

## **Introduction**

- I work for Control Arms, which is the global coalition of civil society groups that campaigned for the negotiation of the Arms Trade Treaty. I am a researcher with the ATT Monitor, which tracks the implementation and impact of the Treaty, which entered into force in December 2014.
- The ATT is the first global, legally-binding instrument to regulate the sale of arms between countries. It's only 18 months old but already has 87 States Parties, and another 45 countries that are Signatories. This includes five of the top ten arms exports (Germany, France, UK, Spain, Italy) who are States Parties, and 11 of the top 20 (+5 Sigs).
- The UK was a champion of a strong and robust Arms Trade Treaty throughout that process, but is now, in the view of Control Arms, one of its biggest violators.

## **Arms Sales to Saudi Arabia**

- There is a large body of evidence of human rights abuses and serious violations of international humanitarian law in Yemen.
- Last month, the UN office for human rights released new data that showed that more than 3,500 civilians had been killed and another 6,360 injured since March 2015, and that 61% of civilian deaths in the last year were caused by coalition air strikes.
- The ATT Monitor recently produced a case study, which found that 19 countries that have joined the ATT have either delivered arms and ammunition, or have issued new licenses to sell weapons to Saudi Arabia since the beginning of 2015.
- Not all of these sales are necessarily a violation of the ATT, and several of these governments, like the Netherlands and Sweden, have since tightened their policies regarding arms sales to Saudi Arabia as the pattern of violations became clearer over the course of last year.

## **UK sales**

- The UK however, has remained a key supplier of arms and ammunition to Saudi Arabia. In 2015 the British Government authorised new licenses to Saudi Arabia worth £2.8 billion.
- The vast majority of these sales were for exactly the same types of weaponry that is being used to devastating effect in Yemen. It included more than £1bn in aerial bombs, and £1.7bn for aircraft. They also delivered 12 combat aircraft to the Saudis in the last twelve months.

- Both the quantity and types of weapons being sold make the UK of particularly grave concern. Only France and the US have carried out sales to a similar multi-billion extent.

### **Political and legal response**

- The Campaign Against the Arms Trade has taken legal action against the government, and the High Court recently granted a judicial review into the legality of continuing exports.
- Last week the Departments for International Development and for Trade issued a joint report in which they called on the Government to suspend its sales, and for an independent international investigation into potential war crimes in Yemen.
- Back in December, London-based law firm Matrix Chambers prepared a legal opinion on the UK's supply of arms to Saudi Arabia. The legal opinion found that the UK is in violation of Articles 6 and 7 of the ATT (which govern the conditions under which arms should not be sold), and of relevant EU law.

### **What will Brexit mean for UK arms export policy?**

- Export controls did not exactly play a major role in the debates either before or after the referendum, but they are actually one of the areas that has seen the deepest levels of collaboration and cooperation between EU countries over the years. The EU has among the most advanced arms control measures in the world.
- There is a complex spider's web of Regulations/Directives/Guidelines that touch on arms exports, coming from the human rights angle, from trade and industry, and from defence and security politics.
- The main instrument is the **EU Common Position** which sets out eight common criteria by which each country's export policies must obey.
- While in the EU, the UK has been legally required to follow the EU Common Position, but it has always been free to decide how to interpret and implement some of these obligations.
- There is no legal power at the EU level to sanction non-compliance (the same is true in relation to the ATT).
- The Common Position is essentially guidance, and sets out the boundaries for national law. The competence for arms exports is always national, and UK legislation will likely remain the same post-Brexit. At least in the short to medium-term, it is not expected that the UK will change the criteria it has set up to reflect the Common Position.
- If the government does seek to make changes, the ATT will limit the areas in which the UK can amend existing legislation as the EU Common Agreement was used as a model to decide the export controls laid out in

the ATT. The UK will not simply be able to bypass a requirement to assess the risk an export could be used in human rights abuses, for example.

- The Common Position does include some things that aren't in the ATT, such as assessing the impact of a proposed sale on sustainable development in the recipient country. The Common Position also goes into greater detail in some critical areas.
- However, EU Common Position is regularly updated. When EU States next update the Position, will the UK change to keep pace? It's not clear. There are no precedents. What is possible is that as time goes by there will be a growing drift apart between the UK and EU on this, but whether the UK continues to harmonise its export control criteria or not will depend on the political character of the government at the time.

**The Intra-Community Transfer Directive** establishes simplified procedures for the export of military goods to other EU member states.

- This will in particular be affected by whether the UK remains in the single market or not. If it does, this agreement is likely to carry on almost as before.
- At the moment the ICT is hardly used. The uptake has been slow, and I'm told that part of the reason that the 'Europeanisation of the defence sector' has been so slow has been because the UK was slowing it. Already we've seen news stories such as France and Italy seeing a fresh opportunity to improve defence research cooperation, so the intra-Europe conversation could look very different with the UK not formally involved.

Some instruments, like the **Dual-use regulation (2009)** are unlikely to change much even after the UK leaves the EU because they take their lead from other existing international agreements to which the UK is a member in its own right. These include the Wassenaar Arrangement, the Missile Technology Control Regime, the Nuclear Suppliers Group and of course the ATT itself. The UK will continue to remain an active member of these arms control agreements.

### **EU Arms Embargoes**

- The UK will no longer be legally obliged to follow EU arms embargoes that either supplement or are separate from the UN Security Council agreements. And if the EU imposes a new embargo, such as on Saudi Arabia, the UK would not be legally obligated to comply. The UK Government has said it will adopt a 'policy mirroring approach' to align itself to EU sanctions. This is similar to what Norway and Switzerland currently do. The UK has adopted legislation that makes EU decisions regarding sanctions automatically applicable at the national level, so it would take a lot of work to unpick those laws.

## **Conclusion**

The picture is obviously unclear. Some of the major pillars of UK export policy look likely to remain materially unchanged, and if we do remain in the EU Single Market perhaps much of the structure of our policy relationship on arms export controls will remain the same even after withdrawal from the EU.

There is however scope for uncertainty. The UK is already a member of all possible arms control regimes, and has still continued its support of Saudi Arabia, which legal experts say is incompatible with the obligations it has made. Any avenue for erosion of existing export controls may not only facilitate continuing sales to Saudi Arabia and similar contexts of concern, but also set a damaging precedent to other countries.