

OUT OF CONTROL

The loopholes in UK controls of the arms trade

Out of Control is the second investigation that Oxfam has undertaken into UK involvement in the international arms trade and the effectiveness of UK arms export controls. Unregulated or ineffectively regulated supplies of arms can exacerbate armed conflict, producing enormous human suffering and undermining development including Oxfam's own work. Oxfam seeks the effective regulation of all arms supplies to reduce this suffering and increase the prospects of sustainable development.

Oxfam's first report *Small Arms Wrong Hands*, published in April 1998, focused on UK controls on legal sales. It revealed export licences being granted - including since May 1997 when the Labour Government introduced its ethical foreign policy - to a large number of countries where human rights abuses, armed conflicts and poverty raised the question whether such exports were ethical. As importantly, it revealed the mechanics of secrecy of a system that meant that it was impossible for parliamentarians, the media or the public to confidently answer this question.

Out of Control investigates current loopholes in arms export controls that are exploited to allow the unregulated transfer of small arms to sensitive destinations - countries where they may contribute to human rights abuses, prolong existing conflict or waste resources needed to fight poverty. These loopholes have not been closed either by the tighter arms export guidelines introduced by the UK government in July 1997 or the subsequent EU Code of Conduct agreed in June 1998. In essence, this report looks at the part of the arms trade that still remains largely *Out of Control*.

The three principle loopholes investigated in this report are:

1. arms brokered by UK companies without ever

passing through the UK

2. arms produced overseas under licence from UK companies
3. the failings of end-use monitoring and control

Through a combination of existing case studies and specially commissioned research, *Out of Control* identifies the involvement of UK citizens and UK companies in each area, and highlights the need for the UK government to take action to regulate these markets.

Arms brokering

Arms brokering is where an agent in one country arranges a deal between an arms supplier in a second country and a customer in a third. Currently, UK companies do not have to apply for export licences or any other official approval to broker arms from one foreign country to another because the arms never enter the UK and so are not covered by existing arms export controls. In addition, arms brokering was not included in the new EU Code of Conduct on arms sales agreed in June 1998. As a result British brokering companies are involved in the supply and shipment of arms to sensitive destinations - destinations to which the direct supply of arms would be prohibited under the tighter ethical regulations brought in by the Labour government and the EU Code of Conduct.

Even where there is a legal and binding UN embargo, there has been a failure to bring to account those brokering arms as we have seen with Mil-Tec and the other British companies involved in shipping arms to the genocidal former government of Rwanda in 1994 and more recently, with Sandline International and the "Arms to Africa" affair.

The July 1998 White Paper on Strategic Export Controls said that the government intends to bring in tighter controls, in legislation not expected before 2000, on arms brokering to countries under any kind of arms

embargo. But it does not say what such controls will be or that all arms brokering should be licensed, as it is in Germany.

Oxfam calls for specific changes in UK controls on brokering, including:

- making all arms brokering to embargoed destinations a criminal offence with clear penalties and a will to prosecute;
- requiring that arms brokering to all destinations should be subject to licensed approval under the same criteria as that contained in the EU Code of Conduct.

Licensed production

Licensed production is when an arms company in one country issues a licence to a company in another country to produce its weapons. Often the export controls in the second country are at a lower standard than in the first country. Also, many factories continue to produce the weapons once the original agreement has ended. As a result many weapons, designed and initially produced in countries with strict export controls flow to sensitive destinations from countries where they are produced under licence.

A UK company does not usually have to apply for UK export licences for arms produced under licence overseas. Therefore, through the establishment of licensed production agreements in countries with records of human rights abuses and internal repression, companies can effectively circumvent UK legislation which would not allow the direct transfer of arms to that country.

Heckler & Koch, the once German manufacturer of small arms ranging from automatic rifles to sub-machine guns is now owned by Royal Ordnance which in turned is owned by British Aerospace. Heckler & Koch MP5 sub-machine guns and G3 rifles have been produced under licence in Turkey, Iran, Burma, Pakistan, Saudi Arabia, Mexico and other countries. In January 1998 it was reported in the defence industry press that the

Turkish licensed facility will be producing 200,000 Heckler & Koch rifles for the Turkish army over the next ten years.

Later in July 1998 it was reported that the Turkish company has signed an agreement with the Indonesia Police to supply 500 Heckler & Koch sub-machine guns - a deal for which they would be unlikely to be granted a licence for the direct export of such guns from the UK under the government's current regulations. But no such government approval is required.

The licensed production of arms overseas avoids UK regulations on arms sales in much the same way as brokering does. No UK licences are usually needed. In the United States it is different. There, if a company would need an export licence to physically ship a weapon from the US, then it must also seek an export licence to produce these weapons overseas under licence. If the foreign company then wishes to export it must apply to the US government for a further licence.

Oxfam calls for the licensed production of arms by British companies to be brought under effective control by ensuring that:

- deals to license arms production overseas have to pass the same checks as direct exports, including parliamentary reporting;
- exports via UK licensed production overseas must require UK export licences;
- governments must act to halt the production of arms from factories where licensed production agreements have expired.

Absence of effective end use control

To get a licence to export arms from the UK a company must give the government an end-use certificate stating who will import the weapons and the uses to which they will be put. In theory, this is a real check on whether or not British arms are likely to be used to kill civilians or break the other criteria which the UK government uses before granting export licences. In practice, it appears to be largely worthless because it is so easy to get an end-use certificate - and impossible to check how the arms are being used once

they leave the UK.

While preparing *Out of Control*, Oxfam asked a researcher to try obtain an end-user certificate to test the system. It took a few days to arrive: an end-user certificate stamped by the Defence Ministry of the government which appeared to be importing the arms on official headed paper, with an apparently bonafide signature. Oxfam has no intention of using this certificate to export arms.

Oxfam believes that more can be done to make it more difficult to abuse the UK end-user control system. Practical measures include:

- All arms transfers should require end-use certification which should be legally binding and be verified at each transit point.
- British embassies should be used to check end-user documentation relating to the recipient country, at the very least if that country is a sensitive destination.
- Details of end-users relating to the granting or refusal of export licences should be included in all annual reports of strategic exports to national parliaments.

Conclusion

Many governments, including the US and some EU governments, have recognised the necessity to introduce new regulations to control aspects of this market. In the recent White Paper on Strategic Export Controls the UK government has addressed some but not all of the issues raised in this report. Nor does it meet all the standards identified in the best practice of other foreign governments. Opportunities clearly exist for the UK, the EU and other governments and international fora to introduce the type of comprehensive regulations Oxfam believes are necessary to prevent much of the international arms trade remaining *Out of Control*.

We would like to thank Oxfam for permitting CJM to reproduce this article.

To serve and collect

Tim Newburn urges the adoption of 'ethical policing'.

In November last year *The Times*, reporting the results of its own survey, suggested that nearly half of the 43 police forces in England and Wales had officers facing corruption or dishonesty charges. This revelation came shortly after the Chief Inspector of Constabulary, David O'Dowd, had warned in his annual report that he was becoming increasingly concerned at the level of corruption that was now evident in the police service. In the same month Sir Paul Condon admitted that there might be as many as 250 corrupt officers within the Metropolitan Police.

Of course, none of this is especially new. From the earliest days of the Bow Street Runners, through the formation of the New Police in the 1820's, to the vice and porn squad scandals in the 1960s and 1970s, policing in the UK has been punctuated with examples of malpractice and misconduct. The range of corrupt activities uncovered included bribery, the fabrication and planting of evidence, the cover up of serious crimes, and even the planning and commission of serious crimes. More recently there have been the many major miscarriages of justice involving 'process corruption' such as the suppression of evidence, the beating of suspects, and perjury.

Though it hardly needs saying given the content of much 'police drama', corruption is to be found in most jurisdictions. There is considerable evidence of long-standing malpractice within Australian policing for example,¹ and the recent Royal Commission in New South Wales found widespread and

organised corruption within the police service.² In the United States, most large city forces have been hit by scandals about corrupt cops. Indeed, the history of the New York Police Department has been punctuated by regular scandals approximately every 20 years.

There are numerous factors underpinning the pervasiveness of corruption in policing, but four are perhaps key. First, as possessors of the legitimate use of force, police officers are in an enormously powerful position, with the ability to deprive someone of their liberty, and to use 'reasonable force' to do so. Secondly, much of what the police do is low in visibility - both as far as the public and police managers are concerned. This, allied to the discretion that characterises much police practice, gives enormous scope to the officer who may wish to bend or break rules. Thirdly, policing brings its officers into close contact with opportunities for corruption - what have been referred to as its 'invitational edges'. Thus, as Sherman has observed, although the police 'have used their official powers to protect or commit every crime from burglary to election fraud and murder, the main source of police corruption has always been the purveyors of illegal pleasures: prostitution, alcohol, gambling, and, in recent years, narcotics'.³ The final ingredient is the 'code of silence' which prevents exposure by other officers.

All this means that not only are corrupt practices a frequent temptation for police officers, but that enormous barriers face any police organisation wishing to prevent corruption. The evidence from previous police experience suggests that an essential ingredient in maintaining integrity is clarity about standards of conduct.⁴ Where the police organisation stands in relation to bribery, perjury and so on should not be problematic. But what about the receipt of gratuities? What about a free cup of tea in a local cafe on the beat? Such things may be on the boundaries of the question of corruption but, at least in the eyes of some, acceptance of gifts is the first step on the 'slippery slope'. Patrick V. Murphy, the Commissioner of the NYPD in the aftermath of the major corruption scandals in the 1970s, famously told his officers:

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‘except for your paycheck, there is no such thing as a clean buck’. Bill Bratton, one-time chief of the Boston Police Department (and later the NYPD), describes how ‘gratuities’ had got out of hand when he first became a cop in Boston:

Like the mailman with a steady route the cop on the beat developed friendships with the merchants, and it was a very commonplace practice to accept a bottle or an envelope with a five dollar bill as a holiday gift. The downtown posts were particularly lucrative because of all the big businesses. Maybe you’d get a deal on a stereo system or a deep discount on a suit of clothes. One captain in the downtown district was famous for keeping the front doors of the police station open as people carted in the gifts; legend had it that the station was overflowing. It wasn’t

legal, but it was widely accepted.⁵

Technological advances

In addition to emphasising ethical standards, forces in the UK are now bringing the full paraphernalia of technological policing to bear on corrupt officers. Bugging devices, wiretaps, hidden cameras, sting operations, random integrity tests - all these and more are being used in an effort to detect corruption, to collect sufficient information to prosecute successfully, and to act as a deterrent to those who are tempted. The use of such strategies, however, is far from straightforward itself. As Gary Marx observed about undercover tactics: ‘just because a policy may work and is legal, it does not follow that it is a wise policy’.⁶ His point is that, just as in relation to all undercover police work, such corruption control tactics may

have unforeseen consequences. They also raise ethical and civil liberties issues and require that the police service set in place another set of safeguards to oversee and regulate their use.

Towards ethical policing

Previous experience suggests that although corruption can never be completely eliminated it can be controlled. Successful control requires that police managers remain open at all times to the possibility that there may be corruption within the organisation. Complacency breeds corruption. A willingness to admit to the possibility of corruption, together with clarity and enforcement of standards is vital. The Nolan Committee on Standards in Public Life (1998) has recently set out the seven basic principles of public life: integrity, selflessness, objectivity, accountability, openness, honesty and leadership. Although such principles require some elaboration in order to clarify their precise application to policing, they potentially provide the basis for the establishment of something that might be recognised as ‘ethical policing’.

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1. Finnane, M. (1994) *Police and*

Government: Histories of Policing in Australia Melbourne: Oxford University Press

2. Wood, J. R. T. (1997) *Final Report of the Royal Commission into the New South Wales Police Service*

3. Sherman, L. W. (1978) *Scandal and Reform: Controlling police corruption* Berkeley: University of California Press

4. For a review of previous experience see: Newburn, T. (1999) *Understanding and Preventing Police Corruption: Lessons from the literature*, London: Home Office Policing and Reducing Crime Unit

5. Bratton, W. and Knobler, P. (1998) *Turnaround: How America's top cop reversed the crime epidemic*, New York: Random House

6. Marx, G. (1992) When the guards guard themselves: undercover tactics turned inward. *Policing and Society*, 2, 151-172.

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