

## **Cover**

**Amnesty International**

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## 1. Introduction:

This report seeks to analyse the current policies and practices of the 15 EU Member States and the 10 new Member States with regard to their control of the transfer of military, security and police (MSP) technology, weaponry, personnel and training. The report demonstrates why Amnesty International is convinced that more effective EU mechanisms to control MSP exports are urgently required to help protect human rights and ensure respect for international humanitarian law.

The major European Union (EU) arms exporting countries - France, Germany, Italy, Sweden and the United Kingdom - accounted for one third of the worldwide arms transfer agreements signed between 1994 and 2001.<sup>1</sup> The EU's share of the market was smaller than the United States and Russia, but it increased on 1 May 2004 when ten new countries joined the EU. Some of these new Member States have significant arms production and exporting activities. For example, the enlarged EU will have over 400 companies in 23 countries producing small arms & light weapons (SALW) - only slightly less than the USA.<sup>2</sup> Such a dramatic enlargement of the EU presents both potential opportunities and dangers for European arms control.

The establishment in 1998 of the EU Code of Conduct on Arms Exports represented a significant advance in terms of regional arms export control. In the Preamble to the Code the 15 Member States declared themselves:<sup>3</sup>

DETERMINED to set high common standards which should be regarded as the *minimum* for the management of, and restraint in, conventional arms transfers by all EU Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency,

DETERMINED to *prevent* the export of equipment which might be used for internal repression or international aggression, or contribute to regional instability; [emphasis added]

As well as providing the minimum standards for EU Member States' export control policy and practice, the EU Code has also been adopted by many states outside the EU region and has informed the development of a number of regional and international agreements such as the OSCE Small Arms Document<sup>4</sup>, and the Wassenaar Arrangement<sup>5</sup> Best Practice Guidelines

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<sup>1</sup> Such arms transfer figures are often biased by different accounting systems and also obscured by national secrecy but are useful for comparative purposes. See 'Conventional Arms Transfers to Developing Nations, 1994-2001' report by the Congressional Research Service, August 2002. <http://fpc.state.gov/documents/organization/12632.pdf>.

<sup>2</sup> Source Omega Foundation database. Compiled September 2003. (numbers of companies in brackets): Existing EU countries: Austria (19), Belgium (17), Denmark (3), Finland (10), France (34), Germany (37), Greece (10), Italy (60), Netherlands (5), Portugal (4), Spain (30), Sweden (11), United Kingdom (90). New EU Members: Cyprus (2), Czech Republic (26), Estonia (1), Hungary (1), Latvia (1), Lithuania (2), Poland (22), Slovakia (11), Slovenia (6)

<sup>3</sup> EU Code of Conduct for Arms Exports, 8 June 1998; [//www.smallarmssurvey.org/source\\_documents/Regional%20fora/European%20Union/EUCodeofConduct.pdf](http://www.smallarmssurvey.org/source_documents/Regional%20fora/European%20Union/EUCodeofConduct.pdf). EU Member States must also respect other relevant international obligations such as UN arms embargoes and agreements within the OSCE

<sup>4</sup> OSCE Document on Small Arms and Light Weapons, November 2000, [www.osce.org/documents/sg/2000/11/673\\_en.pdf](http://www.osce.org/documents/sg/2000/11/673_en.pdf)

<sup>5</sup> The Wassenaar Arrangement is the group of leading conventional arms exporting countries, including

for Exports of Small Arms and Light Weapons<sup>6</sup>. Support for the principles of the EU Code has been declared by third countries – notably the EU Associated States of Eastern and Central Europe, Cyprus, the European Free Trade Area (EFTA), members of the European Economic Area and Canada. It is also referred to in the EU-US and EU-Canada Small Arms Declarations of December 1999. In November 2000, the second Consolidated Report of the EU Code recorded that Malta and Turkey had also pledged to subscribe to the principles of the EU Code.

However, the application of EU Code has shown the system to be deeply flawed. Disturbingly, as this report shows, there are numerous reports of exports of MSP equipment, technology and expertise from existing EU Member States or new EU member states which have been transferred mostly in secret to recipients who have used such items for grave human rights violations or breaches of international humanitarian law.

Thus, the decision by existing Member States to carry out a comprehensive review of the EU Code during 2004 is welcome. Such a review should provide an opportunity for a thorough assessment of the first six years of the EU Code's operation and for appropriate amendments so as to ensure that all 25 EU Member States are working together and following responsible arms export control policies. The review process should involve not only the various national governments but also consultation with other interested parties such as parliaments, the business community, non-governmental organisations (NGOs), professional associations and academic experts. However, as explained in the concluding chapters, Amnesty International is concerned that the EU member states do not appear to be heading towards the kind of comprehensive review that AI would like to see take place.

The following chapters examine existing EU Member States' and New Member States' inadequate adherence to the minimum standards set by the EU Code of Conduct on Arms Exports and highlight major weaknesses, ambiguities or loopholes in the Code, related EU mechanisms and national export controls. The final two chapters look at the review of the Code and suggest measures that EU Member States should promote to improve international conventional arms controls.

Amnesty International takes no position on the arms trade *per se*, but is opposed to transfers of military, security or police (MSP) equipment, technology, personnel or training - and logistical or financial support for such transfers - that can reasonably be assumed to contribute to serious violations of international human rights standards or international humanitarian law. Such violations include arbitrary and indiscriminate killing, "disappearances" or torture. To help prevent such violations, Amnesty International campaigns for effective laws and agreed mechanisms to prohibit any MSP transfers from taking place unless it can reasonably be demonstrated that such transfers will not contribute to serious human rights violations. Amnesty International also campaigns for MSP institutions to establish rigorous systems of accountability and training to prevent such violations.

## **2. Basic flaws in the EU Export Control Criteria**

The EU Code of Conduct on Arms Exports requires EU Member States to use one or more of eight Criteria to consider, on a case by case basis, requests for exports of military equipment, including small arms and light weapons (SALW), and dual use equipment. These eight criteria are:<sup>7</sup>

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many EU and new Member States

<sup>6</sup> Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons, December 2002, [www.wassenaar.org/docs/best\\_practice\\_salw.htm](http://www.wassenaar.org/docs/best_practice_salw.htm)

<sup>7</sup> This is a summary of the essential points in each Criterion. For the full text, see the EU Code, op cit

**Criterion One: International commitments:**

- *should refuse* export licences if approval would be inconsistent with respect for international commitments such as UN, OSCE or EU arms embargoes or if approval would breach treaties that control specific arms such as missiles or completely prohibit specific arms such as anti-personnel mines;

**Criterion Two: Human Rights:**

- *will not issue* an export licence if there is a clear risk that the proposed export might be used for internal repression and will take into account the nature of the equipment to ensure respect for human rights;<sup>8</sup>

**Criterion Three: Internal Conflict:**

- *will not allow* exports which would provoke or prolong armed conflict or aggravate existing tensions or conflicts in the recipient state;

**Criterion Four: Regional Peace and Security:**

- *will not issue* an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial gain or adversely affect regional stability in a significant way;

**Criterion Five: Defence and National Security:**

- *will take into account* the defence and national security of Member States and their allies;

**Criterion Six: Terrorism and International Law**

- *will take into account* the recipient state's attitude towards terrorism and organized crime, as well as its compliance with international commitments, in particular on the non-use of force, including international humanitarian law and agreements on non-proliferation, arms control and disarmament;<sup>9</sup>

**Criterion Seven: Diversion:**

- *will consider* the risks of diversion, especially to terrorist organizations, given the capability of the recipient country to exert effective export controls;

**Criterion Eight: Sustainable Development:**

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<sup>8</sup> According to Criterion Two of the Code, states will “exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU....For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with operative paragraph 1 of this Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.”

<sup>9</sup> Criterion Six of the EU Code states that: “Member States will take into account *inter alia* the record of the buyer country with regard to: (a) its support or encouragement of terrorism and international organised crime; (b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts;”

- *will take into account* whether the proposed export would seriously hamper the sustainable development of the recipient country, considering the recipient country's levels of military and social expenditure.

The EU Code also contains *operative provisions* aimed at:

- harmonising the Code's application of arms export control by Member States, including the use of a common arms control list
- increasing transparency with regard to governmental authorized arms exports
- enabling consultation between EU governments on prospective exports to prevent "undercutting"<sup>10</sup>

Under these operative provisions, states are required to notify each other of arms export licences they have refused when a proposed arms export has failed to meet the Code criteria. Before any Member State can grant a licence that has been denied by another Member State (for an essentially identical transaction in the preceding three years), it is required to consult the State that denied the original licence. Although the power to take the final decision remains with individual States, if a licence is granted in these circumstances, the licensing State will have to provide a detailed explanation of its reasoning. The EU Code also imposes an annual reporting obligation on States.

This combination within the Code of a comprehensive set of determination criteria coupled with the set of operative provisions to bring them into effect makes the EU Code an important advance in regional export control.

Yet despite these commitments, certain EU and new Member States have - by neglect, lack of resources or intent - undermined, by-passed or ignored their own national export criteria and those of the EU Code. Despite their promises to the contrary, EU and New Member States have allowed arms and security equipment to be transferred to illicit or abusive end users. Amnesty International and other arms control researchers, including United Nations investigators, have discovered the following ways through which this has occurred.

### **Divergences in governmental "interpretations" of the EU Code, Embargoes and National Export Control Criteria**

There have been a number of cases where differing "interpretations" by EU governments of the EU Code have resulted in officially sanctioned arms exports in clear contradiction of fundamental EU Code Criteria. For example, arms or security equipment from the EU has been transferred to embargoed destinations in breach of Criterion One and, moreover, to security forces that are clearly likely to use such arms and security equipment for human rights violations or breaches of international humanitarian law, in breach of Criterion Two.

In addition there have been interpretations of how to implement the Operative Provisions of the EU Code that have resulted in arms and security exports contrary to the purposes of the Code. For example, the EU Code and most national export reporting systems of EU Member States do not explicitly cover transfers of government-owned arms to other governments -

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<sup>10</sup> "Undercutting" is the process whereby one state grants a licence despite another EU member refusing a licence for the same or similar MSP transaction. Operative provision 3 of the EU Code is intended to limit undercutting, stipulating that EU members will circulate through diplomatic channels details of arms export licences refused in accordance with any of the Code criteria, and that "before any member state grants a licence which has been denied by another member state for an essentially identical transaction within the last three years, it will first consult the member state or states which issued the denial(s)." See EU Code of Conduct for Arms Exports, op cit

“government to government” transfers. Furthermore in many EU and new Member States, the level of secrecy around such “government to government” transfers means that neither parliament nor the public can be sure whether these transfers are consistent with national or EU export criteria.

The details of certain transfers that have come to light - either through limited government reporting or through the investigative work of journalists, human rights and arms control researchers - have given grave cause for concern.

*The EU Code and “Undercutting”*

Because the process of consultation over denial notices is confidential between governments, it has been impossible for Amnesty International to identify the true extent and nature of “undercutting”. However an indication of the level of such undercutting was given recently by the UK Foreign Secretary, Jack Straw, in evidence before a Select Committee of UK Parliamentarians:<sup>11</sup>

“In terms of undercutting we [the UK government] consulted other Member States 20 times last year and we [the UK government] undercut them five times...the denial notices and undercut notifications are confidential. One Member State does make information available about its denial notices, which is the Netherlands, but all the rest of us do not, for our own reasons. In terms of total numbers it is roughly proportionate to the size of the different countries' defence industries.” A UK Foreign Office official, also giving evidence before the Committee, stated that although he could not give a precise figure approximately 15 cases of “undercutting” were recorded per year across the EU.

Although government Ministers and officials may believe that such numbers are relatively low, in practice each case of undercutting can potentially result in arms being sent to a country where there are serious concerns that the weapons will be used for human rights violations, as illustrated in the following case.

In May 2002 after a long delay, the German government formally refused to issue an export licence for the export of H&K G36 rifles to Nepal, after Amnesty International's German Section had raised concerns about the possible impact of such a transfer on human rights in Nepal.<sup>12</sup> It would appear that the long delay allowed another EU member state, the UK, to issue an export licence for similar weapons before the German government's formal refusal, thus avoiding the need to initiate the EU code undercutting process.

In February 2002, *Jane's Defence Weekly* reported that “the Royal Nepalese Army has selected the H&K G36E 5.56mm assault rifle to fulfil a longstanding requirement for some 65,000 weapons. The initial delivery of some 5,000 weapons is intended for this month, but German export controls may yet block the deal. Deliveries of the full order will be phased over 10 years with the bulk obtained over the initial 2-3 year period. All details of the contract are not yet known.”<sup>13</sup> In 2003, *Jane's Infantry Weapons* reported that G36 rifles are now in service in Nepal.<sup>14</sup>

The German company H&K has had a long-standing licensed production arrangement with Royal Ordnance, a UK company. In 2001, the UK government issued an export licence for the export of 6,780 assault rifles to Nepal.<sup>15</sup> In the absence of meaningful transparency by both the German and UK governments concerning arms export deliveries, Amnesty International has not been able to ascertain whether these rifles have been exported to Nepal.

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<sup>11</sup> <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmfaaff/390/4022503.htm>

<sup>12</sup> *Berliner Zeitung*, 8 May 2002

<sup>13</sup> *Jane's Defence Weekly*, “Nepal Chooses G36E Rifle”, 20 Feb 2002

<sup>14</sup> *Jane's Infantry Weapons* 2003-4

<sup>15</sup> UK Annual Report 2001, p222 states export licence granted for 6780 rifles to Nepal in 2001.

In its 2003 Annual Report, Amnesty International reported that: “Against a background of mounting political crisis, there was a sharp rise in the incidence of unlawful killings, “disappearances”, torture and arbitrary arrest and detention by the security forces, and of deliberate killings, hostage-taking and torture by the Maoists. The abuses were carried out in the context of the “people’s war” declared by the Communist Party of Nepal (CPN) (Maoist) in 1996, and the declaration of a state of emergency and the deployment of the army in late 2001.”

A National Human Rights Commission investigation team has investigated allegations that one person was shot dead and 19 others were summarily executed after being taken into custody by the army in Doramba village, Ramechhap district on 17 August 2003. This incident occurred during a ceasefire, and post-mortem reports suggest that the execution victims had their hands tied behind them, and were shot in the head at close range with rifles. The casings were found in the area by investigators. The army has recently admitted that some of the victims were killed illegally and is initiating court-martial against the major responsible for the patrol that day.<sup>16</sup>

Given such reports of the misuse of firearms by the Nepalese security forces, Amnesty International is calling upon all EU countries – particularly the German and UK governments - to announce a freeze on the export of such equipment to the Nepalese forces until the danger of deliberate and serious misuse no longer exists.

*Austrian and UK transfers to Zimbabwe:*

Following widespread and sustained human rights abuses by the Zimbabwean security forces and their armed supporters, the European Union (EU) introduced an embargo on military equipment to Zimbabwe in May 2000. In the run-up to the presidential election in Zimbabwe in March 2002, repression by government forces of opposition rallies and other campaign gatherings intensified. Youth militia, supporters of the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF), and so-called war veterans, often with the direct collusion of the police, perpetrated much of the political violence.

Despite the EU embargo and this pattern of repression, 66 four-wheel drive vehicles produced by the Austrian arms company Steyr were delivered to the Zimbabwe National Army (ZNA) in November 2001. Opposition parliamentarians in Austria raised concerns that the vehicles would be used to transport youth militias and war veterans spearheading Zimbabwean President Robert Mugabe’s campaign for re-election in March 2002.

The Austrian authorities claimed that the vehicles were not covered by the EU embargo or by Austrian national legislation on military equipment because they were not fitted with guns and other special devices.<sup>17</sup> In contravention of Criterion Two of the EU Code, the 66 vehicles were considered by the Austrian government to be ordinary “transport vehicles” so that Steyr did not need special permission from Austria’s Foreign and Internal Affairs Ministries before agreeing the deal with the Zimbabwean government.

Moreover, the involvement of Zimbabwean armed forces in the brutal war in the Democratic Republic of the Congo meant that the Austrian government also ignored Criteria Three and Four of the EU Code. In addition, the Austrian domestic law forbidding Austrian firms from

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<sup>16</sup> Amnesty International Press Release, *Nepal: Killing of 19 Maoists in Ramechhap should be investigated*, 22 August 2003 (AI Index: ASA 31/026/2003)

<sup>17</sup> Amnesty International, “Transporting repression to Zimbabwe”, *Terror Trade Times* 4, 2003, [http://web.amnesty.org/pages/ttt4-article\\_9-eng](http://web.amnesty.org/pages/ttt4-article_9-eng)

selling military equipment to countries involved in war, or to places where there is a strong likelihood of war breaking out, was ignored.

**Police vehicle in use as Zimbabwean riot police patrol Harare during riots over food prices in October 2000. © Juda Ngwenya**

In March 1998 the UK government announced that the Department for International Development (DfID) had approved a project to supply over one thousand Land Rovers to the Zimbabwe Police as part of a programme to help to reform the police in Zimbabwe. The project was valued at US\$14.8 million.<sup>18</sup>

Although these transfers of Land Rovers took place before the imposition of the EU embargo against Zimbabwe, concerns about the deteriorating human rights situation in Zimbabwe had previously been raised by a number of human rights organisations, including Amnesty International. In May 1998, just before the EU Code was adopted, the UK government had indicated that it was aware of the likelihood that the Land Rovers could be used for political repression. Nevertheless, the aid project was not formally cancelled until May 2000. By that time it was reported that some 450 Land Rovers had already been delivered and various reports had detailed the use of Land Rovers to facilitate human rights violations by the Zimbabwean security forces. For example, in the town of Zaka in Masvingo Province, local government Land Rovers were reportedly used in co-ordinated attacks on New Year's Eve 2001 against opposition party activists. Fifteen opposition political activists were hospitalized after severe beatings by militia members. DfID and the UK government's continued support for the supply of such vehicles after June 1998 was contrary to Criterion Two of the EU Code.

*UK and other EU exports to China:*<sup>19</sup>

The EU imposed an arms embargo on China (excluding the Hong Kong SAR) in June 1989, shortly after the Tiananmen massacre. Unfortunately the scope of the ban was left to interpretation by national governments. In the absence of an agreement on a common interpretation it appears that different EU countries have "interpreted" the breadth of this embargo differently. In addition, Criterion Two of the EU Code of Conduct also binds all EU Member States not to issue export licences "if there is a clear risk that the proposed export might be used for internal repression."

A memo dated 26 February 2002 to a joint parliamentary select committee in the UK,<sup>20</sup> examining the 2000 Annual Report of UK arms exports, states that the UK interpreted the arms embargo on China as including:

- Lethal weapons such as machine guns, large-calibre weapons, bombs, torpedoes, rockets and missiles;
- Specially designed components of the above, and ammunition;
- Military aircraft and helicopters, vessels of war, armoured fighting vehicles and other such weapons platforms;
- Any equipment which might be used for internal repression;

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<sup>18</sup> Amnesty International, *Terror Trade Times 4*, op cit

<sup>19</sup> See also related information in the surveillance chapter of this report.

<sup>20</sup> This committee is known as the Quadripartite Committee (or QSC) and draws its membership from Foreign, Trade, and Defence and Development select committees. These are the select committees with a specialist interest in arms sales.



- All defence exports to China to be assessed on a case by case basis against the consolidated EU and national arms export licensing criteria.<sup>21</sup>

However, analysis from a recent report by Oxfam Great Britain<sup>22</sup> indicated that whilst UK components for ‘lethal weapons’ were banned, UK components for other military equipment were not. The 2001 UK Annual Report on Strategic Export Controls lists a number of components, technology, software, and related systems for weapons platforms licensed for export to China that year. These include categories of equipment that would clearly be for use in or with a weapons platform which would itself be subject to embargo.<sup>23</sup>

Furthermore it seems that the UK is not alone in its narrow interpretation of the range of MSP equipment that might be used for “internal repression” – as defined in the EU Code. This report also details below how a number of EU companies have been involved in the supply of communication and surveillance systems to China that have contributed to internal repression.

In addition to bending their “interpretation” of the scope of the EU embargo and the application of the EU Code Criteria, certain EU governments, specifically the French and the German governments, have been pressing for the EU arms embargo to be lifted completely, despite continuing widespread and endemic human rights violations throughout China. Thus, the European Council on 12 December 2003 invited the General Affairs and External Relations Council (GAERC) to re-examine the EU Arms Embargo on China. The GAERC met on 26 January 2004 and decided to remit the issue to the relevant working groups for detailed examination. The issue was due to return to the GAERC at the end of April 2004.<sup>24</sup> The European Parliament has taken a position against lifting the embargo several times, invoking continuing human rights infringements in China.<sup>25</sup> The fact that reservations about lifting the embargo have been expressed by some EU member states, particularly Denmark, the Netherlands and Sweden, could mean that a decision may be difficult.

**Visitors look at models of Chinese fighter jets at an aviation exhibition showcasing both military and civilian aircraft in Beijing in September 2003. Amnesty International is concerned that the UK government’s interpretation of the EU arms embargo on China has resulted in licences for components for military aircraft being granted. © AP/Greg Baker**

*French exports to Myanmar:*

In April 2001 the EU agreed to extend the embargo on Myanmar [Burma] that had been in force since 1996,<sup>26</sup> and confirmed the embargo on the export of arms and military equipment from EU member states. Therefore it is puzzling to find, according to official data, that France made shipments of equipment within the category “Bombs, Grenades, Ammunition, Mines, & Others” to Myanmar in 1998, 1999 and 2000 as follows.

French exports to Myanmar [Burma] between 1998 and 2002. <sup>27</sup> (US\$)			
	2000	1999	1998

<sup>21</sup> See [www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdfence/718/718ap07.htm](http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmselect/cmdfence/718/718ap07.htm)

<sup>22</sup> Oxfam Great Britain, *Lock, stock and barrel*, February 2004

<sup>23</sup> Components licensed to China and identified in the 2001 annual report include aircraft, military communications equipment, components for airborne radar, components for aircraft, military communications equipment, components for aircraft radar, components for combat aircraft simulators, components for destroyers, components for military aero-engines, components for military infrared/thermal imaging equipment, general military vehicle components, military aero engines.

<sup>24</sup> UK Government Parliamentary Answer to PQ 154648, 12 Feb 2004 : Hansard, Column 1653W

<sup>25</sup> European Parliament Resolution of 18 December 2003

<sup>26</sup> Declaration by General Affairs Council 29/7/91. Confirmed by Common Position 96/635/CFSP Common Position 2000/346/CFSP

<sup>27</sup> Source: Comtrade data

Bombs, Grenades, Ammunition, Mines, & Others (930690)	17 248	133 895	18 344
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Whilst this data does not provide specific details of what exactly was exported to Myanmar, the categories of munitions listed above raise serious concerns regarding whether or not the French government has enforced the EU embargo on military exports to that country or fulfilled its obligations under the EU Code.

*Colombia:*

Spain together with a number of other countries – including the UK and most importantly the USA - has authorised transfers of military, police and/or security equipment and other assistance to Colombia over the past few years. Given the pattern of gave human rights violations committed by the Colombian security forces and by paramilitaries associated with them, such MSP transfers are almost certainly contrary to Criteria Two and Six of the EU Code.

At the end of February 2003, the Spanish government announced a huge unconditional package of military assistance to the Colombian government armed forces “to fight any kind of occurrence that affects the security of the Colombian people”, in the words of Federico Trillo, the then Spanish Minister of Defence. It reportedly included eight Mirage-F fighter planes, two C-212 military transport planes and real-time satellite intelligence, as well as the possibility of helicopters and patrol launches. Reports indicated that anti-terrorist equipment and exchanges of military personnel to help train the Colombian security forces in military intelligence and anti-terrorism were included in the package. The fighter-planes were subsequently dropped from the aid package.<sup>28</sup> The new Spanish government which was to take office at the end of April 2004 has suggested that it may review the 2003 agreement with Colombia.<sup>29</sup>

**“Design loopholes” in EU export controls**

The Operative Provisions for the EU Code are quite general and even vague in their wording and, together with loopholes in many EU states’ national arms export control legislation, allow many arms transfers to occur with little, or no, regulation. For example, the EU Code has no operative provisions for Member States to specifically control arms brokering, arms transporting and arms financing activities by EU nationals and residents when such activities, and the related arms deliveries, take place through “third countries”. As explained in Chapter five of this report, these activities are still not adequately controlled despite the introduction of an EU Common Position on arms brokering in 2003.

Similarly, the EU Code has no operative provision for Member States to specifically regulate the transfer of licensed arms production or assembly facilities to “third countries”, and no operative provisions for Member States to regulate transfers from stocks of surplus arms or the provision of MSP expertise, training or personnel. Other loopholes reported below have been uncovered by recent research. Taken together, these “design loopholes” can easily be exploited by arms traffickers or suppliers to circumvent the purposes of the EU Code.

*Slovakian “repair” loophole:*

Since its accession on 1 May 2004, Slovakia is now bound by the EU Code, and it has – along with other New Member States - previously aligned itself with the EU Code.

<sup>28</sup> *El Espectador*, 14 April 2003. See related information in the chapters below on transfers from EU Member States of military training and surveillance.

<sup>29</sup> Reported in *Semana*, 22 March 2004

The UN Panel investigating breaches of the arms embargo on Liberia in 2001 strongly suspected that a Mi-24 combat helicopter was illegally delivered to Liberia.<sup>30</sup> In June 2000 a Mi-24 combat helicopter from Kyrgyzstan had been shipped to Slovakia to be repaired, and was allowed to leave in August 2000, purportedly to be flown back to Kyrgyzstan. A second Mi-24 was brought for repairs in October 2000, but was intercepted in February 2001 as it was at the airport about to leave Slovakia. The UN Panel asserted that the second helicopter, had it not been stopped, would have gone to Liberia as well. The UN found that the arms brokering company, the air transport company, and the aeroplane used for both shipments all played a role in other illegal arms deliveries to Liberia.

The UN Panel's report described that the then Kyrgyz military attaché in Moscow, Maj. Gen. Rashid Urazmatov, had signed a contract with the Slovak repair company LOT (Letecke Opravovne Trencin, or Aircraft Repair Company Trencin), claiming to act on behalf of the government of Kyrgyzstan. The Kyrgyz authorities, however, said they had no idea about a repair contract and, to the contrary, had arranged to sell the helicopters to a company based in Guinea, Pecos Compagnie SA.<sup>31</sup> The helicopters purportedly were for the government of Guinea, according to the end-user certificate supplied by Pecos that showed the ultimate purchaser of the weapons.<sup>32</sup>

Human Rights Watch<sup>33</sup> later uncovered that: "key to the fiasco was a loophole in Slovak law under which the arms deal with Kyrgyzstan did not require approval from Slovakia's arms-export licensing commission... [because]... arms deals were exempt from licensing requirements if the transaction was for repair or refurbishment. As a result, no license application was filed for deals involving repair or upgrading of military equipment from abroad; no end-user certificate was required; and no document authentication or checks on the destination were performed."<sup>34</sup> In response to the scandal, this legal loophole was closed by the Slovak government in December 2001.

#### *Italian "hunting guns" loophole*

In Italy, as in many other countries, the category "small arms" is not precisely defined in the national export control legislation and administrative procedures. Officially a distinction is made between small arms for military purposes and civil arms generally used for sport, hunting and self-defence. "Military arms" require a specific government licence for export and their transfer is supposedly checked and monitored by parliament. Small arms categorized as military weapons or "war arms" come under the Arms Control (185/90) Law. Arms which fall within this category include rifles, machine-guns and machine pistols, which are automatic arms and specifically built for military purposes.

However, the export regulations governing the second category of weapons — "civil arms" — are very weak and it is possible to export handguns from Italy by merely obtaining the permission of a local police commander. Italian research institutes Archivio Disarmo and IRES Toscana reported that there had been an increase in exports of such small arms in recent years, especially to countries where they are likely to be used to violate human rights.<sup>35</sup>

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<sup>30</sup> United Nations, *Report of the Panel of Experts pursuant to Security Council resolution 1343 (2001), paragraph 19, concerning Liberia* (New York: United Nations, October 26, 2001), U.N. document S/2001/1015, [mondediplo.com/2004/01/IMG/pdf/1015e.pdf](http://mondediplo.com/2004/01/IMG/pdf/1015e.pdf) See paras 228-240, (as cited in Human Rights Watch, *Ripe for Reform: Stemming Slovakia's Arms Trade with Human Rights Abusers*, February 2004, <http://hrw.org/reports/2004/slovakia0204/>.)

<sup>31</sup> UN Panel of Experts on Liberia, paras 231-232, op cit

<sup>32</sup> *ibid*, para 239

<sup>33</sup> *Ripe for Reform*, op cit

<sup>34</sup> *ibid*

<sup>35</sup> SIMONCELLI, M., *Armi Leggere Guerre Pesanti*, Rubbettino, 2002, and IRES Toscana, *Il Commercio delle Armi*, [http://www.irestoscana.it/commercio\\_delle\\_armi.html](http://www.irestoscana.it/commercio_delle_armi.html)

Indeed the vast majority of the individual weapons exported from Italy in recent years have been categorized as intended for "civilian" use and so fall outside the remit of the 1990 Arms Control Law. Among the weapons exported under this category are not only semi-automatic firearms, but also manually charged canna-rigata rifles, canna rigata muskets, semi-automatic pistols, revolvers, and spare parts, ammunition and explosives that can, in any case, be used for military purposes.

Weapons routinely used by the police are normally not considered "war arms". This categorisation has led to a liberalisation in the trade in most semi-automatics. The result is that Italian traders are able to export "small civil weapons" to countries devastated by violent conflict and gross human rights violations. For example, in Brazil handguns made by the Italian company Berretta are the second most numerous foreign small arms confiscated by the police,<sup>36</sup> in a country where both the use of small arms by civilians in crime and misuse of small arms by police are rife, and where the government's attempts at control have so far been ineffective.

Likewise, between 1996 and 1997 Italian companies exported pistols, rifles and ammunition worth 13 billion lire (approximately US\$6 million) to Algeria, a country which has been ravaged by serious human rights abuses resulting in the killing of more than 100,000 people by security forces, state-armed militias and armed groups since 1992.<sup>37</sup>

#### *German "air" pistols loophole:*

In 2002, the UK National Criminal Intelligence Service revealed that over 35% of the firearms recovered by the police were Brocock ME38 Magnum air pistols, and that many of them had been converted to fire live .22 and even .38 ammunition. A study by the Forensic Science Service has discovered that 50 unsolved murders and attempted murders were carried out with Brocock pistols. Such pistols have been imported from Germany and distributed by the Birmingham-based company Brocock, which makes the air cartridge system that powers the airgun pellets.<sup>38</sup>

In 2003, the UK *Daily Telegraph* quoted Mr Silcock, who runs Brocock, stating that the ME38 air pistol had been specially designed for Brocock by a German armaments manufacturer, Cuno Melcher.<sup>39</sup> Cuno Melcher continues to manufacture, and offer for export, the ME 38 pistol.<sup>40</sup> Enquiries with the German Federal Ministry of Economics and Labour found that there are no restrictions on the export of air guns and air pistols by the German authorities.<sup>41</sup>

The lack of consistent controls on firearms within the European Union has created a situation where the more stringent controls in one country are undermined by the lack of controls in another. This lack of consistency also applies to a range of other police or security equipment that are classed as controlled goods in some EU countries but not others: for example, stun guns, batons (tonfas) and certain types of chemical irritant weapons.

### **Some Lessons Learned**

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<sup>36</sup> Amnesty International, *A Catalogue of Failures: G8 Arms Exports and Human Rights Violations*, May 2003, (AI Index: IOR 30/003/2003)

<sup>37</sup> Ibid

<sup>38</sup> 'Ban for Airgun used in dozens of murders' *The Independent*, 7 April 2003

<sup>39</sup> Gangsters' DIY handgun that makes a mockery of the ban on firearms, 5 January 2003  
[www.telegraph.co.uk/news/main.jhtml?xml=/news/2003/01/05/ngun105.xml](http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2003/01/05/ngun105.xml)

<sup>40</sup> <http://www.me-sportwaffen.de/> (accessed March 2004)

<sup>41</sup> Email correspondence with the Economic Affairs Department of the German Embassy in the UK. April 2004.

These cases and many more in the chapters that follow illustrate that despite the adoption of the EU Code in 1998 and the enactment of national systems of control, transparency and accountability, EU Member States and the new Member States have continued to allow the transfer of arms and military equipment to recipients who have used them to carry out human rights violations and breaches of international humanitarian law. These cases also illustrate how weaknesses in the EU Code, particularly the lack of clarity of how to interpret some of the Criteria and the limited scope and vagueness of the Operative Provisions, have resulted in inadequate, or even no, control of the transfer of certain arms and security equipment.

Since the enactment of the EU Code, EU Member States have acknowledged some of the above concerns and have attempted small improvements to strengthen the Code. Through discussions of the Working Party of the Council of the EU on Conventional Arms Exports (COARM), states have tried to improve the consistency of the Code's application amongst Member States, and have sought to include areas not originally covered by the Code. Although many of these are discussed in detail in subsequent chapters, the most important developments have included:

- publishing an Annual Consolidated EU Report giving aggregate figures on export licences granted by EU member states;
- the development of a “Users Guide to the EU Code” which seeks to clarify the Member States’ responsibilities with regard to denial notifications and consultations;
- plans to establish a database of EU government licence denials – which should enhance information exchange amongst Member States and aid assessment of arms export licence applications;
- agreements on harmonising end-use certification processes;
- adoption of a Common Position on arms brokering;
- agreement of an updated military list.

However, as the following chapters demonstrate, these measures alone are insufficient to make the EU Code regime effective.

### **The EU Code Review and the Accession Process:**

In late November 2003, the fifth EU Annual Consolidated Report to the EU Code of Conduct was made public. Among nine “priority guidelines for the near future” the EU Member States committed themselves to review the EU Code. Such a review can potentially provide Member States with an important opportunity to remove existing weaknesses in the Code and increase the scope of its coverage. However there is to date little indication of what such a review might contain or whether parliamentarians at national and EU level and members of civil society will be able to contribute to the review.

In reviewing the Code, EU Member States should enhance the Criteria and Operative Provisions to ensure that no MSP arms, equipment, technology, expertise or services are transferred to states where they could be used for human rights violations or breaches of international humanitarian law. All such obligations must be extended to cover government-to-government deals, “third country” dealing by EU citizens and residents, “arms in transit” via the EU, “surplus arms” and the provision of MSP expertise, training and personnel. This should be explicitly stated in the wording of the EU Code.

### 3. Transfers of “Surplus” Arms

Surplus weapons are a predictable consequence of changing security requirements, defence restructuring and re-equipment programmes. States periodically have to dispose of significant quantities of surplus small arms and ammunition. The importance of responsible disposal of surplus and illegal weapons has been recognised by the international community, especially with regard to small arms and light weapons (SALW). The 1997 UN General Assembly Resolution on SALW stated that: “All States should exercise restraint with respect to the transfer of the surplus of small arms and light weapons manufactured solely for...use by the military and police forces. All States should...consider the possibility of destroying such surplus weapons”.<sup>42</sup>

This international consensus was reinforced and developed by governments in Europe through the Organisation of Security and Cooperation in Europe (OSCE). In 2000 the OSCE agreed a politically binding Document on Small Arms. All the 15 EU states and the 10 new states are members of the OSCE and are bound by this agreement. Section 4, part C, paragraph 1 states that:

“The participating States agree that the preferred method for the disposal of small arms is destruction. Destruction should render the weapon both permanently disabled and physically damaged. Any small arms identified as surplus to a national requirement should, by preference, be destroyed. However, if their disposal is to be effected by export from the territory of a participating State, such an export will only take place in accordance with the export criteria set out in Section IIIA, paragraphs 1 and 2 of this document.”<sup>43</sup>

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<sup>42</sup> Fifty second session, Item 71 (b) General and Complete Disarmament: Small Arms page 23, Recommendations 27 August 1997, A/52/298. The term “surplus” indicates serviceable and unserviceable small arms and light weapons held in stockpiles by military and police forces and the illicit weapons seized by such forces that they no longer need

<sup>43</sup> OSCE (2000) Document on Small Arms and Light Weapons, section IV, part three; emphasis added. Section IIIA, paragraphs 1 and 2 is as follows:

1. The participating States agree to the following criteria to govern exports of small arms and technology related to their design, production, testing and upgrading, which are based on the OSCE document on "Principles Governing Conventional Arms Transfers".
- 2.(a) Each participating State will, in considering proposed exports of small arms, take into account:
  - (i) The respect for human rights and fundamental freedoms in the recipient country;
  - (ii) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts;
  - (iii) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict;
  - (iv) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and to the objective of the least diversion of human and economic resources to armaments;
  - (v) The requirements of the recipient country to enable it to exercise its right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
  - (vi) The question of whether the transfers would contribute to an appropriate and proportionate response by the recipient country to the military and security threats confronting it;
  - (vii) The legitimate domestic security needs of the recipient country;
  - (viii) The requirements of the recipient country to enable it to participate in peacekeeping or other measures in accordance with decisions of the United Nations or the OSCE.

## **Destruction of small arms © SEESAC**

Despite such international commitments and obligations, some European states (see examples below) have not provided adequate resources or political will to ensure that surplus SALW are disposed of responsibly. Officials are essentially instructed to dispose of them as quickly as possible, without expense and if possible at a profit. In some EU and new Member States this practice has led to arms being transferred to criminals or to security forces or non-state actors that have used such weaponry for human rights abuses.

### **New Member States**

Although some EU Member States also sold surplus arms following the end of the Cold War,<sup>44</sup> a number of the new Member States together with other Central and Eastern European countries sold off large amounts of their surplus Soviet-era weapons and ammunition. This is particularly true for candidates for NATO membership, as well as new NATO members, who have been modernizing their armed forces in line with NATO guidelines. The surplus weapons have sometimes been transferred to conflict zones or to governments with a record of using similar weapons to facilitate human rights abuses.<sup>45</sup>

Some limited regional and international initiatives have been initiated to attempt to address the ongoing cascade of surplus weapons from the former Soviet Bloc to the world's human rights and conflict zones, by reducing the quantities of such weapons available for sale. NATO and its Partnership for Peace program, for example, have made funds available for the destruction of surplus small arms in NATO candidate countries, as have individual donor countries from the EU. However, some of those EU New Member States with large surplus arms have not taken full advantage of these offers of support.

#### *Slovakia:*

Slovakia had failed to utilise such programs. Instead sales of surplus weapons were found to comprise a significant portion of Slovakia's foreign trade in arms. In 2000, for example, nearly two-thirds of all arms exports were surplus weapons, as opposed to new production.<sup>46</sup>

Many more surplus weapons are expected to come onto the market as Slovakia institutes military reforms that will considerably reduce the size of its forces.<sup>47</sup> By 2010 Slovakia plans to reduce its forces by 21,000 troops, and the country will seek to shed heavy equipment in favour of lighter military equipment that can be more rapidly deployed. Official information on Slovakia's military holdings, when compared to its planned force structure for 2010, reveal the scale of weapons that could potentially be dumped onto the market place: In 2002 the Slovak armed forces had 271 battle tanks in their arsenal, and by 2010 this number was expected to be reduced to 52; the 524 armored combat vehicles held in 2002 are to be brought down to 164 by 2010.<sup>48</sup>

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<sup>44</sup> See examples in Brian Wood and Johan Peleman, *The Arms Fixers*, Norwegian Initiative on Small Arms Transfers, Oslo, December 1999 ([www.nisat.org](http://www.nisat.org))

<sup>45</sup> See: *The Nato summit and arms trade controls in central and eastern Europe*, Human Rights Watch backgrounder, 15 November 2002, [www.hwr.org/backgrounder/arms/nato1115.bck.htm](http://www.hwr.org/backgrounder/arms/nato1115.bck.htm); *Eastern Europe's Arsenal on the Loose: Managing Light weapons flows to conflict zones*, BASIC papers, Number 26, 1998, [www.basicint.org/bpaper26.htm](http://www.basicint.org/bpaper26.htm);

<sup>46</sup> *Ripe for Reform*, op cit

<sup>47</sup> "Slovakia's Path to NATO," briefing by Peter Burian, Ambassador of the Slovak Republic to NATO; Ivan Korcok, then Director General, Security and International Organizations, Ministry of Foreign Affairs, Slovak Republic; and Peter Misik, Director, North-Atlantic Security Department; Ministry of Foreign Affairs of the Slovak Republic, RFE/RL, Washington, DC, June 27, 2002. (As cited in *Ripe for Reform*, op cit).

<sup>48</sup> Data compiled from Slovakia's entry in the U.N. Conventional Arms Register for 2002, and "SR Force 2010," a 2001 publication of Slovakia's Armed Forces. As reported in *Ripe for Reform*. op cit.

The Slovak military has also made clear that it intends to use revenue from the sale of unneeded weapons to finance its modernization.<sup>49</sup> In the absence of a well-funded destruction surplus arms destruction program, the financial incentive to sell surplus arms is strong. According to a 2001 estimate, the destruction of surplus battle tanks reportedly costs approximately 100,000 SKK (some \$2000) per unit in Slovakia. Surplus tanks sold to Angola, on the other hand, were said to have earned some 700,000 SKK (approximately \$15,000) apiece.<sup>50</sup> A senior MOD official said Slovakia was able to sell only a few of the more than twenty surplus MiG-21 fighter planes it had on offer in the late 1990s, and that the cost of dismantling the rest was 150,000 SKK (approximately \$3000) per unit.<sup>51</sup> Selling the weapons not only spares the government the added expense of storage or destruction, it also earns income for the government. In the first half of 2000, the Slovak MOD reportedly added 73 million SKK (more than \$1.5 million) to its budget from the sale of surplus aircraft and tanks.<sup>52</sup>

Pressures to make sales are such that the government often intervenes to market the surplus wares of its military.<sup>53</sup> According to official data, from 1999 to the end of 2002 Slovakia sold Angola 205 battle tanks, thirty-eight large-calibre artillery systems, and twenty-five combat planes. Most were direct exports of surplus weapons from Slovak stocks, but a considerable number were re-exports by Slovak companies of weapons from the arsenals of Bulgaria and the Czech Republic.<sup>54</sup>

#### *Poland:*

A 1999 shipment of Polish tanks to Yemen was diverted en route and reportedly delivered to Sudan, sparking an international scandal that drew attention to the risk of weapons diversion and the responsibility of arms exporters to evaluate more carefully potential arms clients. The shipments were part of a deal between Yemen and Poland's state-run Cenzin arms company reportedly worth \$1.2 million.<sup>55</sup> However despite this history of diversion by Yemen, Poland continued to engage in the arms trade with Yemen, with confirmed exports in 2001.<sup>56</sup>

Poland has also continued to sell off other Soviet-standard weapons. In early 2002 it reportedly had some 800 outdated tanks available for sale. It was seeking markets for its surplus weapons in Asian countries, including Indonesia.<sup>57</sup>

#### *Czech Republic:*

Between the end of 2000 and the beginning of 2001, the Czech Ministry of Interior started selling significant quantities of surplus SALW to selected Czech firms that wanted to export the weapons abroad. The arms, which belonged to the old Interior Ministry troop arsenals, included hundreds of machine guns, tens of thousands of submachine guns and 40 bazookas.<sup>58</sup>

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<sup>49</sup> See, for example, "Slovak army to cut personnel by 8,000 by 2002," CTK, via FBIS, February 15, 2000; Gabriela Bacharova, "Combat equipment on decline, there are no funds," via FBIS, May 12, 2000; "Army decides to sell off T-55 tanks, armored carriers," *Pravda*, via FBIS, December 14, 1999. Ripe for Reform op cit.

<sup>50</sup> "Weapons deals: State has few reasons not to approve," *Slovak Spectator*.

<sup>51</sup> Human Rights Watch interview with then State Secretary Rastislav Kacer, Bratislava, April 12, 2002. *Ripe for Reform*, op cit.

<sup>52</sup> Santor, "The Weapons Trade: Our Taboo," *Narodna Obrodna*. (As cited in Ripe for Reform).

<sup>53</sup> See, for example, "Slovak arms producers offer Indonesia armoured vehicles, know-how," TASR, via WNC, June 20, 2002; "Slovakia offers T-72 tanks, artillery equipment to [Malaysian] army," *SME*, via FBIS, March 17, 2000.

<sup>54</sup> UN Register of Conventional Arms, 1999- 2002. (As cited in *Ripe for Reform*, op cit)

<sup>55</sup> *Jane's Defence Weekly*, 29 September 1999, 'Czech Republic to sell upgraded MBTs to Yemen.'

<sup>56</sup> *Jane's Defence Weekly*, 26 July, 2000, 'Yemen receives Russian and Czech main battle tanks.'

<sup>57</sup> *Jane's Defence Weekly*, 7 May 2003, 'Indonesia looks to bolster air-defence system'.

<sup>58</sup> "Interior Ministry is selling machine guns, *Pravo*, 21 February 2001, p3, sources: David Isenberg's



In the recent past the Czech government has licensed the transfer of surplus conventional arms to governments with poor human rights records. For example, in 2000 the Czech government agreed a licence for the transfer of an estimated 16 RM 70 122mm mobile rocket launchers from ex Czech army stocks to Sri Lanka. These were delivered in 2000-1. Sri Lanka also received an estimated 41 T-55 AM-2 main battle tanks again from ex-Czech army stocks. Similarly the government of Zimbabwe received a consignment of six ex-Czech army RM 70 122mm multiple rocket launchers in 2000.<sup>59</sup>

There have also been concerns about Czech surplus weapons transfers to governments with poor end use controls and a history of diversion. In 1999 the Czech government licensed the transfer of an estimated 106 T-55 AM-2 main battle tanks – all ex Czech army, possibly including T-54 tanks, possibly modernised before delivery - to Yemen.<sup>60</sup> Previously, Poland was reported to have halted a shipment of 20 T-55s bound for Yemen after it was found that an earlier shipment of 20 T-55s had found its way to Sudan (see above).

Nevertheless, the Czech government announced in August 2002 that it would offer for sale nearly 200 surplus battle tanks and some fifty combat planes.<sup>61</sup> It was also reported in February 2002 that the Czech Interior Ministry intends, over the next few years, to sell off 45,000 police pistols. The company Ceska Zbrojovka began supplying the police with the same number of new weapons at the beginning of the year. In reply to a question on whether the Czech Interior Ministry is capable of guaranteeing that the 45,000 pistols will not eventually end up in embargoed regions of the world, where they could be misused, the Czech Interior Minister Anna Stanclova said: "We are very careful about selling weapons. Only companies that have a license to deal in weapons obtain them. Nevertheless, we are unable to guarantee that they do not then end up in these regions."<sup>62</sup>

### **EU Member States before 2004 enlargement**

However, it is not only new Member States that have been guilty of irresponsibly exporting surplus arms contrary to the criteria of the EU Code, but also some of the existing EU members.

#### *Denmark:*

The Danish government reportedly gave a false statement to UN in an apparent attempt to hide an irresponsible export of surplus weapons. In March 2001, as part of a UN fact-finding operation into SALW, the UN Secretary General invited Member States to inform them about national measures to “destroy surplus, confiscated or collected small arms and light weapons.”<sup>63</sup> In their response to the UN the Danish authorities claimed that: “All small arms and light weapons of the police forces which have been taken out of service are destroyed centrally through melting or shredding.”<sup>64</sup> However it was subsequently reported that the

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<sup>59</sup> *Jane's Defence Weekly*, 19 July 2000, ‘Sri Lankan Army inspects Czech main battle tanks.’

<sup>60</sup> *Jane's Defence Weekly*, 29 September 1999. ‘Czech Republic to sell upgraded MBTs to Yemen.’

<sup>61</sup> “Army going to sell 190 old tanks, 47 planes,” CTK, 31 August 2002. As cited in HRW briefing paper, 8 October 2002

<sup>62</sup> Minister: Czech Interior Ministry intends to sell off 45,000 police pistols” *Pravo*, 2 February 2002 as posted on IANSA web site, [http://www.iansa.org/oldsite/news/2002/feb2002/czech\\_pistols2202.htm](http://www.iansa.org/oldsite/news/2002/feb2002/czech_pistols2202.htm)

<sup>63</sup> UN General Assembly. Fifty-sixth session, item 85 General and complete disarmament: illicit traffic in small arms and light weapons A/56/296 14<sup>th</sup> August 2001, <http://www.un.org/documents/ga/docs/56/a56296.pdf>

<sup>64</sup> UN General Assembly. Fifty-sixth session, item 85

General and complete disarmament: illicit traffic in small arms and light weapons A/56/296 14<sup>th</sup> August 2001, page 16 <http://www.un.org/documents/ga/docs/56/a56296.pdf>

Danish Minister of Justice, Ms Lene Espersen, admitted that this information was false and that instead of destroying such weapons the Danish authorities had sold them to a German arms dealer.<sup>65</sup>

Since 1998 10,000 old Walther 7.65mm calibre guns previously in service with the Danish police have been replaced with new 9mm weapons from the German arms producer Heckler and Koch. Part of the 24 million Danish kroner cost of the arms replacement deal was offset by Heckler and Koch agreeing to buy the old weapons from the Danish government for a cost of 7 million kroner, with the purpose of selling them on the open weapons market. It has since been reported that some of these guns have been sold over the internet.<sup>66</sup>

This surplus weapons sell off is contrary to the spirit of UN General Assembly resolutions on SALW, which have been strongly supported by Danish government. For example the 1998 UNGA resolution says that: "All States should exercise restraint with respect to the transfer of the surplus of small arms and light weapons manufactured solely for...use by the military and police forces. All States should...consider the possibility of destroying such surplus weapons."<sup>67</sup>

*Statewatch* reported that at no time during the deal did the Danish police enquire of the Danish Foreign Ministry whether they would be violating Danish government small arms policy. The police stated that the deal would not be violating the UN resolutions and that if people wanted guns and "did not have the possibility to buy the police weapons they would, all things considered, buy other weapons."

In another example from 1999, the Danish army sold 40,000 used 7.62 Garand rifles to a private arms dealer. The rifles were then sold to a dealer in Canada. When the Canadian arms dealer applied to the Canadian government for a license to export the rifles to the USA, the Canadian government refused. The dealer then took the guns apart and shipped the components to the USA for later re-assembly. The subterfuge came to light in 2000 when some 20,000 rifles were seized by US and Canadian Customs in the biggest arms seizure in US history.<sup>68</sup>

In December 2003, after these press revelations, the Danish Justice Minister Lene Espersen confirmed that police and military sales of used firearms would be suspended: "There will be no agreements in the future on the sale of decommissioned police weapons. These weapons will be destroyed in the future."<sup>69</sup> Similarly the Defence Ministry has decided that the military will no longer sell or turn over handguns to civilians, unless the weapons have been rendered unusable in advance.<sup>70</sup>

#### *United Kingdom :*

The UK government asserted in 2000<sup>71</sup> that small arms declared surplus by the Ministry of Defence (MOD) (other than automatic weapons, which are routinely destroyed) are "made

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<sup>65</sup> "No fallout from false UN weapons certificate", *The Copenhagen Post Online*, 12 June 2003

<sup>66</sup> As reported from Danish articles in *Statewatch* January-February 2003  
<http://www.statewatch.org/news/2003/aug/sw131.pdf>

<sup>67</sup> Fifty second session, Item 71 (b) General and Complete Disarmament: Small Arms page 23, Recommendations 27 August 1997, A/52/298

<sup>68</sup> Email correspondence with Nic Marsh, NISAT and also *Copenhagen Post*, Police and military to halt weapons sales, 5 December 2003, [http://www.cphpost.dk/print.jsp?o\\_id=73824](http://www.cphpost.dk/print.jsp?o_id=73824)

<sup>69</sup> Police and military to halt weapons sales, 5 December 2003,  
[http://www.cphpost.dk/print.jsp?o\\_id=73824](http://www.cphpost.dk/print.jsp?o_id=73824); Police and military to halt weapons sales, 11 December 2003, <http://www.cphpost.dk/get/73921.html>

<sup>70</sup> *ibid*

<sup>71</sup> The policy for the export of surplus UK small arms is set out in Written Answer 1138W of October 2001, which reiterates Written Answer 242W of June 2000

available only to Governments, for use by acceptable military, paramilitary and police organisations, either directly or through duly licensed entities authorised to procure weapons.”<sup>72</sup> Surplus weapons are sold by the Disposal Services Agency (DSA), which is a subsidiary of the Defence Export Services Organisation (DESO), within the MOD. The DSA “normally requires overseas governments which purchase surplus MOD equipment to obtain a UK export licence before collection of equipment from the UK.”<sup>73</sup>

Two major aims of the DSA are to secure the best financial return from the sale of surplus equipment and to promote British business. As such, there is a tension between the principles governing the disposal of surplus small arms and the basic aims of the DSA. This was highlighted in late 2002, when, at the African Aerospace and Defence Exhibition hosted by the South African government, the DSA had a brochure offering the SA80 rifle (designated the L85A1), including the most recently updated model L85A2 for sale.<sup>74</sup> This most recent update was only just being introduced into the UK armed forces at the time, so it seems strange that at the same time it was being marketed as surplus weaponry. The last African Aerospace and Defence Exhibition attracted more than 20,000 trade visitors from five continents and 40 countries. In all, 87 official delegations representing 37 countries attended the exhibition.<sup>75</sup>

It is of concern that these sophisticated and deadly small arms were being marketed in South Africa, a country which has one of the highest rates of gun violence in the world,<sup>76</sup> and which is in the midst of the Southern African region where the uncontrolled proliferation and misuse of SALW by state and non-state actors has resulted in widespread human rights abuses in many countries. This marketing of surplus rifles contradicts the UK’s positive work in combating weapon proliferation in Southern Africa, through its role since December 1998 in the EU-SADC dialogue on small arms.

As well as marketing SALW, the DSA has also advertised surplus ammunition and explosive ordnance. At both the International Defense Industry, Aerospace and Maritime Fair (IDEF) 2003 (Turkey) and Defence Systems and Equipment International Exhibition and Conference (DSEI) 2003, the DSA was offering ammunition and mortar rounds for sale to government representatives. A picture on the brochure was identified as the .224 BOZ round developed by Civil Defence Supply in the UK – a modern high power round.<sup>77</sup>

#### *Germany:*

In January 2004, it was reported that the Interior Ministry of Lower Saxony was considering the option of selling a large amount of old police weapons on the free market. By 2006, around 15,000 to 17,000 type P7 pistols will be replaced by the more modern type P 2000 and will thus become redundant. According to the Ministry, these weapons will be ‘sold to reliable companies and traders’. Whether the weapons will remain within Germany or whether they will be exported is currently unknown.<sup>78</sup>

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<sup>72</sup> Saferworld, *Disposal of surplus small arms: a survey of policies and practices in OSCE countries*, January 2004, [www.saferworld.co.uk/armspubres.htm](http://www.saferworld.co.uk/armspubres.htm)

<sup>73</sup> Annual Report on Strategic Exports 2001, p 368.

<sup>74</sup> Company brochure, Omega database.

<sup>75</sup> [www.kallman.com/Aerospace-Defense%20Shows/Africa%20appointment.pdf](http://www.kallman.com/Aerospace-Defense%20Shows/Africa%20appointment.pdf)

<sup>76</sup> According to a 1998 United Nations survey of 69 countries, South Africa had one of the highest firearm related homicide rates in the world per 100 000 people, second only to Colombia. Quoted in ‘Gun related deaths and injuries, Gun Control Alliance, South Africa. [www.sacc-ct.org.za/statistics.html](http://www.sacc-ct.org.za/statistics.html)

<sup>77</sup> Company Brochure, United Kingdom Ministry of Defence, Ammunition, Available for immediate sale

[photograph shows Boz .224, assorted small calibre ammunition and mortar ammunition]

<sup>78</sup> ‘Alte Waffen nicht verkaufen’, *Osnabrücker Zeitung*, 22 May 2002, [www.neue-oz.de](http://www.neue-oz.de), as quoted in

*France:*

On 19 May 2003, France's Ministry of the Interior signed a contract with J.P. Sauer & Sohn's French partner Rivolier S.A. for the provision of the new duty pistol for the French law enforcement authorities. Under this contract the companies will deliver over 200,000 pistols to the French Gendarmerie Nationale, Police Nationale and French Customs.<sup>79</sup> At the time of writing the French government has not responded to requests from Amnesty International for a statement on whether the surplus pistols being replaced will be destroyed or sold and if to be sold, to whom.<sup>80</sup>

### **Key lessons to be learned**

EU Member States should agree without delay an Operative Provision to ensure that transfers of surplus arms do not contravene any of the EU Code criteria. EU states must never export or transfer surplus arms to countries where they will be used for human rights violations, breaches of international humanitarian law or other violations of international law.

The EU Member States should agree without delay a binding Common Position, to destroy all confiscated illegal arms and to make every effort to destroy arms deemed surplus to their security needs - including both police and military arms and potentially lethal security equipment. Where such destruction is not possible, surplus arms should be securely stockpiled. EU Member States should provide human and financial assistance to EU partners with insufficient resources to carry out destruction or secure stockpiling programmes.

## **4. Failures to Control Transit and Trans-shipment**

All governments in countries through which arms pass (or transit) need to ensure the security of the arms transferred and whether the transfers meet the international obligations of the state in transit. If secure passage does not exist there are dangers that those licensed arms transfers will be diverted to illegitimate end users who will use these weapons for criminal acts or to commit grave human rights abuses.

Operative Measures to explicitly control trans-shipment are not included in the EU Code, but (as detailed below) research for Amnesty International has shown clear contradictions between certain EU Member States practices with regard to their controls on trans-shipment and their obligations under the EU Code criteria. Certain countries have become key transit or trans-shipment hubs through which commercial and government freight (including arms and security equipment) flow. For such hubs, strict customs and freight control regulations need to be enforced. However, the reality is that in many of these transit hubs, the existing transit controls are very weak or are not adequately enforced. Unscrupulous arms dealers will seek to use the wide "holes" and weaknesses in national and regional controls on trans-shipment.

Amnesty International believes that the issue of transit/trans-shipment controls has not received adequate attention by governments. Two areas are of greatest concern:

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Saferworld SALW surplus report, 2004

<sup>79</sup> [www.sauer-waffen.de](http://www.sauer-waffen.de) 2003

<sup>80</sup> AI France has written to the heads of the Police, Gendarmerie and Customs, but has not yet received any reply

- *Danger of diversion* – in contravention of EU Code Criterion Seven, diversion of arms shipments is facilitated by poor laws and oversight, inadequate customs and transport controls, lack of resources and corruption - allowing criminal gangs, terrorist supplier and, UN sanctions busters to flourish. This is reported principally in some of the new Member States for example Poland, Slovenia and Slovakia.
- *Violating EU Code Export Criteria* – in contravention of several Criteria of the EU Code, governments may allow arms to transit through their territory to end users to whom EU governments would not normally allow arms to be transferred directly. This has been reported primarily in the Netherlands.

### **Danger of diversion**

#### *Poland:*

It has been reported that, amongst arms in transit through countries in the Baltic region, it is not unusual for Polish military equipment to be found in illicit stores and shipments of arms.<sup>81</sup> Whether these arms have been acquired through unauthorised sales, authorised sales that are being transferred without the relevant permits, or stolen from stores is unknown. According to one report, shipments that included advanced weaponry were discovered in Gdansk and Czestochowa in 1997.<sup>82</sup> More recently in 2002, four Arrow anti-aircraft missiles were reported 'missing' from a train travelling from Skarzysko-Kamienna to Gdansk. This shipment was being transported by an intermediary from the manufacturer for export, suggesting that inadequate safeguards were in place.<sup>83</sup>

#### *Slovakia:*

Slovakia's intelligence body, the SIS, reported in May 2002 that the country continued to serve as a trans-shipment point for illegal arms flows to areas of violent conflict, noting among other concerns that "Slovakia became, due to imperfect legislation, a transport corridor for illegal deliveries of weapons and a country where illegal deals were legalized."<sup>84</sup>

Under a legal exemption in a 1998 law and still in place following legal revisions in 2002, no license is required for the transit of military equipment through Slovakia if the equipment is on the territory of the Slovak Republic for a period of no longer than seven days. As noted by a licensing official, there would be no reason for any transit across Slovakia to take more than seven days, so this exemption effectively covered all weapons transit.<sup>85</sup> The airport in Bratislava in particular, has been a hub for illegitimate arms shipments. Arms shipments through Slovakia are subject only to civil aviation and customs controls. Customs and airport personnel are not able to check every shipment, and these controls have been insufficient to deter and detect suspicious activity.

Slovakia has been a point of origin or transit for arms deliveries to human rights abusers and countries in violent conflict, as well as to suspected illegal destinations. Slovak transport agents have been involved in arranging some of these deliveries.<sup>86</sup> In March 2000, a plane left

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<sup>81</sup> Saferworld, *Arms transit trade in the Baltic region*, October 2003

<sup>82</sup> Equipment of criminal groups viewed, *Zycie Warszawy*, 25 January 1999, NISAT Black Market Archive on Poland, <http://www.nisat.org/>, 28 April 2003.

<sup>83</sup> Lodz police investigate theft of four anti-aircraft missiles', RFE/RL Crime, Corruption and Terrorism Watch, vol 2, no 13, 4 April 2002.

<sup>84</sup> Slovak Information Service Annual Report for 2001, March 2002. See also Nicholson, "From cheerleader to referee..." *Slovak Spectator*.

<sup>85</sup> Human Rights Watch interview with Ondrej Varacka, Ministry of Economy, Bratislava, April 12, 2002, as cited in *Ripe For Reform*, op cit

<sup>86</sup> See for example, Brian Johnson Thomas, "Anatomy of a Shady Deal" in Lora Lumpe, ed. *Running Guns*, Zed Press, London and New York, 2000.

Bratislava's airport bound for Harare, Zimbabwe, allegedly carrying a mis-declared weapons cargo for use by Zimbabwean forces in the war in the Democratic Republic of Congo.<sup>87</sup>

According to Human Rights Watch, on the evening of September 29, 2001, an Iranian Ilyushin-76 plane landed at Bratislava airport and offloaded approximately three tons of cargo, which was to be loaded onto a Ukrainian plane for onward shipment to Angola. The Iranian plane departed again before authorities discovered that the contents of the shipment—504 units of anti-tank munitions packed in 84 containers—did not match the accompanying documents.<sup>88</sup> The rocket-propelled grenades bore no markings indicating the producer, but they were evidently new and were most likely manufactured in Iran.<sup>89</sup>

#### *Slovenia:*

According to a Saferworld report Slovenia has had problems regulating SALW on its territory, and the number of shipments that have been intercepted and confiscated led to suggestions that “many others have slipped though” and that Slovenian territory is an important transit route for weapons going to and from the former Yugoslavia.<sup>90</sup> However, the number of seizures of illicit SALW on Slovenian territory and at border points does indicate that security and prevention measures are yielding results. In autumn 1999, arms smugglers were caught on the Croatian-Slovenian border with approximately 5,000 handguns.<sup>91</sup> More significantly, in September 2001, Slovenian customs officials in the port of Koper detained an enormous 48-ton batch of smuggled infantry weapons sent from Malaysia, which police believe were destined for Macedonia and Kosovo.<sup>92</sup>

#### *Hungary:*

A positive example of transit control in action is that of the Hungarian Border Guard Centre (HOP) which intercepted a shipment of missile parts and military equipment carried by Turkish trucks as they entered Hungary from Romania.<sup>93</sup> In early 2004, the trucks were intercepted because they did not have the correct NATO or Hungarian Military transit documentation. The final destination of the equipment was reported to be a West European

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<sup>87</sup> “Britons involved in arms running,” *Guardian* (London), April 15, 2000; “Romania: Daily Details Arms Exports to African Nations,” *Evenimentul Zilei* (Bucharest) via WNC, 13 March 2002.

According to the *Guardian*, which said it had documents on the flight, the plane departed Bratislava carrying cargo listed as “technical equipment and machinery” for delivery to the weapons procurement arm of the government. The previous November, the *Guardian* reported, the same plane reportedly had been used to fly a load of weapons (misdeclared as “technical equipment”) from Bulgaria to Harare, where it was transferred to another plane for delivery to Zimbabwean troops fighting in the DRC.

<sup>88</sup> See, for example, “Police seize illegal ammunition shipment at Bratislava’s airport,” Associated Press, 1 October 2001; “Slovak police investigating illegal arms cargo seized at airport,” Reuters, October 2, 2001, supplemented by Human Rights Watch telephone interview with a Slovak diplomat, 13 February 2002. While some media reports refer to the Iranian airline as Chabahar Airlines, it appears in an industry listing as Chabahar Air. See *JP Airline-Fleets International*, 2002/03 edition, (Zurich: Bucher & Co., Publikationen, 2002), p. 138, as cited in Human Rights Watch, January 2004, op cit

<sup>89</sup> Human Rights Watch interview with a person familiar with the case, who requested anonymity, Bratislava, April 2001. This person is close to Slovakia’s Interior Ministry, Economy Ministry, and General Prosecutor’s Office

<sup>90</sup> *Arms production, exports and decision-making in Central and Eastern Europe*, Saferworld, June 2002

<sup>91</sup> MORH protects arms dealers who smuggle weapons to ETA and IRA, Jasna Babic, Zagreb Nacional in Serbo-Croatian, 24 July 2001, as cited in *Arms production, exports and decision-making in Central and Eastern Europe*, Mariani and Hirst, Saferworld 2002

<sup>92</sup> ‘Large batch of weapons for Macedonia and Kosovo detained in Slovenia’, *RIA Novosti*, Belgrade, 6 September 2001, source: David Isenberg’s Weapons Trade Observer, as cited in: Saferworld, *Arms production, exports and decision-making in Central and Eastern Europe*, op cit

<sup>93</sup> ‘Missiles and Uranium pass Hungarian borders’, *The Budapest Sun*, 4 March 2004.

military base. The trucks were reported to be stranded on the border at Nagylak and would not be permitted to enter Hungary until the correct transit documentation was presented.

### *Kaliningrad*

Kaliningrad is an enclave of the Russian Federation bound by Russian Federal laws on arms control and trafficking. The enclave will become “trapped” in the newly expanded EU and could provide a dangerous control “black hole” for unscrupulous arms traffickers to utilise. It has reportedly served, in the past, as a transit point for shipments of military equipment and arms from other parts of Russia, Lithuania and beyond, for illicit end-users.<sup>94</sup>

## **Violating EU Code Export Criteria**

### *The Netherlands:*

To comply with the EU Code, the Dutch government has stated that it prevents the export of equipment which might be used for internal repression or international aggression, or contribute to regional instability.<sup>95</sup> However there is concern that these principles are not extended to the Dutch arms transit policy. For example in 2002 Israel was granted export licences worth 1.46 million euros, approximately half of the licensed Dutch transit trade.<sup>96</sup> The licences were granted for goods under the category A2, which are those connected with armoured vehicles. This is despite the consistent reporting by human rights organisations of the misuse of such equipment by the Israeli security forces.<sup>97</sup>

On 16 May 2002, a Dutch court in The Hague heard summary proceedings filed by twenty-one civil society organizations including Novib (Oxfam Netherlands), to ban all export and transit of military goods to Israel. The Dutch government has so far refused to comply with the demands. The claim was declared inadmissible and the NGOs were advised to turn to a “board of appeal of the business community”, which also ruled the case inadmissible.

According to information from Amnesty International (Netherlands) and Novib at least a quarter of all import and export of goods in and from the European Union pass through the Netherlands.<sup>98</sup> They describe the Netherlands as “the distribution country and main port of Europe”. Trans-shipment of goods constitutes about 40 percent of all Dutch exports. Now that

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<sup>94</sup> For examples see Saferworld, *Arms transit trade in the Baltic region*, op cit

<sup>95</sup> However, despite Dutch government statements, further below this report illustrates direct exports from the Netherlands of military and security equipment and components that endanger human rights.

<sup>96</sup> The Netherlands arms export policy in 2002, Ministry of Economic Affairs and The Ministry of Foreign Affairs, The Hague, The Netherlands, September 2003; original title: Jaarrapport Nederlands wapenexportbeleid 2002, Tweede Kamer, vergaderjaar 2002-2003, Kamerstuk 22 054, nr. 74. The Koninklijke Marechaussee (Military and Border Police) received 57 notifications in 2001 and 47 in 2002 by EIAI for export from and to Israel. [Independent evaluation transit regulation military goods, final report, Van de Bunt, Adviseurs voor Organisatie en Beleid, 25 april 2003, p. 12; original title: Evaluatie Doorvoerregeling Militaire goederen, eindrapport.](#) (authors: Dr. J.W. Asje van Dijk, Drs. Gabriël A.H.H. de Groot).

<sup>97</sup> Nine-year-old Shaima ‘Abu Shammala was killed in the early afternoon of 17 October 2002 in her home in front of her parents and siblings by a shell fired by an Israeli army tank/APC into a densely populated refugee camp in Rafah, in the Gaza Strip. In the same incident five other residents were also killed, including a 15-year-old boy, and two women, aged 70 and 30. Ahmad Ghazawi, aged six, and his 12-year-old brother Jamil were killed on 21 June 2002 by a tank shell fired by the Israeli army in a residential area on the edge of Jenin city. Their 11-year-old brother Tareq and a neighbour, Dr Samer al-Ahmad, were seriously wounded in the same incident. In Amnesty International, *Shielded from scrutiny: IDF violations in Jenin and Nablus*, Nov 2002 (AI Index: MDE 15/001/2003). AI has also reported repeated concerns about killings and attacks on civilians by Palestinian armed groups.

<sup>98</sup> Extracted and summarised from a commissioned AI Netherlands Report written by Martin Broek, January 2004 and from a draft NOVIB report written by Arjan El-Fassed, January 2004

Europe's internal borders are becoming less important, the Netherlands is an even more attractive location for international business, at the heart of the European distribution network. Seagoing vessels annually carry tens of millions of tonnes of goods in and out of Rotterdam, one of the largest ports in the world, which handles almost 20,000 containers each day.<sup>99</sup>

Following several publicised cases of arms trafficking,<sup>100</sup> Dutch NGOS and parliamentarians have also raised concerns that their authorities do not have adequate control on the massive flow of cargo through the country. Only three percent of the 20,000 containers that are processed daily in Rotterdam are actually scanned. On 1 January 2002, the Dutch government has established new controls on trans-shipment of arms and security equipment, which are detailed under the Strategic Goods Import and Export Order. These form a relatively complex administrative process of licenses and notifications for some, but not all, types of arms and also depend on the length of time the goods are in transit on Netherlands territory. Generally:

- A) For the transit of arms *an export license* is compulsory, (apart from exceptions covering 'fast transit' between close allies: i.e. temporary storage of shorter than 45 days if transport by sea or 20 days by other transport means and if the goods come from the EU or are going to Australia, Japan, New Zealand, Switzerland or an EU or NATO country.)<sup>101</sup>
- B) For small arms and light weapons *a notification*,<sup>102</sup> including an end use notification, to the Dutch authorities is always compulsory.
- C) When the government is suspicious of an individual delivery it can enforce an *export license* on that particular shipment, this on a so-called ad hoc basis.<sup>103</sup>

In 2003 an independent evaluation report stated that there was not enough knowledge on the volume of so-called "fast transit" and that the control of small and light weapons was more extensive than control of other types of arms.<sup>104</sup> The report states that the transit of "heavy" arms, such as tanks, does not require mandatory notification because such "heavy" arms can be noticed more easily by customs services. When transit appears to be suspicious it is assumed that customs authorities will intervene.

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<sup>99</sup> <http://www.portofrotterdam.com>

<sup>100</sup> In 1996, a parliamentary question was raised on illicit trans-shipment of arms through Schiphol, based on an article in *Vrik Nederland* 18 May 1996. In 1998, a question was raised in parliament about illicit arms trafficking to Iran following a report in *Telegraaf* of 6 March 1998 and details of all trans-shipments were requested. In March 1999, a question was tabled concerning trans-shipments to Eritrea because a military consignment was stopped in Antwerp but apparently transported through the Netherlands. On 2 March 2000, questions were raised in the Permanent Commission for Economic Affairs concerning a law proposal to change the law on trans-shipment of weapons and munitions: What is meant by trans-shipment? Is a shipment with strategic goods from France through Rotterdam towards Burundi a trans-shipment that falls under this new law? The MPs referred to an article published on 6 December 1997 which mentioned trans-shipment of arms and munitions through Schiphol airport towards Kenya, Sierra Leone, Tanzania, Nigeria, China, Israel, Lebanon.... On 23 June 2000, further questions were raised in the Commission concerning arms exports to Sub-Saharan Africa, especially the Great Lakes Region. See also Kamerstuk 2002-2003, 22054, nr. 68, Tweede Kamer. On 21 November 2002, a parliamentary question was raised concerning trans-shipments of arms to Israel (see 21-11-2002 nr. 361, Kamervragen met antwoord 2002-2003, 2e Kamer).

<sup>101</sup> Manual strategic goods, supplement 17, p. 20.

<sup>102</sup> This notification includes besides an end user statement, the quantity of weapons, the vehicle for transport, where they leave the Netherlands and identification of the person who possesses the arms at the time of request.

<sup>103</sup> Chapter 'Procedures,' Manual strategic goods, supplement 23 and 21 (Feb. 2003 and April 2002), pp. 20-21.

<sup>104</sup> Extracted and summarised from a commissioned AI Netherlands Report written by Martin Broek, January 2004 and from a draft NOVIB report written by Arjan El-Fassed, January 2004



This system means that there is no registration of many of the arms shipments that transit through the Netherlands. The State Secretary of Economic Affairs argued in a letter to the Dutch Parliament on 21 July 2003 that it is "unrealistic to provide a full overview of transit of arms and military goods through Netherlands territory" because this would mean an "administrative burden" on government and business. However, due to the "war on terrorism", checks on trans-shipments to the United States have been extensive. Since 22 August 2002, the Central Service Import and Export received 24 "notifications" to transit small arms and light weapons from Israeli Airways for shipments originating in the United States with destination Israel.

Dutch parliamentarians have called on the government to bring all transit of arms through the Netherlands under Dutch arms export policy. The government, specifically the responsible ministries of Economic Affairs, Foreign Affairs, Justice and Finance, maintains that the Netherlands is a "distribution country" and cannot possibly control every item that is transferred through Dutch territory. It is, according to the government, also impossible to enforce its own policy upon third countries, unless there is reasonable risk. During the last parliamentary debate on arms exports in November 2003, the minister of Foreign Trade stated that she intends to implement a system whereby the Dutch authorities must be notified about transits of all items on the list of military goods, not just small arms and light weapons (as per point B above). Although this might improve transparency, some Dutch parliamentarians and NGOs want compulsory licences for all transits, rather than just notification that they are occurring.

#### **Key lessons to be learned:**

An experienced arms trade analyst concluded "that the majority of Member States were unwilling to tighten controls on goods in transit on the grounds that this could threaten the competitive position of Europe's ports."<sup>105</sup> However, the overall economic interests of EU Member States and others will be harmed if the EU fails to prevent diversion, illegal trafficking and the "authorised" transfers of arms to users who commit serious human rights violations, or war crimes.

According to the EU Code's Operative Provision 10, "It is recognised that Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the above Criteria." In the 2002 EU Consolidated Annual Report, it was stated that the Criteria of the EU Code of Conduct *should* be taken into account when considering transit licence applications.<sup>106</sup> While all EU Member States should apply the Criteria to arms transiting through their country as they would for arms exported directly, this form of words - "take into account" - is generally too weak and open to abuse.

EU States must apply binding Criteria to arms in transit and agree Operative Provisions in the EU Code to adequately control the transit of arms. The success of such controls depends upon harmonising regulations, closing loopholes and co-operation between the transit states and the importing and exporting states. The EU must also prioritise cooperation with the new Member States and Russian Federation on measures to combat illicit trafficking. These should include regular information exchange on export and transit controls and licences.

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<sup>105</sup> Anthony I, 'Strengthening Controls on Arms Transfers and Transit', Background paper for the Seminar on Strengthening Cooperation on Arms Export Controls, Stockholm, 5-6 March 2003.

<sup>106</sup> Annex 1 of The Council's Fourth Annual Report According to the Operative Provision 8 Of The EU Code Of Conduct On Conventional Arms Exports, 11 November 2002, Doc13779/92, PESC446 COAMRM14.

## 5. Arms brokering and transport services

Amnesty International and other NGOs have repeatedly documented the impact of arms brokers operating from Europe in fuelling human rights abuses in many parts of the world.<sup>107</sup> From the genocide in Rwanda to the bloody conflicts in Liberia, Sierra Leone and the DRC, brokers have taken advantage of the lack of effective export controls within the European Union.

Arms brokers are experts at using “shell” companies, shipping agents and distributors to arrange the sale of arms and weapons to human rights crisis and conflict zones. Because of the lack of effective controls at the national, EU and international level, the brokers, transportation agents, intermediaries and those providing financial services for such third party arms transfers rarely break export laws and can operate with impunity despite the serious human rights abuses caused by such arms transfers.<sup>108</sup> The following cases illustrate the concerns that Amnesty International has regarding the weak or non-existent controls on arms brokering.

### *Italy:*

On 5 August 2000 Italian police arrested arms broker and dealer Leonid Minin, near Milan. Documents found in his hotel room reportedly detailed illegal sales of arms to the Revolutionary United Front (RUF) in Sierra Leone.<sup>109</sup> The RUF have committed widespread and gross human rights abuses against civilians in Sierra Leone and have been subject to a UN embargo. However, despite the evidence against him, Minin was released in December 2002 as the Italian Supreme Court argued that it could not prosecute him because the trafficked weapons had not touched Italian soil and were not covered by Italian law.<sup>110</sup>

### *France:*

In September 2003, the Angolan government appointed French billionaire businessman Pierre Falcone as its ambassador to UNESCO.<sup>111</sup> This was a highly unusual act as Falcone was then, and still is, under investigation by the French authorities for illegal arms trafficking to Angola. UNESCO representatives expressed their shock and dismay at this appointment, adding it was unacceptable that an arms trafficker was now a member of the agency.<sup>112</sup> In November 2003, French actress Catherine Deneuve resigned as UNESCO Goodwill Ambassador protesting Falcone's nomination.<sup>113</sup>

Pierre Falcone's involvement in the “Angolagate” scandal came to light when French judicial officials found that Brenco International, a company owned by Falcone, was involved in arms transfers to the Angola government and had made payments to a number of his French associates.<sup>114</sup> Falcone was a consultant to the French government agency SOFREMI, which exports military equipment under the auspices of the French Interior Ministry. He had also developed good contacts in the Eastern European arms business through Russian émigré businessman Arcadi Gaydamak who was based in Israel. In November 1993, Pierre Falcone

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<sup>107</sup> See for example Amnesty International, *A Catalogue of Failures*, op cit. A comprehensive analysis of the problem and solutions is by Brian Wood and Johan Peleman, *The Arms Fixers*, op cit

<sup>108</sup> Arms brokers can also have a serious impact within EU member states as well. For example see: *The Guardian* 29 July 2000. “Police seize republican arms shipment. IRA dissidents striving to prove their muscle suffer setback as international surveillance nets costly weapons purchase in Adriatic Port”.

<sup>109</sup> Amnesty International *Terror Trade Times*, Issue No. 4, June 2003, (AI Index: ACT 31/002/2003)

<sup>110</sup> Amnesty International, *A Catalogue of failures*, op cit

<sup>111</sup> United Nations Educational, Scientific and Cultural Organisation

<sup>112</sup> *U.N. Wire*, 26 Sep 2003

<sup>113</sup> *U.N. Wire*, 13 Nov 2003

<sup>114</sup> For more details, see Georges Berghezan “*Trafics d'armes vers l'Afrique – Plein feux sur les réseaux français et le savoir-faire belge*”, GRIP, 2002.

and Arcadi Gaydamak had allegedly helped arrange the sale of small arms to Angola worth US\$47 million. In 1994, they reportedly arranged a second deal for US\$563 million-worth of weapons, including tanks and helicopters. The Angolan government reportedly paid for the weapons with oil.<sup>115</sup> The civil war in Angola has taken the lives of hundreds of unarmed civilians each year at the hands of both government forces and the National Union for the Total Independence of Angola (UNITA). Human rights abuses reported included torture, mutilation, abductions and killings. In 2001 alone, the armed conflict and insecurity were responsible for 300,000 people being forced to flee their homes, bringing the number of internally displaced people to four million.<sup>116</sup> In December 2001, Falcone was released on bail whilst the French authorities investigated charges that he broke French arms control laws between 1993 and 1994. He was placed under investigation again in April 2002 for illegal arms trading in the post 1994 period.

Falcone's lawyer argued that Falcone has total immunity from prosecution because of his new status as an Angolan diplomat. However the French authorities have said the immunity only covers acts related to his diplomatic functions. On 14 January 2004 France issued a global arrest warrant for Pierre Falcone. The arrest warrant was issued after Falcone reportedly refused to appear before a judge and left France, breaching his probation terms.<sup>117</sup> Despite such actions Amnesty International is still concerned that France does not have adequate laws covering the brokering of arms transfers outside French territory by French nationals and residents.<sup>118</sup>

**A seriously injured boy has his wounds dressed at the hospital in Gamba, Bie province, Angola in June 2002. The civil war in Angola took the lives of hundreds of unarmed civilians each year at the hands of both government forces and the National Union for the Total Independence of Angola (UNITA). © Francesco Zizola, Magnum Photos**

#### *Czech Republic :*

Following a joint Czech-German-Swiss investigation in August 2002, two Czech nationals were arrested in the Czech Republic and a Russian arms broker with Canadian citizenship was arrested in Germany. The three were accused of engaging in a criminal conspiracy to broker the sale of Russian and Bulgarian weapons to Middle Eastern countries beginning in 1999. Czech officials declined to name the destination countries for the weapons, but a Czech parliamentarian confirmed to the *Christian Science Monitor* that the weapons were suspected to have gone to Syria, Iran, and Iraq.<sup>119</sup> They reportedly did not pass through Czech territory, but the sales allegedly were brokered through the Czech branch of a Canadian company. None of the deals were licensed by Czech authorities because the company was only registered to conduct marketing activities.<sup>120</sup>

### **Arms transport services**

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<sup>115</sup> Ken Silverstein, "The Arms Dealer Next Door: International billionaire, French prisoner, Angolan weapons broker, Arizona Republican. Who is Pierre Falcone?" <http://inthesetimes.com/issue/26/04/feature4.shtml>

<sup>116</sup> See Amnesty International, *Terror Trade Times No 3*, June 2002

<sup>117</sup> [France Issues Arrest Warrant For Angolan Envoy To UNESCO](http://www.unwire.org/UNWire/20040116/449_12156.asp), [www.unwire.org/UNWire/20040116/449\\_12156.asp](http://www.unwire.org/UNWire/20040116/449_12156.asp)

<sup>118</sup> See Amnesty International, "A Catalogue of Failures", chapter 4, op cit

<sup>119</sup> Arie Farnam, "Iraq buying arms in East Europe's black markets", *Christian Science Monitor*, 11 September 2002. As cited in *Arms Trade, Human Rights, and European Union Enlargement: The Record of Candidate Countries*, A Human Rights Watch Briefing Paper, 8 October 2002

<sup>120</sup> "Catalogue found on detained Czechs offers all Russian-made arms," CTK (Prague), August 29, 2002. As cited in *Arms Trade, Human Rights, and European Union Enlargement: The Record of Candidate Countries*, A Human Rights Watch Briefing Paper, 8 October, 2002

The brokering of international arms transfers, especially for illegal or illegitimate clandestine purposes, is very closely associated with deliveries of cargoes by sub-contracted arms transporting businesses. Thus, arms brokers often operate their own arms transport networks, or deal with their trusted cargo charter operators, freight forwarding agents, and insurers.<sup>121</sup> Not all the sub-contractors will be equally informed of the details of such dubious arms deliveries, but usually the key actors on arms transporting will be “in the know”. Despite this, few EU governments appear to have specific controls on arms transporters other than the customs and transport safety mechanisms for moving regular goods across their own borders.

*Denmark :*

In March 2003, a cross-party parliamentary group in Denmark challenged both the Minister of Justice and the Minister of Foreign Affairs as to why Danish shipping companies were continuing to transport arms to countries such as Myanmar, China, and Sudan. Despite these countries being subject to EU embargoes that prohibit the export of weapons to repressive governments, Danish shippers are circumventing the legislation by claiming that they are only transporting, not exporting, weapons. A spokesperson for the Stockholm International Peace Research Institute (SIPRI) stated that: “Denmark is one of the only countries where ships carrying arms are allowed to sail to countries blacklisted by the EU.”<sup>122</sup>

*Ireland:*

In 2002, the involvement of an Irish registered company with an international arms smuggling operation was revealed. The company, Balcombe Investments Limited, owned the aircraft operated by Renan Airways of Moldova to fly several shipments of illegal arms to Africa.<sup>123</sup>

In December 2000, a United Nations report briefly mentioned suspicious dealings involving Renan Airways. A subsequent UN report on the arms embargo on neighbouring Liberia, confirmed those suspicions, identifying Renan Airways as having flown unauthorised cargoes of arms from Moldova to Liberia. The report also detailed how Renan Airways had worked with another company, Central African Airlines - owned by former KGB officer Viktor Bout - to ship illegal arms to Sierra Leone.

Balcombe Investments was registered in Ireland in 1992 by a Dublin-based company formation agent on behalf of an Isle of Man company, Portman Consultants Ltd. Company formation agents are not generally aware of the activities of their client companies and would have had no knowledge of Balcombe's arms trade link. The day after Balcombe Investments was formed it got a new set of directors based in the Channel Islands and employed by Portman Consultants. From then on Balcombe Investments was essentially a company of convenience which was used to register aircraft in Moldova.<sup>124</sup>

When contacted by the *Irish Examiner* and asked about illegal arms sales to Africa, a Renan spokesman said: “Balcombe Investment have some aircraft. We transport cargo world-wide, they are the owners and we are the operators. It is an offshore company, so they acquire some aircraft and register it in the Republic of Moldova.”<sup>125</sup>

***EU initiatives to control brokers, transportation agents and financiers:***

Currently, the majority of EU Member States still do not effectively regulate the activities of arms brokers and transportation agents. According to a recent survey by GRIP and Pax Christi

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<sup>121</sup> For examples, see Wood and Peleman, *The Arms Fixers* chapters 3, 5, 6 and 7, op cit

<sup>122</sup> Copenhagen Post Online, 13 March 2003, “Shippers aid dictators - Shipping companies defy a EU embargo by transporting arms to 'rogue nations’”. <http://www.cphpost.dk/get/65950.html>

<sup>123</sup> <http://archives.tcm.ie/irishexaminer/2002/02/08/story22701.asp>

<sup>124</sup> Balcombe was dissolved in 2000.

<sup>125</sup> <http://archives.tcm.ie/irishexaminer/2002/02/08/story22701.asp>

only Austria, Belgium, Finland, France, Germany, The Netherlands and Sweden have specific controls on brokering of conventional arms – though a number of other EU states such as the UK have been in the process of enacting some controls.<sup>126</sup> Elements of best practice seem to be found in the Finnish, Belgian, Swedish and German controls. It should be noted that some new Member States have also instituted new legislation or administrative controls on arms brokering that, on paper, appear to be in advance of many of the EU Member States.

*Belgium: good practice regarding extra-territoriality*

Arms brokering activities in Belgium fall under the March 2003 amendment to the 1991 Law on the Import, Export, Transit and Combat against Trafficking in Arms and Ammunition. Weapons covered by this law include military small arms and light weapons as well as related ammunition. Belgian nationals as well as foreign residents and dealers in Belgium require a license to negotiate, export or deliver abroad, or possess to this end, military equipment, or intervene as intermediary in these operations, irrespective of the origin or destination of goods and whether or not the goods enter Belgian territory. An intermediary is whoever, for profit or free of charge, creates the conditions for the conclusion of a contract entailing the above operations, or whoever concludes such a contract if the transport is undertaken by a third party. All persons and entities wishing to trade arms and ammunition require a prior registration.

Persons found guilty of arms brokering without a licence outside Belgian territory can be prosecuted if the accused is found on Belgian territory even if the Belgian authorities have not received a complaint from the foreign authorities. Violations and attempted violations of the Belgian legislation on arms brokering are punishable by imprisonment of up to five years and/or a monetary fine.<sup>127</sup>

*Slovakia:*

Following the numerous arms scandals reported by the UN and others, legal reforms were adopted in July 2002 imposing brokering controls for the first time. The law provides that only Slovak individuals and companies can act as arms brokers and subjects them to the same two-tiered licensing system as has been applied to arms trading companies. These brokering controls are intended to apply to arms deals carried out by Slovak arms brokers, even where the weapons do not pass through the territory of Slovakia.<sup>128</sup> However, it is still debatable whether these reforms are yet being put into practice.

Although a number of EU states have made positive attempts to regulate the activities of arms brokers and transportation agents, there is a real danger that their controls will be undermined by other states in the EU that have not yet adopted such controls, or have adopted weaker controls. As the previous case studies show, arms brokers are adept at finding the weaknesses of control regimes.

*Box: United Kingdom brings in flawed controls on arms brokers*

On 24 July 2002, the Export Control Act was promulgated replacing the outdated 1939 law that previously regulated UK arms exports. Among other things, the new law brings the activities of UK-based arms brokers under the control of the government for the first time. However, the proposed secondary legislation indicates that the government does not intend to control all UK brokering deals, despite an election manifesto pledge to 'control the activities of arms brokers and traffickers wherever they are located.' Instead, when the deal takes place abroad or offshore, the UK government has opted to control only deals involving torture equipment, embargo-breaking and long-range missiles. While this is a welcome move, it

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<sup>126</sup> As cited in *Controlling Arms Brokering*, Holger Anders, GRIP/PAX Christi, January 2004: a detailed analysis of all EU national legislation and controls.

<sup>127</sup> *Controlling Arms Brokering*, Anders, op cit.

<sup>128</sup> *Ripe for Reform*, op cit

leaves deals involving all other types of conventional weapons to non-embargoed destinations unregulated.

The need for such powers to be extended to non-embargoed destinations is demonstrated by the case of Essex based arms-dealer, Mick Ranger, who has run a lucrative arms brokerage with operations in Bulgaria, Cyprus, Nigeria, Australia, South Africa and Vietnam.<sup>129</sup> He was reported to be prepared to organise the transfer of 200 rifles from Bulgaria to Syria, despite the fact it was “clear the weapons might be used in Iraq.”<sup>130</sup> However, Ranger ‘would not agree to any deal where Iraq was mentioned in official documents.’ If any potential deal had been made by any of his overseas offices it would not be subject to the UK legislation.

Under the proposed new law, UK arms brokers acting abroad will not need to apply for a licence to transfer weapons to a country neighbouring an embargoed destination. As pointed out by Saferworld, “in order for the proposed legislation to be effective in this regard, the government would have to prove that the broker knew that the ultimate end-user was an embargoed entity, which is likely to be very difficult indeed. Such a loophole could undermine one of the main rationales behind the current proposals, ie that UK persons should not be able to broker arms to embargoed destinations”.<sup>131</sup> In the absence of such proof of intent, there will be nothing to stop an arms broker living in Northern Ireland from stepping over the (open) border to the Irish Republic, brokering a deal there, and then stepping back again to Northern Ireland for his tea. Neither Irish law (which does not control brokering at all) nor the new UK law (which would not have the extraterritorial reach) could stop this.

### **European efforts to secure other international controls on brokering**

Following the lead taken by Norway in the Oslo Meetings of like-minded states since 1999, EU Member States have recognised the need for coordinated regional and international measures to control arms brokers. For example in March 2001, the Swedish government (then acting EU President) introduced a submission to the Preparatory Committee for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons committing the European Union to introducing a legally binding instrument on arms brokering.<sup>132</sup> Unfortunately the EU proposal foundered in the UN due to opposition from states such as the US, China, Russia and the Arab League.

Nevertheless, the EU proceeded to develop and agree in June 2003 what is considered to be a legally binding “Common Position” on arms brokering (see below), the OSCE agreed in September 2003 a Best Practice Guide on National Control of Brokering Activities, and the Wassenaar Arrangement agreed in December 2003 a set of common Elements for Effective Legislation on Arms Brokering.

This flurry of activity was propelled by NGO campaigning and the concerns of some governments, including in the EU, especially about international organised crime and terrorism.<sup>133</sup> A further significant factor has been the example shown by the USA, which has the most comprehensive law on brokering, introduced in 1996 as an amendment to the Arms

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<sup>129</sup> Anthony Barnett, ‘Exposed: global dealer in death’, *The Observer*, 27 April 2003.

<sup>130</sup> Ibid

<sup>131</sup> An independent audit of the 2002 UK Government Annual Report on Strategic Export Controls, Saferworld, February 2004, [www.saferworld.co.uk/Audit\\_Intro%20&%20Sect%201.pdf](http://www.saferworld.co.uk/Audit_Intro%20&%20Sect%201.pdf)

<sup>132</sup> Note Verbale 2 March 2001 from the Permanent Mission of Sweden to the United Nations. A European Union proposes to strengthen section II, paragraph 12, on national measures, and to include a political commitment regarding the elaboration, at the international level, of a legally binding instrument on arms brokering, as envisaged in Section IV, paragraph I(d).

<sup>133</sup> The Dutch and German governments have been very active, especially in alliance with Norway. See the documents on the Dutch-Norwegian Initiative on [www.nisat.org](http://www.nisat.org)

Export Control Act. This law covers a wide range of activities and incorporates a strong extra-territorial component that: “requires US brokers living anywhere and foreign nationals residing in the United States to register and obtain licenses for all arms deals they transact. Not only does the law empower US implementing and enforcing agencies to keep tabs on the number of brokers and the type of their operations, it also subjects violators to US jurisdiction wherever an offence has been committed.”<sup>134</sup> There is anecdotal evidence that the US law has acted as a deterrent to private US nationals and residents engaging in illegal trafficking, but most EU governments are not yet willing to embrace similar laws.

#### *Wassenaar Arrangement*

In December 2003, the Wassenaar Arrangement (WA) - the group of leading conventional arms exporting countries, including many EU and new Member States - agreed a set of common Elements for Effective Legislation on Arms Brokering.<sup>135</sup> Although this is only a politically binding agreement, WA Participating States agreed to: “Strictly control the activities of those who engage in the brokering of conventional arms by introducing and implementing adequate laws and regulations.”

The focus is on controlling brokering activities in “third countries”, although it falls short of requiring wide extra-territorial controls. “For activities of negotiating or arranging contracts, selling, trading or arranging the transfer of arms and related military equipment controlled by Wassenaar Participating States from one third country to another third country, a licence or written approval should be obtained from the competent authorities of the Participating State where these activities take place whether the broker is a citizen, resident or otherwise subject to the jurisdiction of the Participating State...Similarly, a licence may also be required regardless of where the brokering activities take place.”

”Records should be kept of individuals and companies which have obtained a licence...[and]... Participating States may in addition establish a register of brokers.”

”Where brokering provisions do not currently exist, Participating States will work without delay to introduce appropriate provisions to control arms brokering activities.”

#### **The EU Common Position on Arms Brokering:**

Amnesty International has repeatedly warned EU governments that unscrupulous arms brokers will just find the EU country with the weakest controls in the newly expanded Europe to conduct their business and so, in order to help protect human rights, a common high level of control is needed throughout the enlarged EU. With the adoption in June 2003 of an EU Common Position on Arms Brokering, EU governments took a significant first step towards a binding international regulation.<sup>136</sup>

Under this Common Position EU member states are now required to “take all the necessary measures to control brokering activities taking place within their territory.” The lawful engagement of such activities will require “a license or written authorisations... from the competent authorities of the Member State where these activities take place” and Member States will assess applications “for specific brokering transactions against the provisions of the EU Code of Conduct on Arms Exports.”

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<sup>134</sup> As cited in *Controlling Arms Brokering*, op cit

<sup>135</sup> Elements for Effective Legislation on Arms Brokering, Agreed at the 2003 Wassenaar Arrangement Plenary, [www.wassenaar.org/2003Plenary/Brokering\\_2003.htm](http://www.wassenaar.org/2003Plenary/Brokering_2003.htm)

<sup>136</sup> Council Common Position 2003/468/CFSP on the control of arms brokering, 23 June 2003

Amnesty International welcomes this Common Position as a first step but is concerned that the agreement has a number of fundamental weaknesses that, if not corrected, will seriously undermine its effectiveness, namely:

- It only encourages, but does not oblige EU Member States to “consider controlling brokering activities outside their territory carried out by brokers of their nationality resident or established in their territory” and no mention is made of controlling EU citizens who both reside and broker abroad.
- It is left to the discretion of member states to decide whether to register arms brokers, thereby losing the advantages of a compulsory register, kept by each member state, that would help ensure that bona fide arms brokers are kept abreast of changes to export control law and those applicants with criminal convictions in related activities are refused permits; this would also greatly assist effective cross-border information-exchanges to prevent illicit trafficking.
- It omits the key ancillary services upon which arms brokering depends, such as arms transportation, shipping and financial services, thereby reducing the chances of curbing networks of brokers and their partners who may be complicit in illegal trafficking or supplying foreign customers contrary to the EU Code Criteria.

### **Lessons to be learned:**

The EU Common Position is an important step forward in the fight against unscrupulous arms brokers and all EU Member States must implement it fully without delay. However, Member States will have to address, during the ongoing review of the EU Code, the three major problems with the Common Position outlined above if they are to effectively prevent the illegitimate and destructive activities of arms brokers and their associates. As numerous UN reports on arms embargo violations have illustrated, without these three areas of control such actors easily create clandestine international networks across continents using tax havens to reap profits including from arming known human rights abusers and war criminals. Finland, Belgium, Slovakia and Sweden have already enacted legislation that incorporates an extra-territorial element and there is no reason why such elements cannot be adopted throughout the EU.

## **6. Licensed Production Overseas**

Licensed production overseas<sup>137</sup> (LPO) is the process whereby a company in one country allows a second company in another country to manufacture its products under licence. In terms of efforts to prevent irresponsible weapons proliferation and transfer within or from the EU, LPO is of particular concern since it involves setting up new centres of production and the spread of technology over which the government of the licensor company may have little or no control. The EU and the new Member States, have allowed LPO agreements to spread around the world for the manufacture of a wide range of MSP equipment ranging from body armour, machine guns, frequency hopping radios to helicopters and high-tech missile systems.

Criterion 7 of the EU Code requires Member States to consider the “risk that... equipment will be diverted within the buyer country or re-exported under undesirable conditions,” and to consider “the capability of the recipient country to exert effective export controls.” However, there is no Operative Provision in the Code to address the massive risks posed by the spread of LPO. The cases below illustrate how the lack of governmental control in this area can

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<sup>137</sup> Licensed production agreements are often also referred to as licensed manufacturing agreements, co-production agreements, technology transfer agreements and sometimes classified within the general term of “offsets”.



result in arms, ammunition or security equipment - made under licence from EU or new Member State companies - being transferred to human rights violating forces abroad.

*France, Belgium, India and Nepal:*

The Indian company, Hindustan Aeronautics Ltd (HAL) manufactures the Cheetah helicopter under licence from the French company Aerospatiale. This helicopter uses the Artouste IIIB engine, which is also manufactured by HAL under licence from Turbomeca (France).<sup>138</sup>

HAL also produce the Lancer Helicopter, which is reported to be an upgraded version of the Cheetah.<sup>139</sup> The Lancer is a light attack helicopter developed by HAL as a cost effective airmobile area weapon system. The company reports how the basic structure of the Lancer is derived from the reliable and proven Cheetah Helicopter and claims that the Lancer is optimized for anti-insurgency operations, close air support, suppression of enemy fire, attack on vehicular convoys, destruction of enemy machine gun positions and anti-armour applications. Each pod carries one 12.7 mm gun and three 70 mm rockets and has a firing rate of 1100 rounds per minute.<sup>140</sup> It was reported in 1999 that the gun/rocket pod fitted on the Lancer attack helicopter was “an FN Herstal product”.<sup>141</sup> It is unclear what, if any, end-use control and parliamentary reporting has been provided to the French or Belgian parliaments.

In June 2003, it was reported that the Indian government had delivered two Hindustan Lancer light helicopters to Nepal. The reports stated that, although delivered for use by the Royal Nepal Army (RNA), the helicopters would have a law enforcement role and would undertake paramilitary surveillance and police patrol as well as army operations.<sup>142</sup> Other reports claimed that Nepal had obtained the helicopters, cost-free from India, as one of the main components of Indian aid for Nepal government’s campaign against the Maoist rebels.<sup>143</sup>

It is currently unknown whether the Lancer attack helicopters have been used in any live fire attacks. However Amnesty International reported how “in the period immediately following the declaration of the state of emergency, there were several reports that civilians had been shot dead by the army from helicopters”. In one such incident reported on 30 November 2001, “five civilians... were killed by shooting from an army helicopter while they were observing a religious festival (Baraha pooja) at Meldhara, Rolpa district. After widespread protests against shootings from helicopters, such incidents stopped being officially reported”.<sup>144</sup> Other reports have indicated that the army helicopters have continued to be used since then.<sup>145</sup>

*Germany, Belgium, France, Spain, Czech Republic, Turkey and Indonesia*

The German company Heckler and Koch (H&K) has engaged in a number of licensed production arrangements with the Turkish state-owned arms manufacturer, MKEK. In 1998, for example, Heckler and Koch won an \$18 million, ten-year contract for the licensed production of 200,000 HK33 5.56mm assault rifles in Turkey.

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<sup>138</sup> [www.hal-india.com/helicopter/products.asp](http://www.hal-india.com/helicopter/products.asp)

<sup>139</sup> *Jane’s Defence Weekly* 1 March 2001, ‘Indian Army orders Lancer conversions.’

<sup>140</sup> *Jane’s Defence Weekly* 28 February 2001, ‘Indian Army to get first Lancers in upgrade project.’

<sup>141</sup> *International Defense Review*, 15 January 1999, India Cheetah Upgrade for Attack role, p 7.

<sup>142</sup> <http://www.policeaviationnews.com/Acrobat/June2003.pdf>

<sup>143</sup> *Jane’s Defence Weekly* 13 February 2002, ‘Royal Nepalese Army Air Service bolsters fleet.’

<sup>144</sup> Amnesty International, *Nepal : A spiralling human rights crisis*, , 4 April 2002 (AI Index: ASA 31/016/2002)

<sup>145</sup> Hundreds Of Maoists Killed In Air Strikes, May 6, 2002, [www.cbsnews.com/stories/2002/05/08/world/printable508317.shtml](http://www.cbsnews.com/stories/2002/05/08/world/printable508317.shtml).

In 1998 the Turkish News Agency reported that MKEK was exporting 500 H&K MP5 sub-machine guns to the Indonesian police. These weapons were subsequently shipped to Indonesia at the very height of the massacres in Timor Leste in 1999. The MKEK deal was announced just a few months after the UK government had denied licenses for the same weapons to the Indonesian Armed Forces. The MKEK transfers took place just as the EU was agreeing to introduce an arms embargo on Indonesia. This came into force on 16th September 1999 and meant that neither Heckler & Koch in Germany or the UK would have been allowed to export MP5s to Indonesia, but the same weapon, made under a H&K license by MKEK in Turkey, could be transferred to the Indonesian security forces then engaged in widespread and systematic human rights violations.

On 23rd August 2000 the Turkish Minister of Defence signed a contract with a consortium of companies from Germany (Fritz Werner), Belgium (New Lachausee) and France (Manurhin) to install an ammunition manufacturing plant in Turkey. The plant will be run by MKEK and the lead foreign company will be Fritz Werner of Germany. This licensed production deal, which is estimated to be worth between 40 and 45 million euros (approximately US\$35.9 million to US\$40.4 million), will give MKEK the ability to produce 5.56 mm calibre ammunition for assault rifles.<sup>146</sup> It was further reported that Santa Barbara (Spain) was selected as the licensing firm for the gunpowder.<sup>147</sup>

The German, Belgian and French companies have all been granted export licences by their respective governments to fulfil this contract. It still remains far from clear how, if at all, the governments of Germany, Belgium and France will ensure that MKEK will not export ammunition to forces likely to use them for human rights violations. Among MKEK's other clients have been the governments of Burundi, Libya, Pakistan and Tunisia – all countries where Amnesty International has reported serious human rights violations by the security forces.<sup>148</sup>

MKEK is not the only Turkish company engaged in licensed production agreements with European companies. The Czech company Ceska Zbrojovka (CZ) has set up licensed production in Turkey of the CZ 75 B 9mm Luger pistol with the Turkish company Roketsan. The pistols were first exhibited at the IDEF 2001 arms exhibition in Ankara in September 2001.<sup>149</sup> A range of 10 pistols was subsequently on display at the IDEF 2003 exhibition with a Turkish name – TRUVA.<sup>150</sup> According to Jane's Infantry Weapons 2002-3, the CZ 75 is in use with the Czech police and police forces in various countries.<sup>151</sup>

Turkey lacks effective arms export controls based upon respect for international law and, despite its formal adherence to the EU Code, there is a real danger that the government will continue to allow the export of significant quantities of small arms and ammunition, many produced under licence from European companies, to security forces in other countries that persistently commit human rights violations.

#### *United Kingdom and Pakistan:*

In 1998 it was revealed that Pakistan Ordnance Factories (POF) was producing complete L64 105mm APFSDS (Armour piercing, fin stabilised, discarding sabot) tank rounds using a

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<sup>146</sup> 'A Turkish ammunition plant under Belgian licence', Hilde Heressens, Flemish Network on Small Arms, February 2001.

<sup>147</sup> *Military Technology*, September 2001, p27

<sup>148</sup> Amnesty International, *Annual Report 2003*, <http://web.amnesty.org/report2003/index-eng>

<sup>149</sup> Roketsan company brochure, IDEF 2001.

<sup>150</sup> Roketsan company brochure, IDEF 2003

<sup>151</sup> *Jane's Infantry Weapons 2002-3*, p235

technical data pack supplied by the UK company, Royal Ordnance.<sup>152</sup> A report in *Jane's Intelligence Review* (JIR) in 2000 reported that "technology from the UK, Sweden and Belgium has resulted in improvement in advanced tank (and artillery) ammunition, which is produced in increasing quantities by Pakistan Ordnance Factories (POF) for domestic use and growing exports".<sup>153</sup> [Emphasis added].

Another JIR report stated that a 1999 shipment from POF had supplied Myanmar – where widespread and systematic human rights violations have been reported -with a range of ammunition for both small arms and artillery, including 105mm ammunition.<sup>154</sup>

In 2001, a Sri Lanka newspaper highlighted how Pakistan had supplied a range of military armaments including the Heckler and Koch G3 rifle (manufactured under license by POF), 120mm heavy mortars and hundreds of thousands of mortar and artillery ammunition, when other suppliers such as the UK had been reluctant to provide such arms.<sup>155</sup>

During the conflict between the Sri Lankan army and the Liberation Tigers of Tamil Eelam (LTTE), Amnesty International documented many cases of civilians being killed by indiscriminate bombing and shelling.<sup>156</sup> Whilst it is not known whether tank ammunition shells were used in these cases, Amnesty International remains concerned that that UK tank ammunition, produced under licence in Pakistan, can be exported to security forces, who may use it for serious human rights violations or breaches of international humanitarian law.

The present UK government has refused to adequately answer parliamentary questions seeking to establish when the licensed production agreement was established and if it is still current. In February 2002, the UK Trade Minister claimed "It would be inappropriate to comment on any such agreement entered into during the time of a previous Administration. In any case this is a matter between Royal Ordnance and Pakistan Ordnance Factories."

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<sup>152</sup> *Jane's Defence Weekly*, 27 May 1998, 'Failures delay Pakistani Tank Ammunition Plan'. p18. It follows the development of a DU round for the Pakistan Army's Chinese-designed T-59 tanks, which have been re-armed with 105mm guns and currently fire a license-built version of the British L64A4 tungsten APFSDS projectile. [www.gupistan.com/forums/showthread/t-75796.html](http://www.gupistan.com/forums/showthread/t-75796.html)

<sup>153</sup> *Jane's Intelligence Review*, 1 April 2000, 'Transition time in Pakistan's Army'

<sup>154</sup> *Jane's Intelligence Review*, 1 June 2000, 'Myanmar's military links with Pakistan : Evidence of close ties between the armed forces and defence industries of Myanmar and Pakistan has led to concerns over the region's future stability.

Only last year the SLORC's successor, the State Peace and Development Council (SPDC), purchased two shiploads of ammunition from the POF. These shipments, reportedly valued at \$3.2 million, included a wide range of military materiel. There was: .38 revolver ammunition; 7.62mm machine gun ammunition (and spare barrels for the Tatmadaw's MG3 machine guns); 77mm rifle-launched grenades; 76mm, 82mm and 106mm recoilless rifle rounds; 120mm mortar bombs; 37mm anti-aircraft gun ammunition; 105mm artillery shells; and ammunition for Myanmar's new 155mm long-range guns. The latter included both high explosive and white phosphorous rounds.

<sup>155</sup> [www.lanka.net/sundayleader/2001/feb/18/politics.html](http://www.lanka.net/sundayleader/2001/feb/18/politics.html) 18/2/2001: As Pakistan came to assist Sri Lanka.

<sup>156</sup> See for example, Amnesty International, Sri Lanka: *Amnesty International gravely concerned about killing of civilians*, 23 November 1999 (AI Index: ASA 37/29/99)

"Amnesty International is gravely concerned about the killing of 37 civilians when at least three shells were fired at Madhu Church in northern Sri Lanka on 20 November, during fighting between the Sri Lanka army and the Liberation Tigers of Tamil Eelam (LTTE). Those killed included 13 children. They were amongst 3,000 civilians displaced from their homes who had sought safety in the compound of the church as fighting escalated in the area. While the circumstances of the shelling remain unclear, it is clear that both the security forces and the LTTE were aware that civilians were sheltering at the church. Thus, both parties were obliged to take all necessary measures to prevent civilian casualties." Also Amnesty International, Urgent Action 24/96. *Sri Lanka: Deliberate and arbitrary killings / Fear of further killings*. (AI Index: ASA 37/03/96)

However, the Minister did make clear that “an export licence is not required from the Department of Trade and Industry's Export Control Organisation to export items from Pakistan to a third country.”<sup>157</sup> This interpretation clearly undermines the purpose of the EU Code.

*Ireland, South East Asia and Turkey:*

On 22 June 2000, the Minister of State at the Department of Enterprise, Trade and Employment (DETE) was asked about the Irish government's views on licensed production. The response noted that there are no harmonised EU controls on licensed production agreements and went on to state that “while I have no reason to believe Irish companies avail of licensed production agreements to avoid our export controls system, I would, in principle, support the introduction of uniform controls on licensed production within the EU.”<sup>158</sup>

However in September 2003, the ‘Briefing Note on the Public Consultation Process on Ireland's Export Licensing for Military and Dual-Use Goods’ stated that: “Ireland has no specific controls in this area, although important activities associated with this issue are subject to control”.<sup>159</sup> Amnesty International is concerned at the lack of progress or political will from the Irish government on this issue.

Ireland has at least one company making extensive use of such LPO agreements. The Timoney Technology Group, based in Navan, County Meath, designs and develops a variety of armoured vehicles for military and commercial applications. Timoney's range of high mobility vehicles includes armoured personnel carriers, combat support vehicles, heavy transporters, and airport crash fire rescue vehicles.<sup>160</sup> The company's chief executive, Shane O'Neill, stated in January 2001 that 60 per cent of Timoney's sales currently went to the military, although he was hopeful that commercial sales would also increase.<sup>161</sup> Such diversification includes the contracts signed in 2000 to transfer technology to the Beijing Heavy Duty Truck Co in China for the manufacture of a new all-terrain, heavy duty truck.<sup>162</sup> Amnesty International is at present unable to identify the end user of these vehicles.

In September 2001, Timoney exhibited the Bushmaster troop carrier, built by its Australian licensee ADI Ltd at the UK Defence Systems Equipment International (DSEI) exhibition, for the first time outside Australasia. ADI recently won a contract from the Australian government for 350 armoured troop carriers. Whilst Amnesty International has no present concerns regarding the use of such vehicles by the Australian military, the fact that an Australian licensee is now manufacturing and marketing this vehicle to governments – particularly in the Asia Pacific rim – is of potential concern.<sup>163</sup>

Timoney design technology was also on display as part of the prototype Terrex AV8I armoured fighting vehicle that was exhibited for the first time at DSEI 2001. This vehicle is the product of collaboration between Timoney Technology Ltd and the Singapore company, ST Kinetics.<sup>164</sup> Shortly after the exhibition, ST Kinetics announced that it would take a 25% shareholding in Timoney Holdings Ltd, the parent company for Timoney Technologies.<sup>165</sup>

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<sup>157</sup> Hansard, 13 Feb 2002 : Column 444W. Pakistan Ordnance Factories

<sup>158</sup> [www.irishgov.ie/debates-00/22June/sect7.htm](http://www.irishgov.ie/debates-00/22June/sect7.htm) Arms Industry.

<sup>159</sup> [www.entemp.ie/export/briefingnote.doc](http://www.entemp.ie/export/briefingnote.doc)

<sup>160</sup> [www.army-technology.com/contractors/vehicles/timoney](http://www.army-technology.com/contractors/vehicles/timoney)

<sup>161</sup> “The deals that link Ireland to war: The current boom in military spending is increasing sales by Irish-based technology firms to the defence industries. But are these sales being logged as military exports?” 18 January 2003 <http://www.ireland.com/focus/iraq/features/fea12.htm>

<sup>162</sup> [www.china.org.cn/english/1848.htm](http://www.china.org.cn/english/1848.htm) 9/2000: Irish Mission concludes landmark visit.

<sup>163</sup> *Jane's Defence Industry*, 1 November 2001 IRELAND - Timoney Technology Ltd'

<sup>164</sup> <http://defence-data.com/dsei/pageds1044.htm>

<sup>165</sup> *Jane's Defence Weekly*, 15 October 2003, ‘Terrex infantry fighting vehicle moves ahead’

**Australian Bushmaster vehicle, at Defence Systems International Exhibition, London, 2001**  
 © Robin Ballantyne

It was also announced in October 2003 that ST Kinetics and Turkey's Otokar Otobus Karoseri Sanayi AS (Otokar) had concluded co-operation agreements for two vehicles aimed at meeting the requirements of the Turkish Land Forces Command (TLFC). The first agreement involved development of an enhanced variant of the ST Kinetics Terrex infantry fighting vehicle. The Turkish version of the Terrex, to be called the Yavuz, involves joint design, manufacturing and marketing.<sup>166</sup>

Thus it would appear that Timoney's technology, licensed to ST Kinetics, may well be used in the production of a range of vehicles for the Turkish military, who in the past have used such equipment to facilitate human rights violations. At the Kurdish New Year celebrations in March 2002 in Mersin, for example, Mehmet Şen was killed by a tank that crushed him against a wall.<sup>167</sup> Unless the Irish export controls are rapidly changed, it is likely that this will take place with no debate or authorisation from the Irish government or parliament. The Irish Parliament has literally no idea of the number and scale of such agreements. The table below shows the export licences granted for the "military list" category ML6 which covers the type of armoured vehicles that Timoney designs.

Irish Export licences issued for ML6 category. 2000 – 2003				
Export Licence category	2003	2002	2001	2000
Nigeria		1		
Northern Ireland		1		
Serbia & Montenegro	2			
Singapore	2	3		
Switzerland	1			
Taiwan		1		
UK	1	1	1	
United States	1	3		

If Irish parliamentarians relied solely on the information gained from export licences issued, they would get a limited and highly misleading picture of Irish involvement in the manufacture of armoured vehicles and the possible impact on human rights.

*Austria and Bulgaria:*

The Austrian company Hirtenberger AG manufactures and sells a range of mortars and mortar ammunition. Its exports of mortars must be licensed by the Austrian government. The Arsenal JSC company in Bulgaria states that it produces 60mm and 80mm mortars under licence production agreements from Hirtenberger.<sup>168</sup> The mortars are also marketed by the Bulgarian arms agency Hemus.<sup>169</sup>

Given the Bulgarian government's inability over recent years to adequately regulate its arms industry and the cases of irresponsible arms transfers by Bulgarian companies in breach of UN arms embargoes and to human rights abusers,<sup>170</sup> Amnesty International is gravely

<sup>166</sup> *Jane's Defence Weekly* 8 October 2003, 'Teams form for Turkish vehicle programmes'.

<sup>167</sup> Amnesty International Urgent Action, 22 March 2002 (AI Index: EUR 44/019/2002). The police officer responsible was later acquitted.

<sup>168</sup> See [www.arsenal-bg.com/defense\\_police/60mm-m6.htm](http://www.arsenal-bg.com/defense_police/60mm-m6.htm) and [www.arsenal-bg.com/defense.htm](http://www.arsenal-bg.com/defense.htm)

<sup>169</sup> [http://www.hemusbg.org/Web%20Catalogue/en/product1\\_2\\_1.htm](http://www.hemusbg.org/Web%20Catalogue/en/product1_2_1.htm)

<sup>170</sup> Throughout the 1990s Bulgaria became increasingly implicated in arms exports to regions of

concerned that this licensed production agreement could result in Austrian mortars, produced under licence in Bulgaria, being diverted to illicit end users. The Hirtenberger mortars produced under licensed production by Arsenal have recently been offered for sale by the Carigroup.<sup>171</sup> Given the lack of adequate reporting of prospective arms exports in Bulgaria, the Bulgarian parliament will not be able to discover to whom such weapons are exported. It is unclear to what extent the Austrian government is consulted (if at all) regarding the export of Hirtenberger mortars, made under licence by Arsenal, to other countries.

**Lessons to be learned:**

If current trends continue, the number of licensed production arrangements will continue to increase, and the means by which production technologies and component parts will be made available to licensed production facilities are likely to become more varied and difficult to control. The fact that LPO risks not only the proliferation of arms but of arms production technology and capacity, makes effective control of these arrangements of critical importance.

Despite the grave risks of these trends for the protection of human rights, the EU has been slow to act to adequately control LPO. However in the third EU Consolidated Report in 2001 an undertaking was finally made to “study the problem of manufacture under licence in third countries”.<sup>172</sup> Subsequently the fifth Report in 2003 did contain an agreement by Member States that “when considering licence applications [for exports] for the purposes of production overseas of equipment on the Common Military List, account will be taken of the potential use of the finished product in the country of production and of the risk that the finished product might be diverted or re-exported to an undesirable end-user.”<sup>173</sup> Although this does not refer to LPO as such, it would in most cases be relevant to licensed production arrangements entered into where the licensor is an EU-based company. This is a welcome step, but not enough to sufficiently control LPO.

The EU Member States should follow and promote internationally the “best practice” on this issue. In the United States, for example, licensed production (or “manufacturing license”) agreements are treated as physical exports and require prior approval from the US State Department. The US licensed production contracts usually limit production levels and prohibit sales or transfers to third countries without prior US government consent. There is also provision, albeit limited,<sup>174</sup> for prior Congressional approval of licensed production deals.

Amnesty International calls on all EU Member State governments to agree a new Operative Provision of the EU Code and to introduce legislation without delay that requires their

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conflict and to human rights abusing forces An article in the *Sofia Novinar* newspaper in May 2001 shows the extent of Bulgaria’s involvement in arms exports to African countries: “Bulgarian companies are able to sell arms in Africa thanks to good contacts dating back to totalitarian times. The Arsenal Corporation was reported to have sold arms for \$7–8 million to Chad and Angola, and the Ministry of Defence’s Procurement and Trade Department sold weapons for another \$3.7 million. The total for the entire industry was \$160 million. (*Sofia Novinar*, 9 May 2001. ‘We are ruining our own arms trade’ [in Bulgarian], Gancho Kamenarski.’). See also UN Security council reports on Bulgarian involvement in supplying arms to UNITA in breach of UN sanctions.

<sup>171</sup> The Caribbean Group of Companies (Carigroup) describes itself as a company “specialized in Specialty Materials involving, Defense and Police Equipment, Automotive Equipment and sales, lease and supply of all aviation related items.” (See [www.carigroup.com](http://www.carigroup.com)) In February 2004, it was offering a package of arms and ammunition including “60mm Mortar M6-21 1LR Hirtenberger-Licence”. ( See [www.carigroup.com/ninja1.htm](http://www.carigroup.com/ninja1.htm) (accessed 5/2/2004 – but no longer available)

<sup>172</sup> <http://register.consilium.eu.int/pdf/en/01/st13/13657en1.pdf>

<sup>173</sup> [http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c\\_320/c\\_32020031231en00010042.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_320/c_32020031231en00010042.pdf)

<sup>174</sup> The US State Department must notify Congress before licensed production agreements over \$50 million are approved.

nationals and companies to seek prior licensing approval for setting up of *all* licensed production agreements for the manufacture of arms and security equipment. The criteria used by the government for such production export licence determinations should be as stringent as for direct arms exports and should be based on common Criteria in an enhanced EU Code.

## 7. Components for Military and Security Systems

The export of MSP components for weapons systems<sup>175</sup> is an ever-increasing part of the global arms market, and effective control of the components trade presents a major challenge for EU Member States if they are to help protect human rights and prevent humanitarian crises.<sup>176</sup> Many countries are often involved in the manufacture of a single weapons system, and components are likely to be less visible in the final product, making it much harder to monitor whether or not such export items have been misused for human rights violations.

Since the end of the Cold War, the global and EU arms industry has undergone wholesale restructuring, leaving it more diversified and internationalised than before. As contractors outsource production, subcontracting, both nationally and internationally, has grown to be increasingly important. Networks have developed internationally, making the existence of a comprehensive production capability within any one country increasingly rare. Weapons systems are now, more than ever, assembled from components sourced from a global market place.

The importance of the trade in components and sub-systems to the defence industry was highlighted in a 1999 submission to a UK Parliamentary Select Committee by the UK Defence Manufacturers Association (DMA): “the UK especially demonstrates great strength in the high technology sub-systems sphere... In consequence, a considerable proportion of defence export contracts won each year have been for subsystems, components, spares, etc and there are very few major Western high technology programmes which do not have some level of British subcontractor participation.”<sup>177</sup> Through partnership agreements, offset deals, technology transfer and licensed production agreements many companies in the EU Member States and New Member States have had a growing involvement in the components and sub-systems sector.

Because of the increasing importance of high-tech electronic systems to both military and police forces, many components or sub-systems are now considered to be strategic goods that need to be controlled. Some components are classed as dual-use and licensed under the agreed “dual-use list”,<sup>178</sup> others come under the EU “military list”. But, worryingly, others are not even considered to be controlled goods.<sup>179</sup> Many EU companies not normally associated with

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<sup>175</sup> Components include subsystems, electronics, software, production equipment and technology, and engines – anything that is not a complete or finished weapons system, a weapons platform, a weapon, or ammunition. Components also include spare parts and upgrades of equipment already in service

<sup>176</sup> For a detailed analysis of the deficiencies of the UK control of MSP components see: *Lock, stock and barrel*, op cit

<sup>177</sup> Memorandum submitted by the Defence Manufacturers Association, <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmselect/cmtrdind/52/91109a07.htm>

<sup>178</sup> Often called the “Wassenaar dual-use list” as agreed by the Wassenaar Arrangement of arms exporting states. The list of dual-use items is set out in Annex 1 and Annex IV of the Council Regulation (number 1334/2000) “setting up a Community regime for the control of exports of dual-use items and technology” of 22 June 2000. This dual-use regime superseded the previous one of 1994 (Regulation (EC) No 3381/94(2) and Decision 94/942/CFSP(3).

<sup>179</sup> For example, components have been transferred from the UK to Turkey for incorporation in armoured vehicles manufactured by Otokar, yet because these components are classed by the UK

the conventional military or “bombs and bullets” production have significant involvement in the high-tech “dual-use” sector. For example, a recent report on Ireland identified that whilst Ireland’s “military” exports in 2002 were only valued at €34 million the “dual use” exports were valued at € 4.5 billion.<sup>180</sup>

The cases below illustrate how the lack of governmental control of EU components for weapons systems has resulted in such arms being transferred to foreign armed forces that commit human rights violations.

*Ireland and Israel:*

The US Data Device Corporation (DDC), which has production facilities in Cork, Ireland (DDC Ireland Ltd) states on its website that its MIL-STD-1553 Data Bus products are used in the AH-64 Apache Attack Helicopters.<sup>181</sup> The company describes the important role that their product plays in enabling military aircraft and helicopters to function, so “a MIL-STD-1553 data bus allows complex electronic subsystems to interact with each other and the on-board flight computer. *This data bus is the life line of the aircraft*” [emphasis added].<sup>182</sup> These systems can include a lethal array of armaments, including a mix of up to 16 Hellfire missiles or 76 70mm aerial rockets and 1,200 rounds of 30mm ammunition for its M230 Chain Gun automatic canon.<sup>183</sup>

Amnesty International has vigorously opposed the transfer of a range of military helicopters from the USA to both Israel and Turkey because these governments permitted their armed forces to use the helicopters for gross human rights violations. Five Palestinians were killed and 15 others injured when Israeli Apache helicopter gunships fired two missiles at a car in a busy part of northern Gaza city on 25 December 2003.<sup>184</sup>

At present it is still not known whether DDC Ireland is supplying military standard data-bus components for incorporation into Apache attack helicopters. To establish whether export licences were being granted for this type of product, Amnesty International asked the Irish Department of Enterprise, Trade and Employment: “What export control category code would apply to MIL-STD 1553 Data Bus products from DDC Ireland Ltd?”. In response, the Minister for Labour, Trade and Consumer Affairs, Mr Tom Kitt T.D, stated in a letter that “the question of the appropriate control category code (which should apply to any product), is in the first instance a matter for the producer/exporter to determine as they have the best knowledge of their own products. Therefore, if you wish to know the control category code of any product, I would suggest that you contact the producer”.<sup>185</sup> Amnesty International wrote to both DDC Ireland Ltd and DDC (USA) in 2001, but to date has still not received an answer.<sup>186</sup>

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government as civilian they have not required export licences. *See Out of Control, the Loopholes in UK Controls of the Arms Trade*, Oxfam GB, December 1998

<sup>180</sup> *Export Licensing for Military and Dual-use goods*, June 2003, Fitzpatrick Associates, p24. [www.entemp.ie/tcmr/finalreport.pdf](http://www.entemp.ie/tcmr/finalreport.pdf).

<sup>181</sup> [www.ddc-web.com/applications/military.asp](http://www.ddc-web.com/applications/military.asp) (accessed April 2004)

<sup>182</sup> [www.ddc-web.com/applications/mil\\_app.shtm](http://www.ddc-web.com/applications/mil_app.shtm) 2/2001. Military Aircraft, such as the F-16 Fighting Falcon, C-130 Hercules Transport, B-1 Bomber and the AH-64 Apache Attack Helicopter, utilize DDC's MIL-STD-1553 Data Bus products.

<sup>183</sup> [www.mimdef.gov.sg/display.asp?number=1772](http://www.mimdef.gov.sg/display.asp?number=1772) , 9 April 2003

<sup>184</sup> Information provided to Amnesty International in December 2003. In Turkey there has been a decrease in the use of helicopter gunships since the ceasefire in the southeast of the country in 1999; but helicopters are still being supplied to military units who have been implicated in human rights violations in the past.

<sup>185</sup> Letter from Department of Enterprise, Trade & Employment to Amnesty International Irish Section 3 July 2001.

<sup>186</sup> However, a 2001 Press release from DDC UK Ltd announcing that DDC and the Israeli company, Ampol Technologies, would be combining efforts to transform DDC's existing line of MIL-STD-1553



Even if Amnesty or Irish parliamentarians could establish the category of Dual Use licence that would be required if DDC were exporting its MIL-STD 1553 data bus products from Ireland, it would now be of little use if these components were going first to the USA for incorporation into the Apache attack helicopters prior to shipment to another country. Since April 2001, the introduction of the EU “Community General Export Authorisation”(CGEA) has meant that the “bulk of the dual-use items subject to export licensing requirements are not subject to individual export” control when destined for the following CGEA countries: Australia, Canada, Czech Republic, Hungary, Japan, New Zealand, Norway, Poland, Switzerland, United States of America.<sup>187</sup> This applies to exports of such components within all 10 states included in the CGEA. Thus, exports of this category of “dual use” component can be exported from Ireland and will not be reported in the current DETE licence statistics.

So there would appear to be nothing to prevent the export of the DDC data bus from Ireland to the US for incorporation into Apache attack helicopters destined for Israel or for any other country where the government permits its armed forces to use military aircraft to indiscriminately attack and target civilians.

*The Netherlands and Israel:*

Analysis by Amnesty International (Netherlands)<sup>188</sup> has shown that a large part of Dutch MSP exports are components for incorporation into larger weapon systems, mainly to be assembled in the USA which, in turn, is the major supplier of arms to Israel.

The Dutch Minister of Foreign Affairs has stated: “in the request for an export license the end user must be mentioned. When the delivery by another country ends-up in for example Israel, then the export guidelines will be applied for Israel and a negative advice will be given.... conform[ing with] the Dutch policy. In the case [where] the final destination is not known, Foreign Affairs will apply the guidelines on the country where the components are first going to. When this is a country with a solid arms export regulation – an EU member state, a NATO ally – in principle a positive advice will be given to Economic Affairs, but when the country has a unsound arms export regime, this will result in a negative advice. The Minister regards the arms export regime of the US, the biggest and most important ally of the Netherlands, as sound.”<sup>189</sup>

The policy is formalised in the Declaration of Principles (DoP) between the USA and the Netherlands, which regulates bi-lateral exports as well as exports to third countries.<sup>190</sup> The US is the biggest customer for military products from the Netherlands so the policy brings roughly 25% of Dutch arms exports under ‘a common’ US-Dutch export policy.

This policy has major consequences for arms control and the protection of human rights. When, for example, Dutch Hellfire Missile components are to be sent to the US for a production run of which some are to be used by the US military and a proportion transferred

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and ARINC-429 databus interface cards into enhanced, COTS (commercial off the shelf) turnkey solutions for communications and avionics systems - beginning with the integration of DDC cards and Ampol's field-proven dataMARS and dataSIMS software suite.stated that “DDC has its European Headquarters in Newbury, UK, a manufacturing plant in Cork, Ireland, and sales offices in Germany and France.” which suggests that the MIL\_STD-1553 data bus manufacturing is undertaken in Ireland. DDC and Ampol in avionics comms test alliance, 7 May 2001, [www.electronicstalk.com/news/ddc/ddc100.html](http://www.electronicstalk.com/news/ddc/ddc100.html)

<sup>187</sup> Written answer on 11 February 2004, Ref No: 4215/04

<sup>188</sup> Information from this section extracted and summarised from a paper on Dutch export policy written for AI Netherlands by Martin Broek, 2004

<sup>189</sup> Report of a general discussion on Dutch arms export policy, 22 054 no. 79, Tweede Kamer 2003-2004.

<sup>190</sup> ‘Declaration of Principles (DoP), between the Netherlands and US,’ 12/03/02

to third countries, these exports have been viewed as exports to the USA [and therefore deemed acceptable], even though a proportion will probably end up in countries that would be deemed unacceptable and would have been refused a direct arms export licence. The Hellfire is becoming one of the most well known missiles, not least because of its use in trouble spots in Iraq, Afghanistan, Yemen and Israel. The missile is produced by Boeing, Lockheed Martin and Northrop Grumman and a number of subcontractors and exported to thirteen countries.<sup>191</sup> Hellfire Missile exports started in 1997. The biggest Dutch delivery took place in 1999, and was valued at € 3.6 million.

Export records show that in 2001 the Dutch government authorised the export of components for the F16 fighter plane to the USA valued at over 57 million guilders. Since 2000, there have been orders for 344 F16s from nine countries.<sup>192</sup> Due to the lack of transparency in the Dutch reporting of components exports, it is not known whether any of these particular planes incorporate Dutch components, but potentially they could – especially given the Dutch Foreign Minister’s statement on components and end use quoted above.

At least one Dutch company is open about the end-user of its products, on its ethical policy page: “In principle, Philips companies do not produce products or render services specially designed or developed for the military, except for the following products: F16 parts and Apache parts supplied to NATO countries and Israel (under compensation agreements US/Netherlands).”<sup>193</sup> So, although Dutch parliamentarians and the Dutch people are not given the information as to whether Dutch components are incorporated into Apaches that are in action in Israel, this information is known at the Philips headquarters.

Amnesty International is also concerned about the transfer of small arms parts from the Netherlands. The table below describes Dutch export licenses to the USA and shows that significant quantities of components have been transferred. These are believed to include triggers, bolts etc. of pistols, revolvers and rifles which have been produced by a Dutch fine metallurgy company which has exported them to a well-known US small arms producer. The US is one of the world’s major small arms exporters, including to armed forces that abuse human rights. Whilst the Dutch government might take a strong position on the proliferation of SALW, this components loophole means that Dutch small arms parts potentially can be transferred to many countries.

<b>Dutch export licenses to the United States, related to small arms (2001)</b> <b>(only large deliveries)</b>		
<b>Code</b>	<b>Description</b>	<b>Value in Dutch guilders</b>
0001a	Parts of rifles, types [***]	5,708,355
0001a	Cartridge holders, 32 shots, for Uzi rifles cal. 9x19	442,584
0001a	Twin barrel bullet hunting rifles, cal. . . .500NE	210,129
0001a	Parts for pistols, type [***]	25,161,581
Note: *** is whitened by government		

*France, Poland, Russia*

In 1996, the French company Celerg (now Roxel) formed a joint project with TM Pressta (Poland) to develop the Feniks-Z 122mm rocket. Celerg was responsible for supplying components for the rocket motor, whilst TM Pressta had manufacturing responsibility for the

<sup>191</sup> Export orders for air-launched Hellfire missiles have been reported to Canada, Egypt, Greece, Israel, South Korea, Kuwait, Netherlands, Saudi Arabia, Singapore, Taiwan, Turkey and UAE.

<sup>192</sup> Bahrain, Chile, Greece, Israel, Jordan, Oman, Poland, Portugal, and UAE

<sup>193</sup> <http://www.philips.com/InformationCenter/Global/FArticlesummary.asp?INodeId=772&channel=772&channelId=N772A2046> (modified Monday 01/10/03)

rocket and for the marketing and deliveries of the rockets worldwide, including for Celerg's existing customers. Under the 1996 agreement, TM Pressta would manufacture 50% of the motor.<sup>194</sup>

The Feniks-Z rockets can also be fitted with a range of Polish-developed warheads. These include a high-explosive warhead, with 6,000 fragments, and a cargo warhead, with 42 high-explosive anti-tank fragmentation bomblets.<sup>195</sup> The rockets can also be used with the Russian-built BM-21 and the Czech RM-70 multiple-rocket launchers and is claimed by the manufacturer to be "10 times more effective than the older rocket, but only five times more expensive".<sup>196</sup>

In 1996, it was reported that Celerg had also established a joint project with Splav (Russia) and would be offering enhanced range ammunition for the world's most widespread rocket artillery system, the 122 mm BM-21 Grad. After two years of work, Splav officials stated that they were ready to enter the export market. The potential for export was significant with around 2 million rockets in service. Celerg officials said that there was a market of 200,000 units over the next ten years. Celerg would supply a new rocket motor design and propellant, while Splav would perform integration and supply a new stabilisation system. The Grad system was reported to be in service with 50 armies around the world.<sup>197</sup>

Russia is one of the countries that uses the Grad rocket systems and in 1996, Amnesty International reported an incident on or around 19 January in Dagestan where the Russian army had launched heavy artillery and Grad rocket attacks on the village of Pervomaiskoe in an attempt to rescue hostages taken there by Chechen fighters. Amnesty considered that the Russian army rocket attacks had signaled the army's intention to end the hostage crisis by resorting to an indiscriminate attack, without regard for the lives of the civilians in the village and the hostages themselves. The Russian army reportedly secured the freedom of 82 hostages from Pervomaiskoe and the remaining hostages were later freed by the Chechen fighters. The number of civilian casualties remained unknown because the Russian army did not permit journalists and independent observers access to the village during the attack and until after dead bodies of civilians were reportedly cleared from the streets by Russian soldiers.<sup>198</sup>

Amnesty International has documented the continued indiscriminate attacks using Grad rockets by Russian forces in Chechnya. In 1999, Amnesty reported that Russian forces had used airplanes; tanks; artillery; multiple rocket launching systems "Grad" and "Uragan"; and cluster bombs. Witnesses interviewed by Amnesty International claimed that many people had been killed or wounded by fragments from high-explosive artillery shells, many of which had exploded in the air.<sup>199</sup>

Amnesty International remains concerned that France and Poland are supplying components for incorporation into rocket systems that have been used in indiscriminate attacks on civilians in Russia, or other conflict areas.

### *Belgium and Kenya*

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<sup>194</sup> *Jane's Missiles and Rockets*, February 01, 2004, 'Poland orders Feniks-Z artillery rockets'.

<sup>195</sup> *Jane's Defence Weekly*, 24 October 2001, 'Feniks-Z 122mm rocket passes qualifying tests'.

<sup>196</sup> *Jane's Defence Weekly*, 23 April 2003, 'Poland accepts indigenous cargo ammunition'.

<sup>197</sup> *Jane's Defence Weekly*, 3 July 1996, 'New Franco-Russian Ammo Design for Grad'.

<sup>198</sup> Amnesty International, *Russian Federation: Brief summary of concerns about human rights violations in the Chechen Republic*. 1996 (AI Index: EUR 46/20/96.)

<sup>199</sup> Amnesty International, *Russian Federation: Chechnya for the Motherland. Reported grave breaches of international humanitarian law. Persecution of ethnic Chechens in Moscow*. 1999 (AI Index: EUR 46/046/1999)

In 1988, FN Herstal (Belgium) had signed a construction contract, worth 2.4 billion Belgian francs (approx US \$80 million), with the Kenyan government to build an ammunition production factory, capable of producing 20 million rounds per year, at Eldoret in Kenya. However, construction was not completed until late 1995. Subsequently, the Belgian government provided export authorisation for FN Herstal to supply ammunition production machinery for the Eldoret facility.<sup>200</sup>

Concerns regarding the dangers of the inadequate regulation of MSP technology transfer from Belgium to establish the Eldoret ammunition factory in Kenya had been raised by Belgian parliamentarians, NGOs<sup>201</sup> and journalists since mid-1996 when details of the contract became public.<sup>202</sup> On 14 November 1996, following public protests, the Belgian government suspended the issuing of export licenses for weapons transactions to Kenya, Uganda and Tanzania for sixty days. Then, on 27 February 1997, the government announced that construction at the factory would be halted until further notice, pending receipt of formal guarantees from the government of Kenya that it would not sell ammunition to Rwanda, Burundi or Zaire.<sup>203</sup> However, on 8 March, the Belgian government reportedly agreed to the resumption of work at the factory, after receiving written guarantees from the government of Kenya that bullets produced at the Eldoret facility would not be exported to countries in the Great Lakes region.<sup>204</sup>

A 2002 report by GRIP (Belgium) investigating the marking and tracing of SALW stated that “Officials from the UN International Commission of Inquiry on arms transfers in Rwanda interviewed by the authors on 1 October 1998 explicitly blamed Kenyan officials with regard to the provision of supplies from the Eldoret ammunition factory to factions in the Rwanda conflict.”<sup>205</sup>

In October 2003, the Kenyan National Security Minister, Chris Murungaru, was reported as saying that the Kenyan government would not close down its bullet factory in Eldoret despite being at the centre of concerted efforts to rid the region of illegal small arms and light weapons. *The East African* had earlier established that the factory produced three types of bullets, namely, 9mm ammunition for the FN35 Browning pistol and the Sterling, Uzi or H&K MP5 sub-machine guns used by the armed forces; 7.62x51mm for the FN-FAL and the G3, the main rifles used by the armed forces; and 5.56mm ammunition, used by the Kenya police.<sup>206</sup> Amnesty International has documented human rights violations by these forces using small arms.

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<sup>200</sup> *Jane's Intelligence Review* – Pointer, 1 November 1996, Africa, Moi set to remain in power.

<sup>201</sup> See for example Human Rights Watch Arms Project, 1997, *Stoking the Fires : Military Assistance and Arms Trafficking in Burundi*

<sup>202</sup> *The Guardian*, 20 June 1996, “‘Secret’ Bullet Factory Sparks fears in Kenya”

<sup>203</sup> United Nations, Department of Humanitarian Affairs, Integrated Regional Information Network, “Great Lakes: IRIN Update 115,” March 4, 1997. [As cited in Burundi Human Rights Watch Report]

<sup>204</sup> *Jane's Intelligence Review* – Pointer: Africa, 1 February 1998, ‘Press silenced in Ammunition Query’; Human Rights Watch interview with officials at the Foreign Ministry, Brussels, June 20, 1997. In later correspondence, the Belgian government declared: “The Government of Kenya has given written assurances that, if the amount of the ammunition produced at the Eldoret factory would exceed the domestic demand, no export to belligerent parties in the region will be approved. The letter of the Government of Kenya cannot, however, be divulged.” Letter from Johan Verbeke, Deputy Chief of Mission, Embassy of Belgium, Washington, D.C., to Human Rights Watch, September 10, 1997. See also “Belgium Lifts Suspension on Bullet Factory Permit,” *The East African* (Nairobi), May 19-25, 1997.

<sup>205</sup> GRIP, 2002, Marking and Tracing Small Arms and Light Weapons ; Improving Transparency and Control, [http://www.grip.org/pub/rappports/rg02-hs1\\_alg.pdf](http://www.grip.org/pub/rappports/rg02-hs1_alg.pdf)

<sup>206</sup> *The East African*, October 20, 2003, ‘Kenya Will Not Close Eldoret Bullet Factory, Says Murungaru’, *According to 'Jane's Intelligence Review' of 1996, the factory's capacity is 20,000-60,000*

In February 2002, it was reported that Kenyan police had shot and seriously injured three children who had joined a demonstration against a local playground being taken away by the local administration. The children, aged between 16 and 10, were shot in the hands, legs and thighs by police officers. One of the children's hands was shattered by a bullet from a G3 rifle. The children accused the police of being trigger-happy, saying that they did not attempt to talk to the group before lobbing tear gas and firing live ammunition at them. Such incidents are not uncommon and over the recent years Amnesty International has documented many cases of police shootings and killings in Kenya, some of which may have been extrajudicial executions. It is possible to identify the particular G3 rifle used in this incident from its serial number, but the supply route to Kenya is not known.<sup>207</sup>

#### *Belgium and Tanzania*

On 16 December 2003, the Belgian company New Lachaussée was given the go-ahead from Belgium's state-backed credit agency, Ducreux, for 8.8 million Euro (US\$10.8 mn.) of cover on an 11 million Euro investment in an ammunition plant in Mwanza, Tanzania<sup>208</sup>. The company was also seeking government approval for the export of technology to Tanzania for establishing the factory. Given Tanzania's relatively weak export controls, Amnesty International raised concerns over the effect of the proposed technology transfer and ammunition factory establishment on human rights in the region.

Amnesty International sections in the EU joined other NGOs to lobby and campaign on this issue. Although Federal Minister Louis Michel said in January 2004 that an export to Tanzania was not of concern because Tanzania was not at war, he "rephrased" his answer in the second week of February 2004 saying that there would not be an export to Tanzania. In February 2004, Minister Van Cauwenbergh (the prime minister of the Walloon government) announced that the licence for the export to Tanzania had not been approved due to the uncertain violent situation in the region of the Great Lakes. This is a major success for the human rights and arms control community in Belgium and Europe as a whole. It shows that governments can be made to abide by their international commitments and to act responsibly, when there is enough public and political pressure brought to bear.

#### **The Big Six "Letter of Intent - Framework Agreement"**

In a Letter of Intent (LOI) signed in July 1998, the Defence Ministers of France, Germany, Italy, Spain, Sweden and the UK stated their desire "to establish a co-operative framework to facilitate the restructuring of European defence industry."<sup>209</sup> Consequently, the six LOI states negotiated a Framework Agreement "concerning measures to facilitate the restructuring and operation of the European defence industry".<sup>210</sup> Various measures were introduced, including simplified licensing procedures for components. Transfers within the six members are no

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*bullets per day and local consumption is about two million bullets per year*

<http://www.nationaudio.com/News/EastAfrican/20102003/Regional/Regional35.html>

<sup>207</sup> Amnesty International, *Terror Trade Times* 3, 2002 (AI Index: ACT 31/001/2002) [web.amnesty.org/web%5Cweb.nsf/printpages/tt3\\_smallarms](http://web.amnesty.org/web%5Cweb.nsf/printpages/tt3_smallarms)

<sup>208</sup> Africa Confidential, Volume 45, number 2, 23 July 2004, [www.africa-confidential.com/country.aspID=48](http://www.africa-confidential.com/country.aspID=48)

<sup>209</sup> The Letter of Intent text and related documents are available on the SIPRI export controls website: <http://www.sipri.se>

<sup>210</sup> The "Framework Agreement between the French Republic, the Federal republic of Germany, the Italian Republic, the Kingdom of Spain, the Kingdom of Sweden, and the United Kingdom of Great Britain and Northern Ireland concerning Measures to Facilitate the Restructuring and Operation of the European Defence Industry" was signed on 27th July 2000. It is available on the SIPRI website at: <http://projects.sipri.se/expcon/expcon.htm>.

longer referred to as “exports”, which constitutes a step towards a common market for defence goods within that limited area.<sup>211</sup>

For exports to “third countries”, a mechanism was established to negotiate common “white lists” of countries eligible to receive certain armaments. States involved in a joint production agreement would negotiate these product-specific “white lists” in advance and by consensus. During the course of the project, potential recipients can be added or deleted at the request of a contributing government.

The implications for arms control and human rights resulting from this process are hard to gauge at present. The Framework Agreement clearly states that consultations preceding the agreement of the “white lists” will take into account, *inter alia*, the Parties’ national export control policies, the *fulfilment of their international commitments, including the EU code of conduct criteria*, and the protection of the Parties’ defence interests, including the preservation of a strong and competitive European defence industrial base.<sup>212</sup> Thus, the Agreement ensures that, for the first time, “taking into account” the fulfilment of the EU Code Criteria is now legally binding for the six LOI states when previously it was only a politically binding commitment. However, the actual wording: ‘taking into account’ indicates a low level of commitment and requires relatively subjective interpretation. Furthermore, such an international treaty is not subject to enforcement in the way that national and European law is.

A further complication arises since the “White List” would be drawn up by consensus, and any country involved in a particular programme can therefore veto the inclusion of a particular destination on the list of prospective customers. Given that Sweden, for example, has tighter export controls than for example the UK when it comes to components, this could mean that UK components would be less likely to be exported to sensitive third country destinations via incorporation in a system produced in another country. However, a UK Ministry of Defence official, questioned by the UK Defence Select Committee and quoted in its Report, admitted that if a minor partner was too eager to wield its veto of particular destinations “...they are unlikely to be a partner of choice in future collaborations. They will also have ... to take into account ... bilateral relations with the countries concerned, as well as the industrial coalitions.”<sup>213</sup>

### **Lessons to be learned**

This chapter has highlighted Amnesty International’s concerns over the inadequate control and reporting by EU governments of the transfer of MSP components and subsystems to “third countries” for incorporation into weapons systems. The deliberate lack of transparency in EU export licensing of components and subsystems to certain countries has hindered parliamentary scrutiny, especially within all ten states included in the CGEA.

EU Member States should affirm through an Operative Provision of the EU Code or an EU Common Position that at least the Code Criteria will be applied to case-by-case licensing of the export of components and subsystems used for arms as well as to complete weapons systems. In order to promote respect for international human rights and humanitarian law, the Member States should agree to actively promote mechanisms, including for greater transparency, to help ensure the effective control of exports of strategic components for final assembly elsewhere.

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<sup>211</sup> ‘*The Europeanisation of Arms Export Policies and Its Impact on Democratic Accountability*’, Sibylle Bauer, Phd thesis, submitted at Université libre de Bruxelles and Freie Universität Berlin, May 2003

<sup>212</sup> Article 13, 2(a), Framework Agreement op cit.

<sup>213</sup> <http://www.parliament.the-stationery-office.co.uk/pa/cm200001/cmselect/cmdfence/115/11502.htm>

## 8. Private Military and Security Services

The last decade has seen a marked increase in the use of private security or military companies by governments, companies and also inter-governmental organisations (IGOs) and even non-governmental organisations (NGOs) to provide security training, logistics support, armed security and, in some cases, armed combatants.

Three terms are often used interchangeably in the debate on the privatisation of security: mercenaries, private military companies and private security companies. They can be defined as:

\* *mercenaries* – individuals used by non-state armed groups and sometimes by governments who fight for financial gain in foreign conflicts;

\* *private military companies* (PMCs) – corporate entities providing “offensive” services designed to have a military impact in a given situation that are generally contracted by governments; and

\* *private security companies* (PSCs) – corporate entities providing “defensive” services to protect individuals and property, frequently used by multinational companies in the extractive sector, humanitarian agencies and individuals in situations of conflict or instability.

### *Mercenaries:*

Amnesty International believes that all governments should oppose the use of mercenaries as they operate outside the normal criminal justice system and on the fringes of military command structures. This can have important consequences for the protection of human rights, because mercenaries in various conflicts around the world have executed prisoners and committed other serious human rights abuses. It is much harder to hold mercenaries to account than regular members of a country's security force, not least because such personnel can leave the country at any time and thus escape any accountability.

Amnesty International has raised concerns about such mercenary activity in a number of countries including Papua New Guinea,<sup>214</sup> the former Zaire,<sup>215</sup> Cote d'Ivoire<sup>216</sup> and Equatorial Guinea.<sup>217</sup> Past examples of EU citizens acting as mercenaries include: Irish mercenaries allegedly acting as paid assassins in Namibia<sup>218</sup> and French mercenaries training and leading private armies in the Comoros.<sup>219</sup> More recently, in 1995 the government of the

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<sup>214</sup> Concerns raised regarding the use of mercenaries in Papua New Guinea. See Amnesty International - Report - ASA 34/04/97. 8 March 1997. ‘Open Letter to Prime Minister Sir Julius Chan. Papua New Guinea’.

<sup>215</sup> Amnesty International, *Zaire. Rape, killings and other human rights violations by the security forces*. February 1997 (AI Index: AFR 62/006/1997)

<sup>216</sup> Amnesty International, *Côte d'Ivoire: Amnesty International fears settling of scores and xenophobia*, September 2002 (AI Index: AFR 31/001/2002)

<sup>217</sup> Amnesty International, *Equatorial Guinea: Alleged mercenaries and opposition activists at grave risk of torture and death*. March 2004 (AI Index: AFR 24/004/2004)

<sup>218</sup> *Cape Times* ‘Lubowski killer named’. 29 June 1994. An inquest in Windhoek, Namibia, has named an Irish mercenary as the assassin of SWAPO lawyer and activist Anton Lubowski, who was gunned down in 1989. Eight operatives of the SA Civil Cooperation Bureau (CCB) hit-squad were named as accomplices. Acheson was arrested shortly after the shooting, but was released for lack of evidence. The CCB has since been disbanded.

Federal Republic of Yugoslavia (FRY) claimed that citizens from Austria, France, Germany, Italy Netherlands and the UK amongst others had fought as mercenaries with the Croatian and Bosnian forces against the Yugoslav People's Army (JNA) and Serbian forces.<sup>220</sup> As the case of Cote D'Ivoire below shows, the use of mercenaries continues in current conflicts and it would appear that EU governments still seem unable or unwilling to ensure that their nationals do not carry out or facilitate human rights abuses in recipient countries.

#### *Curbing Mercenarism:*

Introducing effective international legislation to prohibit mercenaries has proved difficult, particularly as "mercenaries usually deny that they are mercenaries and present altruistic, ideological and even religious reasons to mask the true nature of their participation under international law...but in actual practice the constant factor is money. Mercenaries are paid for what they do. The hired mercenary attacks and kills for gain, in a country or in a conflict not his own."<sup>221</sup>

At the global level the international community has so far failed to introduce effective controls on mercenaries. In 1989 the UN General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which finally came into force in October 2001.<sup>222</sup> This declared mercenary activity to be an offence under the Convention and called on states to take preventative measures against their recruitment, financing, training and use.

In response to a question from Amnesty International, the Irish government's Department of Foreign Affairs stated that whilst Ireland, along with its EU colleagues, had expressed support for the UN Mercenary Convention they had not acceded to it. This response is consistent with that from other EU governments. For example the UK Green Paper on Military Companies states that: "The UK, in common with most other Western Governments, has not become party to the Convention mainly because it does not believe that it could mount a successful prosecution based on the definitions in the Convention. This is because of the extreme difficulty of establishing an individual's motivation beyond reasonable doubt. It is doubtful whether it would be practical to try to amend the Convention at this stage."

Whilst Germany and Poland have signed the Convention, the only EU states to have ratified or acceded to it have been Belgium, Cyprus and Italy. However, whilst the international approach seems to have stalled, a number of countries, such as South Africa and France, have introduced legislation prohibiting mercenaries and controlling private providers of MSP services.

#### *South Africa's Regulation of Foreign Military Assistance*

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<sup>219</sup> *The Times*, 29 September 1995, 'French mercenary leads fresh coup in Comoros'.

<sup>220</sup> A/50/390/Add.1, 29 August 1995, Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, Note by the Secretary-General, Addendum

<sup>221</sup> Enrique Bernales Ballesteros, the UN Special Rapporteur on the use of mercenaries. United Nations, Commission on Human Rights, 'The Right of Peoples to Self-Determination and its application to peoples under colonial or alien domination or foreign occupation'. E/CN.4/1995/29, 21 December 1994

<sup>222</sup> United Nations, 76th plenary meeting, 9 December 1988. 43/168. Report of the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries. A/RES/43/168. The Convention finally came into force on 20 October 2001 when Costa Rica became the 22nd state to deposit instruments of ratification or accession with the UN Secretary General. The other 21 states who had already done this are: Azerbaijan, Barbados, Belarus, Cameroon, Croatia, Cyprus, Georgia, Italy, Libya, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan.



The 1998 South African Regulation of Foreign Military Assistance Act is the most far-reaching national legislation dealing with mercenaries and private military companies in the world. Mercenary activity is banned under the Act, however, its wider purpose is to regulate foreign military assistance, defined as including: “advice and training; personnel, financial, logistical, intelligence and operational support; personnel recruitment; medical or paramedical services, or procurement of equipment.” The rendering of foreign military assistance is controlled by a licensing and authorisation procedure under the competence of the National Conventional Arms Control Committee. The Act includes extra-territorial application and punitive powers for those that do not abide by it.<sup>223</sup> There have been some prosecutions and convictions under the act, and there is a dedicated unit within the office of the National Prosecuting Authority in Pretoria involved in conducting prosecutions under the act.

*France:*

A new law in France was passed on 14 April 2003 aimed at preventing French mercenary activity abroad. Any individual recruited for the specific aim of fighting in an armed conflict in exchange for personal advantage or compensation, without being a citizen of a state involved in the armed conflict, a member of the armed forces of this state or an envoy of a state other than those involved in the armed conflict, will be subject to fines and imprisonment: five years and 75,000 euros for an individual, 7 years and 100,000 euros for a recruiter and organiser of mercenary operations.<sup>224</sup> In August 2003 the new law was reportedly put into effect when 11 people were arrested in Paris for their suspected involvement in a plot to overthrow the government of Cote D’Ivoire.<sup>225</sup> Several of them including the alleged leader were released on bail following a decision by a French appeal court in September 2003.

In 2003 Amnesty International called on the French and South African authorities to take action to investigate the reported use of mercenaries from France and South Africa in Cote d’Ivoire.<sup>226</sup>

*Private military companies (PMCs) and private security companies (PSCs).*

Whilst the international community has sought to prohibit the activities of mercenaries outright, this has not been the case with private military companies (PMCs) or private security companies (PSCs). It is argued by a number of governments, businesses and NGOs that there are certain legitimate and acceptable roles for PMCs and PSCs, as long as they act in accordance with national and international law. As shown by the information below, the provision of private military and security services is a growing market. Research for this report identified 51 companies in 8 EU Member States and new member countries providing private military or security services or training<sup>227</sup>.

However, in his 2001 report the UN Human Rights Commission’s Special Rapporteur on the use of mercenaries states: “While private companies play an important role in the area of

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<sup>223</sup> Republic of South Africa Government Gazette, 20 May 1998, vol 395 no 18912

<sup>224</sup> *Loi nr. 2003-340 du 14 avril 2003 relative à la répression de l’activité de mercenaire.*

<sup>225</sup> Cote D’Ivoire: Wave of arrest in connection with coup plot, 23 - 29 August 2003, IRIN-WA Weekly Roundup 190

<sup>226</sup> In October 2002 the UK newspaper *The Times*<sup>226</sup> reported that more than 40 British, French and South African troops were being deployed with two Mi24 "Hind" helicopter gunships to protect President Gbagbo. “Wild Geese fly to war in Ivory Coast”, *The Times*, 31<sup>st</sup> October 2002. In February 2003, the *Guardian*<sup>226</sup> reported that the majority of these pilots had left Cote D’Ivoire under pressure from France. However, six helicopter gunship pilots – a UK former member of B squadron SAS, a Frenchman and four South Africans – remained. “British mercenaries find a new ferocity in Ivory Coast: Shunned by the west, soldiers of fortune scent new opportunities in Africa,” *The Guardian*, 22<sup>nd</sup> February 2003

<sup>227</sup> These countries included Belgium, Czech Republic, Finland, France, Italy, Poland, Sweden and the United Kingdom.

security, there are certain limits that should not be exceeded. They should not participate actively in armed conflicts, nor recruit and hire mercenaries, much less attempt to replace the State in defending national sovereignty, preserving the right of self-determination, protecting external borders or maintaining public order.”<sup>228</sup> Of particular concern is the lack of accountability and absence of regulation in the private provision of military and security services that are being exploited by unscrupulous companies and mercenaries,

The national legislation applicable to PSCs and PMCs varies throughout the EU, with no harmonised or overarching EU administrative framework or criteria. Private military or security companies have the potential to carry out directly, or to facilitate, human rights abuses by non-state and state actors in the recipient country. If this risk is to be minimised it is vital that those companies operating within the rule of law are properly registered, and that international transfers of such services are subject to stringent export controls based upon international human rights and humanitarian law.

### **Private Military Companies**

*French Private Military Services*<sup>229</sup> :

Défense Conseil International (DCI), 49.9 per cent owned by the French government and 50.1 per cent by private investors, has provided military and security training, advice, maintenance and technical assistance to a number of foreign countries.<sup>230</sup> DCI has several subsidiaries including NAVFCO and COFRAS, both of which can supply consultancy, equipment and operational training services as well as the transfer of know-how.<sup>231</sup> However, there appears to be no clear legal accountability to government or parliament for its activities. It claims to have around 700 French Army or retired army personnel, and works closely with the General Arms Delegation in the Ministry of Defence and the Department of Foreign Relations. In a conference in 2003 run by these two organisations with the Institute of International and Strategy Relations, the president of DCI, Yves Michaud, reacted strongly against an Amnesty International (France) speech about the need for transparency and respect of human rights.<sup>232</sup> Despite attempts by Amnesty International to contact DCI no response has as yet been forthcoming.

### **Private Security Companies (PSCs):**

**An Israeli security guard escorts children of Israeli settlers during a march at Gush Katif settlement in the Gaza strip on 8 February 2004. The provision of private military and security services is a growing market. © Reuters/Tsafir Abayov**

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<sup>228</sup> Enrique Bernales Ballesteros, “The question of the use of mercenaries as means of violating human rights and impeding the exercise of the rights of peoples to self determination”, January 2001, E/CN.4/2001/19, paragraph 64.

<sup>229</sup> Extracted and summarised from Amnesty International, *G8: A catalogue of failures*, op cit

<sup>230</sup> *Jane's Defence Weekly*, October 10, 2001, ‘Industry round-up - Michot to head France's Défense Conseil International’.

<sup>231</sup> *Jane's Defence Weekly*, 10 April 1993, Business focus : Oiling the wheels of Export Industry.

Each subsidiary can act as either consultants offering a range of services including aid with defining technical specifications for equipment or as lead contractors in the framework of turnkey contracts. They can also act as technical assistants, providing full equipment training and operational training as well as the transfer of know-how.

<sup>232</sup> The chairperson of Amnesty International France wrote to DCI after the conference to discuss human rights but so far there has been no reply

Services provided by PSCs vary enormously and can range from perimeter and on-site security, the provision of transportation and logistics, to intelligence gathering and interrogation. There are a number of cases where PSCs have directly and indirectly contributed to human rights abuses.

#### *Danish Firm in Israeli Occupied Territories*

In March 2002 the Danish-company Group 4 Falck paid US\$ 30m for 50% of the shares – and controlling interest - of Hashmira, Israel's largest private security company. Hashmira is the largest security company operating in the West Bank with over 100 armed guards stationed at Jewish settlements. UN Security Council Resolution 446, passed in 1979, affirms that Israeli settlements are illegal, in accordance with article 49 of the fourth Geneva Convention, which prohibits the transfer of a civilian population to occupied territory. The illegality of Israeli settlements in the Occupied Territories is recognized by the EU.

A *Guardian* investigation<sup>233</sup> in the settlement of Kedumim showed that Hashmira's guards worked closely with Israel's military and security apparatus. The investigation reportedly found that the guards, many of whom were Jewish settlers, routinely prevented Palestinian villagers from cultivating their own fields, travelling to schools, hospitals and shops in nearby towns, and receiving emergency medical assistance. Intimidation and harassment were reportedly common, causing many villagers to fear for their lives.

Following this investigation Falck/Group 4 announced that it was withdrawing the Hashmira guards out of the West Bank. A spokesman said: "Even if our investigation clearly indicates that our activities on the West Bank do not entail a breach of human rights, it is not enough for us to be legally in the clear... In some situations there are also other criteria, which we must take into consideration. And to avoid any doubt about whether Group 4 Falck respects international conventions and human rights, we have decided to leave the West Bank."<sup>234</sup>

#### *Netherlands company:*

In 1997, a Netherlands-based company, Satellite Protection Services was established which consisted of four operating divisions and offered a range of private military and security services. Satellites Maritime Services (SMS) offered services to ship owners around the world which included specially trained Maritime Security Teams (MST). The members of these teams were recruited mainly from UK and Netherlands special forces. In August 1999, SMS announced its intention to establish an Operating Centre in the Subic Bay Freeport (Philippines). The company also announced that there were also plans for liaison offices in Gambia and Curaçao to respectively cover the regions Africa and South America.<sup>235</sup> It was reported in 1999 that the company had been “disowned by Netherlands officials” but that “the authorities have conceded that they are powerless to act unless Dutch law is infringed.”<sup>236</sup>

#### **Lessons to be learned**

EU governments should introduce legislation to control and monitor the activities of private providers of military, police and security services. Companies and individuals providing such services should be required to register and to provide detailed annual reports of their activities. Every proposed international transfer of personnel or training should require prior government approval. This should be granted in accordance with publicly available criteria based on international human rights standards and humanitarian law. Amnesty International

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<sup>233</sup> “Group 4 security firm pulls guards out of West Bank,” *The Guardian*, 9<sup>th</sup> October 2002; ‘Security firm bearing weapons for Israel’ Copenhagen Post, 19 September 2002. Controversy erupted this week over Group 4 Falck's involvement in illegal settlement operations on the West Bank. [www.cphpost.dk/get/64578.html](http://www.cphpost.dk/get/64578.html))

<sup>234</sup> Ibid

<sup>235</sup> <http://home.wanadoo.nl/m.bruyneel/archive/modern/saprse.htm>

<sup>236</sup> Lloyd's List, August 25, 1999, ‘Piracy: Dutch mercenaries to set up training base at Subic Bay.’

believes that such companies should operate in a manner consistent with international human rights standards and international humanitarian law. EU governments should give consideration to developing a regional mechanism for stringently controlling the activities of private providers of military, police and security services, building upon best practice within and outside the EU.

## 9. Transfers of MSP personnel, expertise and training

This chapter outlines Amnesty International's concerns over the lack of regulation and reporting by EU Member States on the provision of MSP training and expertise. Most EU and new Member State governments provide very little information to their parliaments or elected representatives on the range and scope of MSP training or technical assistance that is provided by their own personnel and have little or no regulation of the activities of non-state organisations or private companies providing such assistance.<sup>237</sup>

### Provision of MSP assistance by EU governments

A number of EU states - particularly France, Spain and the UK - are important providers of MSP training and military assistance worldwide to the MSP forces of foreign states. Some of this training and assistance may have the potential to benefit recipient communities by providing better skilled MSP forces, which respect the rule of law and seek to promote and protect the rights of the civilian population (see examples of good practice later in this section). However, unless such transfers are stringently controlled and independently monitored, there is a danger that it will be used to facilitate human rights violations.

Whilst a number of governments, for example the US with the Leahy Amendment,<sup>238</sup> do have controls which, in theory, prohibit the governmental transfer of MSP training or equipment to security forces that have poor human rights records, many countries – including a number in the EU – do not. Furthermore such MSP training and assistance is often carried out without adequate parliamentary oversight and in many cases in secret. This secrecy means that the public and legislatures of the countries involved rarely discover who is being trained, what skills are being transferred, and who is doing the training. Both recipient and donor states often go to great lengths to conceal the transfer of assistance and expertise which is subsequently used to facilitate serious human rights violations.

#### *French military and security assistance*

France has bilateral defence accords with countries such Burkina Faso, Central African Republic,<sup>239</sup> Congo, Gabon, Cote d'Ivoire (suspended since General Robert Guei entered in

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<sup>237</sup> The Council Joint Action of 22 June 2000 “concerning the control of technical assistance related to certain military end-uses” (2000/401/CFSP) requires EU Member States to control the provision of technical assistance that is either intended for use in connection with weapons of mass destruction or missiles for their delivery, or for conventional military goods for countries subject to EU, OSCE or UN arms embargoes. This instrument's definition of technical assistance is “any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, training, transmission of working knowledge or skills or consulting services [...] ‘Technical assistance’ includes oral forms of assistance..” However, this instrument is very limited: it does not cover the provision of technical assistance for conventional military goods to any countries not under an arms embargo but where such assistance is likely to contribute to human rights violations.

<sup>238</sup> The amendment to the US annual Foreign Operations and Defense Appropriations Act known as the “Leahy Law” was first introduced in 1996. It requires background screening for past human rights violations of foreign recipients of US military and police training. For more information see Amnesty International (USA), *Unmatched Power, Unmet Principles*, New York 2001

<sup>239</sup> On 16<sup>th</sup> January 2004 IRIN reported that France had donated 46 military vehicles and equipment

power), Rwanda, Togo and Zaire.<sup>240</sup> They are all countries where Amnesty International has reported human rights violations committed by the security forces since 2000. The number of French military personnel in operation in African countries is difficult to establish.<sup>241</sup> In 2000 François Lamy a French deputy, noted that just 39 defence accords were published out of a total of 90.<sup>242</sup>

*The Nationals Schools with Regional Vocations (NSRV):* In 2001 it was reported that there were 15 training centres with French Instructors in Benin, Burkina Faso, Cameroon, Gabon, Ivory Coast, Mali, Senegal and Togo for more than 840 trainees coming from 20 countries.<sup>243</sup> In February 2004 it was reported that France opened a new military training centre in Kabul, Afghanistan<sup>244</sup> to help train the reformed Afghanistan Army.

*French military schools:* In 2000, 1473 places were offered to foreign military officers. Full details of the training are not available. The available information does not mention human rights or humanitarian law, nor if inquiries are made about students' backgrounds or the risk of their involvement in human rights violations.<sup>245</sup>

Despite the reformation in 2001 of the reporting structures within the French "cooperation policy",<sup>246</sup> there is still a great lack of transparency. The French Parliament does not receive a complete report about French military cooperation programmes abroad. An official of the agency responsible for the cooperation policy told Amnesty International that his agency was always prepared to answer to questions raised by the French Parliament, but he refused to talk about French military cooperation programmes in central Africa, as 'this was confidential information that could not be shared with the general public'.<sup>247</sup> In the past inadequate controls and transparency regarding such military training and co-operation has led to human rights violations in the recipient country.

#### *France and Togo*

AI has published several reports on Togo during this past decade that describe its policy of extrajudicial executions, the pattern of "disappearances", arbitrary arrests, and detentions followed by torture and ill-treatment as well as deaths in detention and unacceptable conditions of detention. In one of these reports<sup>248</sup> AI detailed the military assistance that France had provided President Gnassingbe Eyadema's government over a period of several years.

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worth US \$3.2 million for use by the army and gendarmerie of the Central African Republic. This aid was part of a package of assistance which has included the training of three battalions of the CAR army and 30 gendarmerie units. For more details see: Central African Republic: France trains Bangui army, IRIN, 16<sup>th</sup> Setember 2003, <http://www.africahome.com>; France Defends its latest coup, IRIN, 16<sup>th</sup> January 2004, <http://www.ocnus.net>

<sup>240</sup> Annexes of the Information Report Assemblée Nationale N°3394, 20 November 2001. In March 2003 France subsequently signed a military agreement with Uzbekistan, see Interfax, March 18 2003, [www.uzland.uz/2003/march/19/11.htm](http://www.uzland.uz/2003/march/19/11.htm). See also Amnesty International, *A Catalogue of Failures*, op cit

<sup>241</sup> In "La coopération militaire en question" p25, Observatoire des Transferts d'Armements Belkacem Elomari 2001

<sup>242</sup> In "Control the foreign operations" Assemblée Nationale 8 March 2000 n° 2237

<sup>243</sup> National Assembly 1114, 8 October 1998, Page 41

<sup>244</sup> France opens military staff college in Afghanistan, Daily Times [of Pakistan], 15 February 2004, <http://www.dailytimes.com>

<sup>245</sup> Observatoire des Transferts d'Armements - La Coopération militaire Française en question Belkacem Elomari 2001

<sup>246</sup> from [www.france.diplomatie.fr/mae/dcmd.gb.html](http://www.france.diplomatie.fr/mae/dcmd.gb.html) ; Information report, Assemblée Nationale 20 November 2001, p34, cited in Amnesty International, *A Catalogue of Failures*, op cit

<sup>247</sup> Telephone call to Ministry of Defence, 25 April 2003. See Amnesty International, *A Catalogue of Failures*, op cit

<sup>248</sup> Amnesty International, *Togo: Rule of Terror*, May 1999 (AI Index: AFR 57/001/1999)

In the context of an agreement on defence and on technical military assistance, Togo has benefited and continues to benefit from significant French military aid. By virtue of this agreement, Togo may call on France at any time in the case of external invasion. The agreement, which has never been made public, also allows for intervention in the case of trouble occurring on Togolese territory. France has already intervened, in September 1996, at the time of an attack by an armed opposition group.

The technical military assistance has three components: assistance from French experts; provision for Togolese trainees to be instructed in France and in military schools situated in the region; and the provision of matériel. Recently there were 17 French police advisers providing technical assistance to the Togolese police force, and a "military cooperation and defence" mission of 19 people. While the stated focus of the latter mission is to prepare the Togolese army for international peace keeping operations, information on the French Embassy in Togo web site stated that other forms of action include: supporting state security, training military forces, including gendarmes. Despite the provision of French training, Togolese forces have continued to carry out human rights violations including torture. In 1998, when AI raised with the Togolese Minister of Defence, the case of a Togolese gendarmerie captain who had been designated by several different people as responsible for torture and ill-treatment, the Minister replied that the captain was being trained in France.<sup>249</sup> Furthermore a high ranking officer in the Togolese gendarmerie, accused by Togo's National Commission for Human Rights of ordering the torture of four people in August 1990, was subsequently awarded the decoration of the National Order of Merit by the French government.

Amnesty International is concerned that, despite France's training of the Togolese security forces, excessive force continues to be used notably during election periods such as in June 2003 when it led to the death of several civilians, and the arrest and arbitrary detention of scores of political opponents.

#### *EU military training and assistance to Colombia*<sup>250</sup>

The provision of MSP training or the transfer of expertise or personnel is often just one part of a larger package of military or security aid given by EU Member States to foreign governments. In a number of cases Amnesty International has raised tangible evidence of serious concerns that the MSP aid package or assistance programme has been used to commit human rights abuses by the recipient government. This is illustrated by the grave abuses associated with continuing MSP transfers from certain EU countries to Colombia.

In 2002, following the break-down of peace talks, the 40-year old armed conflict between the Colombian security forces, (acting in conjunction with paramilitary groups), and guerrilla groups, intensified. This resulted in a marked deterioration in the human rights situation. By the end of 2003 more than 600 people had been "disappeared" and more than 3,000 civilians were killed for political motives. Forced internal displacement continued to grow dramatically. Over 2,200 people were kidnapped, more than half of them by guerrilla groups and paramilitaries.<sup>251</sup> The main victims of violations of human rights and international humanitarian law continued to be the civilian population including the internally displaced, peasant farmers, Afro-Colombian and indigenous communities living in conflict zones.

This cycle of political violence was exacerbated by the security policies of the new government of Álvaro Uribe Vélez which took office in August 2002. The creation of a

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<sup>249</sup> In a previous document, published in 1993, Amnesty International had already pointed to the link between military, security and police transfers and human rights violations in Togo.

<sup>250</sup> See also chapters on surveillance/intelligence.

<sup>251</sup> Amnesty International, *Annual Report 2003* op cit

network of civilian informants, and an army of “peasant soldiers” required to collaborate with the security forces has put civilians in danger of attacks by the guerrillas. The approval in Congress of a law that grants judicial police powers to the armed forces is likely to facilitate the existing practice of launching often spurious criminal investigations against human rights defenders and other civilians, heightened risk of violent attack by paramilitaries, regardless of whether or not investigations uncover evidence of criminal wrong-doing. With the military “policing” themselves, very few, if any, are likely to be investigated for human rights violations.<sup>252</sup>

Under international humanitarian law, the civilian population is entitled to be shielded from the effects of armed conflict. However, civilians in Colombia are the prime targets as the parties to the conflict compete for territory through the control of the civilian population. The Colombian armed forces and their paramilitary allies as well as the armed opposition groups have all been responsible for serious and persistent human rights abuses. Amnesty International has documented the mounting scale of such abuses in certain areas of Colombia. For example in a recent report Amnesty International has discovered that in the municipality of Tame alone, which has a population of only some 55,000, at least 175 people were murdered in 2003, compared to 144 in 2002 and 86 in 2001.

**A military instructor talks to peasant-soldier recruits at a base in Popayan, in the department of Cauca, Colombia, in January 2003. The creation of an army of “peasant soldiers” required to collaborate with the Colombian security forces has put civilians in danger of attacks by the guerrillas. Amnesty International does not believe that EU states should giving military aid while the Colombian government is pursuing policies such as this that threaten to deepen the human rights crisis. © AP Photo/Oswaldo Paez**

Despite these grave concerns, a number of EU countries, including France, Spain and the UK, have provided MSP assistance and training to the Colombian government forces over the past few years. Amnesty International is concerned that many of those MSP transfers may have been used for grave human rights violations by the Colombian military.

In 1999 the Foreign Office confirmed that the UK had given training on urban warfare techniques, counter-guerrilla strategy and “psychiatry”.<sup>253</sup> During 2002 the UK provided military advice and training assistance to Colombia, and in 2003 the Armed Forces Minister Adam Ingram, admitted that “military liaison teams” had been sent to Colombia.<sup>254</sup> Media reports indicate that the UK has also provided military advice in the setting up of newly created Colombian army mountain units.<sup>255</sup> In July 2003 the Foreign Office held an international conference on support for Colombia, the second in two years, which involved the EU, the US, several Latin American countries and the IMF. UK special forces, whose activities are not formally acknowledged by the government, have been present in Colombia since the 1980s, and is thought to be involved in counter-insurgency training.<sup>256</sup> A security

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<sup>252</sup> Amnesty International, *Colombia: a laboratory of war: repression and violence in Aruaca*, April 2004, (AI Index: AMR 23/004/2004)

<sup>253</sup> Secret Aid Poured into Colombian Drug War?, *The Guardian*, 9 July 2003

<sup>254</sup> Details were withheld under Exemption 1 of the Code of Practice on Access to Government Information, which covers information whose disclosure would be harmful to national security, defence or international relations. He added that the uncertainties over UK action in Iraq made planning for continued assistance of this kind (impossible at present). Hansard, 31 March 2003. See also *El Tiempo* 12 March 2003, and a report on *semana.com*, 2 August 2002. In an interview published in the same Colombian online magazine on 16 May 2003, the UK Foreign Office Minister responsible for Latin America, Bill Rammell, said that “we are cooperating in all areas, but I cannot give details”.

<sup>255</sup> ‘Secret Aid Poured into Colombian Drug War’, op cit; also *El Espectador*, 18 May 2003

<sup>256</sup> Colombia: flow of arms contributes to increased human rights violations MSP Action Circular, Amnesty International MSP, October 2003 (Internal document. AI Index: AMR 23/010/2003)

analyst with close ties to the Colombian defence ministry suggested recently in the UK press that the UK is now the second biggest donor of military aid to Colombia after the US.<sup>257</sup>

According to press reports during President-elect Uribe's visit to France in July 2002, the French Minister of the Interior, Nicolas Sarkozy, offered his "*total apoyo a la lucha contra la guerrilla y el trafico de drogas*" ("total support to the fight against the guerrillas and narcotrafficking"). He suggested the possibility of sending a delegation of police and gendarmerie experts to Colombia. According to the Colombian press, Uribe requested military aid from the French government; it has also reported that France had a technical cooperation agreement with Colombia which included a US \$200 million facility for Colombia to purchase weapons.<sup>258</sup>

At the end of February 2003, the Spanish government announced a huge unconditional package of military assistance to the Colombian government armed forces. Anti-terrorist equipment and exchanges of military personnel to help train the Colombian security forces in military intelligence and anti-terrorism were included in the package. It reportedly included two C-212 military transport planes and real-time satellite intelligence, as well as the possibility of helicopters and patrol launches.<sup>259</sup>

#### *United Kingdom aid to foreign military*

In 2000 a parliamentary answer provided details of how Britain had provided military training for nearly 4500 foreign military personnel from over 100 countries including Algeria, Brazil, Indonesia, Israel, Nigeria, Pakistan, Saudi Arabia and Zimbabwe between April 1999 and March 2000.<sup>260</sup> Neither details of the nature of the military training nor of the specific forces trained has been made public. Such training is of potential concern given the poor human rights record of many of the countries whose forces were trained. Without adequate transparency and reporting to the public and parliament, such MSP training can facilitate human rights violations in the recipient countries.

#### *United Kingdom and Jamaica*

Jamaica suffers from a high level of crime and police officers frequently face armed criminals, at times leaving them with no alternative to the use of lethal force to protect their own lives and the safety of the public. However, over recent years, Amnesty International has documented numerous cases where the evidence overwhelmingly indicates that those killed were extra-judicially executed.<sup>261</sup> Although the UK is the principal provider of external assistance to the Jamaica Constabulary Force (JCF), including programmes in human rights and firearms training and forensics, such assistance has been insufficient to end the pattern of extra-judicial executions and impunity by the JCF.

With 133 deaths at the hands of the JCF in 2002 alone, Jamaica had one of the highest rates of police killings *per capita* in the world.<sup>262</sup> In April 2001 and March and July 2003, Amnesty International released reports documenting extra-judicial executions and violence by members of the Jamaica security forces, including the "killing of the Braeton Seven."<sup>263</sup>

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<sup>257</sup> 'Secret Aid Poured into Colombian Drug War', *The Guardian*, 9 July 2003

<sup>258</sup> *El Espectador*, 8 March 2004

<sup>259</sup> However, it was reported in March 2004 that the newly elected Spanish government which was due to take power at the end of April 2004 said it may review the 2003 agreement: *Semana*, 22 March 2004

<sup>260</sup> 21 Jul 2000 : Column: 338w - 340W ,Foreign Military Personnel

<sup>261</sup> Amnesty International, *Jamaica: Police killings: Appeals against impunity*, August 2001 (AI Index: AMR 38/012/2001)

<sup>262</sup> Amnesty International, *Annual Report 2001* (AI Index: POL 10/001/2001)

<sup>263</sup> Amnesty International, *Killing and violence by police: How many more victims?* April 2001 (AI Index: AMR 38/003/2001)



However, in 2001, the UK government issued an arms export licence authorising the transfer to Jamaica of 300 handguns, small arms ammunition, weapon sights and gun mountings. The UK government subsequently reported that 100 Beretta pistols were actually transferred. Amnesty International protested against such transfers and sought assurances that the UK government would not export arms to Jamaica for use by the JCF until significant steps were taken to re-train JCF officers to operate within existing UN standards on law enforcement, criminal justice and human rights, and until effective monitoring and accountability systems have been put in place.

In 2003, Amnesty International called upon the Jamaican government to hold police officers accountable for committing extrajudicial executions - "not one police officer has been convicted of an extrajudicial killing since 1999, despite over 600 killings at the hands of the police since that date, many in disputed circumstances." The organisation documented in detail the impunity with which the JCF are able to kill, and called for a worldwide campaign for the protection of human rights in Jamaica.<sup>264</sup>

### **Good practice in EU training and assistance:**

Some examples have been reported of international military and security assistance by EU Member States and their partners which incorporate human rights and other international standards into their operational procedures and accountability systems. A few that try to help curb the illicit circulation and misuse of small arms in line with the EU Joint Action on Small Arms<sup>265</sup> have been innovative, and these point to the possibility of the EU establishing good practice guidance for aid programs to military, police and security sectors.

#### *Cambodia:*

Lax storage facilities for police firearms fuels armed crime in many countries. For example many policemen in Cambodia used to take their weapons home at night and they would be used off duty in domestic and neighbourhood disputes. Now however, an ambitious project of management and storage of weapons is underway. After a successful project to store army weapons, the European Union has funded a programme for police weapons in Phnom Penh, Kandal and Kampong Speu provinces.<sup>266</sup> The EU coordinating body claims that this project has:

- registered all weapons belonging to the National Police in a centralized computer database;
- built one safe storage depot in each province for police weapons not in daily use. Each building is capable of storing 1,260 weapons;
- constructed a larger storage depot for national reserve weapons in Phnom Penh. This has a storage capacity of over 7,000 weapons;
- equipped each police post with a rack to lock up the duty weapons. A total of 477 racks were produced for the three provinces. This represents a storage capacity of 5,670 weapons;
- installed additional racks in the Ministry of Interior in Phnom Penh for an extra capacity of 800 weapons;
- provided training courses in logistics, weapons management and computer skills for relevant police officials.

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<sup>264</sup> Amnesty International, *Jamaica: The killing of the Braeton Seven – A justice system on trial*, March 2003 (AI Index: AMR 38/005/2003) and *Jamaica: Government fails relatives of the Braeton Seven*, 13<sup>th</sup> March 2003 (AI Index: AMR 38/007/2003)

<sup>265</sup> EU Joint Action on Small Arms, 17 December 1998. <http://projects.sipri.se/expcon/eusmja.htm>

<sup>266</sup> Press release from EU ASAC, the Programme of European Union Assistance on Curbing Small Arms and Light Weapons in Cambodia, 14 November 2003, cited in Amnesty International, Oxfam and IANSA, *Guns and Policing: Standards to Prevent Misuse*, February 2004 (AI Index: ACT 30/001/2004)

The EU has also provided a series of fourteen training courses for policemen in the rural areas of Cambodia with the aim of improving their relations with the local villagers.<sup>267</sup> One outcome from such training is that when the villagers trust the police, they will hand in their illegal weapons; but they will only trust the police when neither the police, nor the police weapons, are seen as a threat to the villagers.<sup>268</sup>

*UK and Norwegian aid to Malawi:* From 1999, the UK and Norwegian governments have provided aid to enable the Malawian government to reform its police and criminal justice system. With civil society and NGO cooperation the Malawian government has engaged community representatives in hundreds of new Community Policing Forums across the country. Awareness of basic human rights standards for policing and the dangers of the proliferation of firearms are spread using posters, radio, TV and other media, including a video film, “Protecting our lives”.<sup>269</sup> Although it is too early to tell how effective this has been in reducing violent crime and countering the illegal possession of firearms, there have been indicators of increased reporting of illegal firearms by the community to the police. Increased public awareness of policing issues has helped police gather more information and build public support for policing by consent. Nevertheless, reform of the Firearms Act and policing standards regarding the use of force and firearms are still inadequate, and there is a lack of transparency regarding both investigations of police misuse of firearms, and police issuance of firearms licences to civilians.<sup>270</sup>

#### **Lessons to be learned:**

All international assistance programmes by EU Member States should ensure that the training of military, security and police personnel of another country does not include the transfer of skills, knowledge or techniques likely to lend themselves to torture or ill-treatment in the recipient country. The practical application of relevant human rights standards and humanitarian law should be fully integrated into such training programs.

## **10. Surveillance and “Intelligence” Technologies**

Amnesty International is greatly concerned by instances where the provision of powerful surveillance and interception capabilities to repressive states are contributing to human rights violations carried out by the police, security and intelligence forces. Criterion Two of the EU Code prohibits the transfer of equipment which might be used for “internal repression” and Operative Provision 6 covers certain dual-use goods “where there are grounds for believing that the end user of such goods will be the armed forces or internal security forces or similar entities in the recipient country”.<sup>271</sup> However, EU governments so far appear to limit the definition of security and dual use equipment that can be used to facilitate internal repression to “lethal” or military hardware.

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<sup>267</sup> The Working Group for Weapons Reduction in Phnom Penh has organized 22 public forums for local authorities, policemen and officials to dialogue together on weapons reduction, security and their role in responding to the above problems in their communities and building trust among themselves.

<sup>268</sup> For more information on management of police firearms please see Amnesty International, *Guns and Policing: Standards to Prevent Misuse*, February 2004, (AI Index: ACT 30/001/2004)

<sup>269</sup> Brian Wood, with Undule Mwakasungura and Robert Phiri, *Report of the Malawi Community Safety and Firearms Control Project*, Lilongwe, August 2001.

<sup>270</sup> Amnesty International, *Policing to Protect Human Rights*, op cit

<sup>271</sup> See EU Code Operative Provision 6 which requires EU Member States to apply the Code to “dual-use goods as specified in Annex 1 to the EU Council decision 94/942/CFSP2 where there are grounds for believing that the end user of such goods will be the armed forces or internal security forces or similar entities in the recipient country.”

Surveillance and C3I (command, control, communication and intelligence) technologies cover a wide range of components, sub-systems, products and software. They are used by military, law enforcement, emergency services, commercial and private organisations. Whilst the term C3I is generally used to denote military and police systems, civilian systems are more commonly referred to as ICT (Information & Communication Technologies). However, as this report illustrates, most civilian communications have inherent surveillance and “control” facilities and therefore this report includes military, police and civilian systems within the C3I category. The uses of surveillance systems can range from providing Closed Circuit Television (CCTV) surveillance, local, regional or national traffic control to global systems for the monitoring of telephone, internet and fax communications. Such systems may have legitimate military, police and civilian uses. Amnesty International does not oppose the transfer of surveillance and C3I technologies in general, but such technologies have inherent capabilities that facilitate human rights abuses by security forces in repressive countries.

*China:*

In the days following the Tiananmen massacre on 4 June 1989, the Chinese authorities used images from a CCTV traffic control system originally supplied by the USA and the UK with World Bank assistance to create instant “wanted” posters from close-up images of student activists. These were broadcast on state-run television with a telephone number asking viewers to report those portrayed. Arrests of prisoners of conscience and unfair trials followed. In 2002 a human rights researcher revisited Tiananmen Square and established that surveillance cameras were still operating.<sup>272</sup>

*Colombia:*<sup>273</sup>

On the night of 12 November 2002, about 700 soldiers surrounded the town of Saravena, Arauca to enable the army, police and members of the Offices of the Attorney General<sup>274</sup> and the Procurator General<sup>275</sup> to raid homes, workplaces and shops. By the end of the evening more than 2,000 civilians had been rounded up at gunpoint and taken to Saravena’s stadium where they were photographed, videotaped, questioned, their background checked, and their arms marked with indelible ink.

This mass detention, known as Operation Heroic (*Operación Heroica*) purportedly designed to round up alleged members of armed opposition groups, was the largest operation of this kind carried out by the Colombian security forces in recent years. Most of Saravena’s human rights community, as well as many known trade unionists and other social leaders were among the 2,000 people detained that night. However, only 85 were officially arrested. Of these, 35 were subsequently released for lack of evidence. Of the remaining 51, around 40 were trade unionists. At the time of writing this report, as few as 30 of the 2,000 people rounded up that night are still believed to be under investigation.

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<sup>272</sup> *An Appraisal of the Technologies of Political Control*, Interim Report for the STOA Panel (The Assessment of Scientific and Technological Policy Options for the European Parliament), September 1998, PE 166.499/Int.St./Exec.Sum./en, [http://www.europarl.eu.int/stoa/publi/166499/execsum\\_en.htm](http://www.europarl.eu.int/stoa/publi/166499/execsum_en.htm);

“Big brother was watching”, *Time*, 26 June 1989; the World Bank assistance is documented in *China's Golden Shield: Corporations and the Development of Surveillance Technology in the People's Republic of China*, 2001 [www.ichrdd.ca/english/commdoc/publications/globalization/goldenShieldEng.html](http://www.ichrdd.ca/english/commdoc/publications/globalization/goldenShieldEng.html)

<sup>273</sup> Amnesty International, *Colombia: a laboratory of war: repression and violence in Arauca*, op cit

<sup>274</sup> The Office of the Attorney General (*Fiscalía General de la Nación*) was set up by the 1991 Constitution to investigate and prosecute all crimes committed in Colombia, including human rights violations and abuses.

<sup>275</sup> The role of the Office of the Procurator General (*Procuraduría General de la Nación*) is to carry out disciplinary investigations into allegations of misconduct, including human rights violations, by public officials, such as members of the security forces.

Because of the “invisibility” of surveillance systems it is very difficult for human rights organisations to provide direct evidence of the impact of surveillance and C3I systems on human rights violations.

### **EU export controls of Surveillance and C3I technologies :**

If they are designed primarily for military users, exports of some of these technologies are controlled through the Military List,<sup>276</sup> whilst some others are controlled through the EU Dual-Use list.<sup>277</sup> However, it is unclear whether some surveillance technologies, if designated for police or commercial use, are subject to any export licence control at all.

There appears to be little understanding amongst government export control departments of the potential impact that such technologies have on facilitating serious human rights abuses. Amnesty International believes that greater attention needs to be given to the export licensing and transfer of these technologies to countries or MSP forces that have poor human rights records. Such inattention to the serious impact that such surveillance technologies can have on civil liberties and human rights is illustrated by the interpretation by certain EU governments of the EU embargo on China,<sup>278</sup> adopted in June 1989 following the Tiananmen massacre. Despite the embargo and the EU Code, both of which contain criteria prohibiting the transfer of equipment which might be used for “internal repression” it is clear that EU companies have been involved in the supply of communication and surveillance systems that have contributed to “internal repression in China. (See also the Undermining the Criteria Chapter for related discussions). Transfers of concern continue.

#### *Identification control technologies:*

In 2002, the French firm Thales Identification reported that China had chosen the company’s secured identification technology to produce its new “smart” national ID card. According to the company, “the project has the potential to become the biggest of its kind worldwide with more than 1 billion potential users.” The company stated that it would provide the Chinese authorities with the secured identification systems to personalise the card graphically and electronically.<sup>279</sup>

According to the Ministry of Public Security, the authorities have issued 1.14 billion ID cards since 1985 when it started using ID numbers to identify residents on the mainland. New ID cards will use integrated circuitry (IC) technology to make them harder to forge. The new IC identification cards can be read by computers, which make it possible for police to check huge numbers of ID cards in a much shorter time than before. This has led to concerns from Chinese legislators that the police may infringe the rights of individuals during random ID cards checks.<sup>280</sup> In 2002, a *Newsweek* article described how some Internet cafes in Jiangxi province were “experimenting with swipe cards linked to customers’ national ID cards. Some Beijing Internet cafes have installed surveillance cameras overlooking computer screens. One cafe manager took foreign reporters to a back room, where a police-linked computer, connected to four spy cameras, monitored users.”<sup>281</sup>

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<sup>276</sup> For example, ML5b Surveillance systems, ML11 Transmitters military radios, ML15b Cameras & components, ML22b1d - Command, Communications, Control and Intelligence (C3I) software

<sup>277</sup> For example, 5A001 Telecommunications equipment, 5A001b2 Radio equipment, 5D001 Telecommunications equipment/system software, 6A003b.2 Cameras scanning & scanning camera systems, 6A003b.1 Cameras video using solid state sensors,

<sup>278</sup> European Council Declaration on China: Madrid, 26-27 June 1989

<sup>279</sup> [http://security.thalesgroup.com/case\\_study/case15.htm](http://security.thalesgroup.com/case_study/case15.htm) ‘People’s Republic of China Uses Secure Identification Technology for Smart Card Based ID Card.’

<sup>280</sup> <http://www.china.org.cn/english/government/68036.htm>

<sup>281</sup> “China’s Cyber Crackdown : The Internet was supposed to give dissidents power and influence. But Beijing seems to be winning round one,” *Newsweek International*, 12 August 2002

Despite the difficulties of documenting the impact of such technologies, Amnesty International and other human rights groups have reported the impact of telephone-tapping and other surveillance systems in a number of countries including Saudi Arabia,<sup>282</sup> and Mexico, where in 1996 Amnesty detailed a “sharp increase in the targeting of human rights defenders throughout Mexico. In scores of cases such threats contain extensive details about the victim’s personal and professional lives, suggesting intelligence work, including telephone-tapping. Amnesty International believes that such activities cannot happen without the authorities’ acquiescence.”<sup>283</sup> Amnesty has also reported on the activities of the security forces in India<sup>284</sup> and Tunisia where it has documented how “alongside imprisonment, short-term detention, harassment and torture, the authorities have introduced telephone tapping, fax and mail interception and even sleaze campaigns to harass and intimidate human rights defenders and curtail their activities”.<sup>285</sup>

Some telephone-tapping and surveillance can be relatively “low tech” as illustrated by the use of tape recording equipment in Guatemala during the 1990s. Both the Human Rights Ombudsman and the Archbishop’s Human Rights Office (ODHA) complained, the director of the ODHA stating that “here the espionage is outrageous, you can hear when the tape starts to run and [the people listening] talk in the middle of the conversations we’re having.” The director of the Guatemalan Telephone Company (TELGUA) stated that they do not have the technical or human capacity to carry out phone tapping. He later admitted that, “Rudimentary equipment for this practice has been placed in the exterior boxes.”<sup>286</sup>

However, surveillance technologies and software have developed at a rapid pace and many of the modern surveillance functions have outpaced developments in export controls and in many cases the ability of politicians to understand the dangers that such systems can pose when exported to repressive regimes.

### **EU “lawful interception” and the potential impact on human rights**

Privacy is specified as a fundamental right by a number of international agreements.<sup>287</sup> At a global level, Article 17 of the International Covenant on Civil and Political Rights guarantees

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<sup>282</sup> Saudi Arabia; Human Rights group founder resigns; Interior Minister criticises western media. Agence France-Presse in English 1110 gmt 24 May 93. ...The message addressed to King Fahd by about 30 religious signatories called for a review of Saudi laws “in a bid to make them conform with shari’ah (Islamic law)” and the abolition of “torture and telephone tapping”.

<sup>283</sup> Mexico: *Amnesty International gravely alarmed at sharp increase in human rights violations against civil and human rights activists*. 14 October 1996 (AI Index: AMR 41/64/96.)

<sup>284</sup> Article 6 of the Human Rights Defenders Declaration reflects Article 19 of the ICCPR to which India is a party. However, the rights set out in these international standards are regularly ignored. It is acknowledged that correspondence to and from many civil liberties organizations (particularly those which operate in areas of armed conflict) is intercepted by the authorities and that their telephones are regularly tapped. Information and documentation sent to international human rights organizations is often intercepted and much of it does not reach its destination. See Amnesty International, *Persecuted for challenging injustice. Human rights defenders in India*, (April 2000. AI Index ASA20/08/00)

<sup>285</sup> Amnesty International, Tunisia : *Human rights in peril despite government propaganda*. News Service: 214/98, AI Index: MDE 30/26/98, 4 November 1998

<sup>286</sup> (La Prensa on the Web from AFP, San Pedro Sula, 6/23/98).The Guatemalan government did not acknowledge its participation in the phone-tapping. The Military Intelligence organization claimed that it was the responsibility of the Ministry of Government, and the Interior authorities that it was the Armed Forces responsibility.

<sup>287</sup> See for example: Article 12 of the Universal Declaration of Human Rights; Article 17 of the Covenant on Civil and Political Rights; Article 7 of the EU Charter of Fundamental Rights; Article 8 of the European Convention on Human Rights; Article 7 of the Council of Europe Convention on the Protection of Persons with regard to the automatic processing of automatic data.

the protection of privacy. At the European Union level Article 7 of the EU Charter of Fundamental Rights explicitly includes in law the right to respect for privacy of communications. Despite such international conventions, Amnesty International is concerned that the supply of telecommunications infrastructure systems by European Union based companies to countries with poor human rights records will facilitate violations of such fundamental human rights. By adhering to EU standards, these telecommunication systems will have built-in capabilities to enable “lawful interception” by legitimate “law enforcement agencies”. Such “lawful interception” may be acceptable in countries that have effective parliamentary scrutiny and legal mechanisms to ensure the accountability of the surveillance activities of the police and intelligence services. But in many countries where a pattern of human rights violations is committed by the “law enforcement agencies”, the supply of hi-tech telecommunications infrastructure with built-in interception, surveillance and monitoring capabilities can only facilitate such violations.

Any EU company providing telecommunications infrastructure systems is required to meet the technical standards produced by the “Working Group on Lawful Interception” (WG LI) of the European Telecommunications Standards Institute (ETSI).<sup>288</sup> One of the key guidelines is that “*the act of interception is kept discreet*”.<sup>289</sup> ETSI has devised a number of standards for different types of communication systems such as Terrestrial Trunked Radio (TETRA) and the 3<sup>rd</sup> Generation mobile phone systems.<sup>290</sup> The need for secrecy or “non-disclosure” as it is called is outlined in the technical specification for the lawful interception of the Terrestrial Trunked radio (TETRA).<sup>291</sup> It is clear from this specification that the “manufacturers of the technical installations” are involved in the implementation of the “lawful interception” capabilities and activities of the communications systems.

According to a 2001 report, the EU (and ETSI) had co-operated with the US-Federal Bureau of Investigation to create international technical standards for interception (wiretapping). In 1993, the FBI had hosted meetings at its research facility in Quantico, Virginia called the “International Law Enforcement Telecommunications Seminar” (ILETS), inviting representatives from Canada, Hong Kong, Australia and the European Union. At these meetings, an international technical standard for surveillance, based on the FBI’s demands, was adopted as the “International Requirements for Interception.”<sup>292</sup>

This means that all EU countries have to ensure that their systems have built-in capabilities for “lawful interception”. For example, in 1999 it was reported that the US-based company Nortel Networks and the US Federal Bureau of Investigations had reached a “first-of-its-kind agreement enabling telecommunications companies to use computer software to assist law enforcement agencies in conducting lawfully authorized wiretapping under the 1994 Communications Assistance for Law Enforcement Act”.<sup>293</sup> These interception capabilities are not restricted to the boundaries of the EU as was identified by the 1996 ETSI guidelines on interception across national boundaries. The ETSI guidelines state that if the interception

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<sup>288</sup> For example see the description of the work of the Working Group on Lawful Interception in the European Telecommunications Standards Institutes 1999 Annual Report and Accounts. See [www.etsi.org/sec](http://www.etsi.org/sec).

<sup>289</sup> Annex B: draft requirements for interception across national frontiers. ETSI Technical Report ETR 331 December 1996. [European Telecommunications Standard Institute].

<sup>290</sup> See 3G TS 33.106 v3.0.0 (1999-07) Technical Specification. 3<sup>rd</sup> Generation Partnership project; technical Specification Group Services and Systems Aspects; WG3 Security; Lawful Interception Requirements.

<sup>291</sup> See EN 301 040 v2.0.0 (1999-06). Terrestrial Trunked radio (TETRA); Security; Lawful Interception (LI) interface;

<sup>292</sup> Electronic Privacy Information Center (USA) and Privacy International (UK) (2001) : Privacy and Human Rights 2001 : An International Survey of Privacy Laws and Developments, [www.privacyinternational.org/survey/phr2001/phr2001.pdf](http://www.privacyinternational.org/survey/phr2001/phr2001.pdf)

<sup>293</sup> “FBI’S “Big Brother” Eye on the Internet”. Intelligence, N. 104, 27 September 1999, p. 12

interface lies in a foreign territory, then arrangements are made by EU Member States so that interception is still possible.<sup>294</sup> Although subject to further review, the guidelines imply that any telecommunications infrastructure systems installed in non-EU countries would need to have the same level of “lawful interception” capabilities as a European system.

Even where national legislation exists to control the use of telephone-tapping and other forms of surveillance, this legislation can be ignored or abused by law enforcement or intelligence agencies. For example, in Taiwan, under the martial law-era Telecommunications Surveillance Act, permission for telephone tapping and other similar interferences with privacy of communications must be granted according to law. However, according to the Taiwan Association for Human Rights in 1999, “prosecutors appeared to have abused their eavesdropping power by authorizing law enforcement units to monitor more than 16,000 telephone calls in less than a year. Such behaviour has constituted a serious infringement of peoples’ privacy.”<sup>295</sup> In 1999 the new Telecommunication Protection and Control Act imposed stricter guidelines on how wiretaps could be used, although they can still be approved for broad reasons such as “national security” and “social order”. According to the US State Department, following the new law the number of wiretaps was 3,377 in 2000 and 6,505 in 2001.<sup>296</sup>

Research conducted for this report has discovered that 28 companies in eight EU and new Member State countries manufacture or supply equipment designed for the purposes of covert surveillance and the monitoring of telephone and other forms of electronic communications.

#### *Turkmenistan:*

In September 2003 Amnesty International reported serious, widespread and ongoing human rights violations by the Turkmenistan government.<sup>297</sup> Similarly in 2002, and for many previous years, the US State Department has reported that: “Security officials used physical surveillance, telephone tapping, electronic eavesdropping, and the recruitment of informers. Critics of the Government, and many other persons, credibly reported that their mail was intercepted before delivery. Mail delivered to the post office must remain unsealed for government inspection.”<sup>298</sup>

It was therefore of concern that in early 2001, the Ministry of Communications of Turkmenistan signed a contract with German company Siemens and French company Alcatel for Euro 3.3 million to install 12,000 telephone lines. Since 1993 Alcatel has installed 60,000 lines while Siemens has installed 40,000. A total of 325,000 lines are to be installed by 2010.<sup>299</sup> As two leading EU telecommunications companies, it is assumed that both Siemens and Alcatel comply with the ETSI guidelines – and therefore ensure that their telecommunications systems are designed to enable government surveillance and telephone tapping to take place.

Amnesty International is concerned that the German and French governments have permitted such transfers despite reports by governments and human rights organisations that the

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<sup>294</sup> Annex B: draft requirements for interception across national frontiers. ETSI Technical Report ETR 331 December 1996. NOTE: the above requirements are subject to further review, particularly with regard to questions of extraterritoriality.

<sup>295</sup> Taiwan takes stick on human rights, China News, December 8, 1997. Cited in *Privacy and Human Rights 1999. An International Survey of Privacy Laws and Developments*. Electronic Privacy Information Center & Privacy International.

<sup>296</sup> *Privacy & Human Rights: An International Survey of Privacy Laws and Developments*, 2003, EPIC & Privacy International, <http://www.privacyinternational.org/survey/phr2003/countries/taiwan.htm>

<sup>297</sup> Amnesty International, *Turkmenistan: clampdown on dissent, a background briefing*, September 2003 (AI Index: EUR: 61/015/2003)

<sup>298</sup> <http://www.state.gov/g/drl/rls/hrrpt/2002/18397.htm>

<sup>299</sup> See also TDA Making Connections with Eurasia Project Resource Guide I-TM-1 PDF file

Turkmenistan government has a longstanding and continuing practice of surveillance and telephone tapping as part of a policy of repression against those perceived to be critical of the government.

For example, in one case a civil society activist who had a telephone conversation with a representative of a foreign human rights organisation was subsequently summoned to the Secret Service in July 2003. Here the activist was questioned about his conversation with direct reference to what had been discussed in the phone call. There are strong indications that the authorities in Turkmenistan are also trying to monitor emails.

Amnesty International's concerns about the transfer of telecommunications systems to Turkmenistan have been deepened by recent revelations in the German magazine *Der Spiegel* that Siemens had also transferred surveillance and telephone tapping equipment to Turkmenistan.<sup>300</sup> This was confirmed by correspondence between Amnesty International and Siemens. In a letter to Amnesty dated 17 February 2004, Dr Peter Ramm of Siemens stated: "In accordance with a contract that was signed in the year 2000, monitoring-facilities were delivered, which due to the client would be exclusively used to monitor activities in organised crime and terrorism. This appeared to be believable purpose, given the country's location in an unstable crisis-ridden region, and its shared borders with Afghanistan and its former Taliban-Regime. Comparable and more advanced technical facilities are in use in a number of democratic countries, including Germany."<sup>301</sup> Dr Ramm continued that "Those responsible for this business agreement were obviously aware that Turkmenistan is not a western-style, democratic state. However, they assure that they were not aware of any human rights violations at the time the contract was signed - in the year 2000....The secret service was not our client. If there has been a misuse recently of the technical facilities delivered by us, we are very sorry and distance ourselves from the matter explicitly. We will approach the client appropriately through existing contacts. However, neither are we able to verify misuse ourselves, nor are we technically able to stop it."

### **Intelligence and surveillance provided by EU Member States**

A number of EU governments have provided intelligence and surveillance assistance packages directly to governments whose security forces have used such intelligence to target perceived opponents such as human rights defenders, trade unionists and journalists. Such "opponents" have subsequently faced intimidation, arrest and sometimes torture and execution.

#### *Colombia:*

In its ongoing conflict with left-wing guerrillas and drug-trafficking cartels, the Colombian government has been the recipient of direct MSP assistance from a number of states. The vast majority of this MSP aid has come from the US Plan Colombia programme. However, a number of EU states have been significant providers of additional MSP support, including surveillance and intelligence assistance.

It has been reported that two Spanish satellites will be made available to the Colombian government, one for observation and another for communication. The majority of information will come from the Helios 1B reconnaissance satellite, which was launched in 1999, jointly financed by Spain, Italy and France. In 2004, France, Belgium and Spain will launch Helios 2, a satellite with infra-red technology able to undertake night-time intelligence photographs. Military intelligence collected by this second satellite will also reportedly be provided to

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<sup>300</sup> Problems with joints, *Der Spiegel* no. 46, 2003

<sup>301</sup> Letter from Dr P Ramm, Siemens AG to Amnesty International, 17 February 2004



Colombia. Spain will also provide assistance and collaboration in the “fight against terrorism” with eavesdropping equipment and intelligence training developed in its fight against ETA.<sup>302</sup>

It was reported in March 2003 that Colombia had asked for further military intelligence assistance from the British government.<sup>303</sup> According to the Colombian media the UK may be providing support in the creation of the *Centro Nacional de Inteligencia*, CENIT, National Intelligence Centre, a body to coordinate all Colombian security force intelligence operations.<sup>304</sup> On a visit to Colombia in July 2003 Nicholas Sarkozy, the French Minister of the Interior, renewed his pledge to support the Colombian government and signed an agreement which included exchange of intelligence data.<sup>305</sup>

Amnesty International is also concerned that the US military Forward Operation Locations (FOLs) in the Dutch islands of Curaçao and Aruba, as well as El Salvador and Ecuador, from where US aerial intelligence flight operations are reportedly coordinated over Colombia and other countries of the Andean region could facilitate human rights violations. A number of Dutch NGOs are currently coordinating efforts to raise concerns on agreements reached between the US government and the Dutch government for the operation of FOLs in Curaçao and Aruba. It is interesting to note that in the USA’s Plan Colombia there is a budget allocation of around USD 54 million to upgrade the Aruba FOL and the Curaçao FOL.<sup>306</sup>

Given the failure by the Colombian authorities to significantly reduce human rights violations by the security forces and particularly by the security force-backed paramilitaries, there can be no guarantees that this intelligence support will not be used by military units operating in collusion with paramilitary structures or to help coordinate paramilitary operations. The Colombian authorities have not yet fulfilled UN requirements to ensure that all Colombian military intelligence files are revised and the data contained on human rights defenders and other legitimate civil society representatives made public. In a letter to President Uribe, dated 11 June 2003, Colombian non-governmental human rights organizations called on the government to revise military intelligence files and ensure that if any of these files contained information which justified legal proceedings these should be undertaken observing all the guarantees for a fair and impartial trial or investigation and if they contained no such information the file should be destroyed.

A report by the UN Special Representative on Human Rights Defenders, Hina Jilani, had expressed concern about practices of the Colombian police and the army against human rights defenders, in particular the keeping of intelligence files containing false information about human rights defenders and the tapping of telephones of NGO offices. According to information provided to her, there are clear parallels between the information collected by military intelligence regarding human rights defenders and the information that appears in

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<sup>302</sup> El Tiempo, 3 March 2003 and ‘España cederá a Colombia ocho aviones militares Mirage F-1,’ EFE 28 February 2003

<sup>303</sup> *El Tiempo* 12 March 2003

<sup>304</sup> Report on *semana.com*, 2 August 2002. In an interview published in the same Colombian online magazine on 16 May 2003, the UK Foreign Office Minister responsible for Latin America, Bill Rammell, said that “we are cooperating in all areas, but I cannot give details”. Amnesty International is concerned that General Rito Alejo Del Río, who has been implicated in judicial investigations for coordinating paramilitary groups which committed numerous human rights violations in the departments of Antioquia and Chocó, is reported to be playing an important role in the creation of the new military intelligence structure. (Criminal investigations into the former general were closed in March 2004)

<sup>305</sup> “Ministro francés elogia logros contra drogas y el terrorismo”, *El Colombiano* 24 July 2003

<sup>306</sup> See the US Department of State International Information Program (<http://usinfo.state.gov/topical/global/drugs/canal.htm>). The site contains the speech of the Deputy Assistant Secretary of Defence on 9 June, 2000 which confirmed the agreement between the US and Dutch governments regarding the use of Dutch FOLs.

public threats issued by paramilitary forces.<sup>307</sup>

### **Internet “blocking” and surveillance**

Article 6 of the UN Declaration on Human Rights Defenders states that: "Everyone has the right, individually and in association with others [...] freely to publish, impart to disseminate to others views, information and knowledge on all human rights and fundamental freedoms [as well as] to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and appropriate means, to draw attention to those matters."<sup>308</sup> However in many countries human rights organisations have detailed attempts by the authorities to block access to the internet, censure the content of internet web sites and harass and intimidate internet users.

For example in Togo, Amnesty International received reports that the authorities informed an internet café owner that internet access would be cut during the hours immediately after the election in June 2003. For some months previously Togolese authorities had, in fact, censored some Internet sites by preventing access from Togo. This measure seems to have been taken after September 2002 when the website *letogolais.com* published an interview with the former Prime Minister, Agbéyomé Kodjo, currently in exile, which criticized the way political power was exercised in Togo. In the same period, the authorities also prevented access from Togo to other websites, including that of the UFC opposition party.<sup>309</sup>

Saudi Arabia has provided limited Internet Access via a government controlled ‘gateway’ at King Abdul-Aziz City for Science and Technology.<sup>310</sup> However, the access is through a special telephone number which can be identified by the primary exchange<sup>311</sup> (and presumably monitored) and it has been reported that the Saudi government have deployed web monitoring that is more ‘sophisticated’ than just blocking or filtering access to specific “undesirable” web addresses. It was reported that “users who attempt to access banned sites reportedly receive warnings on their computer screens that their access attempts are being logged.”<sup>312</sup>

**An Amnesty International internet campaign calling for the release of Le Chi Quang, who was sentenced in November 2002 to four years in prison in Vietnam for writing about democracy and human rights on the Internet. © AI and Pilgrim Communications**

#### *China and the Great Firewall:*

It is China that is thought to have in place the most extensive censorship of the Internet of any country in the world.<sup>313</sup>

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<sup>307</sup> Report submitted by Ms Hina Jilani, Special Representative to the Secretary-General on human rights defenders: Mission to Colombia, October 2001, E/CN.4/2002/106.Add.2  
[http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/2718664e3817d66ac1256ba30054390f/\\$FILE/G0213563.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/2718664e3817d66ac1256ba30054390f/$FILE/G0213563.pdf)

<sup>308</sup> General Assembly resolution 53/144. ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.’ A/RES/53/144. 8 March 1999.

<sup>309</sup> Amnesty International, *Togo: an election tainted by escalating violence*, June 2003 (AI Index: AFR 57/005/2003)

<sup>310</sup> Amnesty International Irish Section, *Ireland and the arms trade: decoding the deals*, 2001

<sup>311</sup> “Saudi Arabia: Saudi Minister on Introduction of Internet, Call Charges”, FBIS-NES-98-311, 7 Nov 1998

<sup>312</sup> “The Internet’s ‘Open Sesame’”, *New York Times* cited in “*The Internet in the Middle East and North Africa - Country Profiles - Saudi Arabia*”, Human Rights Watch.

<sup>313</sup> See for example the 2001 report - *China's Golden Shield: Corporations and the Development of Surveillance Technology in the People's Republic of China*, op cit

Up to 7 January 2004, Amnesty International had recorded<sup>314</sup> the names of 54 people who had been detained or imprisoned for disseminating their beliefs or information through the Internet - a 60 per cent increase compared to figures recorded at the end of 2002.<sup>315</sup> Those detained for downloading information from the Internet, expressing their opinions or circulating information on the Internet or by email include students, political dissidents, Falun Gong practitioners, workers, writers, lawyers, teachers, civil servants, former police officers, engineers, and businessmen. Signing online petitions, calling for reform and an end to corruption, planning to set up a pro-democracy party, publishing 'rumours about SARS'<sup>316</sup>, communicating with groups abroad, opposing the persecution of the Falun Gong and calling for a review of the 1989 crackdown on the democracy protests are all examples of activities considered by the authorities to be "subversive" or to "endanger state security". Such charges almost always result in prison sentences. Prison sentences ranged from two to 12 years.

Many of those arrested have been held for long periods, sometimes for over a year, awaiting a formal trial and for some there has been a long delay between trial and sentencing. All are believed to have been denied full and adequate access to lawyers and their families, particularly during the initial stages of police detention, and several have reported being tortured or ill-treated. Such violations of the right to a fair trial and to freedom from torture or ill-treatment often contravene provisions of China's Criminal Procedure Law as well as international human rights standards.

Huang Qi is notable for being the first person in China to be arrested for posting articles concerning human rights and political issues on his own website. After his trial in August 2001, he continued to be detained for almost two years before his sentence was finally announced on 9 May 2003 - five years' imprisonment for "inciting subversion". By that time Huang Qi had spent a total of almost three years in detention. This was taken into account in his sentencing and he is due to be released in June 2005. It remains unclear why it took so long for the sentence to be announced after the trial. Huang Qi filed an appeal on 18 May 2003 pointing out that China's Constitution guarantees the right to freedom of speech and of the press. During his appeal hearing, prison guards reportedly held him down by the throat as he tried to speak in his defence. In August 2003 his appeal was turned down and the five-year sentence upheld.

According to the court verdict, the prosecution cited evidence which included reference to the posting of an Amnesty International document on Huang Qi's website. Amnesty International believes that merely publishing names of individuals imprisoned following the 1989 pro-democracy protests on the Internet can never amount to "inciting subversion". After his appeal Huang Qi was transferred to Chuanzhong high security prison, in Nanchong in Sichuan Province. Following a visit by representatives of the international non-governmental organization, Reporters Without Borders in October 2003, Huang Qi was reportedly placed in solitary confinement and then moved to a punishment cell. He is reported to be in poor health.

Many of the toughest regulations to control the Internet have been issued since 2000 and those who cause "especially serious harm" by providing "state secrets" to overseas organizations and individuals over the Internet can be sentenced to death. As all communication on the Internet in China passes through government-controlled routers the authorities are able to block access to many sites and to filter content and delete individual links or web pages if considered "dangerous" or "subversive". No list is publicly available on what is filtered and blocked, but one study done by the Harvard Law School found that over

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<sup>314</sup> Amnesty International, *People's Republic of China: Controls tighten as Internet activism grows*, January 2004 (AI Index: 17/001/2004)

<sup>315</sup> In November 2002, Amnesty International documented 33 people who had been detained for Internet-related offences, including three Falun Gong practitioners who had reportedly died in custody.

<sup>316</sup> Severe Acute Respiratory Syndrome

50,000 of 204,000 web sites tested were inaccessible from at least one location in China although some were accessible from the USA.<sup>317</sup>

Amnesty International has reported how, over the past year, websites using banned words such as 'Taiwan', 'Tibet', 'democracy', 'dissident', 'Falun Gong' and 'human rights', have continued to be regularly blocked, together with the websites of international human rights groups, including Amnesty International, and several foreign news sites. In addition, several new regulations have devolved greater responsibilities for control of the Internet to Internet cafes, companies and, most recently, portals providing news. In October 2003, the Ministry of Culture announced that by the year 2005 all China's 110,000 Internet cafes will need to install surveillance software which would be standardised throughout all Internet cafes in China. The Ministry of Culture also intends to issue licenses to allow up to 100 companies to manage the majority of Internet cafes. According to Liu Qiang, a senior official with the Ministry of Culture, the management companies would be required to use software that would make it possible to collect personal data of Internet users, to store a record of all the web-pages visited and alert the authorities when unlawful content was viewed. On 20 November 2003 the Ministry of Information Industry (MII) issued rules for approximately 30 large companies that manage Internet addresses in China. While these regulations appear to be intended to improve service standards, they are also aimed at strengthening control over sensitive information posted on the web.

As China's burgeoning economy grows and with its admission in December 2001 to the World Trade Organization (WTO), foreign ownership, investment and involvement of foreign companies in China's telecommunications industry have soared. One foreign investor, Nortel Networks, announced in September 2003 that it plans to invest US\$200 million over the next three years to strengthen its research and development capabilities in China.

Amnesty International remains concerned that in their pursuit of new and lucrative markets, foreign corporations may be indirectly contributing to human rights violations or at the very least failing to give adequate consideration to the human rights implications of their investments. In its first report on *State Control of the Internet in China*, Amnesty International cited several foreign companies (Cisco Systems, Microsoft, Nortel Networks, Websense and Sun Microsystems – many of whom have production or distribution operations in the European Union), which had reportedly provided technology which has been used to censor and control the use of the Internet in China. Amnesty International urges all companies which have provided such technology to China to use their contacts and influence with the Chinese authorities to bring an end to restrictions on freedom of expression and information on the Internet and to urge the release of all those detained for Internet-related offences in violation of their fundamental human rights.<sup>318</sup>

### **Key lessons to be learned**

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<sup>317</sup> See for example 'Online Police appear in Internet Bars in Xi'am', CND-Global, 7 August 2001. [www.cnd.org/Global/01/08/07/010807-9.html](http://www.cnd.org/Global/01/08/07/010807-9.html) and >The Internet and State Control in Authoritarian Regimes: China, Cuba and the Counterrevolution. A report from the Information Revolution and World Politics Project, Carnegie Endowment, 21 July 2001. Report No. 21. The Harvard Law School study is: Jonathan Zittrain and Benjamin Edelman, *Empirical Analysis of Internet Filtering in China*, Berkman Centre for Internet and Society, Harvard Law School, <http://cyber.law.harvard.edu/filtering/china/>

<sup>318</sup> Amnesty International, *State Control of the Internet in China*, November 2002 (AI Index: 17/007/2002)

Despite evidence from Amnesty International and other human rights groups about the extent to which communication and surveillance systems have contributed to, or facilitated “internal repression” in China, and other countries, EU governments seem to have paid little regard to this aspect of export control.

All EU governments and the European Commission should review their export control policies with regard to the export of “dual-use” goods and their obligations under Operative Provision 6 of the EU Code of Conduct so as to develop further specific mechanisms to ensure that the transfer of sophisticated communication and surveillance systems is not permitted to countries where such systems are likely to be used to facilitate human rights violations.

## **11. Security Equipment used for Torture and Ill-Treatment**

In June 2002, the 15<sup>th</sup> anniversary of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the EU called on all countries to comply with its unconditional prohibition on all forms of torture, and to adhere to international norms and procedures. The EU noted that even though 129 States were parties to the Convention, torture continued to occur and perpetrators were going unpunished, even in countries that had ratified it.<sup>319</sup>

But despite such high profile support for the Convention against Torture the EU’s commitment to take action against torturers and torturing states has not been reflected in its controls on the equipment that can be used for torture. This is despite the requirement of Criterion Two of the EU Code of Conduct which requires that MSP equipment should not be exported if there is a risk that it will be used to abuse human rights. Companies in the EU and New Member States are still manufacturing and trading in such equipment. Amnesty believes that some of this equipment should be banned outright and that strict export controls should be introduced on the rest.

In December 2002, the European Commission introduced a draft Trade Regulation which proposes a new control regime on equipment that can be used for torture. However, this Regulation has remained stuck “in committee” and Amnesty International has serious concerns that the EU member states are attempting to weaken the draft controls. This chapter provides examples of the continuing trade within the EU and new member countries in stun guns, shock batons, leg cuffs, leg irons and other restraint technologies, and the lack of effective export controls. Amnesty International continues to document how the uncontrolled trade in such technologies contributes to torture and serious human rights violations in many countries worldwide.

### **Mechanical Restraints**

Handcuffs, leg irons, shackles, chains and thumbcuffs are some of the most widely used security devices. Although certain forms of restraint devices such as handcuffs<sup>320</sup> or

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<sup>319</sup> EU Presidency Statement on victims of torture, 25 June 2002 , <http://europa-eu-un.org/article.asp?id=1470>

<sup>320</sup> For many years Amnesty International has documented the misuse of ‘standard design’ handcuffs for acts of torture, and cruel, inhuman and degrading treatment. Between 2000-2004 there were at least 38 companies in 17 of the EU or New Member States manufacturing, selling or marketing handcuffs. However such figures are an underestimate as a number of governments do not define handcuffs as “controlled goods” under their trade laws. In the UK, for instance, no export licence and therefore no end user certificate is required for the export of handcuffs, so it is not possible to monitor to which countries UK handcuffs are exported.

straightjackets are sometimes needed by law enforcement officials to control dangerous prisoners, many are also widely misused.

For almost half a century, international human rights standards have required governments to prohibit absolutely the use of chains and irons, such as shackles, on prisoners.<sup>321</sup> Yet in many parts of the world, chains and irons and other mechanical restraints are used to punish, torture and mistreat prisoners and detainees. Amnesty International has documented the use of leg irons in at least 38 countries over the past five years. In many countries around the world – including most of the EU countries and new Member States - the trade in such restraints is not sufficiently regulated and is shrouded in secrecy. Amnesty International has discovered that in the EU and new Member States 18 companies manufacture or supply leg restraints and 4 companies manufacture or supply thumb-cuffs.

However these figures do not represent the true scale of this trade. Few governments provide trade data for these products and many countries do not require licences for the export, trans-shipment or brokerage of such products.

*USA, Latvia and Estonia:*

Between 1998 and 2002 the Bureau of Export Administration (BXA) in the USA granted three licences for export to Latvia of crime control equipment described as “thumbcuffs, leg irons and shackles” (Category OA983).<sup>322</sup> In 2003, the BXA issued a further licence for this category valued at \$1540 for Latvia.<sup>323</sup> Yet in 2001 the Latvian government had changed its legislation to prevent the use, production and transfer of certain specifications of restraint equipment.<sup>324</sup> Because the US licence data is not as transparent as it could be, it is not possible to identify the specific goods that were authorised for export, but it remains of concern that the US may have authorised the export of goods to Latvia whose use, production and transfer has been prohibited.

During 1998 – 2002 the BXA also issued five licences for the OA983 category to Estonia. Responding to questions from Amnesty International, the Estonian government stated that “thumb-screws and serrated thumb-cuffs are classified as goods used to commit human rights violations and therefore the following is prohibited: import, export and transit of goods used to commit human rights violations and the provision of services related thereto regardless of their country of destination, unless such goods are displayed as objects of historical value in a museum.”<sup>325</sup> The contradiction between the statements of the Estonian and Latvian governments and the US trade data remains unexplained. Amnesty International has contacted the governments concerned and is awaiting a response.

*Spain:*

The case of the Spanish company Larrañaga y Elorza highlights the urgent need to introduce comprehensive controls on security equipment which cover the whole of the EU. Over the last decade, Larrañaga has specialized in manufacturing restraint devices.<sup>326</sup> In October 2000,

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<sup>321</sup> Rule 33 of the 1955 United Nations' Standard Minimum Rules for the Treatment of Prisoners, states: "Chains or irons shall not be used as restraints" and, moreover, that "Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment." Rule 33's prohibition includes leg irons, ankle bars, leg-cuffs, body chains, thumb-cuffs and any other form of metal shackle on the hands or feet.

<sup>322</sup> Source: Bureau of Export Administration, Freedom of Information request, 15 October 2002

<sup>323</sup> [www.bxa.doc.gov/News/2003/AnnualReport/appendixf.doc](http://www.bxa.doc.gov/News/2003/AnnualReport/appendixf.doc)

<sup>324</sup> Amnesty International, *Stopping the torture trade*, February 2001, (AI Index: ACT 40/002/2001)

<sup>325</sup> Estonian government response to “Questions from Amnesty International for a report about controls on arms exports from EU and Accession States”, March 2004.

<sup>326</sup> [www.alcyon.es/catalog/alcybehe.php?language=en](http://www.alcyon.es/catalog/alcybehe.php?language=en) In 1921, the company started what has been its main activity until now, the manufacture of handcuffs.

following the campaigning work of Amnesty International, Greenpeace, Intermón-Oxfam and Médecins sans Frontières and an investigation by journalists from *El Pais* and the *Observer* newspapers, the Spanish government finally announced that it would stop the trade in leg irons and shackles by Larrañaga y Elorza.<sup>327</sup>

Larrañaga continues to manufacture a range of handcuff restraints under the trade name 'Alcyon' and has promoted them at trade shows such as the IWA Sporting and Hunting show in Nuremberg (Germany).<sup>328</sup>

Despite the statement from the Spanish government banning the trade in leg irons and shackles at least two companies in other countries are continuing to offer belly chains and leg restraints that appear to be manufactured using Alcyon cuffs. For example, in February 2004, the Venezuelan company Centurion CA website was offering a range of Alcyon products under the following headings: *esposas con bisagra* (handcuffs) models 5232, 5233, *Cadena para cintura* (Belly Chain) model 5240, *Grilletes para pies* (leg cuffs).<sup>329</sup> The Assegai Trading Company, in South Africa, also claims to supply the model 5240 Belly Chain which is reported on the website as being constructed using the model 5050 handcuffs.<sup>330</sup> The company also offers a range of other restraints including leg irons.<sup>331</sup>

These examples raise serious questions on the effectiveness of the Spanish government's commitment on stopping the trade in such restraints.

#### *US Death Row prisoner held in UK leg cuffs*

Kenny Richey, a UK national from Scotland, was convicted and sentenced to death in 1987 for an alleged arson attack and the death of a two-year-old girl in Columbus Grove, Ohio. He maintains his innocence and his lawyers have been fighting to have new evidence heard. However, a combination of a poor-quality defence at the original trial and a system which makes getting fresh evidence heard extremely difficult, mean that he has already had 13 execution dates. As this report went to press, his case had reportedly been sent to the US Supreme Court for reappraisal.

Kate Allen, Director of the UK Section of Amnesty International, recently visited him at Mansfield Correctional Facility, where she found him shackled with a belly chain and leg chains, bolted to the floor. Amnesty International subsequently discovered that his wrist and leg cuffs have 'Made in England' stamped on them. This is despite the fact that the UK has banned the manufacture and transfer of such leg restraints. Amnesty International is currently investigating the manufacturer of the restraints and the means by which they were transferred to the US.

**Kenney Richey, a UK national who is being held on death row in the US in leg cuffs that have "Made in England" stamped on them, despite the fact that the UK has banned the manufacture and transfer of such leg restraints. © Private**

## **Electroshock Devices**

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<sup>327</sup> *Observer*, September 10, 2000, p15, 'Shame of British firms who trade in torture: Revealed: How UK companies are exploiting legal loopholes to broker the export of deadly instruments to the Third World.'

<sup>328</sup> For example, Larrañaga y Elorza exhibited at IWA 2003 and IWA 2004.

<sup>329</sup> <http://www.centurion.com.ve/prodalcyon.htm>. Feb 2004

<sup>330</sup> The same handcuffs are also described as being used for the: 'Combination #5281 Handcuff #5050 and Hobbles'. [www.asegaitrading.co.za/handcuffs\\_hobblesbelly.htm](http://www.asegaitrading.co.za/handcuffs_hobblesbelly.htm) Feb 2004

<sup>331</sup> Leg Irons 5270 Nickel . [www.asegaitrading.co.za/handcuffs\\_legirons.htm](http://www.asegaitrading.co.za/handcuffs_legirons.htm). Feb 2004

Electro-shock stun weapons deliver electric shocks. In addition to severe pain, they can cause loss of muscle control, nausea, convulsions, fainting and involuntary defecation and urination. Human rights and torture rehabilitation organisations have described the electric shock baton as “the universal tool of the modern torturer”. Between 1990 and 2003, Amnesty International documented electro-shock torture in 87 countries.<sup>332</sup> The manufacturers of electro-shock weaponry argue that their products are not lethal, but deaths have been associated with their use.

Amnesty International calls for governments to adopt measures to halt the production of and trade in electro-shock stun weapons until a rigorous and independent investigation has been conducted into their effects, and has warned governments since 1997 about the uncontrolled international spread of electro-shock stun guns and batons.

Between 2000 and 2004 there were at least 63 companies in 13 of the EU or new Member States manufacturing, selling or marketing electro-shock stun weapons<sup>333</sup>. This is only a partial picture as official government data on exports of electro-shock devices is rarely published.<sup>334</sup>

*United Kingdom:*

Certain states in Europe have attempted to rigorously regulate the trade in electro-shock stun weapons and some, specifically the UK, have attempted to ban these weapons altogether. The UK banned stun guns in 1988 after they had been used by criminals for several muggings.<sup>335</sup> Following campaigns by human rights groups including Amnesty International, Robin Cook, then UK Secretary of State for Foreign and Commonwealth Affairs, stated in July 1997 that:

*"We are committed to preventing British companies from manufacturing, selling or procuring equipment **designed primarily for torture and to press for a global ban**...I can now announce that we will take the necessary measures to prevent the export or trans-shipment from the UK of the following equipment: Portable devices designed or modified for riot control purposes or self-protection to administer an electric-shock, including electric-shock batons, electric-shock shields, stun guns and tasers."*<sup>336</sup>

Unfortunately, despite the ban on direct exports it soon became apparent that without controls on arms brokers, British companies could continue to supply such weapons as long as they did not come onto British territory. In 1998, after an 18 month inquiry into a British businessman who had admitted selling a consignment of 200 electric shock batons to the Cyprus police, one Metropolitan Police source was quoted as saying “this decision means that any company or individual can now trade in these weapons with impunity, provided they do not come through Britain.”<sup>337</sup>

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<sup>332</sup> See Amnesty International, *The Pain Merchants*, December 2003, (AI Index: ACT 40/008/2003) for further details of electroshock torture throughout the world.

<sup>333</sup> Source: Omega Foundation database (numbers of companies in brackets): Existing EU member states : Austria (1), Belgium (1), France (11), Germany (29), Netherlands (1), Portugal (1), Spain (2), UK (2). New EU Member states: Czech Republic (9), Poland (3), Slovakia (1), Slovenia (1).

<sup>334</sup> For example the classification of stun weapons within the Standard Industrial Classification Codes (SIC), through which trade might be monitored, demonstrates the failure of governments to appreciate their potential for use as weapons of torture. SIC 5099 is the international trade statistic code which covers "electronic stun weapons". But SIC 5099 also includes "pre-recorded audio cassette tapes wholesale", and "leather attaches and briefcases". It is therefore exceedingly difficult to track the sale of and trade in electro-shock weaponry.

<sup>335</sup> *The Times*, 26 February 1988, 'Lords outlaw stun gun sales'.

<sup>336</sup> Statement by the Secretary of State for Foreign and Commonwealth Affairs, 28 July 1997

<sup>337</sup> "Yard exposes loophole in 'tools of torture' ban". *The Evening Standard* (London), June 23, 1998,



The UK government is in now in the process of introducing legislation prohibiting UK arms dealers from brokering torture equipment whether they operate in the UK or abroad and to whomever they sell it. Once again Amnesty supports this initiative but remains concerned about the scope of the UK definition of torture equipment and about effective enforcement.

The new UK brokering controls may have an impact on UK firms such as Intelligent Defence Technology Systems Ltd (IDTS) which, in October 2003, was offering a range of stun weapons including electric batons,<sup>338</sup> electric riot control and protective shields,<sup>339</sup> and stun guns.<sup>340</sup> IDTS appeared to be aware of the limitations on trading in such goods within the UK as all three web pages for the electro-shock devices included a “Legal Note” which stated “this device is available for sale to all European Member countries. Please be aware that in the United Kingdom, these units cannot be sold direct to the public, as it is illegal to own or have one of these devices in your possession. All other EU member states can purchase direct or apply for more details in the normal manner.”

The electro-shock devices offered by this company were manufactured in Taiwan. If IDTS had been involved in arranging for these weapons to be sold within the EU or elsewhere outside the UK, then whilst they would have been “brokering” electro-shock devices their actions would have been legal. It remains to be seen how effective the new UK “brokering” controls will be when they are introduced in May 2004.<sup>341</sup>

No matter how effective the export controls of individual EU states are, without consistent and coherent controls at the EU level, they will not prevent brokers of electro-shock weapons operating in other European Union or New Member States - or from marketing their products elsewhere in the world. The Czech Republic company Fly-Euro Security Products has claimed to manufacture the Scorpion 200 (Scorpy Max) and Power 200 range of stun guns. These products have been marketed by at least 26 companies in 14 countries including Brazil, Canada, France, Germany, Italy, Israel, Japan, Netherlands, Poland, Slovenia, South Africa, Switzerland and the United States of America.<sup>342</sup> Many of these countries have no domestic or export controls on stun guns, treating them as “free weapons”.

The spread of electroshock weapons is not just a concern for the human rights community. A recent report by the National Criminal Intelligence Service (NCIS) in the UK said that police there are ill-equipped to thwart criminals armed with electro-shock weapons. The report states that more criminals, particularly drug dealers, are carrying illegal stun guns, which are easily bought on the internet.<sup>343</sup> UK regional police forces have identified that stun guns are

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<sup>338</sup> [www.idtechsys.co.uk/Electric%20baton.htm](http://www.idtechsys.co.uk/Electric%20baton.htm) (accessed October 2003)

<sup>339</sup> [www.idtechsys.co.uk/Electric%20riot%20Shields.htm](http://www.idtechsys.co.uk/Electric%20riot%20Shields.htm) (accessed October 2003)

<sup>340</sup> [www.idtechsys.co.uk/Stun%20guns.htm](http://www.idtechsys.co.uk/Stun%20guns.htm) (accessed October 2003) (All these web pages have since been removed – but were still available via Google cache in March 2004)

<sup>341</sup> The new UK controls will also be tested by companies that are not registered in the UK but who operate in other countries. For example, a UK website offers, in conjunction with an “office” in Cambodia the “Cellular Phone Type Stun gun”. See <http://www.micro-surveillance.com/PhoneNumberInUK>. Tel: +44-020-8202-4777 (UK Office) The manufacturer of this stun gun is Motedo Co Ltd / O-Start R&D Corporation in Taiwan: [www.motedo.com.tw/](http://www.motedo.com.tw/) However the UK trader is not registered in the UK, but appears to be a company registered in the Irish Republic.

<sup>342</sup> [www.primekwas.com.br/tabela.htm](http://www.primekwas.com.br/tabela.htm) (accessed 2/2004), [www.asiabt.com](http://www.asiabt.com) (accessed 2/2004), [www.eclats-antivols.fr](http://www.eclats-antivols.fr) (accessed 2/2004), [www.pro-trek.com/products.asp?](http://www.pro-trek.com/products.asp?) (accessed 2/2004), [www.sh.rim.or.jp/~mark/scp200-01.htm](http://www.sh.rim.or.jp/~mark/scp200-01.htm) (accessed 2/2004), [www.eurospyzone.com](http://www.eurospyzone.com) (accessed 2/2004 via Google Cache), [http://www.secpol.com.pl/obr\\_paraliz.htm](http://www.secpol.com.pl/obr_paraliz.htm) (accessed 2/2004), Defence System S.R.L. brochure April 2004, [www.bock.si/bock/prod\\_orojize\\_brez\\_dovoljenja.asp](http://www.bock.si/bock/prod_orojize_brez_dovoljenja.asp) (accessed 2/2004), [www.assegaitrading.co.za/riot\\_stun\\_guns.htm](http://www.assegaitrading.co.za/riot_stun_guns.htm) (accessed 2/2004), [www.alibaba.com/catalog/10001013/Stun\\_Gun\\_500KV\\_Curved.html](http://www.alibaba.com/catalog/10001013/Stun_Gun_500KV_Curved.html) (accessed 2/2004). In some countries such as Germany the Scorpion 200 is marketed as the Schocktronic.

<sup>343</sup> “Stun gun threat to police safety: Forces ill equipped for rising number of weapons they find,” *The*

being smuggled into their regions, either from France or Germany or by mail order over the Internet.<sup>344</sup>

Amnesty International has serious concerns that unless the EU introduces consistent and coherent controls, security forces who torture their citizens, and criminals, will be able to continue to obtain electro-shock devices from EU-based companies.

### **Kinetic impact devices**

Kinetic impact devices are those designed to hit people. They are used in crime and riot control and can inflict severe pain. They include the oldest weapons available to law enforcement officials - hand-held devices like batons, truncheons, sticks and clubs - and the more sophisticated technology of launched devices, which includes plastic baton rounds and rubber bullets. Kinetic impact devices easily lend themselves to human rights abuse and their application needs to be strictly controlled within human rights standards for law enforcement.

The 1979 UN Code of Conduct for Law Enforcement Officials states that police officers and others may use force "only when strictly necessary and to the extent required for the performance of their duty". In many parts of the world, officers armed with sticks or truncheons, plastic baton rounds or rubber bullets, ignore this injunction and inflict injuries amounting to cruel, inhuman or degrading treatment or punishment.

Amnesty International has documented the misuse of batons, stick and canes in at least 105 countries around the world in the past five years. Between 2000 and 2004 there were at least 24 companies in seven of the EU or new Member States manufacturing or selling batons or similar striking weapons.

AI has documented the use of rubber and plastic bullets – potentially lethal weapons with the capacity to inflict cruel and inhuman treatment - to commit, or facilitate, human rights abuses in at least 32 countries worldwide in the past five years.<sup>345</sup> Between 2000 and 2004 there were at least 19 companies in 9 of the EU or New Member States manufacturing, selling or marketing rubber and plastic bullets.

In recent years manufacturers have introduced a wide range of newer types of “less lethal” weaponry, in response to changes in policing methods and budgets. Many of these are based on new launching weapons or updated designs of ammunition to be fired from shotguns or riot guns. Between 2000 and 2004 there have been at least 18 companies in six of the EU or New Member States manufacturing or selling launched kinetic weapons. These devices are often described by suppliers as “non-lethal” or “less-than-lethal”, but can kill or seriously injure as the case study below illustrates.

#### *Switzerland:*

On 29 March 2003, Denise Chervet and her son, Joshua, took part in a demonstration in Geneva against the World Trade Organization and the war in Iraq. Violent confrontations developed in Cornavin station between some demonstrators and the police. Following an altercation with a police officer, Joshua was hit on the head with a police truncheon and Denise Chervet threw her bottle of beer at the police. Moments later she was hit by projectiles fired by a police officer: one hit her body, and the other the side of her forehead. The

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*Guardian*, 2 January 2004

<sup>344</sup> ‘Criminals order in deadly stun guns.’ *The Journal* (Newcastle), 16 January 2004

<sup>345</sup> Amnesty International is concerned that credible reports from different parts of the world point to security forces using rubber bullets as weapons of first resort, rather than as the last step before the use of live ammunition. See Amnesty International, *The Pain Merchants*, op cit

fragments of plastic and metal that were found in her head wound could not be removed due to their proximity to facial nerves and the risk of paralysis.

She reported that she had seen a police officer raise something that looked like a gun to his shoulder and fire at her. Initial statements from the Geneva police categorically denied responsibility for injuring her. However, a few days later the Geneva police and cantonal government authorities acknowledged police responsibility. Their statements indicated that several days before the demonstration, two police officers had tested a weapon firing plastic capsules containing paint and covered with bismuth (a type of metal) and that one of these officers had then used the weapon during the demonstration, without authorisation.

The weapon was the FN303 "less lethal launcher" manufactured by Belgian company FN HERSTAL, and marketed as offering "low risk of permanent injuries" even at a distance of one metre. FN HERSTAL marketing material warns, however, "For safety reasons, never aim towards face, throat or neck".<sup>346</sup> The wounding and permanent injury of Denise Chervet demonstrate the possibilities for abuse inherent in "less than lethal" security equipment.

### **Chemical incapacitants**

Tear gas is the common name for a family of irritant chemicals whose domestic use by police and security services in crowd control and public order situations is allowed in most countries. Irritants create pain and should only be used in very limited and controlled quantities and situations to disperse violent assemblies posing an imminent threat of serious injury. However, tear gas is often misused to inflict pain on individuals and suppress the rights of peaceful protest.

Amnesty International has documented the firing of tear gas at demonstrators, many of them non-violent, in more than 70 countries in the last five years. There are no specific international standards for the legitimate use of tear gas by law enforcers, but many states claim that police are trained to use tear gas only to disperse a crowd that is becoming violent, and issue national regulations for this purpose. However, Amnesty International has many reports of tear gas being used in confined spaces where the targeted persons cannot disperse, resulting in serious injuries and even deaths. Similarly, to avoid unwarranted injuries police are often instructed not to fire or throw tear gas canisters directly at individuals, but these warnings often go unheeded.<sup>347</sup> Again there appear to be inconsistencies in the extent to which the different EU member states control the sale and export chemical incapacitants.

Between 2000 and 2004 there were at least 60 companies in twelve of the EU or new Member States manufacturing, selling or marketing chemical incapacitants.<sup>348</sup> Amnesty International campaigns for rigorous independent investigations to assess the risk to human rights of law

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<sup>346</sup> <http://www.fnherstal.com/html/FN303.htm> Following the incident, the Geneva chief of police resigned on 5 April and on 9 April the Geneva cantonal government announced an independent commission of inquiry into the events, which was still ongoing in March 2004. In December 2003, an investigation into the criminal complaint lodged by Denise Chervet concluded that the officer who fired the weapon acted according to instructions; no charges were brought. The police captain who had authorised the use of the weapon was charged with causing bodily harm through negligence.

<sup>347</sup> The effective regulation of the chemical safety of different types of tear gas is also lacking, since chemical contents and mixtures can vary greatly between countries. Manufacturers' claims are often not subject to independent analysis, and there are few mechanisms for monitoring the possibility of delayed long-term injury. In addition, the criteria which governments apply to decide exports of tear gas vary greatly, and it is relatively easy for law enforcement agencies that persistently abuse tear gas to obtain new supplies.

<sup>348</sup> Source: Omega Foundation database: Existing EU member states: Austria (2), Belgium (2), France (12), Germany (19), Greece (1), Italy (2), Spain (3), UK (8). New EU member states: Czech Republic (4), Hungary (1), Poland (5), Slovakia (1).

enforcers using specific security technologies and equipment, including chemical irritants like tear gas and pepper sprays, and calls for such research to be published in open scientific journals for public scrutiny before governments authorize the transfer or use of such equipment by security forces. AI is concerned that substances whose safety has been inadequately tested by manufacturers are being adopted by security forces and used in what amounts to live experiments on civilian populations - experiments that continue even when people have reported short-term extreme suffering and long-term health problems.

**Equipment used for the death penalty:**

The European Union (EU) states that it “is opposed to the death penalty in all cases and has consistently espoused its universal abolition, working towards this goal.” In its relations with other countries which maintain the death penalty, the EU states that it aims at the “progressive restriction of its scope and respect for the strict conditions, set forth in several international human rights instruments, under which capital punishment may be used, as well as at the establishment of a moratorium on executions so as to completely eliminate the death penalty.”<sup>349</sup>

Amnesty International opposes the death penalty in all cases and so welcomes the EU’s policy. However, Amnesty remains concerned that the EU’s opposition to the death penalty has yet to be reflected in the EU’s export controls on equipment that can be used to facilitate executions. Whilst the extent of this trade is very small in terms of global trade and few manufacturers or suppliers openly publicise their business, it is clear that by design or by default European Union companies have supplied such equipment.

*Italy and China*

During 2001 and 2002 Amnesty International recorded more than 5,900 death sentences and more than 3,500 executions in China, although the true figures were believed to be much higher. In an effort to improve cost-efficiency, Chinese provincial authorities are introducing mobile execution vans in which convicts are given a lethal injection, replacing the traditional execution method of firing squads.

Eighteen mobile execution vans, converted 24-seater buses, were distributed to all intermediate courts and one high court in Yunnan province in 2003. In December of the same year, the Supreme People’s Court in Beijing urged all provinces to acquire execution vans “that can put to death convicted criminals immediately after sentencing”. The windowless execution chamber at the back contains a metal bed on which the prisoner is strapped down. Once the needle is attached by a technician, a police officer presses a button and an automatic syringe injects the lethal drug into the prisoner’s vein. The execution can be watched on a video monitor next to the driver’s seat and can be recorded if required. As well as domestically produced vans, researchers have discovered that some vans being used as mobile execution chambers are manufactured in China by Naveco which is a joint venture company established between the Chinese state owned truck and bus assembler Yuejin Automotive and the Italian company IVECO(Fiat).

The newspaper Beijing Today reported that use of the vans was approved by the legal authorities in Yunnan province on 6 March 2003. Later that same day, two farmers, Liu Huafu, aged 21, and Zhou Chaojie, aged 25, who had been convicted of drug trafficking, were executed by lethal injection in a mobile execution van. Zhao Shijie, president of the Yunnan Provincial High Court, was quoted as praising the new system: “The use of lethal injection shows that China’s death penalty system is becoming more civilized and humane”. But official reports describing the new system as “efficient” and “cost-effective” raise concerns that they will facilitate an even higher rate of execution. Amnesty International has written to IVECO raising its concerns and asking searching questions over the company’s potential

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<sup>349</sup> [www.eurunion.org/legislat/DeathPenalty/eumemorandum.htm](http://www.eurunion.org/legislat/DeathPenalty/eumemorandum.htm)

involvement in the conversion of its vans into mobile execution chambers. At the time of going to press, no response has been forthcoming from the company.

### *Sri Lanka*

The death penalty was originally reintroduced in Sri Lanka in 1960 after the assassination of the Prime Minister and is carried out by hanging.<sup>350</sup> In March 1999 the President of Sri Lanka announced that death sentences would no longer be automatically commuted. Following this decision scores of people were sentenced to death for murder, but nobody was executed. Appeals for the resumption of executions increased during 2000, amid a rise in crime in the country.<sup>351</sup> In November 2000 the government finally announced that it would be putting into practice the decision to execute taken in 1999, but nobody was executed. In 2003 the Sri Lankan parliament debated reintroducing executions, but no vote was taken. In September 2003 the Interior Minister assured a delegation of European parliamentarians that the government had no plans to resume executions.

Against this background Amnesty International was very concerned to find that in February 2001 a Sri Lanka company had sent a request for “Noose (rope) to be used in the gallows” to an EU-based tenders website.<sup>352</sup> It is not known which, if any, European company responded to this request but given the historical involvement of UK companies in supplying hanging ropes, Amnesty International calls on the EU to ban the export of ropes specifically designed for use in executions.

### **Proposed EC Trade Regulation**

In January 2003, following concerns expressed by the European Parliament<sup>353</sup> and government officials in the European Union, the European Commission (EC) proposed a Council Trade Regulation.<sup>354</sup> If adopted by the EC and ratified by EU member states, it will (a) **ban** trade in equipment which “has no, or virtually no, practical use other than for the purpose of” capital punishment or torture, from member states to countries outside the EU, and (b) **put strict controls** on the trade in equipment that it regards as having legitimate uses but which can also be misused for torture.

Included in the EC Regulation’s draft list of equipment whose trade would be absolutely prohibited are death penalty equipment such as gallows, guillotines, electric chairs, airtight vaults for the administration of lethal gas, automatic drug injection systems; electric-shock belts; restraints such as leg-irons, gang-chains and shackles individual cuffs or shackle bracelets, thumb-cuffs and thumb-screws, including serrated thumb-cuffs.<sup>355</sup>

For the second category, which currently includes electric shock batons and shields, stun guns and tasers, tear gas and pepper spray, EU governments will strictly control the trade in order

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<sup>350</sup> World Factbook of Criminal Justice Systems <http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjsri.txt>

<sup>351</sup> Amnesty International, *The Death Penalty worldwide: Developments in 2000*, May 2001, (AI Index: ACT 50/001/2001)

<sup>352</sup> [www.ecurope.com](http://www.ecurope.com) 27/2/2001: Offer to Buy.

Subject Heading: [LK]: Noose (rope) to be used in the gallows.

Category: Security & Protection Products.

Preferred Region: Worldwide.

Trade Lead Message: A supplier or a manufacture of Noose (Rope) to be used in the...

<sup>353</sup> As expressed in European Parliamentary Resolution OJC 87 E, 11.4.2002, P.136

<sup>354</sup> Council of the European Union, 5773/03, 27 January 2003

<sup>355</sup> The Regulation excludes handcuffs "for which the overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, does not exceed 240 mm when locked". It should also be noted that “components designed or modified for any of the above” would also be prohibited.

to prevent such equipment being used for capital punishment, torture or ill-treatment, “taking into account reports on any occurrences of torture in the country of destination.”

### **Potential weaknesses in the draft EC Regulation**

Amnesty International strongly supports this initiative by the EC to develop a Council Trade Regulation. It believes that the draft text of 27 January 2003 provides the framework for a comprehensive and stringent control. However Amnesty International believes that three elements of the text need to be strengthened.

#### *Internal controls:*

In its current form the draft EC Regulation would cover trade with parties outside the European Union, but not within it. Internal controls are “not considered necessary”, the draft regulation says, because “capital punishment does not exist and there are sufficient safeguards in place to prevent torture and other cruel, inhuman or degrading treatment or punishment.”<sup>356</sup> Amnesty International believes that the omission of internal trade within the EU could leave scope for suppliers to seek out those export points where member states have the weakest interpretation and implementation of the Regulation. AI is also concerned that there have been reports of electroshock torture within the EU, which the draft Regulation does not seek to control.<sup>357</sup>

#### *Voltage threshold for electro-shock weapons:*

Under the proposed draft EC Trade Regulation, authorisation will be required from an EU committee for the export of “portable stun weapons with high frequency pulses equal to or exceeding 50,000 V ...including but not limited to electric-shock batons, electric shock shields, stun guns and electric shock dart guns (tasers)”. Amnesty International is concerned that the proposed threshold of 50,000 volts is too high a figure because even a 10,000-volt stun weapon with a high amperage could be harmful.

#### *Transfer of torture and execution expertise:*

As well as prohibiting a range of devices, the draft Regulation also prohibits “components designed or modified” for any of the banned weapons. Amnesty International welcomes the breadth of such a provision. However the organisation is concerned that the transfer of expertise or training in the techniques of torture or of capital punishment are not included within the scope of the legislation, nor are they dealt with by other EU controls. Amnesty International recommends that the training of military, security and police personnel (whether inside or outside the EU) in the techniques of torture or processes involved in capital punishment should be strictly prohibited.

### **Potential Positive Impact of the EC Regulation:**

Despite such weaknesses in the text, which should be removed before the regulations are adopted by EU member states, the initiative is a very positive one, and one that Amnesty International believes will prove an important landmark in the combating of torture and cruelty around the world. As well as ensuring that EU trade in torture and capital punishment technology is prohibited, the EC Regulation will set an example that other states and regions could follow. The importance of this can already be seen.

In Taiwan<sup>358</sup> domestic use of electro-shock stun weapons is restricted, but the government has permitted exports. However, Taiwan is now considering whether the minor financial benefit gained by commercial exports is outweighed by the negative impact abroad on its human

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<sup>356</sup> Council of the European Union, 5773/03, 27 January 2003

<sup>357</sup> See Amnesty International, *The Pain Merchants*, op cit, for more details of electroshock torture within the EU.

<sup>358</sup> Under administrative measures promulgated on 6 November 2002, Letter from Director General Bureau of Foreign Trade to Amnesty International, 5 April 2004

rights reputation. At a security conference held in 2003, government ministers in Taiwan, who themselves have been prisoners of conscience, expressed interest in the EC Draft Trade Regulation<sup>359</sup>.

The draft EC Trade Regulation has already elicited much interest at the global level. The UN Special Rapporteur on Torture, Theo van Boven, was mandated by the United Nations Commission on Human Rights in 2001 to investigate the trade and production of equipment designed for torture with a view to prohibition. He announced in his preliminary report in January 2003 that he intended to propose to all UN Member States a trade ban and control system on such equipment similar to that of the EC Trade Regulation.<sup>360</sup>

Because of the tremendous potential positive impact of such legislation it is therefore of grave concern to Amnesty International to discover that the draft Trade Regulation text has currently become mired in the bureaucracy and politics of the EU institutions.

Having spent most of 2003 in committees including the Council Working Party on human rights and the Council Working Party which deals with trade questions, the proposal is now being revised by the European Commission. The European Council was due to receive the revised proposal during March or April 2004. The Irish Presidency of the EU has stated that it will “seek to ensure that the proposal is adopted as soon as possible.”<sup>361</sup>

But despite repeated requests from Amnesty International to the Commission officials responsible for advising on the Trade Regulation, no information on the timetable for implementation of the Regulation has been made available. Amnesty International is very concerned that EU Member States are preparing to weaken or shelve it and therefore calls upon the EU Member States, and particularly the current Presidency - Ireland - and future Presidency – the Netherlands, to ensure that a strong EC Trade Regulation is adopted and rigorously enforced as soon as possible.

### **EU sends mixed messages**

At the same time as the EU is prevaricating over the draft EC Trade Regulations, Amnesty International is also concerned about two parallel EU trade initiatives which may be undermining existing MSP controls.

#### *CE Quality Markings:*

Despite a 1996 European Parliament resolution calling for a ban on the sale of electro-shock equipment to states where torture has been recorded, the European Commission has awarded CE quality marks for user safety for stun guns capable of delivering up to 200,000 volts.<sup>362</sup> In 2001 Amnesty International wrote to the European Commission on this issue, highlighting the case of a Taiwanese company some of whose electroshock products bore the CE mark. The reply denied any knowledge of the matter.<sup>363</sup> The European Commission has refused to publish the safety and performance reports it had received from manufacturers of electro-shock weapons, nor would the Commission identify which other companies have been granted CE certification. At the time of writing this report, the information is still not forthcoming – and companies continue to display CE marks on their electroshock products.

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<sup>359</sup> *ibid*

<sup>360</sup> United Nations Commission on Human Rights, *Civil and Political Rights, Including the Question of Torture and Detention*. 59<sup>th</sup> Session E/CN.4/2003/69

<sup>361</sup> Written answer No.192 by Mr Ahern, Minister of State at the Department of Enterprise, Trade and Employment. Ref No: 4579/04, 17 Feb 2004.

<sup>362</sup> See Amnesty International, *Stopping the torture trade*, *op cit*. It should be noted that such safety marks guarantee the safety of the user, not the victim.

<sup>363</sup> Email communication to Amnesty International Ireland, dated 26 February 2001

**A stun gun on display at IWA exhibition, Nürnberg, Germany, 2002, showing a European CE quality mark. The European Commission has stated that it has not tested the products carrying these quality markings. Amnesty International believes that the European Commission should investigate the medical effects of such weapons before permitting CE markings to be used. © Robin Ballantyne**

*Suspension of importing duties:*

In January 2003 the European Council approved Council Regulation EC150/2003. This regulation allows for the suspension of import duties on certain weapons and military equipment, if “the weapons or equipment concerned are used by, or on behalf of the military forces of a Member State”. Included amongst the list of weapons on which duty would be suspended are: electric-shock belts and automatic drug injection systems designed or modified for the purpose of execution of human beings. In a letter to Irish MEP Prionsias De Rossa, the EC Commission explained that this suspension took place despite the fact that the *use* of such equipment is “not in line with Union policy and relevant international legal instruments and is therefore illegal<sup>364</sup>.” Despite this, the trade in such equipment is still not yet illegal and indeed could even have been facilitated by the suspension of the importation duty.

Amnesty International remains concerned at such bureaucratic and administrative “anomalies” and recommends that the EC Commission position be clarified as soon as possible. Amnesty International believes that all relevant EC trade regulations for MSP equipment should be harmonised and rigorously enforced.

### **Key lessons to be learned**

All EU and New Member States should work to strengthen and implement the draft EC Trade Regulation in order to demonstrate the EU’s commitment to take action against torture. Such a measure would help the EU to fulfil its requirement under Criterion Two of the Code, which demands that security equipment should not be exported if there is a risk that it will be used for internal repression or to abuse human rights.

The text of the draft Trade Regulation should be amended to ensure that the scope of the controls include equipment transfers within the EU as well as outside the EU and that the voltage threshold above which electroshock weapons are prohibited should be much lower. The EU should also develop controls to stringently control the transfer of MSP expertise and to prohibit the transfer of skills and training of torture and execution expertise.

## **12. Monitoring and Controlling End Use**

Effective and robust end use certification and monitoring procedures are vital to ensure that arms authorised for export are delivered to the stated end user, not diverted and, most importantly, not misused for human rights violations, breaches of international humanitarian law, to fuel violent conflict or to breach UN, EU or OSCE embargoes.

The examples from France, Italy, Netherlands, Slovakia and the United Kingdom in this chapter highlight the serious omissions in the end-use monitoring systems of both the 15 current EU Member States and the 10 new Member States.

A major problem has been that there is no agreed end use certification (EUC) definition or minimum monitoring requirements included in the EU Code and related mechanisms. Current

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<sup>364</sup> Answer to Proinsias De Rossa by Mr Patten on behalf of the Commission, E-1540/03EN, 13<sup>th</sup> June 2003.



procedures in many Member States for establishing and monitoring the end-use of arms and security equipment transferred are woefully inadequate. The use of false end-use certificates is not uncommon, and there is little in current end use certification requirements, which would prevent irresponsible end-users from using arms for proscribed purposes.

Several EU governments have publicly acknowledged that they have no systematic procedures for monitoring the exports of arms and defence equipment. In February 1999, for example, the then UK Foreign Office Minister Derek Fatchett stated that: "No formal mechanisms exist at present for monitoring the end-use that has been made of British defence equipment once it has been exported."<sup>365</sup> In February 2004 Jack Straw, the Foreign Secretary, talked about the difficulty of policing end use, and indicated that it is still essentially an ad hoc process, although he added: "We are seeking to strengthen [end use arrangements] as far as we can."<sup>366</sup> Similarly in 2001 the Irish government stated that: "While, like most other countries, Ireland does not carry out post-shipment inspections, all licence applications for exports of military goods are subject to the strictest examination before being granted. Both my department and the Department for Foreign Affairs must be fully satisfied with end-use assurances given before issuing a licence."<sup>367</sup>

Other EU Member and new Member States also have no formal end use monitoring systems but have not publicly reported this. More seriously even when a country has a record of diversion or of misusing the equipment and materials previously sent to it, certain EU member states have *continued* to transfer MSP equipment and arms.

#### *Spanish transfers of French tanks to Colombia:*

In February 2004 the Colombian newspaper *El Tiempo*<sup>368</sup> reported that the Colombian Ministry of Defence had announced that it had recently bought between 32 and 46 used AMX-30 tanks from Spain. These tanks were reportedly manufactured in France during the seventies and sold to Spain. However, it appears that the Spanish authorities failed to seek permission from France before re-selling these tanks to Colombia. Herve Ladsous, the spokesperson for the French Ministry of Defence said: "This issue was the responsibility of the Spanish authorities, who did not inform us as to whether they had the intention of selling the arms despite the rules regarding the control of end-use."

Although the Colombian Minister of Defence, Jorge Alberto Uribe, has claimed that the reason behind procurement of the tanks was "to combat terrorism", senior officials from neighbouring Venezuela are reportedly worried that the purchase could upset the delicate border relations between the two countries. Amnesty International is also concerned that the tanks may be used for human rights violations and breaches of international humanitarian law. It was later reported that the newly elected Spanish government which was due to take power at the end of April 2004 expressed concern at the decision to sell the tanks to Colombia.<sup>369</sup>

#### *United Kingdom and the DRC:*

The UK transfer of spare parts for military aircraft to Zimbabwe in January 2000, despite concerns that Zimbabwe was using these jets in the conflict in neighbouring DRC, then subject to an EU arms embargo, were raised by human rights and development organizations.<sup>370</sup> Following a public and parliamentary outcry in the UK and reports of the

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<sup>365</sup> Hansard, 8 Feb 1999 : Column: 79

<sup>366</sup> Evidence from Jack Straw to the Quadripartite Select Committee, 25 Feb 2004. Examination of Witnesses, Questions 1-19.

<sup>367</sup> Letter from Minister for Labour, Trade and Consumer Affairs, dated 20 July 2001

<sup>368</sup> *El Tiempo*, 26 February 2004

<sup>369</sup> *Semana*, 22 March 2004, op cit

<sup>370</sup> "Anger over arms answers," *Guardian*, 14 March 2001, and "Britain still selling arms to violators in world hotspots," *Guardian*, 27 July 2000

worsening human rights situation in Zimbabwe itself, the UK licences were eventually suspended in May 2000.

*United Kingdom to Israel:*

In March 2002, Junior UK Foreign Office Minister, Ben Bradshaw, disclosed that the Israeli armed forces had modified UK Centurion tanks, exported between 1958 and 1970, and were using them as armoured personnel carriers.<sup>371</sup> Mr Bradshaw stated that this contradicted a written assurance from the Israeli government on 29 November 2000 that “no UK-originated equipment nor any UK-originated systems/ sub systems /components are used as part of the defence force's activities in the [occupied] territories”.<sup>372</sup>

Despite this open breach of end user assurances by Israel, the UK government has continued to supply arms and equipment to the Israeli security forces. Such transfers continue despite reports that generic types of such equipment have been used by the Israeli security forces to commit human rights violations and breaches of international humanitarian law in the Occupied Territories.

*Finnish bullets to paramilitaries:*

During a May 1999 research mission to Indonesia and East Timor, Amnesty International researchers collected the casings of bullets, found following a paramilitary militia attack in the capital of Dili. These bullet casings were later analysed and found to have been manufactured by the Finnish company Patria Lapua Oy. The Finnish government had in the past admitted granting export licenses for ammunition to the Indonesian security forces.<sup>373</sup>

*Italian Arms to PKK :*

During 2002, more than 50,000 light weapons were confiscated from the armed opposition PKK in Turkey and of these, the origin of production of about 16,000 have been identified. Italian landmines and light weapons were at the top of the list.<sup>374</sup> It is unclear how these arms fell into the hands of the PKK.

*Slovakia end use certificates:*

Until February 2002, the Slovak Ministry of Economy office responsible for arms trade licenses routinely issued Slovak end-user certificates (also known as “international import certificates”) without first checking that the company in question had sought and been granted an import license for the goods in question. The office also failed to perform checks to see if the company to which it gave the EUC had imported the weapons as planned. This laxity allowed for a situation ripe with potential for misuse: A firm could obtain a Slovak EUC, use it to acquire arms abroad, and then sell the weapons to a client in a third country instead. As explained by the official who took over the export control office and ended this practice, “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.”<sup>375</sup>

In November 2000, assault rifles exported from Slovakia to Uganda for use in that country were supplied to Liberia when Uganda decided it no longer wanted them. An Egyptian arms broker reportedly agreed to return the weapons to Slovakia, as Uganda says it requested after determining they did not meet contract specifications. Instead, the consignment of 1,000 AK-

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<sup>371</sup> Hansard, 11/3/02, Col.689w

<sup>372</sup> “Anger as Israel violates promise”, *The Guardian*, 13 March 2002

<sup>373</sup> Agence France Press (AFP) Helsinki: Finnish cartridges used in East Timor, 1 August 1999

<sup>374</sup> ANSA, 29 May 2002 as cited in Amnesty International, *A Catalogue of Failures*, op cit

<sup>375</sup> Nicholson, “From cheerleader to referee...”, *Slovak Spectator*. As cited in Human Rights Watch, *Ripe for Reform*, op cit.

47s was delivered to UN-embargoed Liberia. A second shipment of 1,250 weapons of the same type was attempted, but not allowed to take place.<sup>376</sup>

*Inadequate French end use monitoring:*

An official of the French Ministry of Defence told Amnesty International that French customs authorities always work closely with customs authorities in the country of destination, in order to ensure the constant monitoring of goods exported from France.<sup>377</sup> But judging from several cases, the French government still fails to ensure that its export licence and ‘end-use’ monitoring systems prevent such transfers falling into the hands of those who have been responsible for human rights violations, whether they are state security forces or opposition groups. For example, despite persistent reports of human rights abuses involving the use of force by Egyptian security forces in the late 1990s<sup>378</sup>, including excessive use of force and torture in police stations, shotgun cartridges were transferred from France to Egypt during 2000.<sup>379</sup>

In a student demonstration at Alexandria University on 9 April 2002, a 19-year-old student, Muhammad Ali al-Sayid al-Saqqa, was killed and several others were seriously injured by buckshot. The demonstration began peacefully but events escalated as security forces prevented students from leaving the confines of the university campus to join others outside for a protest march. A statement issued by the Egyptian Ministry of the Interior said that the security forces fired buckshot in an attempt to calm down the situation. Amnesty International fears that Muhammad 'Ali al-Sayid al-Saqqa died after being shot by buckshot fired by a member of the security forces in circumstances where the safeguards required under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were not adhered to.<sup>380</sup>

*EU small arms to Brazil*<sup>381</sup>

Inaction and non-cooperation by EU Member States and New Member States has hindered efforts to stem the flow of European arms to criminals in Brazil, which is plagued by one of the world’s highest levels of gun violence. Firearms cause nearly 40,000 deaths annually in Brazil. Guns are the number one killer of young males aged between 15 and 19 (causing 65% of deaths in Rio de Janeiro state in 1999). As part of initiatives to combat this devastating gun mortality, the Brazilian authorities and NGOs have been attempting to trace the origins and means by which small arms and light weapons enter the Brazilian criminal world. Of 225,000 guns confiscated by the police in Rio de Janeiro State in 50 years, the majority were domestically produced, although many may have left Brazil and re-entered the country via Paraguay. Of the weapons produced outside Brazil, the countries of origin (in descending order) were as follows: the USA, Spain, Belgium, Argentina, Germany, Italy, Czech Republic, Austria, France, China, Israel, Russia, and Switzerland.<sup>382</sup>

On 12 July 2002 at the seminar: “Getting to the ‘route’ of the problem: following guns from the legal origin to the illegal destination”, the Rio de Janeiro state authorities in partnership with the NGO Viva Rio proposed a program of systematic tracing for a large number of firearms, with the objective of identifying repetitive patterns of how small arms migrate from

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<sup>376</sup> *Report of the U.N. Panel of Experts on Liberia*, paras. 174-188.

<sup>377</sup> interview 24 April 2003, cited in Amnesty International, *A Catalogue of Failures*, op cit

<sup>378</sup> Amnesty International Annual Report 1998 (AI Index: POL 10/001/1998) and *EGYPT-Torture remains rife as cries for justice go unheeded*, February 2001(AI Index: MDE 12/001/2001)

<sup>379</sup> Nisat database, Comtrade data USD 38,000

<sup>380</sup> *AI’s briefing to the Human Rights Committee on the Arab Republic of Egypt*, May 2000, (AI Index: MDE 12/019/2002)

<sup>381</sup> Extracted from Amnesty International and Oxfam, *Shattered Lives: the case for tough international arms controls*, October 2003 - with updated information from Viva Rio

<sup>382</sup> Data on Brazilian and foreign-produced small arms seized by police between 1950 and 2001, Viva Rio and the Government of the State of Rio, July 2002

legal to illegal markets. Under this initiative the Rio de Janeiro state authorities called on the authorities in the countries listed above where the weapons were produced to aid them in their attempts to trace the routes by which the small arms ended up in the hands of criminals on the streets of Rio. Diplomatic representatives, as well as representative from relevant bodies within the United Nations and the Organization of American States were present at the seminar.

However, so far the response from the majority of governments has been slow. Whilst Argentina, Switzerland and the United States have all cooperated with the Brazilian authorities' tracing initiative, only Germany and Spain, from the EU have responded positively. Amnesty International calls on the remaining governments – particularly those from the EU – to cooperate with the Brazilian government in their attempts at tracing and closing down the illicit routes by which small arms and light weapons enter the Brazilian criminal sector.

**A girl takes part in a march against gun sales in Rio de Janeiro, Brazil, in September 2003. Brazil has one of the world's highest levels of gun violence. © Reuters / Sergio Moraes**

### **Developing EU best practice**

A draft European Parliament report on the European Council's 2000 Annual Report on the Implementation of the EU Code of Conduct on Arms Exports noted that there was "currently no EU provision for verifying the end user of exported weapons" and that "there are big differences between member states and end-user requirements and monitoring."<sup>383</sup> The European Parliament report urged all EU countries to agree best practices in the field of end-use certification and monitoring.

When considering the development of stringent end use certification and monitoring systems, EU governments should consider best practice in other countries. Within Europe, the Belgian, German and Swedish governments have in place certain end use certification and monitoring provisions, elements of which other EU states could consider adopting.

#### *Sweden:*

The Inspektionen för Strategiska Produkter (ISP) is responsible for administering export controls in Sweden. They require that in all cases an end-use certificate be supplied for the export of controlled goods. Exporters must use one of a number of different certificates, depending on the identity of the customer and the nature of the items being exported. A "Declaration by End-User", printed on special banknote-quality paper and bearing a unique number, is required for exports of military equipment for combat purposes to the armed forces in the recipient country. This type of certificate is sent by the exporter to the end-user, who upon completion delivers it to the Swedish embassy in the country of end-use. The embassy must verify that the request and the signature are legitimate before the export is authorised.

However, this level of control is not applied to all exports. Included in the certification process is a commitment by end-users not to re-export without permission. Requests to re-export are routed through the ISP, which applies similar criteria to such requests as it does to direct exports. There is also an undertaking to confirm receipt of articles when asked by the Swedish government, and in those cases where it is known that end-use undertakings have been broken, Sweden reserves the right to halt further contracted supplies. However, requests to verify delivery are very rarely made.

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<sup>383</sup> 13177/2000 - C5-0111/2001 - 2001/2050 (COS). Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy. 10<sup>th</sup> May 2001. Rapporteur: Gary Titley.

Furthermore, there is effectively no provision made for post-export monitoring; even where serious concerns are raised about end-use, the Swedish government has no formal avenue through which it can pursue enquiry or inspection.

*Belgium:*

In Belgium end use certificates include a written guarantee by the importing agency that they will not re-export the arms without the prior written consent of the exporting country. They also state that the recipient will not use the arms for proscribed purposes, including the committing of abuses of human rights or international humanitarian law. Three months after the goods are exported, the Belgian government monitors the process and requires proof of delivery, including details of the transit routes and travel plans. Although Belgian controls appear to be impressive on paper, Amnesty International is concerned about their effectiveness in practice.<sup>384</sup>

### **US best practice**

There are elements of US controls which may be applicable to the control systems of EU Member States. The US government restricts commercial arms sales by requiring exporters to submit a “non-transfer and use certificate” with export licence applications. The details of the final end-user and country of destination must be provided to the US authorities, and the intermediary importer, the final end-user, and the importing government must certify that they will not resell or re-export the equipment outside the final destination country or to any other person or organization without prior permission of the US government. When the end-user is a foreign military, they must certify that they will only use the equipment in accordance with U.S. law, or for purposes specified in bilateral or regional defense agreements. The sales agreement may also specify approved use of the equipment. There have been several reports of US attempts at enforcing such controls. For example, in 2003 the *Washington Times*<sup>385</sup> described the US’ calls to Greece to stop the supply of US-made weapons to Greek Cypriots as such supply ran counter to Washington’s ban on arms sales to Cyprus.

The US government verifies compliance with these rules through three programs, one run by the State Department for “direct commercial sales”, the second by the Pentagon for “government-to-government” sales and the third by the US Commerce Department. The State Department’s “Blue Lantern” program involves (i) pre-screening of export license applicants for risks of diversion based upon a set of “red flag” criteria and (ii) post-sale on-site inspection to ensure the equipment has remained with the identified end-user and is being used for agreed-upon purposes.<sup>386</sup> Under this system, while some checks are random, the majority are triggered by the expert judgment of licensing and compliance officers using intelligence, law enforcement and a comprehensive list of “red flag” indicators. In 2001 and 2002, the US government conducted 428 and 410 Blue Lantern end-use checks respectively, of which 50 and 71 were determined to be unfavourable.<sup>387</sup> Crucially, it is considered that end-use monitoring has a deterrent effect, for example where there is a history of diversion.

### **Lessons to be learned**

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<sup>384</sup> See chapter on Licensed Production for Amnesty International’s concerns about the transfer of Belgian ammunition production technology to the Eldoret ammunition facility in Eldoret, Kenya.

<sup>385</sup> US Asks Greece to Stop Arms Supply, *Washington Times*, 2 July 2003

<sup>386</sup> Blue Lantern is legislated in Section 38 g(7) (footnote 217) of the Arms Export Control Act (AECA)

<sup>387</sup> Letter to Barry Gardiner MP from US Senate Committee on Foreign Relations October 21 2003

The fourth EU Consolidated Report on the EU Code, published in 2002, stated that “member states [have] agreed on a common core set of elements that *should* be found in a certificate of final destination when it is required by a Member State, ... [and] an additional set of elements, which *might* also be required in accordance with their national legislation” (emphasis added). The core elements focus on the supply of information by the purchaser, for example with regard to the type, quantity and end-user of the goods. Included among the additional elements are limitations on use, for example restrictions on re-export.

However, there are two potential loopholes.<sup>388</sup> Firstly, it is left to the discretion of member states to decide when a certificate is required. Secondly, the additional elements are viewed as optional. As the first step in creating an effective system of end-use control, documentary proof of end-use must be compulsory for all transfers and restrictions on end-use and re-export must be clearly set out.

Under the Greek Presidency of the EU in the first half of 2003, discussions were held on moving a number of the “additional” (optional) elements into the “core” (recommended) set of elements. Agreement was reached on only one other requirement of certification, ie “an indication of the end-use of the goods” and not on any of the proposed elements concerning limitations on use.<sup>389</sup> However, certification is only one of a range of measures required if EU Member States are to institute fully comprehensive end-use controls. Amnesty International therefore supports the recommendations made by Saferworld for an effective EU system of end-use controls, including:

- comprehensive and thorough risk assessment at the licensing stage;
- a system of end-use certification and documentation that is not liable to forgery;
- explicit end-use assurances which take the form of a legally-binding contract between the exporting government and the end-user, which prohibits unauthorised re-export, and which sets out a list of proscribed uses of the equipment especially the abuse of human rights and breaches of international humanitarian law;
- a delivery verification and post-export monitoring regime; and
- provision for the application of sanctions in the event that end-use undertakings are broken.

Governments should also take into account a range of risk factors when assessing end use destinations for those categories of arms that have a high risk of being used to commit or facilitate human rights abuses, particularly small arms and light weapons (SALW) and security equipment such as restraints, electric shock weapons and riot control technologies.

### **13. Transparency and Reporting**

Amnesty International believes that an essential component of demonstrating commitment to the EU Code and related national and regional control mechanisms is that EU Member States enable effective parliamentary and public scrutiny of the decisions taken to authorize the export of military, security or police (MSP) equipment. This can only occur when governments provide detailed and timely information to the public and their elected officials on the MSP transfers authorized and delivered.

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<sup>388</sup> This comment of the end-use certificate proposal is based on an analysis by Saferworld, UK

<sup>389</sup> Saferworld, *The EU Code five years on: recent developments in and future priorities for the implementation of the EU Code of Conduct on arms exports*, June 2003

Nearly all EU Member States and the new Member States have made improvements in the information that they provide on MSP transfers, albeit in many cases only after extensive public pressure. However, it remains the case that very few EU governments provide the level and extent of information that is necessary to enable effective parliamentary and public scrutiny to ensure that MSP transfers do not contribute to, or facilitate, human rights violations.

The absence of some types of information directly reflects loopholes and flaws in EU Member States' export control systems. Clearly, if a state's export control legislation does not cover activities such as arms brokering or licensed production agreements, or does not control the transfer of private military training, or products such as stun guns or leg irons, then that government is unlikely to have records of such activities or transfers.

However, even where states do control or authorise types of MSP transfers, most EU governments provide little or no useful information on those transfers, for example on government-to-government transfers, many dual use goods or military or police assistance and training to foreign governments. Few EU governments provide detailed descriptions of the products that are licensed for export, even fewer provide details of the quantities of weapons actually exported or the specific end-user. This type of information is vital to enable parliamentarians and the public to hold governments to account.

This section contains two detailed examples from Ireland and the UK that were chosen to try and examine how, even where governments do publish annual reports on export licensing decisions, it is still very difficult, if not impossible, to understand what exports have been authorised. In some ways this focus is unfair on the Irish and UK governments because they do make publicly available more data than most other EU governments. But this is also a powerful argument for the other governments to improve their own reporting and transparency, and for the EU Member States to agree appropriate reporting standards to enable meaningful scrutiny.

### **United Kingdom: lack of transparency**

Recent analysis undertaken for Amnesty International, Oxfam and IANSA of the UK Strategic Export Controls reports for 1998 – 2002<sup>390</sup> has shown several marked trends. Firstly, there had been a significant increase in the number of countries receiving UK export licences for “components for assault rifles” compared to “finished” assault rifles. This issue was raised by the NGOs because from 2000, when the UK government began to report the numbers of small arms licensed in each application, the number of licences issued for “finished” small arms has remained relatively constant, with a slight downward trend. This contrasts significantly with the dramatic increase in the licences being authorized for “components for” small arms. But although licences authorized for small arms components are reported, the number of components included within each licence is not, so it is very hard to scrutinise the scale of this trade. This is a major failing in the transparency of the UK government's annual reports.

Chart 1 shows the fourfold increase in the “components for assault rifles” authorizations from the UK between 1998 and 2002:

The second trend identified was that there was an even greater increase in the use by the UK government of Open Individual Exports Licences (OIELs) for assault rifle components, rising from only two occurrences in 1999 to 23 in 2002, which represents an 11-fold increase (See

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<sup>390</sup> Oxfam GB, *Lock, Stock and Barrel* op cit

Chart 2). The use of such licences can create serious gaps in public information because open licences allow the exporting company to make multiple shipments to specified destinations, and the amount of equipment exported under these licences is not recorded by the UK authorities. Indeed, in 2002, OIELs for assault rifle components accounted for approximately one-third of all licences issued for assault rifles. It is clear from this data that small arms components are subject to a much lower level of reporting than for complete or “finished” weapons. Starting with the 2000 Annual Report on Strategic Export Controls, the UK government had included details of the numbers of small arms licensed for export. However, the government does not currently provide any information on the numbers of components licensed for export via Standard Individual Export Licences (SIELs) and provides no details of numbers on either “components for” small arms or “finished” small arms that are authorized via open licences (OIELs). It is therefore much more difficult for the UK parliament to hold the UK government to account to ensure the protection of human rights.

Chart 2 shows the increase in Open Individual Export Licences for assault rifle components (shown in yellow)

Of particular concern to Amnesty International is that companies exporting from the UK to at least 16 countries that manufacture small arms (including assault rifles, machine guns, and revolvers) have received export licences for “components for” small arms since 1998. Many of these recipient manufacturers are located within Europe or North America, where export control systems are fairly robust and transparent, but still contain loopholes. More worryingly however, “components for” small arms have also been authorized for export to countries where arms export controls are either far less stringent or to countries which, not being in the EU, are not bound by EU embargoes. These countries include Brazil, Turkey, Pakistan, Singapore, and South Korea. Since 1998, each of these countries have exported arms to at least one destination where security forces have carried out a pattern of human rights violations, including Myanmar, Indonesia, Guatemala, Philippines, Sri Lanka, and Sudan.

Since the UK government currently provides no data on the amounts of components being licensed for export, the “components for” small arms could be for foreign assembly and re-export, or the components themselves could be for re-export to other countries. For example, in 2002 the UK government authorized the export of “components for grenade launcher” to Singapore. Since 1994, Chartered Firearms Industries of Singapore (now ST Kinetics) has had a licensed-production agreement with PT Pindad in Indonesia for the production of the CIS 40-AGL 40mm automatic grenade launcher.<sup>391</sup> Given the serious pattern of human rights violations committed by the Indonesian security forces, the inadequate end-use monitoring and reporting system practiced by the UK government means that British SALW components may be diverted for end-users who would not receive direct export authorization from the UK.

#### *German “best practice”*

In contrast to the inadequacy of the UK government’s reporting of arms component exports, the German government has begun some partial reporting of the quantity of such parts and components. In its 2002 *Rüstungsexportbericht* (Military Equipment Export Report), details are given of exports of SALW (excluding pistols, revolvers, sports and hunting weapons) and parts/components to non-EU and non-NATO countries.<sup>392</sup>

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<sup>391</sup> *Jane’s Defence Weekly*, 28 May 1994, CIS 40-AGL to be built in Indonesia. Indonesia’s PT Pindad has entered into an agreement with Chartered Firearms Industries of Singapore (CIS) to license-produce the CIS 40-AGL 40 mm automatic grenade launcher. The company will make some slight modifications to suit Indonesian mountings.

<sup>392</sup> *Rüstungsexportbericht 2002*, Military Equipment Export Report, Government of the Federal Republic of Germany, 17.12.2003



### **Comtrade (Customs) data**

All EU Member States collect data on their own imports and exports both within (intra) the EU and outside (extra) the EU. A series of harmonized custom codes (or ‘tariffs’) has been developed to describe the various types of products that are traded. There are a number of tariffs that are used for arms, ammunition and other defence equipment. For example: “9302 0010 Revolvers and pistols: 9mm calibre and higher” and “9302 0090 Revolvers and pistols below 9mm caliber.”<sup>393</sup>

This means that a government agency within each EU country (and many others worldwide) is collecting data on the imports and exports of a range of small arms and defence equipment. This data should include details of the destination country, the value (in US dollars), the weight (in Kg) and the number of items. Unfortunately, many governments choose not to provide details on the trade in military weapons using such data, or only publish partial data. In addition, many governments refuse to make the data publicly available in a dis-aggregated form.

For example, over the last few years the UK government’s Annual Reports on Strategic Export Controls have purported to provide details (using the Customs data) of the value of exports of “small arms” while in reality failing to do so because the UK government has deliberately chosen to aggregate several Custom tariff codes together for small arms, light weapons and larger arms. This published information is virtually useless for any meaningful analysis. The UK government has chosen to include the following codes as “small arms”<sup>394</sup>:

9301 11001,2 Artillery weapons (eg guns, howitzers, mortars) – self propelled  
9301 19001,2 Artillery weapons (eg guns, howitzers, mortars) – other than self propelled  
9301 20001,2 Rocket launchers; flame throwers; grenade launchers; torpedo tubes & similar projectors  
9301 90001,2 Other military weapons (exc. Revolvers, pistols and the arms of heading 9307)  
9302 0010 Revolvers and pistols: 9mm calibre and higher.  
9302 0090 Revolvers and pistols below 9mm calibre.

This means that the values provided in the UK Annual Reports could be for a very large number of “revolvers” or for one expensive “self-propelled howitzer”. Thus, the UK reporting system does not provide transparent reporting or allow for effective parliamentary scrutiny to hold the UK government accountable for the protection of human rights and its other international obligations. Amnesty International believes, therefore, that this policy of aggregating data is unacceptable and requires urgent correction so that meaningful UK Customs data is made publicly available. The excuse of “disproportionate cost” sometimes used by the UK government to deny public information is irrelevant because the data is already collected by the UK Customs authorities. Nor is the excuse that the data is “commercially confidential” a valid excuse to withhold meaningful export information from the public and parliament as it is possible to provide meaningful export data which does not divulge the names of specific companies and in any case the companies themselves should not be above scrutiny when it comes to UK responsibilities to protect human rights and other international obligations.

### *Burkina Faso and Pakistan*

It is encouraging that a number of countries are increasingly publishing detailed reports of imports (and in some cases) exports of small arms, light weapons and associated security

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<sup>393</sup> For a full listing of tariff codes applicable to the defence sector see <http://www.fco.gov.uk/Files/kfile/Part%202011.%20Cm5819.pdf> , p474.

<sup>394</sup> United Kingdom Strategic Export Controls Annual Report 2002

equipment, thus enabling greater scrutiny of such transfers and end-use destinations. Although in some cases the information is only available for a temporary period.

For example the government of Burkina Faso has published details of the authorizations given to companies in Burkina Faso to import small arms and ammunition. The level of detail given goes far beyond that which could be obtained from analysis of the same transfer from information provided by most exporting states. For example, the table below shows the January 2003 authorization given to the Ouago Arm company to import a range of pistols and ammunition, including 110 CZ pistols, originally from the Czech Republic.<sup>395</sup>

Désignation	Quantités	Observations
Pistolet automatique calibre 9 mm para CZ 75 B	110	Marque CZ d'origine Tchèque
Pistolet automatique calibre 7,65 mm CZ 83	50	
Cartouche calibre 7,62 mm x 39 PV	54 000	
Cartouche calibre 7,80 auto FJ	25 000	
Cartouche calibre 9 mm para FJ	25 000	
Cartouche calibre 7,65 mm FJ	10 000	
Cartouche calibre 6,35 mm FJ	5 000	
Cartouche calibre 12 mm 36 gramme	60 000	Plomb 4, 3, 5, 1

Another example comes from Pakistan where the Customs Agency provides detailed reports of the cargo that arrives at Pakistan's ports. For example in January 2004, one report for the vessel MSC Jordan provides details of the following shipment:

Description of Goods : S.T.C 63 PKGS AS PER CONTRACT NO. 257/V&EE/2000-2001/ARMY DTD 30-06-2001 LOT OF 12 KITS OF LAND ROVER VEHICLES

Port of Shipment	Gross Weight in MT	Number	Unit	No of containers
FELIXSTOWE	23.393	3	Container	003X40FT

Importer Name	Consigner Name
DET MVRDE	LANDROVER EXPORTS LIMITED. <sup>396</sup>

Thus it can be seen that Landrover Exports Ltd of the United Kingdom has shipped 12 kits for Land Rover vehicles to the Pakistan army on a contract that appears to be dated 30 June 2001. Although arms trade data is generally not published by the Pakistan government, this example provides a level of detail beyond the singular entry of "military utility vehicles" in the 2001 UK Annual Report<sup>397</sup> or the "components for military utility vehicle" in the 2000 Annual Report.<sup>398</sup> The Pakistan Customs data provides details of end user, the date of shipment and the number of items delivered, the type of information that Amnesty International has argued that all arms exporting governments should provide.

## Ireland – Reporting dual use exports

<sup>395</sup> A. n° 2003-005/SECU/CAB du 17 janvier 2003. (JO N°06 2003). Article 1 : Une autorisation d'achat, d'importation et de transfert d'armes à feu est accordée à la société "OUAGA ARM" pour les quantités maxima ci-après

[www.legiburkina.bf/jo/jo2003/no\\_06/Arr%C3%AAt%C3%A9\\_SECU\\_2003\\_00005.htm](http://www.legiburkina.bf/jo/jo2003/no_06/Arr%C3%AAt%C3%A9_SECU_2003_00005.htm)

<sup>396</sup> [www.cbr.gov.pk/newcu/igm/kpqi34.pdf](http://www.cbr.gov.pk/newcu/igm/kpqi34.pdf) (accessed 25/2/2004 but no longer available).

<sup>397</sup> <http://www.fco.gov.uk/Files/kfile/laos.pdf>, p251

<sup>398</sup> <http://www.fco.gov.uk/Files/kfile/63090a9breport4-2ftable2iv.pdf> p207

The Irish Department of Enterprise, Trade and Employment (DETE) is the government department responsible for the administration of the export licensing system in Ireland. As shown above, Ireland has very little “conventional” arms trade but does have a very large, and growing, trade in dual-use components and systems. For example, a recent report on Ireland identified that whilst Ireland’s “military” exports in 2002 were only valued at €34 million the “dual use” exports were valued at € 4.5 billion.<sup>399</sup>

Following an earlier report by the Irish Section of Amnesty International<sup>400</sup> the DETE did make some improvements to the export licence information published on its website<sup>401</sup>. The licence information included a section entitled “End-use of Item”, which is a positive step by the DETE. But in the list of dual-use licences issued since January 2002, every single item had “civilian” in the “end-use of item” column, which raises serious questions. As previous chapters in this report have shown, Ireland has many companies that are producing dual-use components.

One of these is Analog Devices Inc (ADI), a worldwide company with manufacturing facilities in Limerick, Ireland. ADI manufactures a wide range of electronic components and sub-systems, particularly for the Digital Signal Processing (DSP) market. These DSP components have a wide range of applications within both the civilian, aerospace and defence markets. One of Analog Device’s key Digital Signal Processing products is the range of SHARC processors.

The exact dual-use licence category code for the SHARC and TigerSHARC devices is unknown to Amnesty International. Previously, when Amnesty International has tried seeking information from the DETE regarding the dual-use category codes for specific types of dual-use equipment it was told to ask the company.<sup>402</sup> The companies seldom oblige. This lack of transparency is the first hurdle to effective parliamentary or public scrutiny. If the Irish parliament and public cannot understand *what* has been licensed, they cannot examine *where* it has been exported and *judge reasonably* whether such exports endanger human rights.

Examination of the dual-use lists suggest that the two category codes, 3A001a2<sup>403</sup> or 3A001a7<sup>404</sup> may be the ones used to control the export of the SHARC components. The table

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<sup>399</sup> Fitzpatrick Associates, *Export Licensing for Military and Dual-use goods*, op cit

<sup>400</sup> Amnesty International Irish Section, *Decoding the Deals*, op cit

<sup>401</sup> Previously the DETE would have been congratulated on its very timely publication of export licence data but they seem to have stopped providing **any** information on their website after November 2002. Amnesty understands that the delay in providing more up to date information is due to staffing constraints Amnesty urges the DETE to publish licence information again as a matter of urgency.

<sup>402</sup> Letter from Department of Enterprise, Trade & Employment 3 July 2001.

“What export control category code would apply to MIL-STD 1553 Data Bus products from DDC Ireland Ltd?”. In response, the Minister for Labour, Trade and Consumer Affairs, Mr Tom Kitt T.D, stated in a letter to Amnesty International that “the question of the appropriate control category code which should apply to any product, is in the first instance a matter for the producer/exporter to determine as they have the best knowledge of their own products. Therefore, if you wish to know the control category code of any product, I would suggest that you contact the producer”.

<sup>403</sup> "Microprocessor microcircuits", "microcomputer microcircuits", microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analogue-to-digital converters, digital-to-analogue converters, electro-optical or "optical integrated circuits" designed for "signal processing", field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used is unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following: ([www.entemp.ie/export/cat3.pdf](http://www.entemp.ie/export/cat3.pdf))

<sup>404</sup> 7. Field programmable logic devices having any of the following:

a. An equivalent usable gate count of more than 30 000 (2 input gates);

below shows the Individual Export licences granted by the DETE for the 3A001a2 category between 1998 and 2002.

**Individual Export licences granted for 3A001a2 dual-use goods 1998 - 2002**

Country	1998	1999	2000	2001	2002	Total
China	1	1			1	3
Hong Kong		1	1			2
India		1				1
Iran				1		1
Israel					4	4
Malaysia		1				1
Republic of Korea		2				2
Singapore		1				1
Sudan				1		1
Taiwan		2				2
Turkey		1				1
United Kingdom		1				1
United States		1				1
	1	12	1	2	5	21

For the 3A001a7 dual-use category, the table below shows the Individual Export licences granted between 2000 and 2002.

**Individual Export licences granted for 3A001a7 dual-use goods 2000 - 2002**

Country	2000	2001	2002	Total
China	1	1	8	10
Colombia		1		1
Hong Kong	1		3	4
India	1		4	5
Israel	1	1	5	7
Lebanon	1			1
Malaysia	1		1	2
Philippines			1	1
Puerto Rico			1	1
Republic of Korea	1		3	4
Singapore	1		1	2
Taiwan	1	1	3	5
Thailand	1		1	2
Turkey	1			1
United Arab Emirates	1			1
Uruguay			1	1
Venezuela			1	1
	12	4	33	49

The following countries could also have received products within those categories via “Global licences” issued between 2000 –2002 that covered: Brazil, Bulgaria, Colombia, Czech Republic, Egypt, Estonia, Hungary, Israel, Jordan, Kazakhstan, Lebanon, Malaysia, Mexico, Philippines, Poland, Republic of Korea, Romania, Russia, Singapore, Slovakia, Slovenia, South Africa, Taiwan, Thailand, Turkey, UAE, Ukraine, United Arab Emirates. According to

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b. A typical "basic gate propagation delay time" of less than 0,1 ns; or  
c. A toggle frequency exceeding 133 MHz; ([www.entemp.ie/export/cat3.pdf](http://www.entemp.ie/export/cat3.pdf))

the DETE a “Global licence” can be issued when an “unusually large number of licences are required for the export of dual-use items...to prevent the creation of an undue administrative burden for the exporter” and is valid for six months.<sup>405</sup> Although, global licences are granted on the understanding that the licence is not valid for military or security users, it is unclear if that restriction applies if the recipient of the dual-use components is a civilian company.

In addition, the following countries could receive such dual-use goods via the Community General Export Authorisation (CGEA) without the details being reported in the export licence statistics that the DETE currently makes publicly available, Australia, Canada, Czech Republic, Hungary, Japan, New Zealand, Norway, Poland, Switzerland, United States of America.

Although the DETE licence data has included an indication of the end use of the dual use items, Amnesty International has concerns about the lack of transparency of such reporting. Arms-related companies in France, India, Israel, Netherlands, United Kingdom and the USA have all reported using SHARC or TigerSHARC products in a range of military electronic warfare or surveillance systems – which may then be exported to other countries. For example, according to a detailed agreement between Thales Nederland and CNPEP Radwar, a Polish company, Squire battlefield surveillance radar systems - which are equipped with Analog Devices SHARC digital signal processors - will be made for export to third countries.<sup>406</sup>

#### *Ireland’s need to improve monitoring and reporting*

Ireland has granted licences for the 3A001a2 and 3A001a7 dual-use categories to a number of the countries where civilian companies or “end-users” have publicly reported using SHARC processors in a range of military or police surveillance products.

Furthermore other Irish-based dual-use manufacturers continue to announce their success in obtaining defence-related contracts.<sup>407</sup> Amnesty International finds it difficult to reconcile these announcements with the Irish government claims that all dual-use export licences have been granted solely for “civilian” end use.

The basic problem is that it is not currently possible, from the information provided by the DETE, for the Irish parliament or for NGOs such as Amnesty International to establish whether such as the SHARC processors have been authorized for export to countries for incorporation into military or police systems for use in that country (or for subsequent re-export to countries) to facilitate human rights violations by the ultimate end-user. Amnesty International believes that the current level of detail in the information that the Irish government makes available does not allow effective parliamentary or public scrutiny.

### **Lessons to be learned**

Parliamentary and public scrutiny is crucial to help ensure that all EU governments do not licence transfers of MSP arms, equipment, technology, components and services that will contribute to internal repression, regional conflict or breach relevant embargoes. However, such scrutiny is only possible if EU governments improve the detail and clarity of their reporting mechanisms. Crucial to this end is the provision of sufficiently detailed and timely information on export licences granted for such MSP transfers and corresponding data on deliveries actually made.

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<sup>405</sup> [www.entemp.ie/ecd/mau-exports-guideline.htm](http://www.entemp.ie/ecd/mau-exports-guideline.htm) accessed 7/4/2004.

<sup>406</sup> *Jane’s Defence Weekly*, 18 September 2002, “Polish Company to make Squire battlefield radar”

<sup>407</sup> Iona Technologies, ParthusCeva, Farran Technology, Analog Devices

## 14. Flaws in the EU Code and the Accession Process

From the 1 May 2004, the 10 new Member States are required to fully apply the EU Code Criteria and carry out the Operative Provisions, as well as meet the range of obligations subsequently agreed by EU members in the six years since the Code has been in operation.<sup>408</sup>

These new obligations will prove very difficult because the existing EU Code Criteria and Operative Provisions are inadequate and sometimes too vague to implement, and also because some of the new Member States do not have sufficient capacity to meet the existing obligations immediately. If a concerted effort is not made to improve and refine the EU Code, especially during the current review process, and to help new EU Member States implement an enhanced EU Code, there is a danger that the fundamental aims set out in the existing EU Code will not be met. The net result could considerably undermine international security and respect for human rights.

### Weaknesses in the EU Code

As demonstrated in this report, the EU Code has a number of critical weaknesses, which have undermined its effectiveness. Specifically, the EU Code has:

- only a “politically binding” status and does not have the full force of a legally binding treaty – accordingly there is little scope for legal review and for enforcement by independent legal authorities;
- four Criteria (5,6,7 and 8) that are worded in such a way, using phrases like “take into account” and “consider”, so as not to impose clear binding obligations on EU Member States;
- some Criteria that are not sufficiently explicit, leaving too much scope for individual “interpretation” by Member states;
- excluded violations of international humanitarian law in the receiving state as a categorical reason for refusing an arms export – under the Code Criterion 6 such violations are merely elements that the exporting state should “take into account”;
- a control list that still excludes many items of security or crime control equipment and technology which can be used for “internal repression” (Criterion 2) and fails to explicitly prohibit equipment that can be used for torture, cruel, inhuman or degrading treatment or punishment, or the death penalty;
- no operative provision requiring timely and detailed public reporting of export licences granted for dual use exports and components for military and security equipment, thereby undermining public scrutiny of EU exports of such items as surveillance equipment which can be used for “internal repression”;<sup>409</sup>

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<sup>408</sup> These include, as discussed at various points in the report, the Dual Use Control List (Council Regulation (EC) EC Regulation 1334/2000 of 22 June 2000), and national ‘Control of Exports Orders or ‘Military Lists’ (introduced or amended as required) the Joint Action on Small Arms (1998), the Common Position on Brokering (2003), and the proposed EC Trade Regulation on equipment that can be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

<sup>409</sup> The EU Regulation on dual use goods - EC Regulation 1334/2000 of 22 June 2000 - does require the European Commission to report to the European Parliament and the Council every three years, and requires Member States to provide “appropriate information” to the Commission for this purpose. However, the fact that not all dual-use goods of concern to Amnesty International are covered by this regulation’s dual-use list, and the fact that many governments’ own reporting of dual-use exports is

- operative provisions for consultations on possible undercutting (which take place when one Member State wishes to take up a licence previously denied by another) that are only conducted on a bilateral basis, depriving the wider group of EU States of potentially valuable information and insights into arms export control concerns;
- no operative provisions for Member States to specifically control arms brokering, arms transporting and arms financing activities by EU nationals and residents when such activities, and the related arms deliveries, take place through “third countries” - these activities are not adequately controlled in the EU Common Position on arms brokering;
- no operative provision for Member States to specifically regulate the export of licensed arms production or assembly facilities in “third countries”;
- no operative provisions to close export loopholes for “repaired” arms, for “civilian” arms and for air-gun weapons;
- no specific operative provisions for Member States to regulate exports from stocks of surplus arms;
- insufficient standards regarding the reporting of arms exports by Member States, in particular a system of “prior notification” to the parliaments of Member States when arms exports are being considered to sensitive destinations;
- excluded any explicit reference to the possibility that military and security transfers might not involve “goods” or “equipment”, (the words used in the text) but military and security assistance, training or personnel;
- no operative provision detailing how Member States can establish mechanisms for cooperative end use monitoring of arms transfers from the EU;
- excluded any explicit reference to apply the EU Code to transfers taking place outside the export licensing regime; for example, in a number of EU countries, gifts or donations of arms by the government do not require a licence;
- a requirement under Operative Provision 11 to promote the principles of the EU Code internationally, but without a viable method of doing this in accordance with existing principles of international law.

The above weaknesses would be significantly overcome if the EU Code was considerably strengthened and also underpinned by the adoption of a legally binding Arms Trade Treaty with the development of linking protocols and comprehensive operative provisions. Proposals for this are set out in the chapter below.

## **EU Review Process**

In the fifth EU Annual Consolidated Report to the EU Code of Conduct, published in November 2003, EU Member States committed themselves to review the EU Code. Such a review could potentially provide Member States with an important opportunity to remove existing weaknesses in the Code elaborated above, and increase the scope of its coverage.

However, Amnesty International is concerned at recent indications suggesting that some EU Member States are seeking a fast and superficial “review” of the EU Code that will not allow a thorough analysis of its weaknesses. Currently, there does not appear to have been any decision made about wider consultation beyond the government officials and ministers of

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insufficient or not transparent, means that it is very difficult for parliaments, the media and NGOs to scrutinize what is actually being exported to check that human rights and other international obligations are being upheld by EU Member States.

the EU Member States. Amnesty International welcomes the fact that the Code is being reviewed, but believes that if sufficient time to deal with the weaknesses, loopholes and omissions detailed in this report is not allowed, the EU Code will continue to allow arms exports that fuel human rights violations to slip through the net, particularly now that the borders of the EU have grown, and the net result will be to undermine international security.

The review of the EU Code should really be an opportunity to carry out a thorough assessment of the first six years of the Code's operation and for appropriate amendments as detailed in this report. The review process should involve not only the national governments but also consultation with interested parties such as parliaments, companies, NGOs, professional associations and academic experts – it should not be something to be rushed through as quickly as possible for the sake of having completed it.

### **Dangers from the Accession Process**

Given the weaknesses in the EU Code and related EU mechanisms, the large number of new states having joined the EU at the same time has increased the risk that future interpretation and implementation of relevant EU mechanisms will be watered down. A number of the new members are small-to-medium but significant arms exporters and play host to companies and individuals engaged in the international arms trade, and as shown in this report have a record of weak arms export control. The loose "interpretation" of the Code Criteria and limited application of the scope of the Operative Provisions and other EU mechanisms by certain old EU Member States encourages a purely rhetorical commitment of many of the new Member States.

On joining the EU, the ten new Member States are expected to accept the "*acquis*", i.e. the detailed laws and rules adopted on the basis of the EU's founding treaties, mainly the treaties of Rome, Maastricht and Amsterdam.<sup>410</sup> These states have been changing their national legislative and administrative arms export controls in line with existing EU policies, particularly the EU Code – which are obligations under the Common Foreign and Security Policy (CFSP) of the EU.

New Member States are now required to license the export of arms on a case-by-case basis subject to the eight criteria of the EU Code. However, there are instances where officials from some of these new EU member states have previously expressed their export licensing policy in far less restrictive terms than the EU Code.<sup>411</sup> The likelihood that new members may not have developed the necessary administrative capacity to implement EU arms control policies, adds to the prospect that new member states may "interpret" the Code and other EU arms control mechanisms even more loosely than their west European partners.

In the fourth Consolidated Report on the EU Code, Member States agreed to "*share information on denials on an aggregate basis with Associated Countries and encourage these countries to similarly inform Member States about their denials.*" Member States reportedly began a process of compiling a list to be circulated to New Member States of all denials notified since the beginning of 2001. While these were welcome steps, the information provided was not as extensive as that shared among old Member States and the channel of information exchange was also different. It is clear that the new Member States will be

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<sup>410</sup> //europa.eu.int/comm/enlargement/negotiations/index.htm

<sup>411</sup> For example CTK Business News Wire - November 27, 2001, Czech Arms Exports to Yemen on the Rise'. "There is no legally binding embargo on supplies to Yemen. Everyone sells things to this market, including the USA," Hynek Kmonicek, Czech ambassador to the UN. Janusz Zemke, First Deputy of the Polish Defense Ministry, was reported in the Jakarta Post as having stated that while Poland will not provide arms to countries considered hostile to NATO or European Union member states and will not sell arms to both sides of an existing conflict, it is willing to supply to one side ("America, Britain won't sell arms to RI, but Poland will," *Jakarta Post*, 8 November 2002).



carefully watched by the old Members to see if anyone misuses the denial notifications for competitive arms export advantage. The loose and non-binding Code Criteria and Operative Provisions, as currently drafted, do little to prevent EU Member States using the information generated through the denial notification mechanism as a trading opportunity. If states were to behave in such a way it could inhibit the whole denial notification mechanism, thereby undermining the application of the EU Code.

## **EU assistance to New Member States**

Recognizing the potential difficulties for the new Member States and the potential dangers for weakening of the application of the EU Code, the existing member states, in the fourth EU Consolidated Report, committed themselves to provide “assistance, *when requested*, for the Acceding Countries, ... to ensure the harmonization of [relevant] policies ... and the full implementation of the Code of Conduct” [emphasis added]. Certain states have already begun to do this:

*Lithuania* received help from Finland, through a 2001-2 twinning project focused on how to implement EU Directives on firearms and explosives; from France, Germany, Sweden, UK, US and Finland, in the form of finances for equipment and training in best practice techniques; and from Sweden in the form of a dialogue during 2002 with the Swedish National Inspectorate of Strategic Goods about end-user certification.

*Latvia* received briefings and seminars from Germany, Norway and the US on international export control regimes, Latvian export controls and regulations, changes in the list of “strategic goods” and the use of databases for the identification of strategic goods.

*Poland*: received help in 1999 from UK and Dutch police officers in establishing contacts between the regional police, border guard and administration offices in the eastern provinces.<sup>412</sup>

*Slovakia*: was invited by the Netherlands in March 2003 to view how Dutch arms export controls worked; a delegation was shown how licensing procedures, implementation of the EU Code, coordination of different government agencies, and the role of customs functioned.

## **Aid to harmonize the application of the Code Criteria**

The UK has recently held two seminars for new Member States on harmonizing the application of the EU Code Criteria.<sup>413</sup> The implications of the Code were discussed as well as the specific obligations and problems that the new Member States were anticipating. It is expected that the process of “harmonizing the interpretation” of the EU Code will now continue within the monthly COARM<sup>414</sup> meetings of EU officials. Previously, new Member State officials had been observers at such meetings, but from 1 May 2004, they became full participants.

From the end of 2003, the new Member State participants at these meetings have been issued with the denial notifications received by EU Member States. Since 2001, and on the initiative of the Polish and Swedish governments, an informal COARM meeting has met five times to develop ideas and engage in dialogue on arms export controls. This informal meeting has

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<sup>412</sup> Saferworld, *Arms Transit Trade in the Baltic region*, op cit

<sup>413</sup> The November 2003 seminar in Tallinn, Estonia was attended by Estonia, Latvia, Lithuania, UK, Denmark, Finland and Sweden: the January 2004 seminar in Bratislava, Slovakia was attended by Slovakia, Poland, Slovenia, Hungary, Czech Republic, UK, Austria, Germany and the Netherlands.

<sup>414</sup> COARM: Working Party of the Council of the EU on Conventional Arms Exports

reportedly been a useful arena for key officials of new Member States to familiarize themselves with existing EU arms export systems.

Amnesty International welcomes the efforts of those EU Member States that have taken a lead in aiding new Member States to improve their export control regimes and align themselves with the EU Code. However, the support which some Member States provided to New Member States has been patchy and in many cases uncoordinated. Member States should work together, with the EU secretariat, to identify those needs of new Member States that are most urgent, and agree a co-ordinated programme of activities to address those needs. Furthermore, unless the review of the EU Code results in an enhanced Code that is consistent with existing principles of international law, and has stronger operative provisions to close up loopholes in arms export control systems, any EU programme of support to new member states will have limited effect. If the review of the Code is successful, Member States will need to work more closely with new Member States to implement a co-ordinated programme of activities to develop greater capacity to implement the enhanced Code.

*Future EU expansion:*

The accession of the 10 new states into the EU on 1 May 2004 is unlikely to be the end of the extension of the EU. Bulgaria, Romania and Turkey are all in various stages of negotiation with the EU over possible accession. Such expansion of the EU presents potential opportunities and dangers to European arms control, as all three candidate countries have a record of serious human rights violations and also of poor arms control policy and practice. Amnesty International believes that in the accession negotiation process, human rights and arms control must be central. There must be tough entry criteria and adequate financial and personnel resources to ensure that the export control policies and practices of these candidate countries come into line with strengthened EU Code and related mechanisms.

The next EU President, the Netherlands, has already begun to undertake positive initiatives in this regard. For example in May 2003, a Romanian delegation visited the Netherlands to view their arms export controls programme. The delegation visited customs agencies and was informed of licensing procedures, application of legislation and how the EU Code was implemented. In principle, they have agreed a similar initiative with Ukraine, which is planned for May 2004. Dutch officials have stated their desire to begin to engage with other countries outside the new Member States, for example the Former Republic of Yugoslavia, Croatia, Bosnia and Herzegovina, Albania and Bulgaria.

Amnesty International welcomes these initiatives by the Netherlands government to engage with European governments outside of the EU. However, other Member States should join in these initiatives so that recipient EU Member States can benefit from as wide a range of experience as possible, and a coordinated and comprehensive programme of assistance must be implemented.

## **15. An Arms Export Agenda for the Expanded EU**

Governments that export arms and those that receive them have a fundamental moral and developing legal responsibility to ensure that the arms are not misused for human rights violations or breaches of international law.<sup>415</sup> EU Member States should fully abide by their international obligations including those acknowledged in the EU Code of Conduct and related EU and other international agreements, including treaties on human rights and international humanitarian law. Fulfilling these obligations should not be viewed as a

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<sup>415</sup> For a legal argument underpinning this statement, see Emanuella Gillard, "What is legal", in Lora Lumpe, ed. "Running Guns", Zed Press, London and New York, 2000.

“hindrance” to trade, but as a fundamental pre-requisite for greater international security and prosperity.

### **Strengthening the EU code and related control measures**

Credible evidence in this and other reports points to a series of dangerous gaps and weaknesses in the EU Code and in related EU Member States’ national and regional mechanisms to control military and security exports. Clearly, these need to be urgently addressed by EU Member States if they are to achieve the stated goals set out in the Code.

The intended review of the EU Code should not skate over these weaknesses. Such an approach will come back to haunt EU governments when EU arms scandals - particularly those linked to grave human rights violations and war crimes - emerge, as they almost inevitably will do.

In reviewing the Code, therefore, EU Member States should seek to strengthen and clarify the Criteria by basing them on relevant principles of international law wherever possible. For example, under EU Code Criterion 6 it is not good enough to refer to states’ obligations under international humanitarian law as obligations that are only “taken into account”. All High Contracting Parties of the Geneva Conventions - the cornerstones of international humanitarian law - are required under Common Article 1 to “respect and ensure respect” for these obligations and therefore have a fundamental responsibility to prevent arms transfers that would contribute to breaches of them. In addition, gaps and weaknesses in the Operative Provisions need to be addressed in a strengthened Code and in related EU agreements and mechanisms. The scope of controls needs to extend to the full range of arms and security equipment, technology, components, expertise or services so as to ensure these do not contribute to human rights violations or breaches of international humanitarian law. To be meaningful, definitions and determination criteria in the Code must at least cover all: commercial sales, government-to-government deals, “third country” dealing by EU citizens and residents, licensed production overseas, “arms in transit” via the EU and “surplus arms”. This should be explicitly stated in the strengthened wording of the Code.

Over recent years, and particularly following the adoption of the EU Code 1998, the EU has attempted to be an important and progressive voice promoting effective arms control internationally. The enlarged EU now has an opportunity to become an even more powerful international voice for positive change. In order to do this, the EU must put its own house in order. In order to help prevent the EU being complicit in, or otherwise contributing to, grave human rights abuses, Amnesty International believes that the enlarged EU should seek to:

- strengthen the EU Code by making it more consistent with fundamental principles of international law, as well as improving the scope of controls and reporting standards, including for arms in transit;
- promote and work towards a global arms trade treaty (ATT) to underpin a strengthened EU Code – EU Member States should demonstrate that a strengthened Code can be consistent with a legally binding and workable arms trade treaty;
- promote a global ban on the manufacture and transfer of equipment easily used for torture, ill-treatment and the death penalty by strengthening and adopting the proposed EC Regulation;
- curb the proliferation and misuse of arms, and small arms and light weapons in particular, by adopting an EU Joint Action or EU Code Operative Provision to widen the extra-territorial application of EU laws on arms brokering, transporting, and financing;
- adopt an EU Joint Action or EU Code Operative Provision to properly regulate surplus arms;

- prevent the unregulated spread of arms production by adopting an EU Joint Action or EU Code Operative Provision to effectively control EU licensed arms production in third countries;
- establish, through an EU Joint Action, a national legal requirement to observe international human rights and humanitarian standards for all EU military, security and police aid programmes to “third” countries, as well as laws consistent with such international standards for all EU companies purporting to provide such expertise and training, and a prohibition on mercenarism by EU nationals and residents.

### **An International Arms Trade Treaty to help strengthen the EU Code**

To help overcome some of the fundamental problems with the EU arms control regime outlined above, EU Member States should actively support a process to develop a legally binding international arms trade treaty. To be meaningful, and to underpin the EU Code and other mechanisms, such a treaty would have to conform closely to existing relevant principles of international law. It would contain tougher export criteria than the EU Code (which is only politically binding) and could be ratified and implemented by a much greater number of states across all world regions. Such a treaty would be a basic building block for a much clearer, more consistent and widely shared set of international arms control practices. Existing political realities would probably mean that, initially, a viable arms trade treaty text would have more limited operative provisions than the existing EU Code (for example, it would probably not have consultation/undercutting operative provisions), but the arms trade treaty could have stronger universally applicable arms export criteria and could be enhanced over time with specific supportive binding measures, as outlined below.

Amnesty International and many other NGOs and individuals are calling on all governments, including those of the EU Member States, to press for the negotiation of an International Arms Trade Treaty that ensures full respect for international human rights and humanitarian law.<sup>416</sup> This Treaty should include the following:

Contracting Parties will not authorize international transfers of arms:

- which would violate their obligations under international law - including the Charter of the United Nations, arms embargoes and other decisions of the United Nations Security Council and international treaties prohibiting the use of weapons that are indiscriminate or that cause unnecessary suffering.
- In circumstances in which they know, or should know, that the arms due to be transferred are likely to be:
  1. used in breach of the United Nations Charter or corresponding rules of customary international law, in particular those prohibiting the threat or use of force in international relations;
  2. used to commit serious violations of human rights;
  3. used to commit serious violations of international humanitarian law relating to armed conflict;
  4. used to commit genocide or crimes against humanity;
  5. diverted and used to commit any of the above acts.

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<sup>416</sup> Amnesty International is a member of the international Control Arms Campaign with Oxfam International and the International Action Network on Small Arms [which has 500 NGO affiliates], and is one of several NGOs that has conceived and helped develop proposals for an Arms Trade Treaty. For further details, and the list of NGOs and supporters, see [www.controlarms.org](http://www.controlarms.org) and [www.armstradetreaty.org](http://www.armstradetreaty.org).

Furthermore there should be a presumption against the authorisation of those arms transfers likely to:

- be used for or to facilitate the commission of violent crimes;
- adversely affect regional security;
- adversely affect sustainable development.

Contracting Parties will submit an annual report on international arms transfers from or through its territory or subject to its authorization to an International Registry, in accordance with the requirements of this Convention. The International Registry shall publish an annual report and other periodic reports.

### **Operational Measures and Mechanism Required**

EU Member States should act without delay to include the following specific measures either in the Operative Provisions of a strengthened EU Code, or in binding EU agreements such as EU Joint Actions. In addition, EU member States should work towards including such measures in wider international binding agreements, and as annexes to an arms trade treaty or in separate protocols to such a treaty:

#### ***Transparency and Accountability***

- All international transfers of small arms and light weapon should be included in a UN register and be published regularly – pending UN agreement, states should submit such data to the UN Register on Conventional Arms and publish such data.
- States should publish comprehensive, detailed and timely annual reports on arms export licences and deliveries – data should include how many articles have been licensed to which country and to which end user, including numbers and types of components by description.
- Procedures should be established to ensure effective parliamentary scrutiny of arms transfer policy and practice – including a mechanism for prior parliamentary scrutiny of those proposed licenses which may violate the principles of the EU Code and existing international law.
- Systems should be established for adequate and reliable marking of arms during manufacture or import and for adequate record-keeping on arms production, possession and transfer. Such marking should include arms transferred by governments as well as commercial sales. International arrangements should be established for tracing arms by relevant authorities.
- EU Member States should publish annual reports giving details of EU companies or individuals who have been prosecuted for breaching EU national or European Union arms export control legislation.

#### ***Licensed arms production overseas***

- All licensed production agreements with foreign partners must be authorised by governments and no permit for licensed arms production should be issued in circumstances where this would result in international arms transfers contrary to the International Arms Trade Treaty, the strengthened EU Code and the other measures outlined in this chapter.
- No licensed arms production should be authorised without a specific mutually binding agreement with the recipient state to seek prior authorization for any exports from a licensed production facility on a case-by-case basis, stating maximum production quantities to be exported and requiring in each case end-use certification and provision for end-use monitoring. The lifetime or duration of such agreements

and the details of intended end-users should be clearly defined. Any such permission should be reported to the licensing state's parliament in its Annual Report.

- National legislation providing for the above and each agreement to establish a facility should also require the monitoring of such licensed production. Where there is credible evidence that arms resulting from such a facility have been used contrary to the Arms Trade Treaty or strengthened EU Code (e.g. for human rights violations) in the licensee's home country, or have been exported to destinations not subject to agreement, the licensed production agreement should be immediately revoked. In such cases all provision of related machine tools, parts, training and technology should be halted.

### ***Arms brokering and transporting***

- EU Member States should immediately implement the EU Common Position and include its voluntary recommendations in a legally binding instrument, and in particular should extend the extra-territorial scope of the provisions of the Common Position and provide for the regulation of the transportation and financial services that facilitate brokered arms transfers.
- All arms brokers or arms transport agents operating or having residence or business dealings on their territory must be registered by states. No body, individual or company, will be registered to act as an arms broker or arms transport agent if they have aided or committed crimes set out in the proposed International Arms Trade Treaty, or been convicted of illegal trafficking or money laundering.
- States will prohibit the conduct of all arms brokering and arms transporting activities by their nationals, permanent residents and registered companies unless these activities, *wherever conducted* are covered by a specific license, and will refuse such a licence if the applicant is not registered, or if the activity in question would result in arms transfers that violate the principles of the International Arms Trade Treaty or the strengthened EU Code and its provisions.
- States will ban the brokering and transportation of prohibited items, such as equipment designed for torture, cruel inhuman or degrading punishment or treatment, or for execution.
- States should dedicate financial, personnel and political resources to working with such organisations as INTERPOL, the World Customs Organisation and other law enforcement agencies to bring to justice those responsible for illicit brokering and transporting activities.

### ***Surplus arms***

- States will destroy all confiscated/illegal arms. Such destruction should only take place after investigation of the routes by which the weapons ended up in the hands of criminals, terrorists or human rights abusers. Those responsible for such transfers should be brought to justice where appropriate.
- Every effort should be made by states to destroy arms deemed surplus to their security needs, including both police and military arms. Where such destruction is not possible, surplus arms should be securely stockpiled. The EU should ensure human and financial assistance to all EU Member States and other states with insufficient resource to carry out destruction or secure stockpiling programmes.
- If in exceptional circumstances transfers of surplus arms are permitted, EU member states should ensure that such transfers do not contravene the principles of the Arms Trade Treaty or the strengthened EU Code criteria. All transfers of surplus arms should be subject to stringent licensing and end use certification, and rigorously monitored and reported.

- All arms collection projects supported by EU or EU Member States should be subject to the above measures and procedures.

### ***Trans-shipment of arms***

- All transit of arms and security equipment and technology out of the EU must be authorised on a case-by-case basis according to explicit and unambiguous procedures and licences refused if the trans-shipments are likely to violate the principles of the Arms Trade Treaty or the strengthened EU Code.
- Detailed information on all transit shipments for arms and dual use goods should be included in EU Member States annual reports. Details should include types of goods, quantities, routes, suppliers and end-users.
- EU Member States should provide financial and human assistance to those states that currently do not have the capacity to enforce transit/trans-shipment controls adequately. The EU must prioritise cooperation with the Russian Federation on measures to combat illicit trafficking. These should include regular information exchange on export and transit controls and licences. Special emphasis must be given to enforcing stringent controls in Kaliningrad.

### ***Components for military and security equipment***

- The principles of the Arms Trade Treaty and the strengthened EU Code should apply to components as well as to complete weapons systems, and specific binding operative provisions should apply to the export of strategic components for final assembly elsewhere.
- EU Member States government should improve their provision of information on exports of components in their annual reporting. They should specify whether the components are for spares and upgrades, or if they are destined for incorporation into other products or re-export.
- For small arms and light weapons, EU Member States should provide a further breakdown of what equipment has been licensed (e.g. trigger mechanisms, or proofed barrels) and it should also provide the quantity of items that it has licensed. Customs data, used to report the physical exports of small arms, should also include details and quantities of components in order to provide a realistic and accurate assessment of the EU states' involvement in the small-arms trade.
- All EU Member States should ensure that licensing approval is required for the transfer of MSP production technology for controlled goods. The criteria used by the governments for such licence determination should be as stringent as for transfer of MSP equipment and arms.
- EU states particularly those six members of the Letter of Intent process – should ensure that the enactment of the Framework Agreement does not undermine their obligations under the EU Code.

### ***Surveillance and communication technologies***

- All EU governments and the European Commission should review their export control policies with regard to the export of “dual-use” goods and their obligations under Operative Provision 6 of the EU Code of Conduct so as to develop further specific mechanisms to ensure that the transfer of sophisticated communication and

surveillance systems do not contravene the principles of the proposed Arms Trade Treaty, the strengthened EU Code and other measures outlined here.

### ***Repressive equipment other than conventional arms***

- Adopt without further delay the European Commission (EC) Council Trade Regulation which will (a) *ban* trade in equipment which “has no, or virtually no, practical use other than for the purpose of” capital punishment or torture, from member states to countries outside the EU, and (b) *place strict controls* on the trade in equipment that it regards as having legitimate uses but which can also be misused for torture or cruel, inhuman or degrading treatment or punishment.
- EU Member States should strengthen the definitions of security and policing equipment to be banned and controlled in the proposed EC Trade Regulation on the trade in torture and death penalty equipment, as follows.

#### *Ban on torture and death penalty equipment:*

- Ban the manufacture, trade, promotion, brokering, possession and use of equipment which “has no, or virtually no, practical use other than for the purpose of” capital punishment or torture.
- Include death penalty equipment, specifically: gallows, guillotines, electric chairs, airtight vaults for the administration of lethal gas, automatic drug injection systems;
- Include electric-shock belts designed or modified for restraining human beings by the administration of electric shocks.
- Include leg-irons, gang-chains and shackles, designed for restraining human beings...Individual cuffs or shackle bracelets, designed for restraining human beings, thumb-cuffs and thumb-screws, including serrated thumb-cuffs.

#### *Equipment used for torture:*

- Ban the manufacture, trade, brokering, promotion, possession and use of restraint devices and methods whose use is inherently cruel, inhuman or degrading: including *shackles, leg irons, leg cuffs and sharp or serrated cuffs*;
- Ban the promotion and use of restraint techniques whose use is inherently cruel, inhuman or degrading: including, *chain-gangs and the shackling of women in advanced pregnancy or labour; hog-tying and other prone restraint techniques*;
- Subject the design and use of restraint equipment such as *restraint boards and restraint chairs* to rigorous, independent and impartial review by appropriate medical, legal, police and other experts based on international human rights standards, and suspend all transfers of this equipment pending the outcome of this review.

#### *Electro-shock equipment:*

- Suspend the sale, transfer, brokering, promotion and use of *high voltage electro-shock stun weapons, including tasers*, whose medical and other effects are not fully known, pending a rigorous and independent inquiry by appropriate medical, legal, police and other experts based on international human rights standards. Publish the results of the inquiry on each type and sub-type of such weapons and demonstrate before the legislature/parliament in each case that the effects are consistent with international human rights standards before making any decision on deployment.

#### *Kinetic impact weapons:*

- Establish strict laws and regulations consistent with international human rights standards for the sale, transfer and use of *batons, truncheons, sticks*, and all their variants for law enforcement;



- Establish laws and regulations requiring all weapons that launch kinetic impact devices to be treated for practical purposes as firearms with regard to both their use but also the sale and transfer of such weapons.

*Chemical incapacitants:*

- Suspend the transfer and deployment of those types of *pepper spray or other chemical irritants*, which have revealed a substantial risk of abuse, unwarranted injury or death, pending a rigorous and independent inquiry into their effects in each case by appropriate medical, legal, police and other experts.
- Test every individual chemical irritant and each combination of irritant and solvent carrier as if it were a pharmaceutical and allow full open peer review before any irritant is manufactured, transferred or deployed.
- Publish the results of the inquiry on each type of such weapons and demonstrate before the legislature/parliament in each case that the effects are consistent with international human rights standards before making any decision on deployment.

***Transfers of military and security expertise***

- EU Member States should prohibit the transfer of skills and training of torture and execution expertise.
- All international assistance programmes should ensure that the training of military, security and police personnel of another country does not include the transfer of skills, knowledge or techniques likely to lend themselves to torture or ill-treatment in the recipient country. The practical application of relevant international human rights standards and international humanitarian law should be fully integrated into such training programs
- Objective procedures should be established to screen all potential participants in the training of military, security and police personnel of another country to ensure that those who according to credible evidence have been involved in serious human rights violations are prevented from participating unless they have been brought to justice and effective measures taken for their rehabilitation. Before any MSP training is provided the government must establish whether there is a serious pattern of human rights violations in the recipient country that would require a programme of legal reform in accordance with international standards and that such reform is undertaken.
- Information on all government sponsored police, security and military training programs for foreign personnel should be made public, in particular the individuals and units trained, the nature of the training, and the monitoring mechanisms put in place. Establish mechanisms to rigorously monitor the human rights impact of the training provided.
- EU Member States should introduce national legislation and a binding EU mechanism to strictly control and monitor the activities of private providers of military, police and security services. Companies and individuals providing such services should be required to register and to provide detailed annual reports of their activities. Every proposed international transfer of personnel or training should require prior government licensed approval which should only be granted if the training is not likely to contribute to violations of the proposed Arms Trade Treaty and the strengthened EU Code.

- EU companies and NGOs employing private military and security companies should introduce sufficient safeguards to prevent breaches of human rights standards, international humanitarian law, and other relevant aspects of international law by their personnel. Private security companies should not employ individuals credibly implicated in human rights abuses and there should be strictly enforced controls governing when force and firearms can be used which are consistent with international standards on the use of force, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. All personnel should be properly trained in and committed to respect for such standards.

### *Monitoring and Control of End Use*

- All end-use certificates used by EU Member States should take the form of legally-binding contracts which contain a list of proscribed uses; specifically those in breach of human rights standards and international humanitarian law. Contracts should contain full details of the articles to be transferred, a named recipient, a requirement for detailed information on transit routes and shipping agents, pre-notification of the importing and transit states, and a prohibition on the unauthorized re-export of the articles.
- Provision should be made in such contracts for post-delivery checks of end use. Qualified officials or embassy staff of the exporting EU Member State in the recipient country should carry out and report a systematic risk assessment of likelihood of misuse. Monitoring should focus on those recipients and transfers that are of most concern with regard to diversion or misuse, through a targeted use of limited resources against a matrix of likely risk factors. Joint EU monitoring should be used where this would save resources. Priority for end use monitoring should be given to military and security equipment, such as small arms, light weapons and riot control equipment, that are most readily utilized in serious human rights violations and war crimes by internal security forces and paramilitary police.
- Failure by the receiving state to comply with the terms of an end-use contract should result in the revocation of the licence and a halt in further supplies, provision of spares or other forms of support.
- As a first step towards a cooperative EU system, Member States should establish a “misuse and diversion” notification system along similar lines to the denial notification process, so that all member states would be informed of any incidents which raise end-use concerns. In the event of diversion or misuse of arms sourced from any EU Member State, the recipient would place at risk future sales from all Member States. Such a response would have a potentially powerful deterrent effect against the breaking of end-use undertakings.

### *International assistance to control arms*

- Donor Member States of the EU should provide human and financial resources to those states currently lacking the expertise or funding to implement effective arms control systems as described above, for example with end use certification and monitoring mechanisms. A detailed manual should be produced to assist officials to promote and implement the Arms Trade Treaty and a strengthened EU Code and related mechanisms.

- Aid projects funded by the EU should be adequately resourced by Member States to prevent the proliferation and misuse of small arms as agreed in the EU Joint Action on small arms. These should promote strict adherence to international human rights standards and humanitarian law. Projects should include concerted efforts to increase the capacity of law enforcement agencies to control the proliferation and misuse of small arms, in accordance with international standards.
- EU Member States should collaborate to increase international training programmes for armed forces and law enforcement personnel in operational skills designed to uphold international human rights and humanitarian standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials – the EU should argue to include such standards in the UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons.<sup>417</sup>
- The EU fund that has been set up for support programmes for the collection and destruction of small arms should be adequately resourced to ensure that small arms which are not in legal civilian possession or acquired for legitimate national defence or internal security purposes do not fall into the hands of human rights abusers.

By adopting and promoting the above arms control framework, including binding export controls consistent with an International Arms Trade Treaty and the operational measures and mechanisms listed above, EU Member States will set a high common standard that can attract coherent global support to really improve international security. Paramount for such an effort is the principle that national arms export laws should meet states' responsibilities under international law and standards, particularly international human rights and humanitarian law.

Amnesty International therefore calls upon all EU Member States to adopt the above agenda and to work actively with other states, particularly in the run up to the 2006 UN Review Conference on Small Arms, to get their own house in order and promote full respect for international human rights and humanitarian law by all states through adherence to an International Arms Trade Treaty and the related measures set out in this report.

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<sup>417</sup> UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (UN PoA), UN document A/CONF.192/15, July 2001