Debunking the myth of the “robust control regime”: UK arms export controls during war and armed conflict

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TWENTY YEARS OF THE ‘ROBUST REGIME’ MYTH

The UK is one of the world’s largest arms exporters – a reality that plays an ambivalent role in British political, economic and social life. Supporters of arms exports emphasise the trade’s contribution to the economy and support for British defence, security and foreign policy. Critics challenge the economic arguments and emphasise the role of UK arms exports in violations of human rights and international humanitarian law, pointing to alternative, less militarised opportunities for the UK to play a role on the world stage. The UK has also positioned itself as a leader in multilateral arms transfer control. The UK’s commitments to conflict prevention and the protection of human rights and international humanitarian law in its arms export controls are now over 20 years old. In this time, successive governments have routinely claimed that the UK has one of the most rigorous arms export control regimes in the world.

Despite these obligations and the very public commitments to them, however, the outbreak of war or conflict has had little or no restraining effect on UK arms exports. This article explores the function of the UK’s arms export control regime given that its primary effect is not to restrict arms transfers. I argue that the mantra that the UK has one of the most robust control regimes in the world is not a plausible description of the realities of UK export policy – rather, it is a myth that needs to be debunked. Export controls are primarily mobilised by the state to manage controversy once criticism emerges from civil society and Parliament and thus primarily serve a legitimating function. I illustrate this argument with examples of arms exports in relation to the conflicts in Kashmir, Sri Lanka, the Occupied Palestinian Territory and Yemen, demonstrating three ways in which UK export controls are missing in action: the routine misuse of UK-supplied weapons; the narrow interpretation of risk in licensing policy; and self-serving reviews to manage reputation once controversy breaks out.
to arms sales by a major exporter; and that US and European exporters at times have displayed “a pattern of selective, ‘low stakes’ restraint” – usually in relation to destinations that are not a major market for them (Perlo-Freeman, 2021, 5). At best, restraint on grounds of conflict is highly selective, based on geopolitical factors, political prominence of a conflict, and low market value to the supplier. Overall, the primary factor in UK arms sales, as for other major exporters, is demand from client states (Perlo-Freeman, 2021, 5), regardless of what the government claims about the robustness of its controls. In the UK case, where it does restrict arms supply by revoking, suspending or rejecting licences – such as in relation to the Arab Spring from late 2010 – these measures often do not actually stop weapons being transferred or used, but are publicly hailed by the government as evidence of the robustness of its processes (Stavrianakis, 2016).

This article explores the function of the UK’s arms export control regime given that its primary effect is not to restrict arms transfers. I argue that the mantra that the UK has one of the most robust control regimes in the world is not a plausible description of the realities of UK export policy. Export controls are not proactively engaged to prevent the harms set out in government policy; rather, they are primarily mobilised by the state to manage controversy once criticism emerges from civil society and Parliament. But the problem is not simply one of the failure to implement a policy that looks good on paper: what is also noteworthy is the way the control regime is routinely deployed as a means of deflecting calls for restraint and valorising non-supply to places where the UK does not have major interests. Therefore, the control regime is structured to facilitate rather than restrict exports while giving the government a means to claim legitimacy and benevolence in foreign policy. The robust control regime is a myth that needs to be debunked as it stands in the way of more effective controls.

I illustrate these claims with examples of arms exports in relation to the conflicts in Kashmir, Sri Lanka, the Occupied Palestinian Territory and Yemen. These are good examples of the continuity of practice across governments over time and demonstrate three ways in which UK export controls are missing in action: the routine misuse of UK-supplied weapons; the narrow interpretation of risk in licensing policy; and self-serving reviews to manage reputation once controversy breaks out. Overall, export controls serve a primarily legitimising function in an attempt to mollify parliamentary opposition, NGO and media criticism and domestic public opinion, and to signal good international citizenship in the face of ongoing exports to conflict zones in violation of international humanitarian and human rights law. Debate about arms export controls needs to be reframed as part of a wider conversation about the drivers and effects of UK foreign policy.

2 UK INVOLVEMENT IN THE ARMS TRADE AND ITS CONTROL

The main markets for UK-produced weapons have traditionally been NATO allies, the Middle East and Asia. Since 1990, the main customers in each region have been the USA and Canada; Saudi Arabia and Oman; and India and Indonesia (SIPRI, 2022a). Other regions such as Latin America and Saharan Africa are not traditional or major markets for UK weapons – indeed, they are the smallest importing regions of major weapons worldwide. Industry tends not to seek licences for exports to these destinations, and government is more likely to refuse them where concerns are raised under the control regime, given their more marginal economic and geopolitical significance. Probably the single most important British government arms deals over time is with Saudi Arabia. The Al Yamamah agreements of 1985 and 1993, and the follow-up Al Salam deal concluded in 2003, are government-to-government agreements in which British Aerospace, now BAE Systems, is contracted to supply weapons and engineering support to the Saudi military on behalf of the UK Ministry of Defence (MoD). The agreements constitute the UK’s biggest ever arms deal and have been consistently accused of corruption (Gilby, 2014; World Peace Foundation, 2022). In the years leading up to and during the war in Yemen, Saudi Arabia has accounted for 40–50% of all UK arms exports and in the period 2017–2021 was the world’s largest arms importer, alongside India (SIPRI, 2022b).

There is a particularly symbiotic relationship between BAE Systems and the British state. Ten companies account for over 44% of total MOD procurement expenditure; of these, BAE Systems is by far the largest supplier. And 96% of MOD expenditure with BAE is through non-competitive contracts (MOD, 2020). In the case of arms exports to Saudi Arabia, BAE Systems is directly contracted by the state and acts on its behalf. When the state issues licences to BAE Systems and its sub-contractors for exports to Saudi Arabia and other government-to-government deals, therefore, it is approving its own policy. The mutually supportive combination of industry influence and the state’s strategic and geopolitical interest in trying to remain a major military power generates a congruence of interests and assumptions about the benefits of arms exports (Wearing, 2018). This is the context in which licensing policy and practice must be understood. There is a reciprocally convenient fiction of separation between the state and arms companies, in which companies hide behind the policymaking and licensing role of the state,
and the state refuses to comment on company practice under the guise of commercial confidentiality.

The UK’s relationship with Saudi Arabia is the most pronounced illustration of the way debate about arms exports and licensing policy are politically situated. UK-based arms companies are privately owned and formally separate from the state; they must apply to the government for licences to be able to export controlled goods (military or dual-use). However, the state retains a so-called golden share in the largest companies such as BAE Systems and Rolls Royce which allows it to block changes in ownership or control that it deems not in the national interest. Industry interests are directly inserted into state structures through a dedicated arms export promotion unit, UK Defence and Security Exports, which sits within the Department for International Trade, and the secondment of staff from major arms companies to the Ministry of Defence (Amin, 2022). In addition to this structural enmeshment between companies and the state is the so-called “revolving door” between government and industry, donations to political parties and so on (CAAT, 2022a).

Most arms trade controversies centre on exports to non-western states involved in conflict or engaged in human rights violations. But these same criticisms can also be levelled at the UK and its allies and partners for their own involvement in war. Since 2000 the UK has – officially – been involved in three wars in this time (Afghanistan, Iraq and Libya), each of which has been politically contested as strategic failures or questionable lawfulness (Ammerdown Group, 2016), and each of which has contributed to the proliferation of weapons in each country and regionally (Yousif, 2021). UK involvement in these wars involves the use of its own domestically produced weapons as well as imported ones, and transfers to allies and partners, most notably the USA, European states and Israel. This snapshot itself provides one initial important corrective to mainstream debates about the issue of UK involvement in the arms trade. As well as being a major arms exporter, the UK has also been a leading player in the development and internationalisation of arms export controls. It was a lead proponent of the EU Code of Conduct, which was agreed in May 1998, when the UK held the EU Presidency. And it was an early champion of the UN Arms Trade Treaty, playing a significant role in the negotiations and agreement of the treaty that entered into force in 2014. A key feature of the UK control landscape is the existence of parliamentary scrutiny via the Committees on Arms Export Controls (CAEC), established in 1997 under the New Labour government. The CAEC has had episodes of robust scrutiny and criticism of government policy – largely dependent on the Chair – but at other times has collapsed into near-irrelevance, especially at times of controversy. It also suffers from structural weaknesses such as its indirect membership constituted via the four component committees, its complicated and cumbersome quoracy rules, the lack of a dedicated staff or a paid Chair elected by all MPs, and an inability to compel ministers to give evidence.

UK controls are set out in the legal and administrative framework contained in the 2002 Export Control Act and 2008 Export Control Order, respectively. The UK’s arms export licensing authority is the Department of International Trade (DIT). Since 2016 arms export controls have been administered by the Export Control Joint Unit (ECJU), which is housed in DIT and staffed by officials from DIT, the Foreign, Commonwealth and Development Office (FCDO) and MOD. UK export controls consist of eight criteria that the government must have regard for when making decisions about arms export licence applications. Of particular relevance to exports to countries involved in war and armed conflict are Criterion 2 – which states that the government “will not grant a licence if there is a clear risk that the items might be used in the commission of a serious violation of international humanitarian law” – Criterion Three – the government “will not grant a licence for items which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination” – and Four – the government “will not grant a licence if there is a clear risk that the intended recipient would use the items aggressively against another country, or to assert by force a territorial claim” (Cable, 2014a).

The criteria (previously known as the Consolidated Criteria) were updated in December 2021, ostensibly as part of the UK’s exit from the EU (Trevelyan, 2021). The eight criteria remain, but a key amendment was the insertion of the phrase “if it [the Government] determines” to the risk assessment in Criteria 2, 3, 4 and 6. The risk is that such a change will weaken the effectiveness of controls further by giving government free rein to ignore inconvenient evidence and narrowing the scope for future legal challenges – both of which have been core features of the controversy over arms exports to the Saudi- and UAE-led coalition involved in the war in Yemen.

3 | DEBUNKING THE MYTH OF THE “ROBUST CONTROL REGIME”: THREE WAYS EXPORT CONTROLS ARE MISSING IN ACTION

The UK’s much-vaunted robust control regime is a myth that needs to be debunked if greater restraint in arms exports is to be facilitated. In relation to war and conflict, UK export controls are missing in action in three main ways. First, the misuse of UK-supplied weapons is a historical and routine feature of UK practice, not an aberration or recent development. Second, in
controversial cases of significance to UK interests, the licensing process takes an extremely narrow interpretation of the risk of misuse of weapons, in which neither past patterns nor future scenarios are deemed to crossed the threshold of “clear risk”. And third, the government conducts self-serving reviews once controversy breaks out, which serve to massage its reputation rather than meaningfully improve policy. I illustrate these claims with reference to four cases of arms exports that are typical of UK policy: to India and Pakistan in relation to Kashmir; to the Sri Lankan armed forces during the civil war; to Israel in relation to Occupied Palestinian Territory; and to the Saudi- and UAE-led coalition involved in the war in Yemen. These examples span the last two decades of UK controls, cutting across Labour and Conservative governments. They illustrate a range of recipients of UK weaponry that have been involved in war since the introduction of the control regime. The cases demonstrate different trends within the overall thrust of UK practice: ongoing, indeed exponentially increased, exports to a conflict zone (Yemen); and substantial (India/Pakistan) or minor (Israel/Palestine, Sri Lanka) arms supplies during war (Perlo-Freeman, 2021).

The detail that follows is not exhaustive of each case, but illustrative of key trends in UK policy across time. The controversies over exports to India/Pakistan and Sri Lanka were tests of New Labour’s commitments to the UK’s revised commitments; exports to Israel have been longstanding and cut across governments; and exports to participants in the war in Yemen have taken place under a Conservative government.

3.1 Misuse of UK-supplied weapons: Historical and routine, not recent or an aberration

In addition to the UK’s own involvement in illegal wars using its own domestically produced and imported weaponry, the misuse of UK-supplied weapons is a routine feature of wars – often decades-long – involving UK customers. This includes weapons supplied before the advent of the licensing regime, prior to the outbreak of war and in between cycles of violence, as well as newer weapons, parts and components supplied during conflict. The British state has itself in many instances historically and currently been central to these conflicts and ongoing cycles of violence. In all four cases examined here, the states that became independent in the twentieth century were previously part of or entangled with the British Empire. UK arms exports only officially started once they were declared sovereign states, but this masks the longer colonial history of their relations with the British state.

The UK has been both India and Pakistan’s longest-standing arms supplier since the two won independence from the British Empire. Armed conflict within and between them has been a persistent feature since independence, most notably over Kashmir, a region claimed by both states and with its own multi-faceted demands for self-determination. Kashmir is now widely understood to be the world’s most militarised region and three of four wars between India and Pakistan since independence have been fought over Kashmir. Arms sales and their potential for misuse in Kashmir, such as the 1999 Kargil war, and their role in facilitating nuclear escalation were an early test case of the Consolidated Criteria and a challenge for New Labour and its foreign policy with an ethical dimension (Cook, 1997; Defence Committee, 2003).

The UK has been a consistent arms supplier to Sri Lanka since its independence from the British Empire, but in this case is a minor, secondary supplier. While the financial value of UK arms sales is lower here than other cases, the impact of those sales and the formal and covert military and diplomatic support provided by the UK on the course of conflict has nonetheless been significant (Miller, 2020). UK-supplied weapons were part of the facilitating conditions of the Sri Lankan military assaults to defeat the Liberation Tigers of Tamil Eelam (LTTE), in which the vast majority of total deaths were a result of state-based violence (UCDP, 2022). International military, economic and political support helped “tip the strategic balance that had precipitated the peace process inexorably in favour of the state” (Nadarajah & Vimalarajah, 2008, 44) that had “come to be seen as representative of only the majority ethnic group” (Orjuela, quoted in Nadarajah & Vimalarajah, 2008, 7).

The UK has supplied weapons to Israel since the end of the British Mandate in Palestine and declaration of the state of Israel. Israel has occupied the Gaza Strip and West Bank, including East Jerusalem, since 1967. It is widely recognised that the Israeli military and security forces routinely commit violations of international human rights and humanitarian law against Palestinians, in addition to the violations of international law through settlements in Occupied Palestinian Territory and the apartheid wall or separation barrier. Israel has operated a blockade of Gaza since 2007 and conducted numerous military assaults over the past two decades. These illegal and repressive practices have not led to meaningful or sustained restrictions on UK weapons supplies to Israel, even as it features regularly as a UK FCO “country of concern” or “human rights priority country” (FCO, 2020) and Israeli violations of human rights and humanitarian law with respect to the Palestinians have repeatedly led to calls for restrictions or embargoes on arms transfers to Israel (Amnesty, 2009; UNA-UK, 2014). Any increase in licence refusals has tended to be short-lived, with a resumption of business as usual once controversy has died down.

In the case of the war in Yemen, the UK supplies weapons to Saudi Arabia, the United Arab Emirates (UAE) and other members of the coalition...
participating in the military intervention in the war that escalated after the 2011 revolution. Britain has supplied weapons to these states since their independence from British protectorate status. While arms sales have long been criticised for corruption, their enmeshment with the oil relationships between the USA and UK, and their role in supporting repressive internal security measures, it was only with the use of foreign-supplied weapons in the war in Yemen that they became more widely and publicly controversial. The coalition has used not only newly supplied weapons, but also weapons supplied years, in some cases decades, previously. Yet once Saudi- and UAE-led intervention in the war started, there was a clear and exponential increase in UK arms export licensing to Saudi Arabia in particular, despite allegations of the misuse of weapons in excessive civilian harm facing from the earliest months of the war (Amnesty International, 2015, 2016).

3.2 Narrowing the interpretation of risk: Making neither the past nor the future matter

In cases where strategic, foreign policy or commercial interests are at stake, arms export licensing practice takes a very narrow interpretation of risk, operating as if neither the past nor the future exist. Government risk assessments treat each round of violence as new and a blank slate, rather than the latest iteration of an ongoing conflict. Ceasefires or other de-escalations are interpreted to mean that there is no clear risk of future misuse, and thus no reason to deny licences. Consequently, British practices allow recipients to replenish their armouries for use in later assaults and rounds of violence.

As conflict escalated between India and Pakistan between December 2001 and June 2002 – raising fears of the use of nuclear weapons – the government’s response to concerns raised by the Quadripartite Committee was to emphasise the flexibility, coherence and responsiveness of the Consolidated Criteria, in order to reject calls for an arms embargo (Secretary of State for Defence et al., 2002, 3). Yet its response — that “All export licences approved were examined carefully and were assessed as not breaching the Consolidated 

Criteria at the time the decisions were made” (Secretary of State for Defence et al., 2002, 3; italics added) — undermined the very premise of a risk assessment, which should consider the risk of misuse in the future, not just in the present. As the standoff ended, the government ignored the past role of weapons in facilitating potential nuclear-armed confrontation, and the future risk of misuse, by arguing that a suspension of arms sales “is now inappropriate in the light of the de-escalation of tension between the two countries” (Key, 2002) — even though the withdrawal of troops did not take place until months later.

Similarly, the 2002 ceasefire in the Sri Lankan civil war was interpreted by the UK’s licensing body to mean there was no clear risk of the misuse of weapons and the government licensed “a whole range of weaponry to the Sri Lankan armed forces, including small arms, naval components, helicopter components” (Gapes, 2009). UK practice of treating each episode of violence as disconnected from the past and from any potential future developments allowed the Sri Lankan military to stockpile weapons for later use when the ceasefire broke down in December 2005 and officially terminated in January 2008. A handful of export licences were refused in 2007 and 2008. Foreign Office minister Bill Rammell later told the CAEC that “[i]f you went back through history, bluntly we would not sell arms to anybody because of what has happened in the past” (cited in Vranckx, 2010, 49). As An Vranckx notes, this was “a fundamentally disingenuous response” as consideration of “relevant existing and past evidence … is a critical aspect of the risk assessment” process (Vranckx, 2010, 50). Indeed, such hyperbolic responses to legitimate criticism are a regular feature of government action on arms exports.

Controversy over the potential for misuse of UK-supplied weapons in Kashmir and Sri Lanka generated early tests of the UK’s new commitments to arms transfer controls. The example of Israel illustrates how this test has been sustained over time and across governments under different political parties. It became publicly known in 2002 that that UK-supplied armoured personnel carriers were used by Israel in Occupied Palestinian Territory as part of Operation Defensive Shield, despite Israeli assurances to the contrary (Hansard, 2002). The UK government originally claimed in February 2002 to have “no evidence that equipment or components manufactured in the UK and licensed for export were used … in the occupied territories [sic] during the recent violence”, on the basis of written assurances from the Israeli government (Berry, 2003). Shortly after this statement, however, one of the British defence attachés to Israel spotted modified UK-supplied troop-carriers while on a tour of the West Bank. The Foreign Office response to this revelation was that these weapons had been exported “a long time ago” and “under a previous Administration and a different export control regime” (Berry, 2003). Despite this attempt to make the past not matter, the government stated that it “will no longer take the Israeli assurances given on 29 November 2000 into account” (Straw, 2002a) as those assurances “have proved to be unsound” (Bradshaw, 2002). Superficially, this response indicates criticism of Israeli actions and suggests a tightening of process. However, there is little to no
evidence that future licensing decisions took this information into account – for example, when the government admitted that UK-supplied equipment was “almost certainly” used in 2008 in Operation Cast Lead (Miliband, 2009). This suggests the move was more an attempt to prevent future embarrassment caused by Israel ignoring assurances, by no longer asking for them.

Such examples of narrowing the timeframe of risk assessment to make past practice not matter in the assessment of future risk have been ongoing. In 2009, the government said that “All future applications” would be assessed in relation to Operation Cast Lead as “it is inherent in the consolidated criteria that judgments are in part based on past practice” (Miliband, 2009). Yet 3 years later, by the time of Operation Pillar of Defence in 2012, the government claimed that “We have no assessment to date of whether any UK weapons or components were used during the recent conflict by the IDF” (Burt, 2012). This suggests that the government treats each round of violence as a blank slate, rather than taking past practice from previous violence into account. In 2014, during Operation Protective Edge, the government used a ceasefire to make a forward-looking statement that it “would” suspend licensing as a precautionary step if there were to be a “resumption of significant hostilities” (Cable, 2014b). But did not explain how it would make this assessment, and the precaution was dropped in July 2015 (Department for Business, Innovation and Skills, 2015). In 2018, when Israel used violence against the Great March of Return, the government said it had no information that UK-supplied equipment “has been, or might be” misused (Burt, 2018). The government appears to have only made this assessment in relation to “recent events in Gaza” (Burt, 2018) rather than any of the longer-standing patterns of Israeli practice.

In response to the war in Yemen, the government has taken an extremely narrow interpretation of risk in its assessment of how the coalition is using UK-supplied weapons, in particular in relation to the question of past practices, whether these constitute patterns of misuse, and the likely future risks. The MoD maintains a database known as the “Tracker,” consisting of Coalition data, MoD-sourced imagery, intelligence reports and battle damage assessments (Watkins, 2016, 16). There was an un-minuted and un-noted “decision, or change of position” in early 2016 to remove the column headed “IHL breach?” from the Tracker and therefore stop seeking to answer the question of whether the Saudi-led coalition was violating IHL (CAAT vs. Secretary of State for International Trade, 2019, para. 141). This move meant the government could claim not to know whether past practices constituted a pattern and therefore contribute to future risk of misuse. The MOD conceded to the High Court that it “does not have access to all of the information which would allow us to make an accurate judgement” (MOD, 2018, 2). However, a risk assessment is supposed to be preventive of future harm, and so it remains unclear how the government came to a position that there was no clear risk of the misuse of weapons, and therefore no need to deny licences to the coalition. The Court of Appeal then found the government’s policy to be unlawful in 2019, on the basis that it had made no attempt to assess whether the Saudi-led coalition had committed IHL violations in the past. In its review of licensing methodology in response to the court order, the government concluded that possible past violations of IHL were “isolated incidents” rather than a pattern, occurring “at different times, in different circumstances and for different reasons” (Truss, 2020). Its review of past practice steadfastly refused to see any patterns in Saudi practice – despite all the evidence in the public domain – and the government concluded that there is no clear risk of misuse of UK-supplied weapons and resumed licensing exports.

### 3.3 Reviewing process once controversy hits: The government marks its own homework

Self-serving reviews of licensing process – but not policy – take place when controversy is generated by NGOs, the media or Parliament. These reviews are mobilised to validate government policy and facilitate ongoing exports rather than restrict them. As a result, there is little to no meaningful change to policy or practice. Tokenistic refusals or revocations of licences occasionally take place at a late stage, but only when violence escalates to extreme levels and external pressure once again mounts. An interesting moment of this came in 2013 in relation to the Arab Spring, when the UK appeared to take a risk-based response by revoking, reviewing, suspending and revising licences. However, revocations do not require equipment to be returned; the review deemed extant licences for equipment including assault rifles, combat shotguns, sniper rifles, acoustic devices for riot control and small arms ammunition to be compliant with its commitments; and the suspension only applies to new licences, not those already granted (Stavrianakis, 2016). Overall, while the Arab Spring did lead to some public soul-searching by government, the response made little material difference to export practice at the time and a more permissive posture was eventually resumed.

In relation to Sri Lanka, nine export licences for replacement components for military helicopters and telecommunications equipment were revoked in 2009 (Secretary of State for Defence et al., 2010, 12). This was the result of a review “[f]ollowing the escalation of the internal conflict in Sri Lanka from January of this year” – a “standard procedure” when there is “an outbreak of internal or regional conflict overseas,” as explained by Foreign Office minister Ivan Lewis MP in evidence to the CAEC (Lewis, 2009).
But the escalation of conflict was not a new “outbreak” of violence – it was a continuation of the war. The violence of the final offensive somehow tipped things over the threshold – in part because of the controversy generated by increased international outrage at the practices of the Sri Lankan military. The announcement of a review process creates the impression that government policy is responsive to the changing conditions on the ground. But the reality is that UK policy had allowed the ongoing flow of weapons to the Sri Lankan military for years.

In relation to Israel, in 2002 the government reviewed and updated its guidance about the export of components for incorporation into weapon systems to be exported to a third country. This occurred as the debate about Israeli assurances was taking place, to allow components to be sent to the USA for incorporation into weapons systems that would be exported on to Israel (even if licences for direct exports would be refused). Arguing that “Any interruption to the supply of these components would have serious implications for the UK’s defence relations with the United States,” the government announced five additional factors that would be considered alongside the Consolidated Criteria, including “the importance of the UK’s defence and security relationship with the incorporating country” (Straw, 2002b). This review served to circumvent existing rules when they were deemed to stand in the way of UK interests.

In April 2009, as part of the ongoing controversy over the use of UK-supplied weapons in Gaza during Operation Cast Lead, Foreign Secretary David Miliband announced a review of licences (Miliband, 2009), and licensing data indicates the revocation in July 2009 of nine licences for components for naval radars. Most of these licences were originally issued between March and December 2008 – when the UK was supposedly no longer accepting Israeli assurances about the use of foreign-supplied weapons – and had been issued a mere 3 days before it was revoked (CAAT, 2022b). And during Operation Protective Edge in 2014, the government launched a review of export licences, identifying 12 licences for components that could be part of weapons systems used by Israel in Gaza (Cable, 2014b). However, the agreement of a ceasefire in August meant that the government did not immediately revoke licences. Instead, as noted above, it announced that it “would” take the “precautionary step” of suspending licences in the future if there were a “resumption of significant hostilities” – a precaution that was removed in 2015. This episode indicates a rare admission from the government that there could be a future risk of the misuse of weapons. This admission is offset by the refusal to revoke licences that have possibly already been used or refuse new licences, on the grounds that there is currently a ceasefire.

In response to the war in Yemen, the UK has engaged in self-serving reviews in numerous ways as arms sales to the coalition have become more controversial. For example, in July 2016 the government took the highly unusual step of issuing corrections to the parliamentary record (Ellwood, 2016), amending its position from certainty to uncertainty about its knowledge of Saudi conduct in the war. In doing so, the government tried to leverage interpretation of arms export controls in support of its preferred policy of continued licensing. And after the Court of Appeal found government practice to be unlawful, the government reviewed its licensing methodology as part of its steps to comply with the court order. As noted previously, this review found that any possible violations of IHL constituted “isolated incidents” rather than a pattern – with the result that the government deemed itself to have met the court’s terms and resumed licensing exports to the coalition. This is a good indication of the way that legal and risk assessment practices are subject to the operation of state power: the Court found government practice to be unlawful, so government re-interpreted its practice to present it as in line with the law. CAAT has been granted permission to proceed with a new judicial review case, in which it argues that the government’s conclusion is irrational and the resumption of licensing is therefore unlawful. The case was heard in January and February 2023; the Court’s decision was not known at the time of publication.

4 | KEY RECOMMENDATIONS

Given the analysis put forward here, any recommendations need to be understood in the context of the entrenched support for arms exports across key parts of the state and in alliance with arms capital. Nonetheless, a reform that could be put in train by parliamentarians would be to turn the CAEC into a standing Select Committee with the powers that would accrue to it. While the inability to compel ministers to give evidence is a longstanding and significant limitation on all committees’ powers, the CAEC’s indirect membership, quoracy rules, and lack of a dedicated staff or a paid Chair elected by all MPs could be addressed by such a shift. This would require a change under the standing orders (the parliamentary rules), either through a government motion or a debate by the four Committees who compose its membership. Such a change could contribute to more meaningful scrutiny of government policy and thus serve as a step towards accountability. As this article was going to press, the CAEC wrote to Leader of the House Penny Mordaunt calling for the committee to be treated as a stand-alone Select Committee: see CAEC, 2023.

5 | CONCLUSION: ADDRESSING THE POLITICS OF POLICY RECOMMENDATIONS

This overview of the past two decades of UK policy and the illustrative examples of UK practice in relation to
war and conflict indicate that the UK’s licensing criteria have politically and legally ambiguous effects that ultimately serve to facilitate rather than restrict exports. On the one hand, the criteria allow critics to draw attention to the misuse of weapons, giving them a framework and a language with which to try to hold the government to account, including via legal challenges. On the other, the criteria are mobilised by government as a mantra to deflect criticism and to close down debate and scrutiny. The government points to the existence of regulations to argue that its policy is sound, regardless of the publicly available evidence to the contrary, and invokes the flexibility of case-by-case application of the criteria as a means to reject more substantive control measures.

The key issue is the absence of political will to address the economic, political and social costs of UK policy on arms sales. Lack of expertise, information or creative alternatives is not the problem. Many credible policy recommendations have been made by actors external and sometimes internal to the state over the years, in particular the vibrant NGO community working on UK and international arms transfer control. They have developed policy guidance specifically related to risk assessment the implementation of arms transfer control criteria as part of the ATT process (ATT Monitor, 2016, ch.2; Oxfam, 2010). Prior to that, they made repeated recommendations such as the so-called “presumption of denial”, in which licence applications for exports to countries of concern (e.g. those identified by the UK Foreign, Commonwealth and Development Office in its own human rights reports) are refused unless the need for them can be clearly demonstrated or there is a high level of confidence they will not be misused (Saferworld, 2001). Other broader recommendations to try to change the orientation of UK policy more fundamentally include ending the subsidies on arms production and export, halting the privileged access of industrial actors to state budgets and decision-making fora, and moving the licensing bureaucracy out of the government responsible for international trade and into a more pro-control part of the state. All of these have been suggested repeatedly in the past two decades and ignored by successive governments. If UK arms exports are to stop contributing to the world’s conflicts, then debates about licensing policy and the wider foreign, defence and security policy it is part of – including the UK’s own propensity to engage in war-making – will need to be re-framed and re-energised. This work will doubtless take considerable time and require efforts to address the systemic pro-export orientation of the UK state and its geopolitical and strategic ambitions. For now, and at a minimum, transforming the CAEC into a standing Select Committee would be an important step to increase Parliamentary oversight of UK arms export licences. The CAEC has played a politically fluctuating role over the years. Its structural weaknesses are a major obstacle to effective democratic scrutiny and control of arms exports. Scrutiny is a key responsibility of Parliament and can generate transparency and accountability for arms export decisions; reform of the CAEC would be one meaningful step towards this.

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