

Defense Export Control in 2007: State of Affairs

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Introduction

In late June 2006, the Ministry of Defense officially announced the opening of the defense export controls division that was established following the serious rift between Israel and the United States over defense exports to China.¹ This signified the beginning of a new approach that Israel decided to adopt as part of compliance with the Wassenaar Arrangement conditions for supervising arms sales in the world, including control of dual use products. This new path was paved after a lengthy process of repair of Israeli-US relations, in which understandings were reached on the procedures to be followed in Israel for enhancing control of defense exports.

Like most countries that export arms, Israel faces the challenge of balancing moral and human issues inherent in the export of arms with the economic, technological, and political advantages offered by weapons exports. Similarly, Israel is faced with the dilemma of adhering to the accepted international rules and commitments regarding export controls while trying to realize the said advantages.

This article presents the dilemma between Israel's justified wish to export large volumes of defense products² and the supervision and restrictions it must accept due to its own defense requirements and in accordance with the requirements of international frameworks in general, and those of the United States in particular.³ The article first reviews Israel's defense exports in the context of the controls until the outbreak of the crisis with the United States. The second portion of the article looks at the crisis surrounding the exports to China, the subsequent creation of the new division at the Ministry of Defense, and the implications of the new policy. Finally, the article offers a set of recommendations for Israel on how to consolidate its international activity while maintaining a correct balance between efforts to advance defense exports and control of this activity.

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Israel's first steps in the field of defense exports occurred in the 1960s, when it began exporting surplus equipment – platforms and weapon systems – that the IDF no longer needed. This surplus equipment was marketed to countries in Africa and Asia that showed interest in the equipment due to its quality and price. Naturally and gradually, this was followed by the export of items and weapon systems developed and manufactured in Israel. In time this grew to exporting via bi-national and multinational companies, as is common practice in the modern era.

Over the years, there were quite a few cases in which defense deals preceded the establishment of political-defense relations. For example, diplomatic relations with Sri Lanka followed exports of weapon systems.

Israel directed its export efforts to a range of countries, including states that were “ostracized” by the international community (Chile and South Africa); South American states suspected of drug dealing; African states connected to genocide (and even China, at least in the American version), states that were formerly hostile towards Israel (Egypt and Jordan); “wavering” states in North Africa, and the Gulf emirates.

Israel managed to establish connections with African states via supplies of arms needed by those states, for example, in exports to Uganda, Congo, Kenya, and Ethiopia. The military technology acted as an important key to relations with China, before the crisis with the United States erupted, and links with India, mainly when it was under a technological embargo (led by the United States) and was looking for a way to breach the technological obstacles that delayed its ambitious development processes. There were also the cases of Poland, which after the disintegration of the Warsaw Pact decided to realize its technological-industrial ambitions in order to find its place among Europe's industrial leaders, and Turkey, which was looking to develop its industry with the leverage of defense acquisitions, obtained courtesy of Israel.

Defense Exports under Control

Over the years, with the development that occurred in the inter-bloc struggle and with the end of the Cold War, Israel had to review its policy towards the establishment of the various control organizations and the changes that took place in methods of control of defense exports. With hindsight, it is hard to claim that these deliberations were

sufficiently focused. On the other hand, it is common knowledge that defense export activities have always been shrouded in a cloud of secrecy. Target countries that were considered “taboo” by the international community – Chile during the Pinochet regime and South Africa during the apartheid era – featured on Israel’s list of export destinations (not without some raised eyebrows at the Israeli Foreign Ministry). While the veil of secrecy helped to obviate pressure from the international community, it also prevented transparency regarding decisions to export to problematic countries, and left the considerations and decisions to a limited number of parties, principally within the defense establishment.

The connection between international law and arm transfers controls has changed since the end of Cold War, just like arms control objectives have changed. Today, the legal means can be defined as one of many components that generate the mechanism of arms control. Cooperation between groups of countries has given rise to ad hoc political arrangements – as opposed to legal agreements – that signify the voluntary obligation of the participating countries.

Notwithstanding the decision to do away with COCOM⁴ in 1993 once the Eastern bloc had disintegrated, the need for multilateral cooperation on defense export controls remained. Efforts focused on the attempt to agree on rules to be adopted by all the member countries of the control treaties, and to incorporate this agreement in the laws of each country. Indeed, during the nineties this method grew and encouraged uniform control of defense exports. A large number of countries participated fully in the various agreements. The most prominent of these included the Australia Group (AG) for supervision of chemical warfare, the Missile Technology Control Regime (MTCR) on long-range missile technology, the Nuclear Suppliers Group (NSG), and the Wassenaar Arrangement (WA) for control of exporting weapon systems and dual use goods. It is important to note that each of these agreements incorporate no more than forty countries.

In 1998 the European Union released a political statement about a code of conduct for defense exports.⁵ It includes a normative chapter and a chapter that looks at how controls are applied. The normative chapter is based on eight criteria for defense exports determined back in 1991 by the five permanent members of the UN Security Council. The application chapter considers information exchange to prevent approval of

defense exports following non-compliance with the conduct code; deliberations on responses to non-compliance with the code by an EU member country; and methods of documenting implementation of the code. Despite the code being a political declaration it became a cornerstone of defense export controls in the EU. A significant decision in the field of control of arms trade is UN Security Council resolution 1540, adopted in April 2004. The resolution did not result from a particular event, but it reflects an attempt to reduce the danger of acquiring means of mass destruction by terror organizations. The resolution calls for a commitment – legalistic in nature – of all member countries in the UN to update their laws and regulations regarding control of defense exports.

Israel reacted hesitantly to the processes of formulating the new control regimes. In each case there were dialogue teams to study and clarify the issues. There were discussions at various levels, but no decisions to join any of the regimes. Thus, Israel was too late to join the MTCR for controlling missiles and launching facilities for non-conventional warheads when the regime was being formulated, and it was obliged to make do at a later stage with a statement of adhering to the regime, as if it were a member.⁶

Concomitant with formulation of the arrangements and the international control regimes, a process took place in Israel that appeared to be detached from the global trend of centralizing and coordinating control of arms trade, namely, a process of increasing governmental support of defense exports. This process was primarily an outcome of a drop in the IDF's (shekel) budget for force buildup; currently, 80 percent of development and production activities of the defense industries are export-oriented while only 20 percent is designated for acquisition by the IDF. This is an unprecedented and unmatched equation among countries engaged in the export of weapon systems.

In contrast with the momentum of support of defense-industrial exports, export control did not appear to be an area that earned too much attention. The main objective for the defense community in the effort to control the exports appears to have been to prevent leakage of sensitive military technologies. There was also, of course, awareness of the political sensitivity of defense exports, but the Ministry of Foreign Affairs was nonetheless only partially involved in the examination and approval processes. The Ministry of Industry, Trade, and Labor also formally played a role defined as controlling

the export of dual use technologies, in the area of chemical products and ballistic missile system (MTCR), but this was not translated into any effective implementation.

The China Crisis and the Establishment of the New Division

The efforts of the defense industries and the Ministry of Defense to take practically every step to encourage and support growing defense exports, and the circumscribed and hesitant attention given to adopting the international controls, are the background to the crisis between Israel and the United States. This crisis intensified during 2005, resulting from differences of opinion regarding defense exports to China.⁷

The problem began in 1999 over the agreement to sell Phalcon intelligence aircraft developed by Israeli Aerospace Industries (IAI). Intense American pressure propelled Israel to cancel the agreement. This incident followed other instances in which America has objected to Israeli exports to China. In leaks to the media, claims were made on the transfer of aerodynamic and electronic technologies that according to American "sources" derived from the Lavi air fighter project that was mostly American funded. There were also insinuations about transfer of Arrow missile technologies to the Chinese, although these claims were never formally aired or proven. The crisis was exacerbated by the affair of the Harpy UAV – an unmanned plane used against radar systems manufactured by IAI – whereby several vehicles were previously acquired by China and returned to Israel for upgrading.⁸

The dispute between Israel and the United States stemmed from their respective assessments regarding the nature of the Chinese military-strategic threat. According to the American perception, dating as far back as the Clinton administration, China constitutes a significant strategic threat to the United States and its interests, particularly in eastern Asia. Israel did not perceive early enough the seriousness with which the US relates to the provision to China of weapon systems that it regards as strategic and that from its point of view are liable to intensify the threat to its forces in the region. At the same time, the industrial-competitive aspect should not be ignored, nor should the impact of the American defense-industrial lobby on the administration's strategy. Besides Israel, European industries and their systems competed for the project to provide the intelligence aircraft to China. Israel's success in the race with the Phalcon did not allow any

indication of how the Americans would have reacted to British or French exports of sensitive strategic systems such as the Phalcon to China.

Even after the Phalcon project was dropped in accordance with a decision by Prime Minister Barak, and after discussion forums between the Israeli Ministry of Defense and the US Department of Defense were established, there still remained some areas of friction. The Americans, led by those responsible for control of defense exports in the State Department and Department of Defense, believed that the root of the problem lay in the fact that in Israel the promoters of defense export and those who are responsible for controls operate under one umbrella – at the Ministry of Defense. They would like to see a system like the American system, with two main centers of control: the Foreign Ministry and the Ministry of Defense, with the Foreign Ministry in the top position.

In addition to resolving some of the past misunderstanding, the solution to the crisis lay in reorganization of control of defense exports in Israel, as well as enacting new legislation for instituting control of defense exports.⁹ With regard to ultimate responsibility, it was clear that in Israel the means for preparing the pre-approval investigations lie mainly in the Ministry of Defense. The reorganization intended to introduce a clear division between encouragement and control of defense exports. Integrating the Ministry of Foreign Affairs and the Ministry of Industry, Trade, and Labor in the approvals process completed this approach.

Prime Minister Sharon's directive to adopt the Wassenaar Arrangement including the control of dual use goods and to prepare new legislation on control of defense exports attested to a new emphasis with regard to the manner of Israeli export control. Adhering to the international restraints on exports of a wide range of weapon systems is an important component of the defense export policy of any country sensitive to its global standing. Moreover, Israel's ultimate compliance with the line of international restraints can eventually contribute to its freedom of action in the area of defense exports.

Thus, after more than a year had elapsed after Sharon's directive to the Ministries of Defense, Foreign Affairs, and Industry, Trade, and Labor, a new and separate division for the control of defense exports was established in the Ministry of Defense, and under the cabinet legislative committee, a new form of the defense exports control law was formulated. This law, brought to the Knesset for approval, calls for significant

involvement of the Ministry of Foreign Affairs in the export control process. The examination and issuing of approvals for negotiations and permits for export of weapon systems will be coordinated by the control division of the Ministry of Defense. The involvement of the Ministry of Industry, Trade, and Labor will now be more precisely defined and stricter than in the past, and will complement the export control activities of the Ministry of Defense and the Ministry of Foreign Affairs in the examination and approval processes.

The new legislation and the reorganization in defense exports controls are designed to provide the necessary if circumspect response to all aspects of exports of weapon systems and dual use materials.¹⁰ The Ministry of Industry, Trade, and Labor has begun to assume the extended responsibility granted to it, which will include control of dual use goods. The new defense export control division in the Ministry of Defense¹¹ is a major component of the new deployment. The legislation that Israel is committed to adopt as part of its reorganization will anchor the existence of the new division legally.¹²

Control in its new format will attend to the following elements:

1. As in the past, significant attention will be given to prevent transfer of sensitive military technologies before the requisite examination of the balance of advantages and risks.
2. Coordinated inter-ministerial deliberations with regard to political sensitivity of the export of any system.
3. Efficient and coordinated full control of the export of dual use materials and goods, in accordance with the accepted international rules.
4. Publicizing Israel's positions and adoption of the principles of control arrangements in the world (for example, the MTCR) in correctly applying controls that are compatible with the international standards, thus establishing Israel as a country that adheres to its obligations in the area of arms control.
5. Simplifying the processes of examination and approvals for export, and providing assistance for exporters in dealing with bureaucracy in these areas. This is particularly necessary once several government entities are integrally involved in the process.

The Wassenaar Arrangement: The Israeli Angle

The Wassenaar Arrangement is a multilateral global organization for control of exports of conventional weapons and military technologies, currently incorporating forty member states. The arrangement is based on the exchange of data about exports of military equipment and technologies between the member states for the purpose of achieving transparency and the ability to control arms trade in the world. The arrangement is also designed to improve cooperation on preventing acquisition of equipment and systems related to weapons of mass destruction.

The WA states maintain control of their exports based on an agreed, frequently updated list of the items under the arrangement. The organization's member states are required to report any export approval or cancellation of approval for exports including those of dual use military items. The arrangement is open to all states around the world, without discrimination. The country, however, must be a manufacturer and exporter, and must be a member of the international conventions of control of weapon systems – such as the Nuclear Non-Proliferation Treaty (NPT), the MTCR, the Biological Weapons Convention (BWC), and the Chemical Weapons Convention (CWC).

Israel is unable to join the WA as a full member, since full membership requires signing all the international conventions for control of weapon systems exports (NPT, MTCR, BWC, CWC, and the AG) and Israel does not meet these conditions. On the other hand, Israel is able to join countries such as China, Hong Kong (which is listed as a separate country by the WA), and South Africa, which are not members of the arrangement but adhere to it. As it will not be a full member of the WA, Israel will not be able to benefit from the ongoing data exchange about permits and prohibitions of exports of weapon systems periodically released by the WA to its member states. On the other hand, the fact that Israel is not a member of the arrangement exempts it from reporting on its export transactions and full disclosure of its activities in this area.

Adoption of the WA lists for defense export controls of weapon systems and those that detail the control requirements for dual use goods and materials is an asset in global politics. As early as 2004 the Minister of Industry, Trade, and Labor issued a directive regarding control of “exports of chemical, biological, and nuclear substances.” Attaining the status of a country that honors the arrangements that are accepted by most

countries engaged in defense exports will contribute to an ability to export more freely and prevent pressures and situations of unfair competition in a competitive world in which Israel contends with the leading exporting countries of weapon systems.

Recommendations

Defense exports are an important strategic asset for Israel that provides a solution for the country's industrial and economic needs. It allows maintaining its technological edge on an industrial-technological basis, which guarantees future capabilities as well. In addition, defense exports help to generate and consolidate political links, though they must be subject to the necessary caution, based on the countries' character and the nature of the relations with them, the international restraints of arms trade with them, and the need to avoid "parallel trading" in areas of conflict.¹³ Israel would do well to act according to a set of principles.

In the area of promoting exports:

1. Maintaining an updated information facility relating to the political climate in the various areas of the world, with regard to countries' plans to increase their military strength and relating to obstacles that are liable to pose difficulties in exporting to target countries.
2. Formulating a sensitive and flexible policy on all aspects of the classification level of the systems for exports, including a transparent policy for permits that can be issued with regard to the target countries.
3. Maintaining constructive involvement by the Israeli customers, beginning with the IDF's acquisition of systems, as proof to the purchasing country of their quality and operational reliability, and remaining vigilant in monitoring common projects of advanced engineering development of systems from an early stage, before they get to the manufacturing and supply stages.
4. Ensuring involvement of the political leadership in selected cases, as practiced by the Americans, French, and British. The global powers do not shirk from applying political pressure in order to advance large sales of arms systems, or when entry to the country in question is of special political importance.

5. Backing Sibat (Israel's Foreign Defense Assistance and Defense Export Department), the staff entity with the relevant position and authority in the Ministry of Defense that exists for promoting defense exports, while relying on the contributing effort of defense emissaries (including military attachés) to the target countries.
6. Close collaboration of the defense establishment, in Israel and abroad, with the defense industries while observing the international rules; coordinating with the existing control organizations but particularly with the United States.¹⁴

In the area of defense export controls:

1. Consolidating the system of defense export controls by completing the establishment of the control division in the Ministry of Defense and bolstering ongoing links between the three government ministries involved in this activity.
2. Completing legislation while ensuring the creation of efficient and operationally available enforcement facilities.
3. Permanent participation in meetings of international forums of the arms control establishments, thus positioning Israel as a country that honors the accepted principles in the world of control of arms trade.
4. Continuous examination of the possibility of extending Israel's participation in the international control organizations, similar to the MTCR and the WA.
5. Consolidating deliberations forums on different levels with the US administration in the area of control, and generating renewed mutual trust.

Conclusion

Economic considerations dictate a significant part of the strategy of the countries that decided to become defense-goods exporters. The potential arms market is in excess of \$25 billion a year. Being a leading supplier in this market sector is a big challenge. Well established and advanced technological capability, along with operational experience, provides an edge in the competitive environment that exists today. These capabilities provide the exporting countries leverage and a competitive edge so that the desired goals for industrial and economic achievements will be reached. For Israel, with its defense industry's unorthodox balance between domestic consumption and export, defense

exports not only act as an economic support that helps to maintain the industry, but also serve as a means of maintaining a technological leadership position.

How can Israel safeguard this asset? Will entering into a new phase and adhering to the WA damage Israel's ability to maintain its freedom to export military systems? Will the crisis that occurred between Israel and the United States continue to cast a shadow and constrain Israel's industrial-defense exports? While the new arrangements between the United States and Israel highlight the sensitivity and caution involved in exporting strategic weapon systems to China in light of the recent crisis, this does not necessarily incorporate a general limitation on all Israeli defense exports.

Israel and the United States are engaged in an ongoing constructive process of consolidating a harmonious relationship with regard to all aspects of export control. Wise management of the relations between the countries in this context is important. It will lead to enhanced abilities of defense exporting without friction and crises. There is no doubt that joining international frameworks, which must materialize with a continuous and courageous examination of the possibility to become a full member in some of the existing international agreements and arrangements, may strengthen Israel, both within the international community and with regard to future exporting abilities. If this is the case, it will be possible to cite the words of Samson: "Out of the strong came something sweet."

¹ "The Defense Exports Control Division Starts Operations," announcement of the Ministry of Defense spokesperson, June 27, 2006.

² In 2005 Israel's defense industries signed new contracts worth \$3,367 billion. Actual exports of Israeli weapon systems in 2005 totaled close to \$2,640 billion. In 2006 the value of contracts signed rose to \$4.4 billion. This is the highest value of exports ever, bringing Israel's defense exports to 10 percent of total global exports. Also important is Israel's special prominence in maintaining its high technological-military level and its defense industries.

³ The answer to the troubling question "did the crisis have a detrimental effect on Israel's future exporting abilities" is that there is no significant damage and Israel's new deployment for control of its defense exports following the crisis will contribute to sustaining its defense exports.

⁴ CCCOM – Coordinating Committee for Multilateral Export Controls: the control committee of the United States and its partners that maintained an embargo on the transfer of arms and industrial equipment to the

Soviet Union and Eastern bloc countries during the Cold War era. COCOM ceased functioning on March 31, 1994.

⁵ The European Union Council, Code of Conduct of the EU for defense exports, Brussels, June 5, 1998. <http://consilium.europa.eu/uedocs/cmsUpload/08675r2en8.pdf>.

⁶ Once the MTCR was formulated, new members have to be approved unanimously.

⁷ Ilil Shahar and Amir Rapaport, "Defense Crisis with Washington Deepens," *Maariv*, June 14, 2005.

⁸ Yitzhak Ben Horin, "Rice: The Talks with the Israelis about China were Difficult," *Yediot Ahronot*, May 17, 2005.

⁹ Ze'ev Schiff, "Israel Succumbs – A Delegation Leaves for the US Today to Formulate Restrictions on Defense Exports," *Haaretz*, June 26, 2005.

¹⁰ "The steering committee for application of control of defense exports has convened ahead of legislation proposal"; Tel Aviv Chamber of Commerce, 7.9.2005.

¹¹ "The Defense Exports Control Division will Start Operations on July 2," The Israeli Institute for Exports and International Cooperation, July 4, 2006.

¹² Aluf Benn, "Clash of the Ministry of Foreign Affairs and Ministry of Defense over Arms Exports," *Haaretz*, March 29, 2006.

¹³ Thus, for example, caution was required for exports to countries in conflict with each other, such as: India and Pakistan, Ecuador and Peru, and Singapore and Malaysia and Indonesia.

¹⁴ Hadas Manor, "Israel and US to Review Arms Export Controls," *Globes*, March 8, 2006.