

UNDERMINING GLOBAL SECURITY: THE EUROPEAN UNION'S ARMS EXPORTS

SUMMARY

AI Index: ACT 30/009/2004

Public Document

May 2004

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.¹

This report analyses problems with the current policies and practices of the European Union (EU) Member States, including 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 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 2001.² The EU's share of the market was smaller than the United States and Russia, but increased on 1 May 2004 when ten new countries joined the EU: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia. Some of these new Member States have significant arms production and exporting activities. For example, the enlarged EU now has over 400 companies in 23 countries producing small arms & light weapons (SALW) - only slightly less than the USA.³ Such a dramatic enlargement of the EU presents both potential opportunities and dangers for European arms control.

The establishment of the EU Code of Conduct on Arms Exports in 1998 was a significant advance in regional arms export control. The 15 Member States declared at that time that they would set minimum common standards in controlling arms transfers, and would prevent exports which could be used for internal repression, international aggression, or would contribute to regional instability.

But the design and application of the EU Code are 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 -

¹ For the legal argument underpinning this statement, see Emanuella Gillard, "What is legal", in Lora Lumpe, ed. *Running Guns*, Zed Press, London and New York, 2000.

² 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>.

³ 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)

mostly in secret - to recipients who have used such items for grave human rights violations or breaches of international humanitarian law. This report identifies major weaknesses, ambiguities or loopholes in the Code, related EU mechanisms and national export controls.

The 15 Member States promised at the end of 2003 to review the Code during 2004 – a year which falls within the EU Presidencies of Ireland and the Netherlands. Amnesty International welcomes this review, which is an excellent opportunity to remove existing weaknesses and increase the scope of the Code's coverage. The review process should involve not only the various national governments but also consultation with interested parties such as parliaments, the business community, non-governmental organisations (NGOs), professional associations and academic experts.

But Amnesty International is concerned at recent indications suggesting that the Irish Presidency is 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 the EU Member States. 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 result will be to undermine international security.

The report shows how:

- The Dutch government has failed to bring the huge “transit trade” of arms through the Netherlands under its arms export policy, allowing the export of goods in the armoured vehicles category to Israel despite the use of armoured vehicles by the Israeli security forces to kill and injure civilians;
- Surplus tanks, artillery systems and combat planes from Slovakia were sold on to the Angolan armed forces while they committed serious human rights violations during the civil war;
- Czech and Polish surplus weapons have been authorised for transfer to governments such as Yemen with poor end-use controls and a history of diversion;
- The UK's interpretation of the EU arms embargo on China has permitted the licensing for export of components in categories of equipment that are for use in weapons systems which would themselves be subject to embargo. The UK's interpretation of the China embargo does not permit the export of military aircraft, for example – yet export licences were granted in 2001 for components for military aero engines;
- Italy's loophole over the definition of “small arms” - which makes a distinction between military and civilian guns - means that handguns for “civilian” use can be exported from Italy by merely obtaining the permission of a local police commander. In Brazil, a country ravaged by gun violence, handguns made by the Italian company Beretta are the second most numerous foreign small arms confiscated by the police;
- Danish shipping companies have been allowed to transport arms to countries under EU arms embargoes with persistent human rights violations such Myanmar, China and Sudan;
- Irish armoured vehicle technology has been licensed, via a Singapore company, to Turkey, where the Turkish military have used armoured vehicles to abuse human rights, including the killing of a man who was crushed against a wall by a tank during Kurdish New Year celebrations in 2002;

- A German technology company has supplied telephone-tapping and surveillance equipment to Turkmenistan despite the fact that the government there has long used such methods as part of a policy of repression;
- French helicopters and parts, manufactured under licence in India, have been delivered to Nepal, where the armed forces have previously shot and killed civilians from helicopters;
- Spanish satellite intelligence, military training and other military and anti-terrorist equipment were promised to the Colombian security forces despite concerns that the Colombian government is pursuing policies which are exacerbating the human rights disaster there;

Since the enactment of the EU Code in 1998, Member States have attempted a few small improvements to strengthen the Code, including the publication of an Annual Consolidated EU Report giving aggregate figures on export licences granted by EU member states; plans to improve information exchange amongst Member States about licence applications that have already been refused by another state; an updated list of military goods; agreements on harmonising end-use certification processes; and a Common Position on arms brokering.

But, as this report demonstrates, these measures alone are insufficient to make the EU Code regime effective. Amnesty International is extremely concerned about:

- *the insufficiently controlled trade* in “surplus” arms, components for weapons systems, surveillance technologies, military assistance and training, and security equipment that can easily be used for torture;
- *the insufficiently regulated activities* of arms transporters, arms brokers, and private security companies, and the failure to stop EU nationals acting as mercenaries;
- *weak controls* on the end use of EU arms, lack of transparency in EU government reporting, the growing number of ill-conceived EU licensed production arrangements in other countries, and the transit of arms through the EU to human rights violators;

These failings all contribute to an export control regime that is allowing MSP transfers to end up in the hand of known abusers of human rights.

What needs to be done?

Over recent years, and particularly following the adoption of the EU Code of Conduct on Arms Exports in 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 a more coherent and effective international voice for positive change. But in order to do this, the EU must put its own house in order.

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 “hindrance”, but as a fundamental pre-requisite for greater international security and prosperity.

In reviewing the Code, EU Member States should strengthen and clarify its Criteria by basing them on relevant principles of international law wherever possible. For example, 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. Likewise, it

is not good enough for the Code to set as its aim to prevent arms being used in “internal repression” and then exclude many MSP articles used for such repression.

The gaps and weaknesses in the Operative Provisions in the EU Code must be thoroughly addressed. The scope of controls needs to extend to the full range of arms and security equipment, technology, components, licensed production, brokering, transporting, financing, expertise and services so as to ensure these do not contribute to human rights violations or breaches of international humanitarian law. To be meaningful, definitions in the Code must at least cover commercial sales and sub-contracting, government-to-government deals, “third country” dealing by EU citizens and residents, “arms in transit” via the EU and “surplus arms”. These should all be explicitly stated in the strengthened wording of the EU Code.

Amnesty International believes that, to help protect human rights, the enlarged EU must:

- 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, marketing, brokering and transfer of equipment easily used for torture, ill-treatment and death penalty, and strictly control the export of other security equipment 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 to widen the extra-territorial application of EU laws on arms brokering, transporting, and financing, and to properly regulate surplus arms;
- prevent the unregulated spread of arms production by adopting an EU Joint Action to effectively control EU licensed arms production in third countries as well as the export of components and dual use technologies, including surveillance and communication items, that can contribute to human rights violations;
- 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.

Given the weaknesses in the EU Code and related EU mechanisms, the large number of new states that have joined the EU at the same time - a number of whom have a record of weak arms export control - has increased the risk that future interpretation and implementation of relevant EU mechanisms will be watered down. Some of the new Member States do not have sufficient capacity to meet the existing obligations immediately. 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, unless the review results in a much stronger Code and associated mechanisms, any EU programme of support to new Member States will have limited effect.

It must also be remembered that the accession of the 10 new states into the EU on 1 May 2004 is probably not 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; all three 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, the acceptance and implementation of international human rights and arms control standards 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 EU mechanisms.

The future for arms control: An International Arms Trade Treaty

To help overcome some of the fundamental problems with the EU arms control regime, EU Member States should actively support a process to develop a legally binding arms trade treaty. The benefits of such a legally binding international arms trade treaty would be a strengthening of the export criteria in the EU Code (which is only politically binding) and, unlike the EU Code, it could be ratified and implemented by a much greater number of states across all world regions. 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, and will be pushing for its principles to be included in the Programme of Action when it is reviewed at the UN Conference on Small Arms and Light Weapons in 2006.
