



Trust and Verify

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Last French nuclear test

On 27 January, France carried out its sixth test of the series announced in June 1995.

Two days later, President Chirac announced in a television address that this was 'the definitive end of France's nuclear tests'.

Scott Report Released

On 15 February the *Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions* headed by Sir Richard Scott was published.

The Scott Report is highly controversial and contains many criticisms of the operation of government, however, it contains fewer criticisms of particular individuals than had been speculated beforehand.

It is as if the judge was using the level of proof required in a criminal court — that is proof beyond reasonable doubt — throughout the report; and that he was able to prove to his satisfaction that certain events had either happened or not, but not to be able to reach this level of proof when it came to the question of culpability of individuals.

The Report does not include a summary, nor do many sections have distinct concluding paragraphs. As the Report is 1800 pages with a further 500 pages as an appendix, summarizing it is a task not without difficulty.

Export Control Law

The Import, Export and Customs Powers (Defence) Act 1939 is criticised by Scott:

the continued use of the 1939 Act emergency powers ... remains in my opinion a matter of legitimate criticism. The omission by successive Governments to bring into effect the requisite Order in Council was deliberate, not a matter of inadvertance or oversight. [C1.64]

Section 9(3) of the 1939 Act, removed in 1990 (see last *Trust & Verify*) read:

This Act shall continue in force until such date as His Majesty may by Order in Council declare to be the date on which the emergency that was the occasion of the passing of this Act came to an end, and shall then expire except as respects things previously done or omitted to be done.

A brief prepared for the Minister for Trade, Tim Sainsbury, dated 29 October 1990, stated:

Successive Governments of both parties have continued to use the [1939] Act, considering that the emergency is not limited to the war with Germany and that a threat has continued to be posed by the Warsaw Pact to national and collective security. [cited in C1.89]

Sir Richard's reaction is:

The proposition that the emergency which was the occasion of the passing of the 1939 Act encompassed the post-war threat posed by the Warsaw Pact seems to me specious nonsense. [C1.90]

In the Ordtec case in the Appeal Court in May 1995, Lord Justice Taylor had said that the provisions of the 1939 Act were in force in the late 1980s, notwithstanding the opinion of many that the 1939 emergency was over.

It is important to notice, however, that the Court of Appeal did not decide, and did not need to decide, the question whether the Government's continuing failure through 1987 and 1989 to bring into effect the requisite Order in Council did in fact constitute an abuse of power. ... None of the documentary material that has led me to conclude that there was an abuse of power was before the Court. So it remains an open question whether the Government's failure to bring into effect the terminating order in Council was an abuse of power in respect of which a remedy in judicial review proceedings would have been available. [C1.57]

A failure to exercise a discretionary power is, if prompted by perverse or otherwise improper reasons, an abuse of the discretion. [C1.54]

For the reasons I have given I believe a judicial review challenge would have had prospects of success. [C1.93]

In his conclusions, Sir Richard Scott includes the following:

I recommend that Government publish as soon as practicable a Consultation Paper with proposals both for the content for new empowering legislation in place of the 1939 Act and for an export licensing system and export licensing procedures suitable for the peacetime requirements of a trading nation in the post cold war era. [K3.6]

Future export controls

Scott suggests:

There would, I think, be broad agreement that the purposes for which export controls may, subject to Parliamentary approbation, be imposed and used should include the following:

(i) the purpose of complying with treaty obligations binding on the United Kingdom;

Scott Inquiry — Background

The guidelines announced by Foreign Secretary Geoffrey Howe implemented in December 1984 and announced in Parliament in response to a Parliamentary Question on 29 October 1985:

- (i) We should maintain our consistent refusal to supply any lethal equipment to either side;
- (ii) Subject to that overriding consideration, we should attempt to fulfil existing contracts and obligations;
- (iii) We should not, in future, approve orders for any defence equipment which, in our view, would significantly enhance the capability of either side to prolong or exacerbate the conflict;
- (iv) In line with this policy, we should continue to scrutinise rigorously all applications for export licences for the supply of defence equipment to Iran and Iraq.

In August 1988 the ceasefire was announced. On 21 December 1988, three junior Ministers — Alan Clark, Minister of State at the Department of Trade and Industry, William Waldegrave, Minister of State at the Foreign and Commonwealth Office and Lord Trefgarne, Minister of State at the Ministry of Defence — to consider a revised form of words for guideline (iii):

We should not in future approve orders for any defence equipment which, in our view, would be of direct and significant assistance to either country in the conduct of offensive operations in breach of the ceasefire.

The three Ministers recommended the adoption of this wording. The controversy centres on whether these changes to the guidelines were adopted or not. The Government have claimed that the changes were not formally adopted as this would have required the approval of more senior Ministers, including the Prime Minister, while Sir Richard Scott is of the view that, as the revised wording was used within Government to guide export control policy, the changes were in effect implemented.

Public Interest Immunity Certificates

When three executives from a British company, Matrix Churchill, were prosecuted for exporting machine tools intended for the manufacture of artillery shells without a licence, the defendants claimed that certain government documents would prove that the Government knew of the companies activities and had at least turned a blind eye to the exports, if not actually encouraged them.

Ministers signed Public Interest Immunity (PII) Certificates claiming that material in the documents was prejudicial to national security interests, not simply because of specific material contained within them, but because they were documents relating to intelligence activities.

The judge overturned the certificates and released the papers to the defendants. Soon after, the prosecution case collapsed.

Lord Justice (later, Sir Richard) Scott was then asked to establish his inquiry.

- (ii) the protection of our armed forces;
- (iii) the prevention of terrorism;
- (iv) the avoidance of assistance to human rights abuses in foreign countries;
- (v) the avoidance of assistance to serious crime in

foreign countries;
(vi) the avoidance of assistance to aggression by foreign countries. [K2.18]

He questions the use of export controls as an instrument of foreign policy outside of these criteria and suggests that 'a wide-ranging public debate on the extent to which foreign policy objectives should be a legitimate purpose for the exercise of export controls is requisite. This is an issue which, in the end, Parliament, not the executive, must decide.' [K2.19]

He also suggests:

I would doubt whether the maintenance of a technology gap between the United Kingdom and other Western countries on the one hand and Eastern bloc or third world countries on the other hand can still be regarded as a legitimate purpose of export controls. If that is disputed by Government, this issue, too, should, in my opinion, be the subject of debate and Parliamentary decision. [K2.20]

Diversionsary routes

On the question of exports of defence related equipment through other states, Scott focuses mainly on Jordan:

There is no doubt, in my opinion, but that throughout the period 1984 to August 1990, the possibility that military exports to Jordan might be diverted to Iraq represented a continuing threat to the Government's policy on restricting defence related exports to Iraq. The extent to which diversion actually took place is impossible now to assess. [E2.62]

Scott also assesses evidence for exports to Iraq via Egypt, Kuwait, the United Arab Emirates, Saudi Arabia, Austria and Portugal.

It should be noted that it was not just exports to Iraq that were being delivered through other states:

... I find the inference that substantial quantities of ammunition were being exported from the United Kingdom to Iran by means of Portugal as diversionsary route to be a compelling one. [E7.15]

Nuclear procurement

The intelligence services were aware of attempts by the Iraqi regime to acquire nuclear weapons. Evidence of this is given by Scott:

We have reason to believe that the refusal of these export licences could force Matrix Churchill to close down. If this happened, we would lose our intelligence access to Habobi's procurement network. By keeping access open, we could obtain more important information, in particular on the procurement of some item which is far more incriminating than magnet rings. Such evidence could then be used to try and stimulate the widest possible agreement on the need to counter Iraqi nuclear procurement efforts. We are already preparing the ground by informing partners of an Iraqi attempt to procure magnets *which could only have been intended for centrifuge rotors*.

[submission by Secretary of State for Trade and Industry (Peter Lilley) to Minister of State at the Foreign and Commonwealth Office (William Waldegrave), dated 1 February 1989, cited in D6.94, emphasis added]

The nature of the Iraqi regime has not changed. It is repressive and beligerent. It has an aggressive policy of arms procurement, and *development of its own missile and nuclear weapon capabilities* ... [D3.160 Briefing prepared by civil servants for Minister of State at the Foreign and Commonwealth

Office (William Waldegrave), dated 19 July 1990, cited in D3.160, emphasis added]

Evidence from UN inspections of Iraq should also prove that MC [Matrix Churchill] did produce components for K1000 ... At first [SIS] experts could not make sense of the K1000 drawings. ... It was only further specialist analysis, less than a month before the second Gulf War, that proved that under the K1000 Project, MC had helped engineer parts for Iraq's nuclear centrifuge plant. [written evidence of Mr T, undated, cited in D5.61, emphasis in original]

Conventional weapons procurement

The attention focused on the Iraqi procurement programme for nuclear weapons detracted from the intelligence services' monitoring of the procurement of conventional weapons capabilities. However, much was known about acquisitions, for example, the work at the Nassr General Establishment, which was being supplied with machine tools from Matrix Churchill:

Projected annual production targets for the Nassr factory were specified in the [intelligence] Report [of 30 November 1987], namely 10,000 122mm missiles, 150,000 130mm shells, 100,000 mortar shells (60, 80 and 120mm) and 130,000 fin-stabilised 155mm shells. [D2.266]

A DIS minute for internal circulation dated 23 December 1988 referred to Nassr as:

mentioned in the Box 850 [SIS] report and ... quoted as being capable of producing 500,000 artillery rounds of assorted calibres annually. [D5.25(ii)]

The provision of munitions-manufacturing equipment to Iraq is at the root of one of the most controversial issues. The Government has stated that the Scott Report clears them of any allegation that arms were supplied to Iraq while critics state that the scale of assistance to the Iraqi manufacturing base by British companies with the knowledge of the Government is the moral equivalent of exporting the arms themselves.

Ministerial accountability

Sir Richard Scott states:

In the circumstances, the Government statements made in 1989 and 1990 about policy on defence exports to Iraq consistently failed, in my opinion, to comply with the standard set by paragraph 27 of the Questions of Procedure for Ministers and, more important, failed to discharge the obligations imposed by the constitutional principle of Ministerial accountability. [D4.63]

The inquiry also investigated the quality of evidence that the government allowed to be presented to inquiries by Select Committees of Parliament:

The refusal [by Ministers] to facilitate the giving of evidence to TISC [the Commons Trade and Industry Select Committee] by Mr Harding and Mr Primrose [retired civil servants] may be regarded as a failure to comply fully with the obligations of accountability owed to Parliament. [F4.66]

Was Parliament misled?

Sir Richard Scott states:

The answers to PQs [Parliamentary Questions], in both Houses of Parliament, failed to inform Parliament of the current state of Government policy on non-lethal arms sales to Iraq. This failure was deliberate and was an inevitable result of the agreement between the three junior Ministers that no publicity would be given to the decision to adopt a liberal, or relaxed, policy, or interpretation

of the Guidelines, originally towards both Iran and Iraq and, later, towards Iraq alone. ... I have come to the conclusion that the overriding and determinative reason was a fear of strong public opposition to the loosening of the restrictions on the supply of defence equipment to Iraq and a consequential fear that the pressure of the opposition might be detrimental to British trading interests. [D4.42]

However, Sir Richard also states: 'I accept also that ... the junior Ministers believed they were avoiding a formal change to the 1985 Guidelines' [D3.125]

The allegations went wider than whether answers to Parliamentary Questions were misleading and included letters written by Ministers to Members of Parliament:

Taken overall the terms of Mr Waldegrave's letter to Mr Sackville [an MP] and his other letters in like terms were in my opinion apt to mislead the readers as to the nature of the policy on export sales to Iraq that were currently being pursued by the Government. Mr Waldegrave was in a position to know that was so although I accept that he did not intend his letters to be misleading and did not so regard them [D4.12]

VERTIC News

VERTIC birthday celebrations

VERTIC is 10 years old this May and to mark the occasion we are holding a one-day conference "Building Trust Through Verification" in London on 3rd May.

Speakers include: Andrei Kozyrev, former Foreign Minister of the Russian Federation; Ambassador István Gyarmati of the Hungarian Foreign Office; Ambassador John Maresca, President of the Open Media Research Institute in Prague; Professor José Goldemberg, former Minister of Science and of the Environment for Brazil; and Sara Parkin, Co-secretary of the European Greens.

The conference will be held at the Royal United Services Institute, Whitehall and will start at 10 a.m. Numbers are limited and so those wishing to attend should contact the VERTIC office as soon as possible. Those of you who can not make it but wish to participate in some way could send us birthday greetings which we shall display at the conference.

Verification 1996

The proofs of *Verification 1996*, the latest of VERTIC's yearbook series, has now been delivered to co-publishers Westview Press. The book will be available from May.

For further information contact the VERTIC office or:

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IT Donation

VERTIC thanks KPMG, one of the UK's largest professional services firms, for their generous donation of two much needed Apple Macintosh computers and a laser printer which are now giving sterling service in our London office.

As an organization with concerns for the environment, we should like to encourage other companies to follow KPMG's excellent example of recycling IT hardware.

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Trust & Verify

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What is VERTIC?

VERTIC is an independent organization aiming to research and provide information on the role of

verification technologies and methods in present and future arms control and environmental agreements.

VERTIC co-ordinates six working groups comprising 50 consultants worldwide.

VERTIC is the major source of information on verification for scientists, policy makers and the press.

VERTIC is funded primarily by grants from foundations and trusts and its independence is monitored by an Oversight and Advisory Committee.

Other publications

In addition to *Trust & Verify*, VERTIC publishes the *Verification* (formerly *Verification Report*) series of yearbooks and a variety of research reports each year. Details of VERTIC publications are available on request.

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