

## Written evidence submitted by Control Arms UK

### Summary of Key Recommendations

#### **Mandate and scope of CAEC. Control Arms UK recommends that:**

- The CAEC in future explicitly references issues of major topical concern, includes as a standing item in its inquiries ‘licences/destinations of concern’, and takes full advantage of the UK’s system of quarterly reporting in the scope of its inquiries
- The CAEC considers establishing itself as a separate, standalone select committee

#### **Arms exports to Saudi Arabia and the war in Yemen**

- The CAEC should seek detailed evidence from the government on:
  - the scale and nature of arms delivered under open licences to Saudi Arabia since March 2015
  - their legal interpretation of a “serious violation of IHL”, key to risk assessment under criterion 2c
  - their basis for requiring a “pattern” of serious violations of IHL to be necessary to create a risk of a single violation in future
  - how they interpret the word “pattern”, including in light of the UN determination that such a pattern exists in Yemen
  - the new risk assessment methodology used in arms licensing (as no detailed explanation has, to date, been forthcoming from the government)
  - exactly how many incidents recorded in the MOD ‘Tracker’ are regarded as likely cases of violations of international law

#### **Examples of other problematic destinations**

- The CAEC should seek from the government:
  - detailed evidence on the scale and nature of arms delivered to Egypt, Turkey and UAE, and on the grounds for determining that none of these approved transfers were problematic under the Consolidated Criteria
  - clarity about whether and how the new risk assessment methodology was applied to these destinations

#### **Countries subject to trade restrictions**

The CAEC should ask the government to provide:

- far more detailed information on individual licences, including the nature of the end-user, for exports to countries subject to trade restrictions.

#### **Autonomy in weapons systems and dual-use transfers**

The CAEC should:

- scrutinise the Government’s provisions with respect to dual-use technology and hardware which could be incorporated into lethal autonomous weapons systems

#### **Enforcement and control of ‘brass-plate’ arms brokering companies**

The CAEC should recommend that:

- The government uses the opportunity presented by the review of Companies House and the running of the company register to make tighten control of brass-plate brokering companies after more than a decade of limited progress in this area.
- DIT requests the Companies House website provides clear and accessible information on export control issues, particularly in relation to arms brokering, so that it is clear to anyone establishing a company via the online registration system that brokering of strategic goods is subject to export controls, including extra-territorial controls.
- A specific system is established to enforce these powers, including an inter-departmental working group comprising of enforcement teams from export licensing and HMRC, to investigate cases involving arms brokering undertaken by brass-plate companies. Where formal prosecution using existing export control legislation is deemed problematic, yet reasonable grounds remain for concluding that offences have been committed, this should include the establishment of formal procedures whereby the Secretary of State responsible for export licensing notifies Companies House of his/her recommendation to remove specific companies from the UK register and the rationale for doing so.
- The UK sets up a register of arms brokers (as encouraged in Article 10 of the ATT) including the establishment of a fit-and-proper-person test for all companies and individuals wishing to broker strategic goods. Failure to register would further strengthen the enforcement of existing brokering controls, especially in cases involving brass-plate entities.

### **Sniper rifles**

The CAEC should recommend that:

- The government explains how its approach to assessing licence applications for exports of sniper rifles and related equipment and technology is consistent with its obligations under the Consolidated Criteria
- The government produces a dedicated section in its Annual Report setting out all sniper-rifle-related export and brokering licences approved or refused and the rationale for approving or refusing licences for transfers to a list of “sensitive” countries (to be agreed with the CAEC).
- CAEC investigates whether and how a whole-of-government approach is or is not taken to export control enforcement, including by calling a cross-departmental panel of witnesses to give oral evidence.

### **Regulation of torture equipment post-Brexit**

The CAEC should recommend that the government:

- seek full involvement in the relevant EU information sharing and consultation mechanism (see ‘The future of multilateral export controls post-Brexit’ below)

### **Provision of law-enforcement and military training**

The CAEC should request that:

- the government introduce controls to regulate the provision of instruction and training provided by all relevant State entities, private companies or educational establishments so as to ensure that such provision does not contravene criterion 2 of the Consolidated Criteria. Specifically, that such instruction or training does not promote or include inappropriate or abusive policies, practices, or techniques that could facilitate internal repression or the commission of serious human rights violations, or breaches of international humanitarian law.

- All instruction or training of law enforcement officials or military personnel is in line with, and actively promotes, adherence to international human rights standards and international humanitarian law. Appropriate accountability, reporting, evaluation, and impact assessment measures are established to monitor adherence of these education and training programmes to these principles.

### **Export licensing and COVID-19**

- CAEC requests
  - details of all licences refused under criterion 2 of the Consolidated Criteria, especially relating to internal repression, during the COVID-19 pandemic.
  - details of any guidance issued relating to human rights violation monitoring and risk assessment processes in the context of COVID-19 responses.

### **Reporting on open licences, arms imports and end-users**

- The government includes in its quarterly and annual reports
  - information on all deliveries made under open licences, including on types, quantities and values of items, and on destinations
  - more detailed information of end-users for all types of licence.
- The government meets all its reporting obligations under the ATT, including on arms imports

### **The future of multilateral export controls post-Brexit**

- The government provides details of the negotiations with the EU on matters relating the EU export control systems as part of the Brexit process, specifically relating to areas around information exchange, cooperation, reporting and alignment.
- The UK seeks to rejoin the EU licence denial notification and consultation system at the earliest opportunity, as well as other relevant information systems relating to the control of dual use goods, firearms, and torture equipment.
- The ECJU provides details of how the Irish protocol is implemented with regards to controls over controlled goods, particularly in the context of the regulations on dual-use goods and torture equipment.

### **Post-export controls**

- The government reserves the right to include end-use conditionality, including provision for on-site inspections, when authorising arms transfers
- For selected transfers where there are concerns that end-use undertakings may not have been complied with, the government undertakes post-export onsite inspections.

### **Introduction**

1. Control Arms UK<sup>1</sup> welcomes the Committees on Arms Export Control's (CAEC) inquiry into "UK arms exports in 2019."

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<sup>1</sup> Control Arms UK is the UK national platform of the Control Arms Coalition, an international coalition of non-governmental organisations, research institutions and other civil society organisations working for effective controls on the international arms trade. Each individual organisation brings different areas of policy expertise encompassing a wide range of related policy concerns and therefore may not address or take specific views on or endorse all areas contained within this submission. The members of Control Arms UK for the purposes of this submission include Action on Armed Violence, Amnesty UK, Omega Research Foundation, Oxfam, Saferworld, United Nations Association – UK.

2. We have engaged with the CAEC and its predecessor, the Quadripartite Committee (QSC), since the QSC was first established more than two decades ago. Drawing on this long experience, and reflecting on all the ground-breaking work the CAEC/QSC has done down the years in holding successive governments to account for their arms exports policy and practice, we are concerned that during the previous parliament the level of scrutiny provided for by the CAEC fell short of the standards established its earlier iterations.
3. The CAEC's most recent Report – “UK arms exports during 2016” – was published on 18 July 2018 ,with a window of scrutiny which is now over four years in the past.<sup>2</sup> The following inquiry, “2017 arms export controls Annual Report” never concluded and did not produce a report.<sup>3</sup> This was due in part to the disruption caused to parliamentary business by the 2019 General Election, exacerbated by the difficulties the CAEC has always experienced in expediting business in light of its complicated structure. The Terms of Reference (ToR) of the 2017 inquiry were, however, of concern in that they did not address the main export control issue facing the UK then as now: the export of arms for use in the Yemen war.<sup>4</sup> The then Chair of the CAEC was also clear in discussions with Control Arms UK members that he regarded this issue as already dealt with by the CAEC and not an ongoing priority.
4. The ToR of the current inquiry appears to draw significantly from the restricted template of the last, with no reference to scrutiny of UK arms export decisions as they apply to conflict, especially in what the UN considers the “world’s worst humanitarian crisis”: Yemen.<sup>5</sup> The Court of Appeal found against the government over arms exports to Saudi Arabia for use in Yemen; the government has since reviewed the licensing process in light of that Court decision and concluded that the right decisions were made; meanwhile a large swathe of countries, including allies such as the US and allies in Western Europe (including, in the case of EU member states, countries which use the same risk assessment criteria as the UK) have restricted or are in the process of restricting transfers of weapons which could be used in Yemen. There is much for the CAEC to unpick in all of this, and yet it is not at all clear this is seen as a priority.
5. We also note that the ToR refers only to “UK arms exports in 2019, including ... the trends in the statistics and information presented in the 2019 Annual Report.”<sup>6</sup> The ToR of the current inquiry do not take advantage of the fact that due to the UK’s production of quarterly as well as annual reports, licensing data is already available to 30 September 2020. It would seem a missed opportunity in terms of timeliness if the CAEC inquiry does not take into account this more recent licensing information.

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<sup>2</sup> Committees on Arms Export Controls (CAEC), ‘UK arms exports during 2016’, HC666, 18 July 2018, <https://publications.parliament.uk/pa/cm201719/cmselect/cmquad/666/666.pdf>.

<sup>3</sup> CAEC, ‘2017 arms exports Annual Report inquiry’, <https://old.parliament.uk/business/committees/committees-a-z/other-committees/committee-on-arms-export-controls/inquiries/parliament-2017/2017-strategic-exports-controls-annual-report-17-19/>.

<sup>4</sup> CAEC, ‘Committee launches inquiry on 2017 arms exports Annual Report’, 29 November 2018, <https://old.parliament.uk/business/committees/committees-a-z/other-committees/committee-on-arms-export-controls/news-parliament-2017/2017-arms-exports-annual-report-launch-17-19/>.

<sup>5</sup> UN World Food Programme, ‘Yemen: The world's worst humanitarian crisis’, <https://www.wfp.org/yemen-crisis>.

<sup>6</sup> CAEC, ‘Call for evidence: UK arms exports in 2019’, <https://committees.parliament.uk/call-for-evidence/404/uk-arms-exports-in-2019/>.

6. In light of concerns about the ToR, the submission that follows has been split into two parts:
  - a. Part 1: Addresses some of the pressing issues that are central to the UK's stated purpose of export controls: "to promote global security and facilitate responsible exports"<sup>7</sup> but that appear to fall outside the ToR of the current inquiry
  - b. Part 2: Addresses some of the elements explicitly listed in the ToR.

## 7. Recommendations

- **The CAEC in future explicitly references issues of major topical concern, includes as a standing item in its inquiries 'licences/destinations of concern', and takes full advantage of the UK's system of quarterly reporting in the scope of its inquiries**
- **The CAEC considers establishing itself as a separate, standalone select committee**

## Part 1

8. Control Arms UK has identified the following issues as of critical importance and in need of UK parliamentary oversight by the CAEC. In the interests of space, they are indicative rather than an exhaustive list. We are available to discuss these and other topics in greater detail as may be of interest to the CAEC.

### Arms exports to Saudi Arabia and the war in Yemen

9. The Department of International Trade issued 415 standard licences worth £6.759bn for the transfer of arms, equipment and supporting services to Saudi Arabia from the date the Saudi- and UAE- led Coalition intervened in Yemen in March 2015 to 30 September 2020. In addition, there are 93 extant open licences for transfer to Saudi Arabia, unlimited in value and quantity of arms, equipment and services. It is calculated that BAE alone has made more than £15bn in its trade with Saudi Arabia since March 2015.<sup>8</sup> The limitations regarding the amount of information available on open licences conceals the full extent of the trade thereunder, although government reporting does reveal that for the five calendar years 2015 to 2019, there were 32,559 distinct deliveries made from the UK to Saudi Arabia under open licences.
10. In June 2019, the Court of Appeal ordered the government to suspend the issuing of new licences to Saudi Arabia, and to review the risk-assessment methodology used to implement criterion 2c of the Consolidated EU and National Arms Export Licensing Criteria (Consolidated Criteria). On 7 July 2020, Secretary of State for International Trade, Liz Truss, announced that the review was complete, a new methodology had been adopted and the issuing of licence would resume. The Secretary of State said that "... analysis has not revealed any such patterns, trends or systemic weaknesses" in Saudi compliance with International Humanitarian Law in Yemen.<sup>9</sup> However, experts working for

<sup>7</sup> 'UK Strategic Export Controls Annual Report 2019', 30 November 2020, p. 2,

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/940274/uk-strategic-export-controls-annual-report-2019-print-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940274/uk-strategic-export-controls-annual-report-2019-print-version.pdf).

<sup>8</sup> Dan Sabbagh, 'BAE Systems sold £15bn worth of arms to Saudis during Yemen assault', *The Guardian*, 14 April 2020,

<https://www.theguardian.com/business/2020/apr/14/bae-systems-sold-15bn-arms-to-saudis-during-yemen-assault>, accessed 2 March 2021.

<sup>9</sup> Written Statement, Export Licences: Saudi Arabia, Liz Truss, Secretary of State for International Trade, Hansard Statement UIN HCWS339, <https://questions-statements.parliament.uk/written-statements/detail/2020-07-07/HCWS339>.

the UN Office of the High Commissioner for Human Rights have determined that Coalition airstrikes constitute “a consistent pattern of harm to civilians.”<sup>10</sup> Despite the new methodology supposedly being more robust, the review of extant licences and the scrutiny of backlogged new licence applications led to no licence denials, and during the period July-September 2020 a further £1.355bn worth of ML4 category licences for bombs, missiles etc. were issued despite continued attacks on civilians and civilian objects in Yemen.

11. A number of important issues are raised by the government’s approach to these issues, including their interpretation of criterion 2c of the Consolidated Criteria, and their assessment methodology of future risk. The language of criterion 2c is clear, in that the risk of a single serious violation of IHL is sufficient to merit licence denials, and that no “pattern” of past violations is necessary to establish a future risk. We look to the Committees to interrogate this in more detail with both the Secretary of State and officials. Even if a pattern were necessary, there is a need for much greater clarity on the government’s definition of a “pattern” of serious violations, given that, for example, Oxfam research shows an attack on water or health facilities in Yemen every 10 days since 2015<sup>11</sup>, and data from the Civilian Impact Monitoring Project (CIMP) shows one airstrike on civilians or civilian objects every two days on average since the 7 July announcement.<sup>12</sup> Evidence should also be sought from the government on their interpretation of a “serious violation of IHL”, as the government’s position during the Campaign Against Arms Trade (CAAT) v Secretary of State for International Trade case was confused and contradictory, making the basis for licensing decision-making hard to follow.

## 12. Recommendations

- **The CAEC should seek detailed evidence from the government on**
  - **the scale and nature of arms delivered under open licences to Saudi Arabia since March 2015**
  - **their legal interpretation of a “serious violation of IHL”, key to risk assessment under criterion 2c**
  - **their basis for requiring a “pattern” of serious violations of IHL to be necessary to create a risk of a single violation in future**
  - **how they interpret the word “pattern”, including in light of the UN determination that such a pattern exists in Yemen**
  - **the new risk assessment methodology used in arms licensing (as no detailed explanation has, to date, been forthcoming from the government)**
  - **exactly how many incidents recorded in the MOD ‘Tracker’ are regarded as likely cases of violations of international law**

## Examples of other problematic destinations

13 Saudi Arabia has for several years and for understandable reasons tended to monopolise attention with regard to UK arms exports. Saudi Arabia is not, however, the only destination for UK arms

<sup>10</sup> Report of the Group of Eminent International and Regional Experts on Yemen, ‘Situation of human rights in Yemen, including violations and abuses since September 2014’, A/HRC/45/6, 28 September 2020, Section V.a., p. 5, para. 1, <https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf>.

<sup>11</sup> Oxfam, ‘One air raid every ten days on hospitals, clinics, wells and water tanks throughout Yemen war’, 18 August 2020, <https://www.oxfam.org/en/press-releases/one-air-raid-every-ten-days-hospitals-clinics-wells-and-water-tanks-throughout-yemen>.

<sup>12</sup> This figure is obtained by compiling data from CIMP Daily Alert emails from 7 July 2020 until 5 March 2021. Detailed reports and data from CIMP can be accessed and subscribed to at <https://civilianimpactmonitoring.org/reports>.

exports that requires close oversight and about which Control Arms UK has major concerns. Included immediately below is some information regarding export licences, issued from 1 January 2019 to 30 September 2020 to three other countries of concern. Two of these –Egypt and UAE – were included among those to whom for more than half this period no new licences were to be awarded for exports that might be used in the conflict in Yemen, as set out in the statement delivered to the House of Commons by then Secretary of State for International Trade, Liam Fox, in June 2019.<sup>13</sup> The third is Turkey.<sup>14</sup>

- 14 Egypt: The UK issued 13 standard licences valued at £9.95 million and seven open licences. Of the standard licences, more than £7 million were for ML1 items, of which the bulk appear to have been machine guns and sniper rifles and their components. Open licences were issued for *inter alia* components for a variety of naval vessels, including combat vessels. Egypt is on the FCDO Countries of Human Rights Concern<sup>15</sup>, with hundreds of extra judicial killings by security forces recorded since 2015.<sup>16</sup> Egypt has since 2013 been subject to restrictive measures under Council of the EU Conclusions, which include member states agreeing “to suspend licences for export to Egypt of any equipment which might be used for internal repression.” This commitment applied to the UK in the period covered by the report.<sup>17</sup>
- 15 UAE: The UK issued 131 standard licences valued at over £263 million and 13 open licences. Standard licences worth approximately £44 million were issued for ML2 items (light weapons), approximately £14 million for ML4 items (bombs, torpedoes, rockets, missiles, etc.), and approximately £7.5 million for ML1 items (small arms). A single licence valued at £100 million was issued for military support aircraft in August 2020. As well as committing human rights abuses at home<sup>18</sup>, the UAE has diverted weapons to militias in Yemen accused of war crimes.<sup>19</sup> The UAE has also supplied arms to the Libyan National Army (LNA), the forces of General Haftar, in breach of the UN arms embargo on Libya.<sup>20</sup>
- 16 Turkey: The UK issued 199 standard licences valued at over £122 million and 14 open licences. Approximately £38 million worth of licences were issued for ML6 items (vehicles), the

<sup>13</sup> Liam Fox, Secretary of State for International Trade, Hansard, Vol. 662, <https://hansard.parliament.uk/commons/2019-06-20/debates/D9BD8C37-E5A0-4A7E-9959-AC40A0DEE622/ExportLicencesHighCourtJudgment>.

<sup>14</sup> All figures extracted from the UK government’s reporting and statistics database, <https://www.exportcontroldb.trade.gov.uk/sdb2/fox/sdb/>.

<sup>15</sup> Foreign Commonwealth & Development Office, ‘Corporate report: Human rights priority countries: ministerial statement, January to June 2020’, 20 November 2020, <https://www.gov.uk/government/publications/human-rights-priority-countries-autumn-2020-ministerial-statement/human-rights-priority-countries-ministerial-statement-january-to-june-2020#:~:text=The%2030%20Human%20Rights%20Priority,%2C%20Maldives%2C%20Myanmar%2C%20Pakistan%2C>.

<sup>16</sup> Reuters Investigates, ‘Egypt kills hundreds of suspected militants in disputed gun battles’, 5 April 2019, <https://www.reuters.com/investigates/special-report/egypt-killings/>.

<sup>17</sup> Council of the EU, ‘Council Conclusions on Egypt’, 21 August 2013, [https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/138599.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/138599.pdf).

<sup>18</sup> Human Rights Watch, ‘United Arab Emirates: Events of 2020’, <https://www.hrw.org/world-report/2021/country-chapters/United-arab-emirates>, accessed 16 March 2021.

<sup>19</sup> Amnesty International, ‘Yemen: UAE recklessly supplying militias with windfall of Western arms’, 6 February 2019, <https://www.amnesty.org/en/latest/news/2019/02/yemen-uae-recklessly-supplying-militias-with-windfall-of-western-arms/>.

<sup>20</sup> Ruth Michaelson, ‘Turkey and UAE openly flouting UN arms embargo to fuel war in Libya’, *The Guardian*, 7 October 2020, <https://www.theguardian.com/global-development/2020/oct/07/turkey-and-uae-openly-flouting-un-arms-embargo-to-fuel-war-in-libya>.

overwhelming majority of which was for military combat vehicles and tanks. A number of licences for combat vehicles were revoked in November 2019 (see below), however around £28 million of the ML6 licences were issued subsequently, in 2020. Licences to the value of approximately £22 million were issued for ML10 items (aircraft), including components for combat aircraft and helicopters. Approximately £19 million worth of standard licences were issued for ML4 items (bombs, torpedoes, rockets, missiles, etc.). Several open licences were for components for a variety of naval vessels, including combat vessels. Turkey has also been shown to be in breach of the UN arms embargo on Libya, providing support to the LNA.<sup>21</sup> The UK suspended the issuing of licensing of arms transfers and revoked some licences to Turkey in October 2019 due to concerns about diversion of arms to militias involved in war crimes, and Turkish attacks on Kurdish civilians in Syria, but arms continue to be delivered under other extant licences<sup>22</sup> and, as noted above, the government has since resumed issuing new licences, including for combat equipment.

## 17 Recommendations

- **CAEC seeks from the government**
  - **detailed evidence on the scale and nature of arms delivered to Egypt, Turkey and UAE, and on the grounds for determining that none of these approved transfers were problematic under the Consolidated Criteria**
  - **clarity about whether and how the new risk assessment methodology was applied to these destinations**

## Countries subject to trade restrictions

18 There are significant concerns about the extent of strategic exports approved to countries that are on the DIT's list of 'Countries subject to arms embargo, trade sanctions and other trade restrictions'. The Action on Armed Violence report 'UK approves military exports to 80% of countries on own restricted list'<sup>23</sup> provides a comprehensive assessment of these exports. Selected examples include:

- Weapon sights to law enforcement end-user in Nigeria (April 2020)
- 960 machine guns, four licences over four years, to Trinidad & Tobago. In one case the end-user is specified as 'armed forces'; for the other three licences the end-user is unspecified
- 3,000 assault rifles to Kenya, worth £9.5m, for government end use in 2017
- Sniper rifles (unspecified user, £6K over two licences, 2018/19) and riot shields to Kyrgyzstan (2015)
- Machine guns (January 2020) and tear gas (five licences over five years) to law enforcement in Oman<sup>24</sup>

<sup>21</sup> Ibid.

<sup>22</sup> See Martin Chulov, 'Syria: videos of Turkey-backed militias show "potential war crimes"', *The Guardian*, 26 October 2019, <https://www.theguardian.com/world/2019/oct/26/syria-turkey-arab-videos-torture-kurdish-bodies-militia>; Patrick Wintour & Dan Sabbagh, 'UK suspends arms exports to Turkey to prevent use in Syria', *The Guardian*, 15 October 2019, <https://www.theguardian.com/world/2019/oct/15/uk-suspends-arms-exports-turkey-prevent-use-syria>; and Campaign Against Arms Trade, 'UK arms sales to Turkey', last updated 8 July 2020, <https://caat.org.uk/resources/countries/turkey/uk-arms-sales-to-turkey/>, accessed on 16 March 2021.

<sup>23</sup> Murray Jones, 'UK approves military exports to 80% of countries on own restricted list,' *Action on Armed Violence*, 26 January 2021, <https://aoav.org.uk/2021/uk-approves-military-exports-to-80-of-countries-on-restricted-list/>.

<sup>24</sup> See separate Action on Armed Violence submission to this inquiry for many more examples, and see the 'UK approves military exports to 80% of countries on own restricted list,' *op. cit.* for details of the nature of the government restrictions applied to the destinations used in these examples.



19 The scale and range of destinations and types of equipment suggest that the declared restrictions do not prevent suppliers from exporting lethal items to internally repressive regimes. More transparency over the end user, the rationale for allowing the exports in question and the assessment criteria of items to destinations on the restricted list may help to allay these fears. We recommend a clear and more consistent inclusion of information on end-users in the UK’s national reporting system.

## 20 Recommendation

- **The government provides far more detailed information on individual licences, including the nature of the end-user, for exports to countries subject to trade restrictions.**

## Autonomy in weapons systems and dual-use transfers

21 Over the last decade concerns about the development of lethal autonomous weapons systems (also known as “killer robots”, fully autonomous weapons) have been a subject of increasing concern to the international community. Since 2014, it has been discussed at the UN under the auspices of the Convention on Certain Conventional Weapons (CCW), which aims to ban or restrict the use of inhumane weapons. The UK has stated it “does not possess fully autonomous weapon systems and has no intention of developing them.”<sup>25</sup> There is wide recognition that the need to preserve human control over weapon systems and the use of force in armed conflict will require limits on autonomous weapon systems in order for them to be capable of complying with IHL.<sup>26</sup> As autonomous elements are increasingly deployed in weapons systems around the world, given the potential for UK technology and hardware to be exported for the purpose of incorporation into lethal autonomous systems incapable of complying with IHL – and therefore in breach of *inter alia* criterion 2 of the UK’s Consolidated Criteria (“respect by [the destination] country for international humanitarian law”) – the CAEC should consider how best to expand its oversight to address this emerging consideration.

## 22 Recommendation

- **CAEC scrutinises the Government’s provisions with respect to dual-use technology and hardware which could be incorporated into lethal autonomous weapons systems**

## Enforcement and control of ‘brass-plate’ arms brokering companies

23 Control Arms UK and previous iterations of the CAEC have raised the issue of loopholes in the enforcement of the current brokering control regime with regard to brass-plate companies for over a decade. Such companies have been used to broker weapons without the necessary trade control licences, including in violation of arms embargoes and related sanctions. To this day, there remains no effective system in place to adequately regulate these companies or to enforce existing brokering controls in relation to them. Numerous examples of the use of these companies for brokering activity are a matter of public record but have included deals to destinations or end-users subject to arms embargoes and related sanctions. Two recent examples include a £34 million contract for small arms and light weapons to South Sudan and the supply of drone technologies and aero engines to ISIS

<sup>25</sup>MOD Joint Doctrine Publication 0-30.2: Unmanned Aircraft Systems, August 2017, updated January 2018, section 2.6, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/673940/doctrine\\_uk\\_uas\\_jdp\\_0\\_30\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/673940/doctrine_uk_uas_jdp_0_30_2.pdf).

<sup>26</sup> Vincent Boulanin, Neil Davison, Netta Goussac and Moa Peldán Carlsson, ‘Limits on Autonomy in Weapon Systems’, *SIPRI and ICRC*, June 2020, <https://www.icrc.org/en/document/limits-autonomous-weapons>.

operatives in Syria.<sup>27</sup> Despite repeated assurances by the UK government, no action has been taken against these companies or any of the individuals involved in establishing or running them.

- 24 Control Arms UK has repeatedly called on the government to make explicit use of existing powers relating to public interest to, where relevant, shutter companies and ban their directors from setting up similar entities. Where there are reasonable grounds to assume the involvement of a brass plate company in unlicensed arms brokering activities, the government could trigger the necessary public-interest grounds to strike it off the company register via powers already available under the Insolvency Act 1986. Despite repeated recommendations that the government departments responsible for enforcement of brokering controls set up a specific process to utilise these pre-existing powers and apply them to illicit brokering activities, to our knowledge no such system has been established. As a result, some ten years after we started documenting these loopholes, brass-plate arms brokering companies still operate in a legal and regulatory vacuum.
- 25 In 2021 a further opportunity will arise to close these unacceptable loopholes in this area. Following a public consultation on corporate transparency and register reform, in September 2020, the Government stated that it would introduce new legislation as soon as practical to do so.<sup>28</sup> In its response to the consultation that government declared: “Many of these reforms will require legislation to implement. Before reaching that point, we intend to publish a comprehensive set of proposals that will set out in detail how we think these reforms should be implemented. Subject to the views received we will then proceed to legislate where necessary when Parliamentary time allows.”<sup>29</sup>
- 26 Control Arms UK urges those responsible for implementing and enforcing arms export brokering control use this opportunity to press for specific changes to be made to prevent UK companies being used as a conduit for illegal brokering activity.

## 27 Recommendations

- **The government uses the opportunity presented by the review of Companies House and the running of the company register to make tighten control of brass-plate brokering companies after more than a decade of limited progress in this area.**
- **DIT requests the Companies House website provides clear and accessible information on export control issues, particularly in relation to arms brokering, so that it is clear to anyone establishing a company via the online registration system that brokering of strategic goods is subject to export controls, including extra-territorial controls.**
- **A specific system is established to enforce these powers, including an inter-departmental working group comprising of enforcement teams from export licensing and HMRC, to**

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<sup>27</sup> See for example Control Arms UK written submission to CAEC in its 2018 enquiry, 23 January 2019, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/committees-on-arms-export-controls/2017-arms-export-controls-annual-report/written/95348.html>.

<sup>28</sup> Department for Business, Energy & Industrial Strategy, ‘Corporate Transparency and Register Reform: Government response to the consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities,’ 18 September 2020, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925059/corporate-transparency-register-reform-government-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925059/corporate-transparency-register-reform-government-response.pdf).

<sup>29</sup> Ibid., para. 45.

**investigate cases involving arms brokering undertaken by brass-plate companies. Where formal prosecution using existing export control legislation is deemed problematic, yet reasonable grounds remain for concluding that offences have been committed, this should include the establishment of formal procedures whereby the Secretary of State responsible for export licensing notifies Companies House of his/her recommendation to remove specific companies from the UK register and the rationale for doing so.**

- **The UK sets up a register of arms brokers (as encouraged in Article 10 of the Arms Trade Treaty (ATT) including the establishment of a fit-and-proper-person test for all companies and individuals wishing to broker strategic goods. Failure to register would further strengthen the enforcement of existing brokering controls, especially in cases involving brass-plate entities.**

## Sniper rifles

- 28 The recent investigation by Bellingcat into UK sniper rifles being identified in problematic locations raised concerns about the UK's export of sniper rifles to Russia, Saudi Arabia and Turkey.<sup>30</sup> The case of Russia in particular, where at least some of the sniper rifles identified in the Bellingcat report may have been exported many years ago, highlights how the consequences of exports of this nature can make themselves felt many years after licences are granted.
- 29 In this context, further examination of the last three years of licences for which data is available (1 July 2017-30 September 2020) reveals many examples of potentially problematic licences for the transfer of sniper rifles and related items. This raises a number of questions about whether the existing licensing policy for such a sensitive type of military equipment is appropriate, and whether more stringent standards should be applied to particularly sensitive equipment, e.g. exports allowed only to the UK's most trusted partners, such as longstanding alliance partners (with the application of the criteria still to be applied in these cases).
- 30 See below for a summary of licences issued since mid-2017 for the transfer of sniper rifles and related equipment to a selected few destinations that may give cause for concern. Further examples are available upon request.<sup>31</sup>
- 6 SIELs for Bahrain (August 2018-August 2020), for 422 sniper rifles and components and technology for sniper rifles, valued at between £1,051,208 and £3,822,938 (likely to be towards the higher figure).
  - 1 SIEL for Egypt (June 2020), for 216 sniper rifles, and components and technology for sniper rifles, valued at £933,328.

<sup>30</sup> Bellingcat, 'How British-made sniper rifles ended up in Yemen, Syria and Ukraine', October 2020,

<https://www.bellingcat.com/news/2020/10/10/how-british-made-sniper-rifles-ended-up-in-yemen-and-syria/>.

<sup>31</sup> Note that the nature of the UK's reporting is such that, depending on the range of items included under any one licence, the level of precision of information provided on the value of approved exports of particular items under SIELs can vary considerably. This accounts for the variation with respect to values as summarised in this list. The UK does not report on the quantities of components and technology licensed, and while the number of complete small arms are usually reported, this is not always the case (which explains why exact numbers of sniper rifles are not available for Qatar, Saudi Arabia and Turkey). Although on many occasions the same licences provided for the export of ammunition, we have not included information on ammunition here as the reporting does not make clear whether this ammunition was intended for use with sniper rifles.

- 4 SIELs for Indonesia (January 2018-May 2019), for 554 sniper rifles, and components and technology for sniper rifles, valued at close to £4,111,083.
- 5 SIELs for Kazakhstan (August 2017-April 2020), for 204 sniper rifles, and components and technology for sniper rifles, valued at not much less than £1,240,838.
- 3 SIELs for Oman (September 2017-December 2019), 142 sniper rifles, and components, technology, equipment for use of sniper rifles, valued at between £475,000 and £492,934.
- 18 SIELs for Pakistan (August 2017-August 2020), for more than 160 sniper rifles, and components and technology for sniper rifles, valued at slightly more than £2,500,000.
- 3 SIELs for Qatar (November 2017-May 2020), more than six sniper rifles, and components and technology for sniper rifles, valued at less than £337,330.
- 2 SIELs for Saudi Arabia (November 2017 and August 2019), for an unknown number of sniper rifles, valued at less than £3,155,468.
- 11 SIELs for South Africa (August 2017-August 2020), for 2,337 sniper rifles, and components and technology for sniper rifles, valued at between £14,624,240,000 and £16,403,060.
- 5 SIELs for Turkey (January 2018-October 2018), for more than 102 sniper rifles, and components for sniper rifles, valued at not much less than £1,255,262.
- 7 SIELs for UAE (July 2017-May 2020), for 37 sniper rifles, and components and technology for sniper rifles, valued at less £1,247,979.
- 1 SITCL for UAE (July 2017), for one sniper rifle and components for sniper rifles, sourced from Brazil, with “no limit” on value.
- A series of OITCLs for the transfer of sniper rifles and components for sniper rifles, along with many other types of small arms and ammunition and related items (with no limits placed on quantities or values), granted for anti-piracy purposes, to and from Comoros, Djibouti, Egypt, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Oman, Seychelles, Singapore, South Africa, Sri Lanka, Tanzania, and ‘vessel and/or platform in international waters’.

31 We also note with concern the letter from Amanda Brooks, Director General (interim) Trade Relations and Implementation in DIT, to the CAEC, subsequent to her oral evidence to the CAEC on 10 November 2020. In that letter she provided *inter alia* information on an assessment of reports that British-made sniper rifles are in the hands of the Russian forces, an issue that we assume would be of significant concern to the government, but about which Ms Brooks seemed relaxed.<sup>32</sup>

32 According to her letter the sum total of DIT’s response has been to check licensing records. The letter also stated that “The Department cannot speculate on how the weapons described by Mr Elwood as ‘arctic warfare’ weapons were able to get into the hands of the Russian forces. It would be a matter for HMRC to investigate if it believed that a breach of our export controls had occurred.”

33 The letter therefore gives some indication of at least some further steps that *could* be taken, while clearly indicating that DIT has neither any intention of taking such steps itself, nor any interest in seeing such steps taken by others. The implication is that HMRC has not investigated, and indeed

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<sup>32</sup> Letter from Amanda Brooks, Director General (interim) Trade Relations and Implementation, Department for International Trade to Mark Garnier MP, Chair of the CAEC, 18 November 2020, <https://committees.parliament.uk/publications/3989/documents/40339/default/>.

the tone of the letter is that if HMRC is even aware of this issue, it was not on account of any actions of the DIT.

- 34 This is clearly relevant to the enforcement of UK export controls, and suggests a basic failing on two counts: due diligence; and cross-governmental communication, cooperation and coherence. Control Arms UK believes that immediately upon these questions being asked by CAEC, and in fact immediately upon the publication of the report by Bellingcat (an organisation with a strong track-record of accuracy and rigour), DIT, as the department ultimately responsible for the integrity of the country's export control system, should have been in consultation with all other relevant departments – including HMRC – to investigate the matter.
- 35 This apparent lack of interest in investigating or even alerting other departments is particularly disappointing in the context of the failings identified following the repeated issuance in 2019 of licences to Saudi Arabia (and Jordan) in contravention of the June 2019 court order by the Court of Appeal.<sup>33</sup> This was explained as a breakdown in communication, with the reassurance then given that systems had been tightened and that parliament could be confident that inter-departmental coherence was sorted.
- 36 This lack of interest also appears to contradict (1) the assertion by the government in its response to the previous CAEC's report 'UK arms exports during 2016' that: "[o]fficials across ECJU communicate and meet with HMRC officials regularly to exchange information on licensing, compliance policy and enforcement issues. DIT and HMRC are also members of the Restricted Enforcement Unit which meets every two weeks with a range of Departments and agencies to review enforcement activities"<sup>34</sup>, and (2) the January 2021 correspondence from the Secretary of State for International Trade on the National Security and Investment Bill, in which the Secretary several times reassures the CAEC that the Export Control Joint Unit works closely with relevant officials across Whitehall.<sup>35</sup>

### 37 Recommendations

- **The government explains how its approach to assessing licence applications for exports of sniper rifles and related equipment and technology is consistent with its obligations under the Consolidated Criteria**
- **The government produces a dedicated section in its Annual Report setting out all sniper-rifle-related export and brokering licences approved or refused and the rationale for approving or refusing licences for transfers to a list of "sensitive" countries (to be agreed with the CAEC).**
- **The CAEC investigates whether and how a whole-of-government approach is or is not taken to export control enforcement, including by calling a cross-departmental panel of witnesses to give oral evidence.**

<sup>33</sup> Dan Sabbagh, 'Truss admits UK broke ban on Saudi arms sales three times,' *The Guardian*, 26 September 2019,

<https://www.theguardian.com/politics/2019/sep/26/truss-admits-uk-breached-court-order-banning-arm-sales-to-saudis-again>.

<sup>34</sup> CAEC, 'UK arms exports during 2016: Government Response to the Committees' First Joint Report', 29 November 2018, Appendix, para. 60, <https://publications.parliament.uk/pa/cm201719/cmselect/cmquad/1789/178902.htm>.

<sup>35</sup> Letter from Rt Hon. Elizabeth Truss MP, Secretary of State, Department for International Trade to Mark Garnier MP, Chair of the CAEC, 19 January 2021, <https://committees.parliament.uk/publications/4606/documents/46708/default/>.

## Regulation of torture equipment post-Brexit

38 The EU Anti-Torture Regulation includes two important processes: the Anti-Torture Coordination Group which allows the EU member states to discuss the application of the Regulation and an information sharing mechanism on licence denials.<sup>36</sup> The UK is no longer part of these processes, however the government has stated it “would welcome the opportunity to continue co-operation with the EU, but that will be subject to whatever settlement we finally agree”.<sup>37</sup>

## 39 Recommendation

- **The government seeks full involvement in the relevant EU information sharing and consultation mechanism (see the section ‘The future of multilateral export controls post-Brexit’ below)**

## Provision of law-enforcement and military training

40 Training of law-enforcement and military officers in the appropriate and safe use of weapons and equipment can reinforce and operationalise human rights and international humanitarian law standards and good practice. But such training needs to be monitored and regulated to ensure it does not facilitate human rights abuses or violations of international humanitarian law. The UK’s overarching Overseas Security and Justice Assistance (OSJA) Guidance aims to ensure that training offered by UK state providers meets the UK’s human rights obligations and values.<sup>38</sup>

41 The UK College of Policing provides policing assistance and training to overseas governments, and has provided this training to 78 countries and in regions all over the world.<sup>39</sup> Concerns have been raised in the media and by certain NGOs that the training the College of Policing has provided to countries such as Nigeria<sup>40</sup>, Hong Kong<sup>41</sup>, Saudi Arabia<sup>42</sup> and Bahrain<sup>43</sup> may have indirectly helped

<sup>36</sup> European Union, Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (‘Anti-Torture Regulation’).

<sup>37</sup> Graham Stuart, Parliamentary Under-Secretary of State for International Trade, HC Deb, Vol. 658, Col. 98, 8 April 2019, [https://hansard.parliament.uk/commons/2019-04-08/debates/14A6A490-A190-4835-8D0E-95E4B12DD37D/ExitingTheEuropeanUnion\(Customs\)](https://hansard.parliament.uk/commons/2019-04-08/debates/14A6A490-A190-4835-8D0E-95E4B12DD37D/ExitingTheEuropeanUnion(Customs)).

<sup>38</sup> Foreign & Commonwealth Office, ‘Guidance: Overseas Security and Justice Assistance Guidance’, 2020, <https://www.gov.uk/government/publications/overseas-security-and-justice-assistance-osja-guidance>, accessed 05 March 2021.

<sup>39</sup> College of Policing, ‘Our international work’, 2020, <https://www.college.police.uk/about/international>, accessed 05 March 2021.

<sup>40</sup> Freedom of Information request from Campaign Against Arms Trade cited in Adam Forrest, ‘UK Police Trained “Brutal” Nigerian Security Forces’, *The Independent*, 23 October 2020, <https://www.independent.co.uk/news/end-sars-nigeria-protests-security-forces-uk-police-training-b1254970.html>, accessed 05 March 2021.

<sup>41</sup> Lizzie Dearden, ‘Hong Kong: UK gave training and ‘support’ to police accused of abuses against protesters – Exclusive: College of Policing’s 2019 training programme revealed amid renewed demonstrations’, *The Independent*, 2 June 2020, <https://www.independent.co.uk/news/uk/home-news/hong-kong-protests-uk-training-china-security-law-police-a9539691.html/>, accessed 05 March 2021.

<sup>42</sup> Reprieve, ‘UK “has not checked” whether Saudi police training led to torture’, 2016, <https://web.archive.org/web/20201101020834/https://reprieve.org.uk/press/uk-has-not-checked-whether-saudi-police-training-led-to-torture/>, accessed 12 March 2021; Reprieve, ‘UK training Saudi police in CSI techniques that risk torture’, <https://web.archive.org/web/20201124212520/https://reprieve.org.uk/press/uk-training-saudi-police-in-csi-techniques-that-risk-torture/>, accessed 12 March 2021; Chris Vallance, ‘Torture fears as British police train Saudis’, *BBC News*, 7 June 2016, <https://www.bbc.co.uk/news/uk-36468268>, accessed 05 March 2021.

<sup>43</sup> Deighton Pierce Glynn, ‘Torture victim seeks review of UK training to Bahrain police’, 15 August 2016, <https://dpplaw.co.uk/torture-victim-seeks-review-uk-training-bahrain-police/>, accessed 18 March 2020; Jamie Doward, ‘Role of UK police in training Bahrain’s forces ‘ignores abuses’’, *The Observer*, 13 August 2016, <https://www.theguardian.com/uk-news/2016/aug/13/british-police-trainers-ignore->

facilitate human rights abuses. Regarding its training in Saudi Arabia, in 2016 the NGO Reprieve reported that the College of Policing had acknowledged there was a risk that the high-tech forensic skills it was training them in “are used to identify individuals who later go on to be tortured or subjected to other human rights abuses”.<sup>44</sup> Subsequent media reports from as recently as 2018 showed the College of Police was still providing training to Saudi police, although the college refused to disclose details.<sup>45</sup> Since April 2017, the College has maintained an “Assessment process” for its training based on the OSJA Human Rights Guidance.<sup>46</sup>

- 42 Since 2018, the University of Huddersfield has been offering an MSc in Security Science to staff of the Royal Police Academy (RPA) in Bahrain, covering areas such as investigative and forensic psychology, criminology, and cyber security.<sup>47</sup> The University states that the course is “in line with the mission advocated by the UK Government’s Department of International Trade” and notes that this forms “part of the [RPA’s] efforts to expose its officers to international police experiences, improve their leadership skills and to solve security issues effectively and at an advanced level.”<sup>48</sup> According to the UK-based Bahrain Institute for Rights and Democracy the RPA is a “torture hub”, and a prison next to the RPA a “scene of electrocutions, rape and beating of inmates”.<sup>49</sup> Of the course, an Amnesty International UK Section spokesperson stated that the university “should immediately suspend its provision of these courses until there has been a full investigation into the possibility of links between graduates of the course and the torture of prisoners in Bahrain”.<sup>50</sup>
- 43 While there is no suggestion the University of Huddersfield, or those it educated, committed acts of torture, institutions must ensure that any training provided is neither facilitating torture, nor profiting from those who torture. When asked about its programme in Bahrain the University of Huddersfield noted, “As part of our monitoring of our involvement, we are in regular communication and consultation with the UK Embassy in Bahrain regarding our work in the region.” Furthermore, the University stated that they had referred media and human rights organisations’ concerns to “the National Institution for Human Rights, the Ministry of Interior Ombudsman, the Prisoners’ and Detainees’ Rights Commission and the Special Investigations Unit” in Bahrain.<sup>51</sup> The OSJA

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[human-rights-abuses-bahrain?CMP=share\\_btn\\_tw](#), accessed 18 March 2020.

<sup>44</sup> Reprieve, ‘UK “has not checked” whether Saudi police training led to torture’, 2016, *op. cit.*; Reprieve, ‘UK training Saudi police in CSI techniques that risk torture’, 2016, *op. cit.*; Chris Vallance, *op. cit.*

<sup>45</sup> Jack Hardy, ‘Hundreds of Saudi police officers trained in Britain ‘aiding regime to commit torture’’, *The Telegraph*, 27 January 2019, <https://www.telegraph.co.uk/news/2019/01/27/college-policing-training-aids-saudi-torture/>, accessed 18 March 2020.

<sup>46</sup> College of Policing, ‘International FAQ: How can the College be sure International policing assistance supports human rights?’, 2020, <https://www.college.police.uk/What-we-do/Learning/International-Academy/Pages/International-FAQ.aspx>, accessed 20 March 2020. Cited in Omega Research Foundation, ‘Review of EU Anti-Torture Regulation and its implementation’, October 2020, <https://omegaresearchfoundation.org/publications/review-eu-anti-torture-regulation-and-its-implementation>.

<sup>47</sup> University of Huddersfield, ‘Bahrain ceremony salutes first MSc Security Science graduates’, 2020, <https://www.hud.ac.uk/news/2019/march/bahrain-msc-security-science-huddersfield/>, accessed 05 March 2021

<sup>48</sup> Email correspondence from the University of Huddersfield to the Omega Research Foundation, dated 8 July 2020.

<sup>49</sup> Colin Drury, ‘British university training Bahrain police based at ‘torture hub’ where electrocutions, rape and beatings all reported’, *Independent*, 19 February 2020, <https://www.independent.co.uk/news/uk/home-news/huddersfield-university-bahrain-police-torture-training-degree-a9344596.html>, accessed 05 March 2021 ; BIRD, University of Huddersfield Master’s Course Taught at Bahraini ‘Torture Hub’, February 12 2020, <http://birdbh.org/2020/02/university-of-huddersfield-masters-course-taught-at-bahraini-torture-hub/>, accessed 05 March 2021.

<sup>50</sup> Cited in Colin Drury, *op. cit.*

<sup>51</sup> Email correspondence from the University of Huddersfield to the Omega Research Foundation, dated 8 July 2020. See Omega Research Foundation, ‘Review of EU Anti-Torture Regulation and its implementation’, 2020, <https://omegaresearchfoundation.org/publications/review-eu-anti-torture-regulation-and-its-implementation>.

Guidance applies to Government-provided “case specific assistance” as well as “broader, often longer-term capacity building assistance”.<sup>52</sup> According to a response to a House of Lords question, however, the OSJA Guidance does not apply in this case as the University is an “independent, autonomous body”, and the training is “a private arrangement”.<sup>53</sup>

44 These cases highlight issues surrounding the lack of applicable guidance, relevant licensing processes, and oversight or evaluation of assistance and training for law enforcement officials provided by UK institutions.

#### 45 Recommendations

- **CAEC requests that the UK Government introduce controls to regulate the provision of instruction and training provided by all relevant State entities, private companies or educational establishments so as to ensure that such provision does not contravene criterion 2 of the Consolidated Criteria. Specifically, that such instruction or training does not promote or include inappropriate or abusive policies, practices, or techniques that could facilitate internal repression or the commission of serious human rights violations, or breaches of international humanitarian law.**
- **All instruction or training of law enforcement officials or military personnel is in line with, and actively promotes, adherence to international human rights standards and international humanitarian law. Appropriate accountability, reporting, evaluation, and impact assessment measures are established to monitor adherence of these education and training programmes to these principles.**

#### Export licensing and COVID-19

46 These are unprecedented times as governments respond to the challenges posed by Covid-19. There is specific concern around the relationship between supplies of military and security equipment and the restrictions, lockdowns and related measures brought in under emergency provisions as governments attempt to control the spread of this virus.

47 The licensing of arms and sensitive dual-use goods presents several complex challenges during this global pandemic, but it is clear that there is an unprecedented and heightened risk of misuse for these types of goods during this period of emergency response. Indeed, as of December 2020, Amnesty International had documented at least 60 countries around the world where serious human rights violations occurred under the pretext of state responses to the Covid-19 pandemic. In many cases this manifested itself in excessive use of force by security personnel in policing public assembly, including the misuse of tear gas and other crowd-control weaponry by state security forces, and, in some cases, the use of live ammunition.<sup>54</sup>

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<sup>52</sup> Foreign & Commonwealth Office, ‘Overseas Security and Justice Assistance (OSJA): Human Rights Guidance’, 2020, p. 4, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583304/OSJA\\_Guidance\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583304/OSJA_Guidance_2017.pdf).

<sup>53</sup> Viscount Younger of Leckie, answer to: Police: Bahrain: Written question from Lord Scriven – HL7777, 24 May 2018, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-05-10/HL7777/>.

<sup>54</sup> Amnesty International, ‘Covid-19 crackdowns: Police abuse and the global pandemic,’ 17 December 2020, <https://www.amnesty.org/en/documents/act30/3443/2020/en/>.



- 48 Beyond law-enforcement operations, governments around the world have also introduced a raft of emergency legislation allowing ever greater monitoring and control of their populations. As such, exports of dual-use goods relating to monitoring, surveillance and image-processing pose heightened risk of misuse for the duration of the pandemic. Longer term, the COVID-19 response risks the misuse of these sorts of technologies being further normalised within state security apparatus.
- 49 Specifically, Amnesty International has documented excessive use of force in policing and security operations during this period in several countries which are recipients of a wide range of UK military and security equipment and related technology. These included, but not limited to: India, Kenya, Nigeria, Poland, Serbia, Sierra Leone, South Africa, and Zambia.<sup>55</sup> Export licensing data show that between them, these destinations were issued with 428 Standard Individual Export Licences for military and dual-use goods valued at £338 million between 1 March 2020 and 30 September 2020 (during the height of the COVID crisis.) Some 45 Open Individual Export Licences were also issued to these destinations during the same period, for which no financial value is provided. Crucially, during this period, no extant licences were revoked and only eight (three standard individual and five open individual) licences were refused, none of which appear to relate to risks of internal repression or other human rights considerations.<sup>56</sup>
- 50 Notwithstanding the limitations of government reporting in trying to establish if licences are being granted in accordance with the Consolidated Criteria, the available data suggests there has been no substantive change in export licensing practice, despite the clear and heightened risk of misuse of a wide variety of military equipment and dual-use technology under the auspices of pandemic response.

## 51 Recommendations

- **CAEC requests**
  - **details of all licences refused under criterion 2 of the Consolidated Criteria, especially relating to internal repression, during the COVID-19 pandemic.**
  - **details of any guidance issued relating to human rights violation monitoring and risk assessment processes in the context of COVID-19 responses.**

## Part 2

### Reporting on open licences, arms imports and end-users

- 52 Control Arms UK has previously highlighted concerns about reporting on open licences and on imports. These concerns remain, and for the record we summarise them here.
- 53 Open licences: The fact that there is still no reporting on deliveries made under open licences undermines the government's claim to be transparent and compromises efforts of external stakeholders to properly understand the role of the UK in the arms trade. This has become more

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<sup>55</sup> Ibid.

<sup>56</sup> UK Government export licensing data to selected countries, 1 March 2020 to 30 September 2020, available from <https://caat.org.uk/data/exports-uk/>.

pronounced over time as the government encourages exporters and brokers to maximise their use of the open licensing system. Arms exporting companies are clear that they do hold this information, compliance obligations mean they already make this information available to the government as required, and sharing it with the government on a systematic basis need not cause them any hardship. Moreover, the government was ready to start reporting on deliveries against licences in 2013 but balked at the last minute. It is past time for the government to report meaningful data on arms exports made under open licences.

- 54 End-users: A fundamental factor when assessing whether a sale of arms complies with the Consolidated Criteria is the identity of the end-user to whom it is being sent. However, information in the annual and quarterly Strategic Export Control reports on end-users suffers from inconsistency and lack of specificity. For example, as noted in paragraphs 18 to 19 above, many licences for the transfer of small arms to countries on the DIT's restricted list do not include any information on the end user. Where information is provided, but in contexts where decision-making is complicated, it is typically not to the level of detail allowing for meaningful oversight. For example, the label 'armed forces end use' could apply to any armed forces based in that location, whereas different elements of the destination country's arms forces could have extremely different histories, reputation, areas of operations etc. This also fails to allow for circumstances where the recipient armed forces are not those of the host nation.
- 55 Arms imports: It is a clear obligation under the Arms Trade Treaty (ATT) that States Parties report on arms imports as well as exports.<sup>57</sup> The UK has never met this obligation. At one point, Control Arms UK was told by officials that the UK would eventually report as required, but that this would have to wait due to competing demands for officials' time caused by Brexit preparations. The UK has subsequently, and uniquely among ATT States Parties, declared that it is not obliged to report on imports because under the Treaty it is only "*encouraged* to maintain records of conventional arms ... that are transferred to its territory as the final destination" (emphasis added).<sup>58</sup> The UK government has stated on the floor of the ATT Conference of States Parties and since repeated in Parliament<sup>59</sup> that because it is not obliged to keep records of imports, it cannot be obliged to report on those imports. The government's position, which was in 2018 described as inexcusable by the CAEC<sup>60</sup>, is widely dismissed by international lawyers familiar with the ATT. The government's argument is problematic for a number of technical reasons but it also suggests a worrying attitude with respect to the spirit of the Treaty. Thankfully, for the health of the ATT, the UK is so far completely isolated among States Parties on this point. But clearly this serves as a poor example to other current and prospective future ATT States Parties, all the more so as the UK has been seen in the past as setting an example and among the more transparent states (the issue around open licences discussed above notwithstanding). This also sits alongside the harm done to the UK's reputation in the ATT context through its willingness to arms belligerents in the Yemen war. The UK needs to address this reporting deficiency as a matter of urgency.

<sup>57</sup> Arms Trade Treaty, Article 13.1, <https://thearmstradetreaty.org/treaty-text.html?templateId=209884>.

<sup>58</sup> Ibid., Article 12.2.

<sup>59</sup> Sir Alan Duncan, Foreign & Commonwealth Office, answer to parliamentary question from Catherine West MP, UIN 216408, 12 February 2019, <https://questions-statements.parliament.uk/written-questions/detail/2019-02-04/216408>.

<sup>60</sup> Committees on Arms Export Controls, 'UK arms exports during 2016', HC666, 18 July 2018, para. 139, <https://publications.parliament.uk/pa/cm201719/cmselect/cmquad/666/666.pdf>.

## 56 Recommendations

- **The government includes in its quarterly and annual reports**
  - **information on all deliveries made under open licences, including on types, quantities and values of items, and on destinations**
  - **more detailed information of end-users for all types of licence.**
- **The government meets all its reporting obligations under the ATT, including on arms imports**

### The future of multilateral export controls post-Brexit.

57 Control Arms UK has repeatedly raised the importance of ensuring that effective multilateral approaches to managing proliferation risks are incorporated into the UK's post-Brexit foreign, trade and human rights policies. We maintain that alignment with existing and future EU mechanisms – most notably the EU Common Position, the regulations on Dual-use goods and torture equipment, and measures to combat firearms trafficking and brokering activities – are in the UK's wider national interest. This is especially the case since the enhanced cooperation, information systems and transparency measures contained within EU frameworks are the most advanced of any non-proliferation control regime. The UK had played a key role in introducing, shaping, and developing these joint systems over many years, which had become a central element of our integrated multilateral approach to export controls. It is of major concern that the Brexit process did not encompass arms export controls within the negotiation process; no agreements have been reached as to how the UK will maintain at least some form of constructive cooperation with EU systems going forward, or whether the UK will seek to strengthen other relevant multilateral export control regimes to fill the vacuum in multilateral controls created by leaving the EU.

58 As an illustrative example, it was a considerable disappointment to learn that the UK will no longer take part in the EU's licence denial and consultation information-sharing mechanism, which is part of the wider implementation system built into the EU Common Position. This did not have to be the case: non-EU member state Norway has arranged access to this mechanism. As we understand it, officials from EU member states would welcome continued UK participation, and were still hopeful that this was a possibility at the time when UK officials informed the CAEC that the UK would be withdrawing.<sup>61</sup> Inadvertently or otherwise, EU member states could approve transfers that the UK has rejected for good reason, and *vice versa*, potentially leading to international law violations and human misery or directly impacting the UK's national and security interests.

59 Information on denial notifications and consultations from the EU Annual Reports gives some insight into the potential significance of the UK's withdrawal.

- From 2015 to 2018 (inclusive) a total of 1,397 licence denials were circulated among EU member states.
- During the same period, based on these shared denials, the UK initiated 50 consultations with EU member states and received 61 consultation requests. These consultations involve detailed exchanges with EU partner governments about possible arms transfers that were at least marginal and potentially extremely problematic, any one of which may have had a significant impact on conflict, human rights, criminality and/or terrorism, or simply on UK interests.<sup>62</sup>

<sup>61</sup> CAEC, 'Oral evidence: Arms Export Controls: Initial Review', HC 965, Tuesday 10 November, Chris Chew, Q42, 2020 <https://committees.parliament.uk/oralevidence/1164/pdf/>.

- 60 Secondly, EU instruments are not static, and are typically subject to periodic review and change over time. While the UK has incorporated existing EU law into its domestic legislation where necessary, there is no agreement or indeed any consultation process for the UK to maintain alignment with future changes to EU systems. This creates the likelihood that the UK and EU systems and standards will diverge in coming years. A current example of this is the Dual-use regulation, a ‘recast’ (amendment) of which has just been completed by the EU. Several new enhanced controls have been agreed, notably on enhanced human rights controls with respect to cybersecurity and surveillance technologies. These amendments will not automatically be part of the existing UK dual-use regulatory framework and the government has so far not committed to strengthen UK controls to align with the EU.
- 61 A further anomaly is that, as we understand, Northern Ireland is still covered by the EU Dual-use regulation under terms of the Northern Ireland Protocol. Whether this applies to the entire scope of the regulation, including reporting, notification, and other implementation systems, or just matters relating to licensing controls, is unclear. Regardless, given that strategic export controls are not a devolved competency, the UK government, and particularly the ECJU will be responsible for operating both systems simultaneously. It is unclear to Control Arms UK how this can work effectively in practice.

## 62 Recommendations

- **The government provides details of the negotiations with the EU on matters relating the EU export control systems as part of the Brexit process, specifically relating to areas around information exchange, cooperation, reporting and alignment.**
- **The UK seeks to re-join the EU licence denial notification and consultation system at the earliest opportunity, as well as other relevant information systems relating to the control of dual use goods, firearms, and torture equipment.**
- **The ECJU provides details of how the Irish protocol is implemented with regards to controls over controlled goods, particularly in the context of the regulations on dual-use goods and torture equipment.**

## Post-export controls

- 63 There is a widely recognised value to control mechanisms post-transfer in order to ensure that the exported material reaches and stays in the hands of the intended end user, and that the use to which it will be put by that end user complies with any conditions of export, and with international humanitarian and human rights law. To be effective, this requires a formal regime of post-export checks with provision for inspections to promote compliance. An effective system will not only address end-use within the designated recipient country; it will also help prevent arms trafficking and re-export to other destinations against the wishes of the country of origin.
- 64 The UK arms export control system, however, explicitly avoids using post-export controls. The government position is that post-export controls cannot be enforced, and that it is unrealistic to expect British personnel or missions abroad to be able to scrutinise the use of exported arms. The

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<sup>62</sup> See the 18<sup>th</sup> to the 21<sup>st</sup> EU Annual Reports on Arms Exports, covering calendar years 2015-18 inclusive, <https://eeas.europa.eu/headquarters/headquarters-homepage/8472/annual-reports-on-arms-exports-en>.

government instead argues that it is better to rely exclusively on factoring information about misuse or diversion into future licence application assessments, the implication being that problems around unauthorised end-use or end-users today will lead to licences being refused tomorrow.<sup>63</sup>

- 65 Almost 20 years ago the UK did sometimes stipulate end-use conditions on arms exports. However, following the discovery that Israeli armoured vehicles being used in Gaza were built on UK-sourced Centurion tank chassis despite end-use assurances given on 29 November 2000 that UK-origin equipment would not be used in the Occupied Territories<sup>64</sup>, rather than placing a hold on arms exports to Israel, the UK stopped asking for end-use assurances.<sup>65</sup>
- 66 This flies in the face of the views and actions of a growing trend among other established arms exporting states. The US has led in this area for many areas through its Blue Lantern and Golden Sentry programmes<sup>66</sup>, but in recent years European states too have begun to develop post-export controls. For example, Czechia, Germany and Switzerland all now carry out post-delivery in-country inspections, while Spain and the Flanders region of Belgium have now established the necessary powers to do so; Sweden has conducted some inspections in the past and is currently considering whether to establish a formal system.<sup>67</sup> The more countries follow this lead, the more this becomes an accepted part of arms trade management, and thus implementation becomes more straightforward. The UK's position also ignores how the mere existence of post-export controls agreed between exporter and importer can impact upon behaviour – while not always the case (as evidenced by the Israeli example above), most countries in most circumstances prefer to abide by rather than break their contractual undertakings.
- 67 None of the European states now undertaking post-export inspections, or the US, does so on a routine basis. They apply different thresholds as to which items and/or destinations will lead them to reserve the right to perform a post-export inspection. In all of these jurisdictions, actual inspections take place only in exceptional circumstances most of these circumstances, however, no inspection will take place. Switzerland has carried out 46 inspections (in 32 countries) since 2012; Croatia has been carrying out approximately 10 a year; Germany performed nine from when the policy was established in 2017 until it was suspended due to COVID-19.<sup>68</sup> Critical to the implementation of post-export measures is that they should not be seen as a replacement for rigorous analysis at the licence-application stage but as additional to that analysis.

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<sup>63</sup> See, for example, CAEC, 'UK arms exports during 2016: Government Response to the Committees' First Joint Report', 29 November 2018, Appendix, para. 61, <https://publications.parliament.uk/pa/cm201719/cmselect/cmquad/1789/178902.htm>.

<sup>64</sup> Defence, Foreign Affairs, International Development and Trade and Industry Committees, 'First joint report: Strategic export controls: Annual report for 2000, licensing policy and prior parliamentary scrutiny, Appendix 8: Letter from the FCO on Israel', 21 March 2002, <https://publications.parliament.uk/pa/cm200102/cmselect/cmcaff/718/718ap10.htm>.

<sup>65</sup> Jack Straw, Secretary of State for Foreign & Commonwealth Affairs, House of Commons Debate, 'The Middle East', vol.383, col. 469, 16 April 2002, <https://hansard.parliament.uk/Commons/2002-04-16/debates/d696a1af-a3c2-4bbc-b541-f1b4e1eed6ea/TheMiddleEast#contribution-1c50f608-89cf-4f6c-8fcb-c2db13f7c3f2>.

<sup>66</sup> US State Department Bureau of Political-Military Affairs, 'End-use monitoring of US-origin defense articles: Fact sheet', 20 January 2021, <https://www.state.gov/end-use-monitoring-of-u-s-origin-defense-articles/>.

<sup>67</sup> Andrea Varisco, Kolja Brockmann and Lucile Robin, 'Post-shipment control measures: European approaches to on-site inspections of exported military materiel', *SIPRI*, December 2020, [https://www.sipri.org/sites/default/files/2020-12/bp\\_2012\\_post-shipment\\_controls.pdf](https://www.sipri.org/sites/default/files/2020-12/bp_2012_post-shipment_controls.pdf).

<sup>68</sup> Ibid.

- 68 A move by the UK – one of the world’s largest arms exporters – to adopt a similar policy could be a significant step towards a broader acceptance of post-export inspections.
- 69 Such a change in approach will not address situations where the government is willing to tolerate a clear risk that arms to be transferred will be used in a serious violation of international law, as has been the case in the context of the Yemen war for the last six years. But it should limit the risk of UK arms being misused or diverted against the wishes of the UK government, as well as help to build broad-based support internationally for these types of measures becoming accepted as an unremarkable part of a fully-developed export control system.

## **70 Recommendations**

- **The government reserves the right to include end-use conditionality, including provision for on-site inspections, when authorising arms transfers**
- **For selected transfers where there are concerns that end-use undertakings may not have been complied with, the government undertakes post-export onsite inspections.**

*17 March 2021*