



Committees on Arms Export Controls

Oral evidence: [Scrutiny of Arms Exports 2014](#), HC 695

Monday 7 April 2014

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Members present: Sir John Stanley (Chair); Katy Clark; Ann Clwyd; Mike Gapes; Mr James Gray; Fabian Hamilton; Ann McKechin; Bob Stewart; Gisela Stuart

Questions 191-206

Witness: **Rt Hon Peter Hain MP**, gave evidence.

Q191 Chair: Mr Hain, welcome to our Committee for this formal oral evidence session. We have asked you to come and give oral evidence to us today on what is, probably, the key policy issue for these Committees, which is Government policy on the export of arms that can be used for internal repression. The purpose of this session is to obtain an understanding from you as to what the policy was of the previous Government and whether that policy has or has not been changed by the present Government.

By way of background and for the record, I just need to recite the key ministerial statements in chronological order that we are dealing with. We start with the written answer that you gave as the then Minister of State in the Foreign and Commonwealth Office on 26 October 2000, when you set out the United Kingdom's consolidated criteria for arms exports. In your written answer, you made two policy statements with regard to the export of arms that could be used for internal repression.

Those two policy statements were as follows. The first was in the last paragraph of the opening section of your answer before you went on to list each of the numbered criteria. It read as follows: "An export licence will not be issued if the arguments for doing so are outweighed by [...] concern that the goods might be used for internal repression [...]." That was your first statement and provided what I would describe as a broad test of whether these types of goods should be exported where they might be used for internal repression.

You then went on to state a second policy in criterion two, which I would describe as a very much narrower test. You said "the Government will [...] not issue an export licence if there is a clear risk that the proposed export might be used for internal repression."

So, the conclusion that we have drawn in this Committee from the last Government and under this Government is that you announced two tests, one a broad test and one a very narrow test—the so-called "clear risk" test. That was the policy that, as far as we understand it, continued throughout the lifetime of the previous Government.

We then come to the present Government, and the first policy statement that was made during the present Government, not surprisingly perhaps, was in the immediate aftermath of the outbreak of the so-called “Arab spring” at the beginning of 2011, when it was found that a significant number of UK-approved arms exports that could be used for internal repression were found in Arab-spring countries in the middle east. That statement was made by the then Foreign Officer Minister, Alistair Burt, in a press statement on 18 February 2011, in which he said this: “The longstanding British position is clear. We will not issue licences where we judge there is a clear risk that the proposed export might provoke or prolong regional or internal conflicts, or which might be used to facilitate internal repression.” That seemed to the Committees to be a faithful and accurate reflection of the two tests, one broad and one narrow, which you had previously announced back in October 2000.

We returned to the same issue approximately a year later when the Foreign Secretary came in front of us on 7 February 2012. I put this question to the Foreign Secretary: “As far as arms exports that involve weapons that could be used for internal repression are concerned, your junior Minister, Alistair Burt, in his press release statement on 18 February last year, entirely accurately and correctly summarised the previous Government’s position carried forward by the present Government on policy in this area. He summarised that accurately in these words: ‘The longstanding British position is clear. We will not issue licences where we judge there is a clear risk the proposed export might provoke or prolong regional or internal conflicts, or which might be used to facilitate internal repression.’

“Foreign Secretary, has that policy changed, or is it as correctly stated by Mr Alistair Burt?

“**Mr Hague:** That is still the policy.”

The Foreign Secretary went on to say: “The ‘or’, as you have pointed out on other occasions, is important.”

So the two tests continued in that statement.

However, two years later, on 8 January of this year, when the Foreign Secretary came in front of us, we had a further exchange on this issue, and I put the following question to the Foreign Secretary: “At the Committee’s oral evidence session with you on 7 February 2012, we asked you for a clear statement as to the Government’s policy on arms exports and internal repression. You said that the policy was: ‘We will not issue licences where we judge there is a clear risk that the proposed export might provoke or prolong regional or internal conflicts, or which might be used to facilitate internal repression.’ Foreign Secretary, is that still the Government’s policy?

“**Mr Hague:** Yes.”

Then the Foreign Secretary went on to say: “The ‘clear risk’”—“clear risk” being in quotes—“applies to both parts of the sentence.” In other words, the broad test appears to have gone out of the window.

That, indeed, is confirmed by the Business Secretary’s written ministerial statement of 25 March 2014 in which the consolidated criteria that you, Mr Hain, announced to Parliament on

26 October 2000 have now been replaced by the Business Secretary's present statement, headed "The Consolidated EU and National Arms Export Licensing Criteria." In that written ministerial statement, the words of the broad test that were in your original consolidated criteria have been removed and do not appear. The only reference to arms exports and internal repression is the narrow test. It is there again in criterion two. It reads as follows: "...the Government will not grant a licence if there is a clear risk that the items might be used for internal repression."

The first question, Mr Hain, I would like to put to you is this. Are the Committees right or not in understanding that throughout the period of the previous Government you applied both the broad test, which I quoted in your original consolidated criteria, and also the narrow "clear risk" test?

Mr Hain: Sir John, thank you for inviting me. I agree with you that there was the broad test that related to concern, which is stated in the preamble to my written ministerial statement, and then there was the—sorry, the narrow test that related to concern. Then there was the broader test. Well, it depends which way you define this. There was a broad test that related to concern, and then there was a narrow test that related to clear risk. Why did I include both of those? I included both of those because different people might share a concern that exports could be used for internal repression. We might share that concern. Hence, on the second test, we might have a different judgment of the risk. One might think, "Well, I'm concerned, but actually there is no risk. I don't judge there to be a risk on the basis of the information given to me." Another might say, "I agree with the concern, but there is no risk. So it passes, as it were, the second test but it doesn't pass the first test." If you do not include both of those tests, as appears to be the case in the statement from the Business Secretary of 25 March, which I have read, and where, as you say, he repeats the second test about the clear risk but he drops the first one, which is the broader one about concern, then the policy has changed from the way that I enunciated it in 2000.

Q192 Chair: Thank you. That brings me to one further question, which I think you have more or less answered. The Business Secretary stated in his written statement of 25 March: "None of these amendments should be taken to mean that there has been any substantive change in policy." Do you disagree with that or agree with it?

Mr Hain: I disagree with it for the reasons I have explained. While there has been a faithful transposition of criterion two (a) from my original statement in terms of a clear risk, there is no transposition of the first, broader test about concern. To that extent, I judge that the policy has changed, yes.

Chair: Do any of my colleagues wish to ask anything?

Q193 Ann McKechin: Yes. To what extent were you aware that the staff who were dealing with the export licences were aware of the fact that there would be two tests applied for licences about the issue of risk, on the one hand, and concerns, on the other?

Mr Hain: All of my officials were very aware of those two. You started off with the concern and then you applied an additional test—a narrower test—of risk. Yes, they were both very clear, as I was. I remember going through that draft of the ministerial statement very carefully indeed, because it was a very important statement.

Q194 Bob Stewart: It is a bit unfair, perhaps, Mr Hain, after all this time, but maybe you can remember. Do you have a concrete example of a broad criteria refusal and do you have a concrete example of a narrow criteria refusal in export licences? From your expression, if you say, “No, I don’t. I can’t remember,” I will withdraw my question, but, if possible, could you give us an example of what it might have been?

Mr Hain: I can’t remember a specific case, but if I were to imagine a specific case—

Bob Stewart: That’s fine.

Mr Hain: —it might be, in the context of ongoing conflict between Israelis and Palestinians, that you might say, in terms of issuing an export licence to Israel, you were concerned about the possibility of it being used for internal repression. However, a peace process had been established. There was no active conflict at the time, and you might judge that there was no clear risk. Now, I cannot recall that being the case because there was a peace process in 2000 and in the months leading up to it, but then the intifada happened after that broke down and the conflict resumed. That might be the kind of situation you could imagine, but I cannot, I am afraid, recall a specific example.

Bob Stewart: I think that is a fair enough answer; thank you.

Q195 Mike Gapes: Let me give you another example, which is what happened in Sri Lanka. There was a period when we were not exporting to Sri Lanka. There was then a ceasefire, during which time—and the previous Foreign Affairs Committee was very critical of this—there was a resumption of exports to the Sri Lankan Government. Then the ceasefire broke down, and it appears that exported weaponry into Sri Lanka—we were never able to determine what—including rifles, ammunition and small arms of various kinds, was used subsequently during the last few years of the Sri Lankan civil war. Clearly, there was a judgment at one point that the ceasefire might lead to a political process, but, actually, we ended up with what happened in 2009. That might be another real example, but you were not the Minister at that time in that Department.

Mr Hain: No.

Mike Gapes: Nevertheless, I do flag that up as a possible example.

Mr Hain: Having been a Minister for Sri Lanka, and having sought to work with the Norwegian peace representative/facilitator, to try and bring a negotiated end to it, I was always concerned; so exports would have failed the broader test in that instance. But, on the second narrower test, presumably, the Government and the Ministers at the time took the decision that there was no risk, whereas it turned out that there was. If you had applied the first criterion, then you would not have proceeded with any exports.

Q196 Ms Stuart: In your view, has the Government’s policy on arms exports changed since you were a Minister?

Mr Hain: In the statement issued by the Business Secretary last month, yes, it has. It has been relaxed in the sense that the broader test that I applied no longer exists. In other respects, that statement is an admirable modernisation—an updating—of the situation. For example, I noticed that in criterion two (c) there is a welcome addition to items that might be used, and I quote, “to commit gender-based violence or serious violence against women

or children.” That was not part of the original statement, and I think that is a welcome update. There are updates on treaties and so on, which are welcome, and then there is a repeat of the second test, as it were, the narrow test, which is welcome, but the broader test has been dropped. So I do think the policy has changed. It is a more relaxed approach to arms exports.

Q197 Ms Stuart: I totally understand. Your view is that, with the Business Secretary’s statement, while we have updated helpfully in some areas, broadly speaking we have relaxed.

Mr Hain: By omitting the broader test of concern, we have relaxed the policy.

Q198 Ms Stuart: If you regard this to be an unfair question, please just say, “This is outwith my remit.” In October 2013, the Foreign Secretary did not think that there had been any changes. Was he at that stage wrong, or was he, in October 2013, right?

Mr Hain: He laid great stress on the “or.” The word “concern” is actually not in the quotes he used in his evidence. The word “concern” is not there, but, without the word “concern,” it is more or less the same. So the “or” is rather important, as the Chair, Sir John, confirmed to him. I had noticed that the word “concern” was not in there, nevertheless.

Q199 Ms Stuart: I really don’t want to put words into your mouth, but do you see a substantive difference between the Foreign Secretary’s view and the Business Secretary’s view, or is the Business Secretary’s statement taking the position further than the Foreign Secretary had, or did the statement simply express the same thing but in different words?

Mr Hain: Sir John, as Chair, took a face-value assessment, which I don’t quarrel with, on the Foreign Secretary’s statement, although he did not use the word “concern.” Nevertheless, it is a reasonable interpretation that he was talking about the same thing as my statement talked about. The Business Secretary’s written ministerial statement of March 2014 limits it to the clear risk. If you take a charitable view of the Foreign Secretary’s answer—and who am I not to?—then the Business Secretary has changed the policy. If you don’t take a charitable view of the Foreign Secretary’s answer, meaning that you attach a lot of importance to the fact that he did not use the word “concern” as per my original statement, then you might think that they were more or less in the same place.

Q200 Chair: Would you agree, Mr Hain, that the key issue here is whether your broad test has been dropped or not? Given that the Foreign Secretary, in the statement that he made to the Committees on 8 January which I read out, said that the clear risk applies to both parts of the sentence—in other words, the broad test goes out of the window—it is, in essence, no different from the Business Secretary’s written ministerial statement a few weeks later, where, again, the broad test is not to be seen.

Mr Hain: Yes. On that view of his statement, absolutely, then the two are consistent. That is why there are different takes on that statement.

Chair: Thank you.

Q201 Mike Gapes: Given your experience as a Minister in the Foreign and Commonwealth Office at the time when these consolidated criteria were being developed, could you confirm that, although the Department, as it then was, namely, the Department of Trade and Industry, would take the lead role in terms of exports, any consolidated criteria statement would have

had to have been approved at the highest level within the Foreign and Commonwealth Office, the Ministry of Defence and, presumably, the Department for International Development as well? So it would not be a question of a Department going out on its own. It would have to have been a collective position representing the Government as a whole.

Mr Hain: Yes—and ultimately it would come to Ministers to decide. For example, an agreed position on a particular case might come to me that had been negotiated between officials of the Departments involved, and I might say—in fact there were some occasions when I did say—“I’m not happy about that. I would like you to go back and say that, from a Foreign and Commonwealth Office point of view, I think we’ve laid too much stress on the opportunities for a company to trade its goods—its exports.”

Q202 Mike Gapes: Can I get back to the wording of the consolidated criteria as opposed to a specific decision? When the decision was taken in 2000, this was, clearly, a position that had been agreed within Government.

Mr Hain: Absolutely.

Q203 Mike Gapes: Therefore, would you, like me perhaps, assume that any statement made today, or in March, by the Business Secretary, in terms of the new consolidated criteria, will have been agreed within the different Government Departments collectively?

Mr Hain: Unquestionably.

Q204 Mike Gapes: Therefore, would you agree with my view that there has been a change between the Foreign Secretary’s statements towards the end of last year and the statements made by the Business Secretary three months later?

Mr Hain: That appears to be the case to me.

Q205 Mike Gapes: With the agreement, presumably, of the Foreign and Commonwealth Office and other departmental Ministers.

Mr Hain: There would have to be agreement. This policy was never unilaterally determined by one Department or the other. It was an agreed position.

I might add, Sir John, that these decisions were not taken lightly. They were meticulously assessed, because you have to consider the opportunities for the British industries involved, the jobs involved and, therefore, the economic effects, as against your concerns about how they might be used for purposes that we did not agree with as a Government. So there was not a pre-set view that you would always oppose export licences or you would always grant them. You looked at each case on its merits. The submissions, as I remember, coming through to me were not just a page; they were quite detailed. The criteria were all assessed for each one.

Q206 Mike Gapes: Finally, would you take the view that there is, therefore, a deliberate change of approach by the Government collectively on this particular issue to downplay the issue of internal repression in order to encourage greater possibilities of defence sales to some countries?

Mr Hain: It would appear so. I am genuinely puzzled how the Government can reconcile the Foreign Secretary's evidence and statements that the policy has not changed with dropping the broader test, keeping, in the exact words, the second test but dropping the former one. Either the policy has changed or it hasn't. If it hasn't changed, why do you not include both tests with the welcome updates that I have referred to, such as the effect of conflicts on women or additional treaties that were not in existence then? That is what puzzles me. And how can you reconcile, on the one hand, the statement by the Government that the policy has not changed, and then a glaring omission of the broader test, which suggests that it has?

Chair: Mr Hain, thank you very much indeed. That has been extremely helpful. I am most grateful.