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CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

DEFENCE SALES TO IRAN: THE KHARG

Note by the Secretaries

The Committee recognised (OD(80) 11th Meeting, Item 1) that the Government would be obliged, as one consequence of Iran's seizure of United States hostages, to refuse an export licence for the fleet replenishment vessel Kharg, ordered from British Shipbuilders. As a result of this decision the Iranian Government have for the time being abandoned the vessel at Swan Hunter's shipyard on the Tyne.

2. At the invitation of the Foreign and Commonwealth Office the Official Group on Iran have examined the problems involved in allowing the Kharg to be exported in the event of the United States hostages being released, and the arguments for and against maintaining the vessel at the Government's expense, pending the grant of an export licence. The Group's report, circulated herewith, forms the background to the Foreign and Commonwealth Secretary's policy memorandum on the same subject (OD(80) 76).

Signed ROBERT ARMSTRONG
R L WADE-GERY
R M HASTIE-SMITH

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DEFENCE SALES TO IRAN - THE KHARG

Note by Officials

BACKGROUND

1. The Iranians took delivery of the fleet replenishment ship Kharg from Swan Hunter Shipbuilders on 25 April, on payment of the final £10 million instalment of a total bill of £39 million. But they were forbidden from commissioning the ship and their application for an export licence was not granted. The ship has therefore remained at Swan Hunter's berth on the Tyne.
2. At the end of August the Iranians appeared to be on the point of challenging in the courts the decision not to issue an export licence. This course has not been pursued.
3. In mid-September, the Kharg's entire crew, which had been looking after the ship and which would in other circumstances have been receiving post-acceptance training under Royal Navy auspices, was withdrawn. The ship has since stood empty (and uninsured). If it remains unattended it will deteriorate. The cost of putting the Kharg in order when eventually an export licence is granted will increase the longer the ship is neglected and could amount in due course to several million pounds; it may already be quite substantial. The Iranians have asserted that the British Government is responsible for the upkeep and protection of the Kharg as long as an export licence is withheld. (There is of course no legal basis for such an assertion: the ship is Iranian property which they have abandoned, and it has been made clear to the Iranians that the Government do not accept responsibility for the ship's upkeep.)
4. Two main questions arise -
 - a. In what circumstances should an export licence for the Kharg be issued?
 - b. Should the Government take on the task of maintaining the Kharg until an export licence is issued?

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FACTORS AFFECTING THE ISSUE OF AN EXPORT LICENCE

5. It has hitherto been taken for granted that an export licence for the Kharg would be issued once the Iranians had released their American hostages and EC and American economic sanctions against Iran had been lifted. The outbreak of war between Iran and Iraq has altered the context in which such a decision would have to be taken. The Foreign and Commonwealth Secretary's minute of 7 November to the Prime Minister reviews the political factors and concludes that there should be no early resumption of military supplies to Iran, even where (as in the case of the Kharg) these have already been paid for, until the risk to the United Kingdom's relations with Iraq can be assessed; and until there is progress over the 4 British subjects detained in Iran.
6. In the case of the Kharg there is, in addition to the power to prevent export by withholding an export licence (which would not be weakened following the release of the hostages), a possible obligation to prevent export so long as Iran and Iraq are at war. The 1907 Hague Convention on Neutral Rights and Duties in Maritime War obliges a neutral Government "to employ the means at its disposal to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, [against a Power with which that Government is at peace], which has been adapted in whole or in part within the said jurisdiction to warlike use". The Attorney General takes the view that the proper stand in present circumstances would be for us to refuse to release the Kharg and to refer the Iranians to our obligations under the Hague Convention. If the Iranians should respond by saying that they had no intention of using the vessel for hostile operations, the position could be reconsidered - although the effectiveness of such an assurance would be doubtful, given the untrustworthiness of the regime in Iran.
7. There is therefore a legal impediment to letting the Kharg go while a state of war exists between Iran and Iraq. Against this it can be argued, somewhat unconvincingly, that possession of the Kharg would not help the Iranians in their fight with Iraq, and that if the balance of other factors pointed to letting the Kharg go it would not be sensible to refuse to do so on the grounds described above. If we so decided, Iraqi complaints about a decision to grant an export licence for the Kharg could similarly be

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answered by pointing to the ship's irrelevance to the battles at present being fought, as well as to the certainty that it would be several months before the ship had been put in full working order, its crew had been trained, and the ship was ready to leave British waters.

GOVERNMENT INVOLVEMENT IN THE MAINTENANCE OF THE KHARG

8. If the issue of an export licence for the Kharg is to be further delayed, whether because the release of the American hostages does not occur soon or because Ministers decide on other grounds that the licence should be withheld for the time being, a decision needs to be taken on whether the Government should become involved in the maintenance of the ship (subject to the Iranians agreeing to this - see paragraph 12 below).
9. The case for the Government taking some action is that a dispute over the condition of the ship when an export licence is eventually granted could hamper any improvement in the United Kingdom's relations with Iran, including our long-term trading prospects, which other developments might have made possible. The cost of maintaining the Kharg cannot be assessed without a proper survey; and it would depend on whether the ship were "mothballed" or maintained actively, this decision in turn depending on a judgment about how long the ship would remain unmanned. Subject to these uncertainties, the cost might be of the order of £2 million per annum. It is just as difficult to assess the cost of refurbishing the vessel, should it be decided not to carry out any maintenance on her; the figure would depend on, for example, how long she remained unattended and on the severity of the weather. But it is unlikely that this course would prove to be cheaper than maintaining the ship in the meantime, and it could well be considerably greater: there are real risks of major damage occurring as a result, for example, of water pipes freezing and bursting. There is the further point that if the ship's condition were allowed to deteriorate it would take time to effect the necessary repairs before the Iranians were able to make use of the ship.
10. The case against the Government taking on this task is that it is the Iranians' responsibility to look after their own ship. Given their known position in the matter of upkeep - that it is a British responsibility - they would almost certainly refuse to reimburse maintenance costs. The Attorney General considers that it would be inadvisable to make satisfactory

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settlement of this or other Government claims on the Iranians a condition of granting an export licence. In addition, the Government would be the more likely to be held liable for the cost of making good damage to the ship arising, for example, from an accidental explosion. The Government might also be held - wrongly - to have assumed responsibility for the consequences of refusing an export licence, contrary to their general policy of not paying compensation in such circumstances.

11. Although several Departments see general advantage in the Government becoming involved in the maintenance of the Kharg, no Department is prepared to provide the necessary funds from their existing budget. The Central Contingency Reserve for 1980/81 is under extreme pressure. If Ministers decide that the Kharg should be looked after at Government expense, they will also need to decide how the costs are to be funded.

12. If Ministers decided to fund maintenance work on the Kharg, care would need to be taken to avoid indicating to the Iranians that we have thereby assumed responsibility for the ship. We have already disclaimed legal responsibility. The Iranians would have to be asked whether they themselves would arrange and pay for the ship's maintenance. Given their likely refusal, their agreement would then have to be sought to the Government doing so on the understanding that this would be without prejudice to the views of either side on the question of responsibility for the vessel or the cost of maintaining it. If they refused to consent to our acting on terms acceptable to us, we should not be justified in interfering with their vessel, except insofar as it became a danger to others.

13. As to the practicalities of maintenance, if that were to be decided upon, Swan Hunter Shipbuilders have indicated that they would be willing to act as the Government's agents in this. The work could be supervised by the Ministry of Defence, on a repayment basis. The alternatives of removing the Kharg to a different commercial shipyard or to a Royal Dockyard offer no advantages in cost terms, and in the case of a move to a Royal Dockyard the task could only be taken on at some detriment to the naval refit programme.

CONCLUSIONS

14. The Group conclude that -

i. So long as Iran and Iraq remain at war, there are likely to be legal difficulties over allowing the export of the Kharg even after the American hostages have been released.

ii. The longer the Kharg remains unattended the greater will be the expense of restoring the ship to the first-class condition in which it was handed over to the Iranians, who are undoubtedly responsible for looking after it.

iii. Maintenance of the ship in good condition by the Government on behalf of Iran could be helpful to the United Kingdom's future defence sales to Iran when other impediments to good relations with that country have been removed. On the other hand, British maintenance would be expensive and would increase the danger of our being held responsible for any accident to the Kharg or more generally for the consequences of refusing an export licence.

iv. The cost of maintaining the ship is impossible to establish accurately, but could amount to around £2 million per year.

v. No single Department regards such expenditure (which would probably never be recovered) as sufficiently important to displace other parts of its programme; nor are the Treasury at official level ready to envisage recourse to the Central Contingency Reserve.

Cabinet Office

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