

Arms-trade Policies

The need for a more coherent Arms-trade Policy

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Although the European Union (EU) has worked towards stricter arms export controls, it fails to prevent irresponsible arms flows from entering conflict zones in developing countries. This clearly leads to incoherence between the EU's trading policy and its development policy: on the one hand, as a major arms exporter, the EU exports or facilitates the transshipment of arms via its territory. On the other hand, however, the EU is a major donor for poor and (post-)conflict countries. This is clearly incoherent.

Irresponsible arms trade does not only directly affect human rights, it has a devastating effect on economic progress, often for years to come. Let's take the example of Nepal. This country spends approximately 10% of its Gross National Product on defence, which is more than on education or health. Its decade-long armed conflict has seriously hampered its opportunities for development. The EU spends millions on development activities in Nepal, including funds aimed at good government, poverty reduction and human rights.¹ Between 2002 and 2005 Nepal received huge amounts of arms, not only from countries such as the US and India, but also from EU Member States, including the UK (various conventional arms including helicopters), Belgium (rifles) and France (components of helicopters).² The above example shows that there is a discrepancy between EU development and EU arms-trade policies.

This fact has been acknowledged by the EU itself: *The widespread availability, rapid accumulation and easy flow of small arms have led to great human suffering, losses in economic development and increased poverty around the world in recent years.*³ Therefore, the EU Member States, aware of the need for more coherence between arms export and development policies, committed themselves in the European Consensus to strict control of their arms exports, including exports to developing countries.⁴ Unfortunately, there is still a long way ahead of us before we can speak of coherent policy on this topic.

European development policy

The goals of the European development policy are very clear: *"Our mission is to help to reduce and ultimately to eradicate poverty in the developing countries through the promotion of sustainable development, democracy, peace and security"*.⁵ The EU, through its various institutions⁶, spends approximately 7 billion euros yearly on

¹ In total this amounted to approximately 70 million between 2002-2006. See EC website:

http://ec.europa.eu/development/index_en.htm

² In the French case this was a result of production deals with India where ventures between French and Indian companies made it possible for these components to bypass EU export legislation. See Amnesty International Report Undermining Security, 2004.

³ European Commission, Policy paper Small Arms and Light Weapons; The Response of the European Union (2001).

⁴ The European Consensus on Development; Joint Statement by the Council and member states, 2006.

⁵ European Commission Website: http://ec.europa.eu/development/index_en.htm

⁶ Mainly through the European Commission, EuropAid and ECHO.

development funds. Africa will receive approximately 10 billion by 2010. Many of the EU's priority countries are countries in (post-)conflict situations, for example the Democratic Republic of Congo, Sudan, Eritrea, Uganda, Liberia, Ethiopia, Colombia and Nepal.

Some of the EU funding directly targets issues such as the proliferation of small arms through weapon-destruction projects, improvement of national legislation or training of law-enforcement officials.⁷ For example, the EU supports Operation Rachel in Mozambique and South Africa, a project that aims to collect and destroy small arms that result from the war in Mozambique and are often smuggled into South Africa.

European arms-trade policy

In 1998 the EU Member States adopted the EU Code of Conduct on Arms Exports (CoC).⁸ The CoC sets the minimum standards in relation to arms exports and transshipment to and from the EU. Member States must adhere to eight criteria when deciding whether to grant an export licence. For example, arms may not be exported to countries if there is a clear risk that they will be used for internal suppression or could lead to human-rights violations. Criterion 8 mentions the need to take the economic situation of the receiving country into account.⁹ In 2005 the code was reviewed and the EU now plans to adopt a Common Position giving the document a more legally-binding status.¹⁰

The value of the EU arms trade in terms of export amounts approximately to 360 billion euros annually. Within the worldwide top 10 of arms-exporting countries in 2006 we find several EU Member States, viz. Germany (3), France (4), Netherlands (5), UK (6), Italy (7), Spain (8) and Sweden (10).¹¹ Some of these arms end up in conflict zones in developing countries.

The EU, aware that arms trade is a global issue, is working towards stricter controls at an international level including supporting an international Arms Trade Treaty that will set out stricter controls on state exports.

Incoherence: the need for a stricter arms policy

In 2002, arms deliveries to Asia, the Middle East, Latin America and Africa constituted 66.7 per cent of the value of all arms deliveries worldwide.¹² The EU was responsible for

⁷ European Commission, Policy paper Small Arms and Light Weapons; The Response of the European Union (2001).

⁸ <http://consilium.europa.eu/uedocs/cmsUpload/08675r2en8.pdf>

⁹ The criterion includes the following text: The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

¹⁰ At the time of writing the draft Common Positions has not been adopted yet. The draft text will however most likely not be amended further.

¹¹ Stockholm International Peace Research Institute Yearbook 2007.

¹² Control Arms, Guns and Growth (June 2004).

about one third of these shipments. African, Asian and Latin-American countries spend approximately 22 billion dollars on arms annually.¹³ This money could provide education for all the children in those countries and, if invested in healthcare, could reduce infant mortality by two thirds by 2015.¹⁴ Countries such as Eritrea, Yemen, Burundi, Rwanda, Sierra Leone, Uganda and Nepal spend more on military needs than on health and education put together.¹⁵ The World Health Organisation (WHO) has estimated the costs of attaining the Millennium Development Goals at \$135 billion. The World Bank therefore rightly concluded that there is a 'fundamental imbalance', with the world spending US\$900bn on defence, around US\$325bn on agricultural subsidies and only US\$50bn to US\$60bn on development.¹⁶

There is a strong need for more coherence between the European Union (EU) arms export and the EU's development policies.¹⁷ Although EU legislation in the area of arms trade has led to better controls, these are still insufficient when it comes to preventing EU arms from ending up in the exact same countries where the EU is promoting development. Although arms trade to developing countries is not illegal as such, the EU should make sure that this trade does not hamper sustainable development or increase tensions or conflicts.

Lack of a binding instrument

EU Member States have said that they plan to give the Code of Conduct on Arms Exports (CoC) a legally binding status, but the EU has still not taken this decisive step. As a result of this inaction, therefore, its development policy continues to be undermined. Binding legislation is necessary to prevent countries from breaching the CoC without being held accountable. In 2005, reports showed that EU members licensed arms to China, Colombia, Ethiopia, Eritrea, Indonesia, Israel, Nepal and elsewhere.¹⁸ Under a binding instrument, some of these transfers might have been avoided, or at least there would have been a better level of accountability.

Lack of implementation of criterion 8 on economic development

The effect of criterion 8 of the CoC, which states that Member States should take into account 'the least diversion for armaments of human and economic resources' and the

¹³ Control Arms, Guns and Growth (June 2004).

¹⁴ Ibidem.

¹⁵ Ibidem.

¹⁶ Wolfensohn, annual World Bank and International Monetary Fund (IMF) Spring Meetings, held from 24-25 April 2004.

¹⁷ It should be mentioned that this report focuses mainly on the link between EU arms trade and EU development policies. However, some of the conclusions relate to other policy areas as well such as EU policies on conflict prevention or human rights. In some of the countries mentioned, the EU's foreign policy is aimed at creating more freedoms, human rights etc., so therefore it is all the more remarkable that arms from the EU still find their way to these countries.

¹⁸ See Stockholm International Peace Research Institute, First and Seventh Annual reports on the implementation of the EU code of conduct on arms exports, available online at: <http://www.sipri.org/contents/expcon/annrep.html>

‘legitimate defence needs’ of the importing country, is doubtful. The UK, for instance, has sold arms to Bangladesh and the Czech Republic. Polish surplus weapons have been shipped to Yemen¹⁹ and several European countries made a 6 billion arms-trade deal with South Africa in 2003.²⁰ Pakistan receives arms from a number of European countries even though it has the highest levels of militarization in the world and spends more on its military than on health and education combined. Therefore, it seems that this criterion is not effective in denying export licences. Also, the criterion is formulated in such a way that states only need to ‘take into account’ the sustainability issue, leaving plenty of room for interpretation. Neither exporting nor receiving states need to prove that the arms transfer is a diversion of human and economic resources, or that there is a legitimate defence need

Lack of transit controls

Neither the CoC nor the draft Common Position requires Member States to control all transit throughout their territory. This is a serious weakness, as arms are transshipped through EU-territory to developing countries regularly. Examples are the transit of arms through Slovenian territory to countries such as Iran, Zimbabwe and Angola,²¹ or the continuous transit of arms to Israel through the Netherlands. Some of these arms are probably used in the Palestinian territories. The EU has spent millions on development funds in the Palestinian territories over the years.

Lack of control over Licensed Production Overseas

Licensed Production Overseas is the process whereby a company in one country allows a second company to manufacture its products under licence. By outsourcing production, controls over arms transfers that may apply in some countries can be evaded. For example, in 2003 the Indian government was able to export helicopters to Nepal that were produced under licence from a French company.²² The same goes for European companies that have subsidiaries in countries with less strict export legislation. As a result of this practice, a subsidiary of a British company, operating in South Africa, has been able to export arms to Uganda. This transfer would most likely not have been permitted had it been directly from the UK.

The Code lacks re-export controls

Neither the CoC nor the draft Common Position mentions the need for all EU Member States to require ‘no re-export without permission’ clauses in their arms shipment deals. This regularly leads to EU-produced arms ending up in countries through third

¹⁹ As mentioned previously, Yemen and Bangladesh have seen enormous levels of militarization and spend more on arms than on education and health.

²⁰ In comparison, South Africa spends approximately 53 million on fighting Aids yearly.

²¹ Amnesty International, *Undermining Security* (February 2004).

²² Amnesty International, *Nepal: Military assistance contributing to grave human rights violations* (June 2005).

countries. The lack of re-export controls is particularly relevant with regard to the production of components that are build into larger systems in other countries and shipped onwards.

Lack of controls over brokers

The same goes for the need for more control over individual brokers. Successive UN reports have implicated dozens of western companies involved in illegal profiteering and arms trade to Liberia, the Democratic Republic of Congo or Zimbabwe. Although the EU has its own common position on brokering, it has been criticized by NGOs as being insufficiently strong. Amongst others, one of its main weaknesses is that EU Member States do not have, nor are required to have, extra-territorial controls over brokers. The EU Common Position dealing with arms brokering²³ encourages Member States iŝto consider controlling brokering activities outside of their territory carried out by brokers of their nationality resident or established in their territoryiŝ. However, they are not obliged to do so iV and most of them do not. This means that EU brokers can simply move to another country and continue dealing in arms, in violation of EU legislation, while the EU cannot hold them accountable.

Lack of controls outside the EU

Lastly, it is important to point out that the arms trade is a global trade. Therefore, the arms-export policies of other countries can also undermine the EUiŝs development efforts. Recent arms trade between China and Sudan, even during the conflict in Darfur, are shocking examples and undermine EU development policies in those countries. The EU should therefore step up efforts to achieve stricter controls at an international level, both for state exports and brokering.

Conclusion

Many developing countries spend huge amounts on military needs, but significantly lower amounts on development-related policies. Also, while the EU provides sustainable amounts of developing aid to developing countries, it exports arms, either directly on indirectly, to the exact same countries where they spend millions on development funds. The EU should work towards more coherence between its arms trade policy and its development policy by taking a range of measures.

Policy Recommendations

- All EU Member Sates should work towards an effective new Arms Trade Treaty and towards a new international instrument for the control over brokers. All EU Member

²³ EU Council, Common Position on Brokering (June 2003).

States should implement extra-territorial legislation that enables them to control European brokers' operations from abroad;

- The EU should adopt a legally binding Common Position on arms trade without any further delay, thereby making the Code of Conduct (CoC) a legally binding instrument;
- The EU should strengthen the Code of Conduct so that all EU Member States are required to control all transit, are required to apply the CoC criteria for licensed production overseas or subsidiaries, and are required to demand end-user certificates and control over the re-transfer of their arms;
- The EU should guarantee a more effective use of criterion 8 of the EU-Code of Conduct that takes greater account of the economic situation in the receiving country. This criterion should be redefined in such a way that Member States will only be able to permit a transfer if it can be ensured that the transfer will not harm sustainable development and the applicant/recipient can identify a legitimate defence need for the specific transfer;
- The EU should discuss high military spending in their bilateral dialogues with those countries that receive EU development aid with the aim of lowering these expenditures and using these funds for development goals;
- The EU should work towards more coherent policies; the EU council and Commission work groups on arms control and development policies should regularly meet and discuss issues of common concern.

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