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Should the EU Arms Embargo against China Be Lifted?

Political and practical implications

Gudrun Wacker

The EU seems ready to move towards lifting its 15 year old arms embargo against China. The governments of France and Germany favour such a revision. To China, the embargo is a relic of the Cold War that hinders co-operation with the EU. The EU Summit of 24–26 March, however, did not make a decision (which has to be unanimous). Some member states have not yet come forward with a clear position. There are still discussions concerning not only possible human-rights concessions by China, but also the question of whether the termination of the embargo would be a largely symbolic act, without any real effect on the arms export policies of the EU member states. The U.S. position, however, is quite clear: Washington opposes lifting the embargo. Should the EU end it, China policy could become another source of transatlantic tension.

Since autumn of last year, there has been ample evidence that the EU is interested in ending its 15-year arms embargo against China. France took the initiative for lifting the embargo and other states have joined in. During his visit to China at the beginning of December 2003, Federal Chancellor Gerhard Schroeder, stated his intention to work for an end to the embargo. Similar comments had been voiced during the EU–China Summit in November 2003.

The December 2003 EU Summit produced no unanimous position; the issue of the embargo was referred to the Council (General Affairs and External Relations) for further deliberation.

In contrast, the European Parliament, in a resolution of 18 December, spoke out clearly for the retention of the embargo, referring to human rights violations in China and tensions in the Taiwan Straits [PA_TA-PROV (2003)0599]. However, since the Parliament only has an advisory function in this matter, the political will of the governments will ultimately determine whether the embargo is lifted or retained. States that were once regarded as opponents to lifting the embargo now seem to have changed their minds: Denmark, for example, has signalled its approval should China make concrete headway in respecting human rights by enshrining them in its constitution.

The background

The EU arms embargo was initially part of a longer list of sanctions that the European Council imposed during its meeting at the end of June 1989 in reaction to the military suppression of the demonstrations on Tian'anmen Square in Beijing earlier in the same month. While the other sanctions – suspension of contacts at the ministerial level, postponement of new co-operation projects, reduction of cultural, scientific and technical co-operation programmes – were already terminated in October 1990, the arms embargo remained in effect.

The extent and scope of the embargo were not specified in the 1989 document and its interpretation was left to the individual states.

In the course of the 1990s several EU member states clarified their respective interpretation of the embargo. In 1995 the United Kingdom declared that it would not supply arms to China or equipment that could be used for internal repression. In 1997, France announced the start of a high-level strategic dialogue with China and co-operation in fields such as technology, but asserted that the co-operation would be “conducted within the framework of our European and international commitments.” During this period, individual European governments – France, Italy and Portugal – spoke out in favour of a revision of the embargo for the first time.

In reality, some European states had shipped arms to China even in the 1990s, partially to meet contract obligations made before 1989. Beyond these earlier obligations, non-lethal military items such as airborne early warning radar systems were also exported. An American report in 1998, however, classified these European shipments as insubstantial. Their share of China's military imports was only 2.7% (compared to 6.6% for the US).

The US had likewise imposed an arms embargo against China in 1989, which was made law the following year (Public Law 101-246). The American embargo is broader in scope and more specific than the Euro-

pean one in that it applies to lethal as well as non-lethal military equipment on the “US Munitions List.” But the US, too, completed projects that had been agreed upon prior to 1989. Moreover, the President repeatedly issued waivers for exports in the “national interest” (between 1990 and 1997 to a total volume of approximately 350 million US dollars). During the second Clinton Administration, the softening of American export controls, especially vis-à-vis China, faced mounting domestic criticism.

The lion's share of China's arms imports since the beginning of the 1990s, however, has come from Russia. These transfers consisted mainly of fighter aircraft, submarines and destroyers. The volume of Russia's annual arms exports to China since 1999 is estimated at 1.5 to 2 billion US dollars, and at 7 to 19 billion US dollars for the entire period from 1990 to 2002. Israel has also sold military goods to China (including airborne surveillance radar) but since the late 1990s it has come under increasing pressure from the US to end this co-operation.

Bilateral positions

China

In an unprecedented strategy paper of October 2003 outlining its foreign policy vis-à-vis the EU, China explicitly demanded the lifting of the arms embargo. From the Chinese viewpoint the reasons for which the sanctions were originally imposed have long since ceased to exist. The spokeswoman of the Chinese Foreign Ministry called the embargo anachronistic and a product of the Cold War that impedes co-operation between China and Europe.

Indeed, the People's Republic of China has undergone massive economic and social change since 1989 and has become a relevant factor in the world economy. Due to China's accession to the World Trade Organization (WTO), the rule of law is slowly gaining ground. Internationally, Beijing is trying to play a responsible role

and has become more pro-active in its foreign policy, including in multilateral institutions.

China believes it has a common interest with Europe in rejecting U.S. unilateralism. Despite the predominant position of the U.S. in international politics, China advocates the concept of a multipolar world order in which China as well as Europe would play a major role. Moreover, China wants to make Europe its main trading partner.

For the new political leadership in China, which has only been in office for a year, it would be a success if the EU embargo were in fact to fall, even if access to European military equipment were to remain limited.

Europe

The EU for its part adopted a new China strategy ("A maturing partnership") in October 2003, after Javier Solana in spring 2003 had included China in the list of those countries which the EU considers a strategic partner. The Council's China paper critically reviews the ongoing dialogue process, but long-term co-operation is the main objective of the document.

Economic relations between China and the EU have become closer and more intensive in recent years. Bilateral trade in 2003 amounted to 125 billion US dollars, an increase of 44% over the previous year. This places the EU just behind Japan (133 billion US dollars) and the US (126 billion US dollars). The EU trade deficit with China is a modest 20 billion US dollars according to Chinese customs' statistics, but more than twice as high according to European figures which include, among other factors, re-exports from Hong Kong. In terms of direct foreign investments in China, the EU ranked fourth in 2002 behind the US, Japan and Taiwan.

In autumn 2003, the EU signed a co-operation agreement with China that has more than just economic significance: China will participate in and contribute to the Euro-

porean satellite navigation system GALILEO. Moreover, the European Space Agency (ESA) is preparing a contract for a five-year comprehensive co-operation with China.

Those EU states that actively advocate lifting the embargo – above all France – are not necessarily motivated by concrete plans for arms exports. Rather, a possible motive could be to improve their own prospects vis-à-vis competitors from Japan or the US of winning large-scale civil engineering projects in China, such as the expansion of the transport infrastructure.

The reaction of the US

By arguing that the human rights situation in China – the original reason for imposing the embargo in 1989 – has not fundamentally changed, US Secretary of State Colin Powell recently urged the EU to keep the restrictions in place. State Department Spokesman Richard Boucher has since reiterated the point.

The negative US attitude to lifting the embargo is, however, not only based on the violation of human rights in China. In February 2004 the U.S.-China Security Review Commission, established by the US Congress in October 2000, conducted a hearing on "Military Modernization and the Cross-Strait Balance." One of the experts who testified, Richard D. Fisher Jr., of the Jamestown Foundation, regards lifting the EU arms embargo as a threat to US security. He gives the following reasons:

First, Russia could react to the competition from European arms manufacturers for the Chinese market by abandoning its own limitations on military exports to China. Indeed, the Russian press reported that about 60% of current Russian arms exports go to China and that the strong market position of Russian defence contractors could only be maintained if restrictions of the Russian Ministry of Defence were to be removed.

Second, the Chinese arms industry could benefit from an innovation stimulus through European imports. And if Euro-

pean defence enterprises co-operating with American partners were to form alliances with Chinese firms, sensitive American technology could fall into the hands of the Chinese by way of industrial espionage.

The Congressional Commission therefore recommends that Congress urge the President as well as the Secretaries of State and Defence "to strongly press their EU counterparts to maintain the EU arms embargo against China." Other American commentaries suggest addressing the issue in various NATO bodies and imposing sanctions against EU enterprises that sell weapons and military equipment to China.

The American government is possibly also concerned that a European initiative would expose it to pressure from its own armament industry interested in doing business with China. Thus, China could try to diminish its dependence on Russia and at the same time improve its bargaining position vis-à-vis all relevant supplier countries.

In contrast to the US, the EU has pursued a policy of full engagement with China. From the American viewpoint, the increased technological co-operation between Europe and China means unwelcome competition for its own firms, but it is also perceived as a sign of the EU's diverging attitude to China's rise. Current characterisations of Sino-American relations as "better than ever" notwithstanding, the U.S. is determined to keep its own military and technological superiority over any potential future challenger.

Symbolic act or more?

The arguments raised in the U.S. are based on the assumption that the European defence industry will be able to export to China with practically no restrictions at all after the end of the embargo. In contrast, Europeans argue that lifting the embargo would be hardly more than a symbolic act – a political signal in response to changes in China, but with no practical consequences.

Even if the embargo is lifted, transfer of military goods would – in addition to international restrictions and those on the national level of the individual European states – still be subject to European mechanisms of export control:

- ▶ The EU Code of Conduct on Arms Exports of 1998, on which all member states have agreed and to which candidates for membership have also committed themselves. It is a formal document of the Common Foreign and Security Policy of the EU (CFSP).
- ▶ The Letter of Intent (July 1998) and the Common Framework (July 2000) which, outside of the EU context, was signed by the six leading arms producers of the EU (France, England, Germany, Italy, Spain and Sweden) for trans-national projects.
- ▶ The EU regulation on exporting dual-use items and technology (January 1995, updated June 2000) as part of the legal system of the Common Market.

Each of these three mechanisms has a different legal status. The Letter of Intent/ Common Framework is an international treaty. The regulation on dual-use items is binding EU law while the Code of Conduct is not. The latter is a declaration of the political will of all member states. As there is no common EU export policy for arms, the document stipulates co-operation and consultation in order to bring about greater consistency in the export practices of the member countries.

The Code of Conduct mentions eight criteria that are to be taken into account before granting an export licence:

1. Respect for international commitments of the EU states;
2. Respect of human rights in the country of final destination;
3. Internal situation in the recipient country (political tension, armed conflict);
4. Preservation of regional peace, security and stability;
5. National security of the EU member states as well as that of friendly or allied countries;

6. Behaviour of the buyer country with regard to the international community (terrorism, alliances, respect for international law);
7. Risk that the delivered goods might be diverted within the buyer country or re-exported;
8. Compatibility of the arms exports with the technical and economic capacity of the recipient country (relationship of military to social expenditure).

Of these eight criteria, the second and fourth (human rights and regional stability) would be of special relevance in China's case if the embargo is lifted.

- A section was added to Article 33 of the constitution stating "The State respects and guarantees human rights."
- A suggestion was made that in future death sentences must be confirmed by the highest people's court – until now this authority rests with the provincial courts. The change would lead to a stricter review and thus a reduction in death sentences. When such a regulation would take effect, however, has not yet been agreed on.
- A commission was set up that will make preparations for the ratification of the UN International Covenant on Civil and Political Rights.

Chinese citizens had already been guaranteed basic rights (freedom of assembly, expression, religion, etc.) in the constitution of the People's Republic before the amendment mentioned above. This does not mean, however, that it was actually possible to practise them. China signed both the UN International Covenant on Economic, Social and Cultural Rights (1997) and the International Covenant on Civil and Political Rights (1998), but ratified only the former with several modifications on the right to set up trade unions (in 2001).

The recent amendment to the constitution should neither be considered a major breakthrough nor be dismissed as mere lip service. Improvements in the human rights situation in China proceed at a slow and uneven pace, and there are often setbacks, especially when the Communist Party sees its monopoly of power being threatened.

Criterion 2: Human rights

The human rights situation in China is still regarded as unsatisfactory by international organisations. In its China strategy of October 2003, the EU, too, noted that "a significant gap still exists between the current human rights situation in China and internationally accepted standards." Issues of concern are the following:

- The still outstanding ratification of the UN Covenant on Civil and Political Rights;
- The persistence of re-education in labour camps;
- The extensive application of the death penalty;
- The failure to guarantee freedom of expression, religion and association.

The dialogue on human rights between the EU and China has resulted in positive developments, but there are a number of issues "where the discussions have not yet allowed for meaningful progress." German Foreign Minister Fischer once again called attention to "serious deficits" in human rights in China at the 60th Conference of the Human Rights Commission in Geneva on 15 March 2004.

However, at the session of the National People's Congress in March 2004, China adopted some positive measures:

Criterion 4: Regional stability

China's foreign policy towards the neighbouring countries has been marked in recent years by positive initiatives aimed particularly at counteracting the perception of a "China threat" and at gaining acceptance for its rise as a regional power.

There is one notable exception, however: Beijing threatens to use force should Taiwan, which it regards as a renegade province, move towards independence.

Even though neither side can be interested in a military conflict in light of the growing economic linkages between Mainland China and Taiwan – China was Taiwan's largest trading partner in 2003 – the danger of an escalation of the conflict still exists. For its own political survival, the new Chinese leadership cannot afford to show weakness over this issue.

The modernisation of the Chinese military must be seen in the context of the Taiwan issue. China has stationed some 500 short-range missiles opposite the island. Prior to the presidential election in Taiwan, which took place on 20 March 2004, Beijing behaved much more restrained than in 1996 and 2000. But as a reaction to announcements of the (old and most probably new) Taiwanese President Chen Shuibian during the election campaign, Beijing once again vowed that China is prepared to make all necessary sacrifices should Taiwan cross the "red line" (declaration of independence).

Since the introduction of the Code of Conduct on Arms Exports, the EU member states have agreed on steps towards more conformity in the consultation mechanism and in reporting. The latest (fifth) annual report on the EU Code from December 2003, illustrates the role its principles are playing already in issuing export licences to China: In 2002, a total of 287 licences for exports to China were granted (203 in the UK alone); 17 were refused with reference to the following of the above-mentioned criteria: 1 (6 times), 2 (3), 4 (9), 5 (1), 7 (2) and 8 (4).

Only for those export licences refused exclusively with reference to the embargo, which falls under criterion 1, would the lifting of the embargo make a difference: Such export applications would no longer be covered by the regulation stipulating that for a period of three years after the non-conferring of an export licence another member state in which an export permit for the same goods is applied for must

conduct consultations with the state that originally blocked the export.

From this it can be concluded, that a lifting of the embargo will only result in modest changes of the current export practice. The key element in implementing the Code and its restrictions is, as it was before, the will of the individual member states. In the case of the major arms-producing states, considerations of national economic interests always come into play when making such decisions. The same applies to the export of dual-use goods, which were not explicitly covered by the embargo to begin with.

Perspectives

In the meantime, China seems to be ready to accept the prospect that lifting the embargo will lead to little change in practice. During a visit to Brussels in early March 2004, Chinese deputy Foreign Minister Zhang Yesui assured Chris Patten, EU Commissioner for External Relations, that China is not planning a massive increase of its arms imports and that it respects the EU Code of Conduct. In this way China attempts to defuse the remaining reservations in various member states.

Beijing fears that an unanimous decision of the member states on lifting the embargo will be harder to achieve once the EU enlargement has become reality in May 2004, since accession candidates like Poland might be more open to US arguments and pressure.

At a Council meeting at the end of January 2004, the Committee of Permanent Representatives (COREPER) and the Political and Security Committee (PSC) were asked to look further into the matter. Their main task is to examine the effectiveness of the Code since its introduction in order to assess the possible consequences of a termination of the embargo. Part of this process could also be to consider which concrete concessions regarding human rights should be requested from China beyond those already made – for example the ratification

of the International Covenant on Civil and Political Rights of the United Nations.

On 15 March 2004, Javier Solana travelled to China with the embargo figuring prominently in his talks there. He announced that the EU seeks a solution that would improve European-Chinese relations without leading to more arms in the region.

Even if a lifting of the embargo is postponed until after EU enlargement, it is possible that the EU will reach a decision before the end of this year. In doing so, the Union would be giving a political signal, not only to China but also to the United States.

If such a decision were taken against American objections, new turbulence in transatlantic relations could result. For the U.S. administration this could be proof once again that the EU does not really care about American security concerns.

From the standpoint of the EU, it would be a sign that Europe does not regard China's growing power as an automatic threat to Western interests. By taking this last step of normalising relations with China, the EU would also document that it is serious about its strategic partnership with China.

Internet sources

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