

Report on the export of Arms from Switzerland 2009

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Introduction

Swiss arms export practice has always hovered between the conflicting priorities of **politics, economy and ethics**. It is all the more crucial that the norms of Swiss domestic and international law are scrupulously upheld.

In autumn 2009, **seventy professors of law**, representing all Swiss law schools noted in an open letter that export licenses to countries like Pakistan, Saudi Arabia and India, but also to the U.S. and GB **are not in compliance with the legal regime currently in force**.

The revised ordinance on the export of war material entered into force in December 2008. Since then, the government must not grant arms export licenses when the destination country is **«involved in an internal or international armed conflict»** or

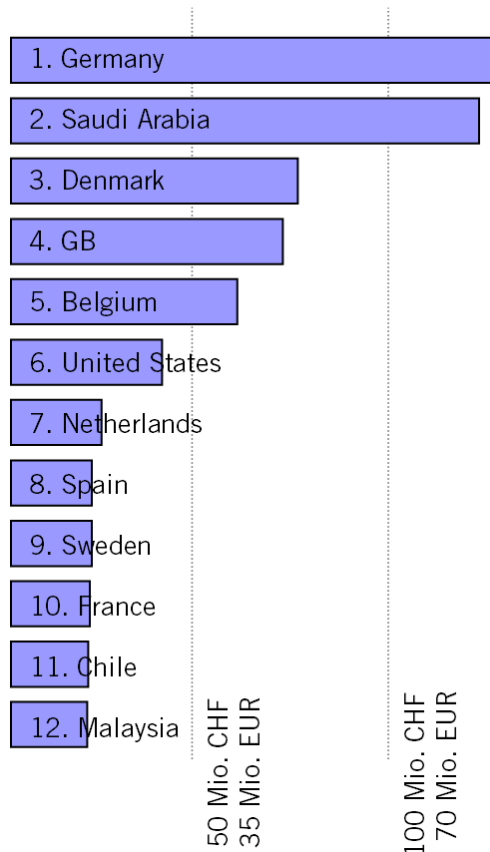
when human rights are systematically and gravely violated in that country.¹ The seventy legal experts pointed out that most customer countries of the Swiss arms industry are involved in armed conflicts despite that it is illegal to export arms to those countries since December 2008.

On October 21, the Federal Council (the Swiss executive authority) decided not to comment on the open letter. The federal department of international law already had prepared an answer on that matter. This answer was never published.

There is no constitutional court or any other mean to challenge the Federal Council's decisions in court. The parliamentary control on arms exports is extraordinarily weak compared to other European countries, as well.

Where did the exports go to?

Switzerland exported war materiel to 74 countries in 2009. The twelve most important customers were:



What does the new ordinance say?

The revised ordinance on the export of war materiel introduced two new criteria for arms export licenses:

1) Armed conflicts

Art. 5, para. 2(a) prohibits exports if the destination country „**is involved in an internal or international armed conflict**“.

2) Human rights abuses

Art 5, para. 2(b) prohibits exports if **human rights are systematically and gravely violated** in the destination.

What is an armed conflict?

The term “armed conflict” is **clearly defined** in international law. The Federal Council affirmed that they will adhere to those defin-

itions when interpreting the revised ordinance.²

The Geneva Conventions only apply when an armed conflict is occurring. The term “armed conflict” is therefore a central term in International Humanitarian Law.

International Humanitarian Law differentiates between two types of armed conflicts: international («inter-state») conflicts und non-international («internal») conflicts.³

Resolutions of the UN Security Council are irrelevant when judging on the presence of an armed conflict. They concern the legality of a military intervention, but they do not define whether or not an armed conflict is occurring. The legal experts also stated that the term armed conflict is not defined in the law of neutrality (i.e. in the Hague Land Warfare Convention of 1907) which anyways only applies in interstate conflicts.

The Pakistan Case

In 2008, Pakistan was the main purchaser of Swiss arms. For years, Pakistan has been deemed as one of the most instable states in a generally instable region. The UNHCR has warned of a humanitarian disaster in South Waziristan since May 2009. According to intelligence reports, certain groups within the Pakistani armed forces supply Taliban groups in Afghanistan with weapons.⁴

On March 25 2009, the Federal Council communicated that they rejected several arms export applications to Pakistan because of the dissatisfying domestic situation and the human rights abuses in that country. However, the „NZZ am Sonntag“ newspaper reported in early November that the Federal Council had decided in the very same meeting to grant an export license for 12'500 artillery rounds in the value of 10 Million Euro.



Rheinmetall-Direktor Peter Weilenmann (vorne rechts) unterschreibt den Vorvertrag mit den Vertretern der pakistanischen POF. (Istanbul, 29. April 2009)

After that, the Federal Council stated that the rounds were only spare parts that were part of a pre-existing contract. Moreover, no more licenses would be granted to Pakistan, Saudi-Arabia and Egypt.⁵ However, the “NZZ am Sonntag” later reported that Rheinmetall Air Defense (the new name of Oerlikon Contraves) had already signed a new pre-contract with Pakistan on 29 April 2009.

In 2009, at least three armed conflicts took place in Pakistan: In Baluchistan, in Waziristan and in the Swat valley.⁶

The India Case

In 2009, Switzerland exported arms in the value of several million Euros to India. In addition to the simmering conflict with Pakistan, the Indian government is fighting armed groups in various provinces, for example in Assam, Manipur und Andhra Pradesh.⁷ Inter alia, Swiss companies supplied the security forces of the Chhattisgarh province with submachine guns. Human rights organizations reported that both the insurgents and the security forces recruited child soldiers in this province.⁸ The Federal Council was aware of these reports when they granted the respective export license the year before.⁹

The Saudi Arabia Case

Saudi Arabia was the second most important recipient of Swiss war materiel in 2009. The Swiss industry delivered arms of all kind to the Saudi Defence Ministry and to the Home Affairs Ministry. In a report to the UN Human Rights Council, Human Rights Watch quailed the human rights abuses by the Saudi government as “widespread and systematic”.¹⁰ Especially the rights of minorities and of women are widely abused in Saudi-Arabia. Torture, show trials against government critics, detention without charge and the death penalty on minors are common.

The Egypt Case

Switzerland exported guns worth 250'000 Euro to Egyptian Defence Ministry in 2009.¹¹ The security forces still torture systematically in Egypt.¹²

The Afghanistan Case

The largest part of Swiss arms exports went to countries that are involved in the conflict in

Afghanistan. Often, the states purchased the materiel explicitly for a deployment in that conflict.

Since the consent of the Karzai government to the presence of foreign troops, the conflict in Afghanistan is a non-international armed conflict.¹³ The parties to the conflict are the Afghani government and the international troops on the one side and the Taliban and other armed groups on the other.¹⁴ The consent of the Afghani government has changed the legal type of the armed conflict, but has not made it disappear.

The UN Security Council authorized the U.S. and other states to form the International Security Assistance Force (ISAF) and to support Afghanistan militarily. This mandate renders the intervention of the foreign troops judicially legal, but does not change the fact that there is an armed conflict in Afghanistan and that the ISAF countries are involved in that conflict.

The Iraq Case

Switzerland exported war materiel in the value of 20 Million Euro to the U.S. in 2009. These weapons are mainly used in Afghanistan and in Iraq.

In Iraq, a non-international armed conflict similar to the one in Afghanistan is taking place. The conflict parties are the government and the coalition troops on the one side and the various insurgent groups on the other. The consent of the government to the presence of international troops changed the type of the armed conflict, but not its presence. The mandate of the UN Security Council expired on December 31, 2008.

The UAE Case

In May 2009, the Federal Council decided to grant the export of Pilatus PC-21 “training” aircraft to the air force of the United Arab Emirates. It is planned that the planes are equipped with gun pods later on. On several occasions, the UAE has broken end user agreements with Switzerland. For example, the UAE resold Swiss howitzers to Morocco illegally in 2006.

Various human rights organizations have reported grave violations of human rights in the UAE in recent years.

The Iran Case

According to the files of the Zurich Commercial Court, the Swiss arms industry sold arms systems to Iran (and probably to Libya) at least until the end of 1997. Oerlikon Contraves Ltd. had declared those deliveries of 35-mm anti-aircraft canons as spare part shipments to Singapore. The Swiss Defence Ministry was aware of these deals at least since April 1995.

There are pictures of these anti-aircraft canons placed outside the Uranium enrichment plants in Natanz, obviously in protection against possible airstrikes against these sites.¹⁵ In 2009, Iran has started to produce look-a-like anti-aircraft canons on its own and calls the model "Samavat".

The Georgia Case

In November 2009, Swiss authorities launched an inquiry as media reported that Swiss sniper rifles (AMSD .50 Nemesis) were used in the war in South Ossetia in 2008.¹⁶ Some Ossetian militia members had confirmed that Georgian soldiers had used those rifles.¹⁷

Swiss authorities stated that no arms export licenses were granted to Georgia since 1998 and that the rifles must have been delivered to Georgia illegally.

Apparently, export controls had failed in that case.

¹ http://www.admin.ch/ch/d/sr/514_511/a5.html

² Reply by the Federal Council on 19/11/2008 to parliamentary question 08.1094.

³ International armed conflicts are defined in Common Article 2 of the 1949 Geneva Conventions and in Article 1 of the first additional protocol of 1977. Non-international („internal“) conflicts are present, "whenever there is protracted armed violence between governmental forces and organised armed groups or between such armed groups within a State". (ICTY, Tadic Jurisdiction Appeal, October 2, 1995).

⁴ New York Times: Afghan Strikes by Taliban Get Pakistan Help, U.S. Aides Say, 25. März 2009:

http://www.nytimes.com/2009/03/26/world/asia/26tribal.html?_r=2.

⁵ NZZ am Sonntag: Weitere Rüstungsexporte nach Pakistan, 01/11/2009.

⁶ http://www.adh-geneva.ch/RULAC/applicable_international_la_w.php?id_state=166

⁷ http://www.adh-geneva.ch/RULAC/current_conflict.php?id_state=107

⁸ Human Rights Watch: Being Neutral is Our Biggest Crime, July 2008, <http://www.hrw.org/en/reports/2008/07/14/being-neutral-our-biggest-crime-0>

⁹ "Sonntag": EDA wollte Lieferung verhindern, 14/11/2009, <http://www.sonntagonline.ch/index.php?show=news&id=68>

¹⁰ "Saudi Arabia commits systematic and widespread violations of several basic human rights." from: Human Rights Watch: Universal Periodic Review of Saudi Arabia. Report to the UN Human Rights Council, 11/06/2009. <http://www.hrw.org/en/news/2009/06/11/universal-periodic-review-saudi-arabia>.

¹¹ Medienmitteilung, 25.06.2008, <http://www.seco.admin.ch/aktuell/00277/01164/01980/index.html?lang=de&msg-id=19556>.

¹² Cf. for example: Amnesty International, Annual report 2009, <http://report2009.amnesty.org/en/regions/middle-east-north-africa/egypt>.

¹³ This assessment is shared e.g. by the German Defense minister: <http://www.zeit.de/politik/ausland/2010-01/guttenberg-afghanistan-bundeswehr>

¹⁴ RULAC: http://www.adh-geneva.ch/RULAC/applicable_international_la_w.php?id_state=1.

¹⁵ Tages-Anzeiger: Wie Washington auf Oerlikon feuerte, 13/11/2009: <http://facts.ch/articles/3195477-wie-washington-auf-oerlikon-feuerte>.

¹⁶ 09.5522 – Reply by the Federal Council on 30.11.2009: http://www.parlament.ch/d/suche/seiten/geschichte.aspx?gesch_id=20095522.

¹⁷ Blick, Scharfschützen-Gewehr für Georgien, 25.11.2009.