



House of Commons  
Foreign Affairs Committee

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# The use of UK-manufactured arms in Yemen

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Fourth Report of Session 2016–17





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**Fourth Report of Session 2016–17**

*Report, together with formal minutes relating  
to the report*

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## The Foreign Affairs Committee

The Foreign Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Foreign and Commonwealth Office and its associated public bodies.

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## Summary

The conflict in Yemen has had tragic and disastrous effects on the civilian population and on the economic development of the country. The intervention of the Saudi Arabia-led coalition in support of former president Abd Rabbuh Mansur Hadi was supported by the United Nations Security Council and we recognise it as a legitimate operation under the aegis of international law. Saudi Arabia and other members of the coalition are key and long-standing allies and partners of the United Kingdom. Defence exports to the region have a value beyond the purely economic; they ensure interoperability of equipment with our allies and underpin long-term alliances which help deliver our wider foreign policy objectives.

A strong and durable relationship with Saudi Arabia has enhanced the United Kingdom's work in advancing many of our shared and vital strategic interests. These include military action against ISIL in Syria and Iraq, combating manifestations of violent extremism and radicalisation, countering terrorist financing, confronting Iranian subversions of the existing state systems across the region, and providing immediate relief and long-term solutions for Syrian refugees. Furthermore, Saudi Arabia is a crucial and indispensable partner of the United Kingdom in our shared objective of reaching a political resolution to the conflict in Yemen, which was precipitated by the armed Houthi aggression. Our common security and economic interests run deep. Saudi Arabia's willingness to bear a greater share of the regional security burden, notably leading the coalition acting under the authority of the United Nations Security Council Resolution 2216 to restore legal authority in Yemen, is a particularly welcome development.

There have been allegations of violations of international humanitarian and human rights law by all parties to the conflict in Yemen, including the targeting of civilian areas and medical facilities, and the use of cluster munitions, which could, although do not necessarily, constitute violations of international humanitarian law. HM Government appears to have relied on assurances from the Saudi government that the coalition is operating within the boundaries of international law, despite the fact we heard allegations from credible sources to the contrary. Whilst we welcome the coalition's progress in establishing the mechanisms to conduct investigations, further progress is needed to ensure that investigations are transparent, credible, and published in a timely manner. We recommend that the UK Government offer its support to the coalition where appropriate so that it can meet these ends. The Saudi government has taken too long to report to the UN Human Rights Council the results of its internal investigations into the alleged violations. We believe that an independent, United Nations-led investigation of alleged violations by all parties to the conflict is necessary to supplement the internal investigations of the Saudi-led coalition.

Given that the UK has a long history of defence exports to Saudi Arabia and its coalition partners, and considering the evidence we have heard, it is possible that alleged violations of international humanitarian and human rights law by the coalition have involved arms supplied from the UK. HM Government has obligations under the Arms Trade Treaty, as well as European and domestic law, to ensure there is no risk that arms it has licensed might be used in contravention of international humanitarian law. The legality of the Government's actions will now be determined by the High Court, which granted The

Campaign Against Arms Trade, represented by Leigh Day lawyers, a judicial review into arms exports to Saudi Arabia. The outcome of this case will have potential ramifications for British arms exports to all members of the Saudi-led coalition, including Jordan, Egypt, Kuwait, the UAE, Bahrain, and Qatar, amongst others.

We are grateful for the former Foreign and Business Secretaries' respective offers for members of the Committees on Arms Export Controls to have regular meetings with ministers and to visit the Arms Export Policy Department in the FCO and the Export Control Organisation in BIS. However, the Government's arms export licensing regime is relatively opaque to the public, to whom it appears that the Government too often relies on assertion rather than positive evidence. We have made a number of recommendations for measures which could be introduced to make the system of licensing considerably more transparent than is currently the case. This would be a significant step forward in terms of our international obligations, not least under the Arms Trade Treaty, in the creation of which the UK was a leading player.

Finally, we call for the Government to respond in a timely fashion to this Report. This is a pressing issue. We will be seeking an early opportunity to debate our conclusions and recommendations on the floor of the House.



# 1 Introduction

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## Our inquiry

1. The Committees on Arms Export Controls are a concurrent meeting of four select committees of the House of Commons—Business, Innovation and Skills; Defence; Foreign Affairs; and International Development—working together to examine the Government’s expenditure, administration and policy on strategic exports, that is, the licensing of arms exports and other controlled goods. The four committees have been cooperating since 1999 as each has an interest in defence exports.

2. Following its re-formation in February 2016, the Committees decided to conduct an inquiry into the use of UK-manufactured arms by the Saudi Arabian-led coalition in the conflict in Yemen. This was in response to considerable public concern that such arms were being used in contravention of international law and the UK’s international, European and domestic obligations. The Committees called for written evidence, looking at the following issues:

- What are the UK’s strategic interests in the Arabian Peninsula and in the wider Gulf region? To what extent and how are those strategic interests being advanced?
- What significance does the region play in terms of the UK defence and security industry?
- Are UK-manufactured arms being used by the Royal Saudi Armed Forces in the conflict in Yemen?
- Have there been any infringements of the UK Government’s criteria for the granting of arms export licences with regard to the use of UK-manufactured arms in Yemen? If so, what should be done as a consequence?
- Should DFID’s formal involvement in granting arms export licences be extended to consider the impact on the sustainable development of both the recipient country and countries where British arms may ultimately be used?

3. The Committees heard evidence from Human Rights Watch, Amnesty International, Saferworld and Oxfam on the crisis in Yemen and the evidence of violations of IHL; from Professor Philippe Sands QC on the findings of his and others’ legal opinion on the lawfulness of UK arms exports to Saudi Arabia in the context of the conflict in Yemen; from ADS, the leading trade body for the aerospace, defence and security industries; from leading experts on our relationship with the Gulf and our arms export policies; and from Ministers from the Foreign and Commonwealth Office, the Department for Business, Innovation and Skills, the Ministry of Defence and the Department for International Development. We are grateful to all of those who gave oral and written evidence.

4. Because of a divergence of view between the committees that constitute the Committees on Arms Export Controls, it has not proved possible to agree a common text. We are therefore publishing this report as an expression of opinion by the Foreign Affairs Committee. References in this report to oral or written evidence are to evidence taken by

the Committees on Arms Export Controls, which consisted of the Business, Innovation and Skills Committee, the Defence Committee, the Foreign Affairs Committee and the International Development Committee.

## Background

5. After the Arab Spring protests in Yemen in 2011, the Gulf Cooperation Council (GCC) agreed a transition agreement to transfer power from President Ali Abdullah Saleh, who had been in power since 1978, to his deputy Abd Rabbuh Mansur Hadi. The change in government did not translate into a change in governance and many economic and social problems persisted. As Saferworld reported, “deals made in the post-Saleh transition ultimately entrenched the same kleptocratic elite whose behaviour was driving Yemen into the ground—and Saleh was allowed to remain in Yemen with impunity to wreck further havoc.”<sup>1</sup> The transition unravelled in the autumn of 2014 when the Houthi armed group, with the support of forces loyal to former president Saleh, seized the capital Sana’a and then moved south towards Aden in March 2015, forcing President Hadi into exile in Saudi Arabia. Responding to a request from Hadi, Saudi Arabia formed a 10-member coalition including Jordan, UAE, Qatar, Bahrain, Egypt, and Kuwait, amongst other countries to intervene in Yemen to halt the advance of the Houthis and reinstate the legitimate government. Since 26 March 2015, Saudi Arabia has led the military coalition in an armed conflict in Yemen.

### *UK arms exports to Saudi Arabia*

6. The UK is a major arms supplier to Saudi Arabia and other countries in the Gulf. Saudi Arabia, the UAE, and Kuwait have been identified as “priority markets”<sup>2</sup> for defence exports with the UK Trade and Investment’s Defence and Security Organisation (UKTI DSO) and in 2015 over 30 per cent of all UK defence exports were licensed to Saudi Arabia. From April to December 2015, these licences included exports exceeding the value of £1.7 billion for combat aircraft and over £1 billion for air-delivered bombs. The aerospace industry in the UK is the second largest in the world and the largest in Europe. It employs nearly a quarter of a million skilled and technical workers across the UK with very significant numbers in the North and Midlands. The Foreign Secretary confirmed at the very start of the conflict that the Saudi Royal Air Force were using UK-manufactured arms in Yemen.<sup>3</sup>

### *Allegations of serious violations of International Humanitarian Law*

7. All sides of the conflict are accused of serious violations of International Humanitarian Law (IHL) by the United Nations, other international organisations and non-governmental organisations. These organisations have documented a high number of alleged breaches of IHL by the Saudi-led coalition and the Houthis. Saudi Arabia has established a Joint Incidents Assessment Team (JIAT), and are investigating allegations of violations of IHL. As of August 2016, the JIAT had reported on nine incidents.

1 Saferworld, [A new war on terror or a new search for peace? Learning the lessons of Afghanistan, Somalia and Yemen](#), January 2016 briefing, p 5

2 HL WA [UK Trade and Investment Defence and Security Organisation](#), 10 July 2014 c WA79–82

3 “UK ‘will support Saudi-led assault on Yemeni rebels - but not engaging in combat’”, [The Telegraph](#), 27 March 2015

### ***Compliance with arms trade law***

8. UK arms exports are bound by the obligations within the Arms Trade Treaty (ATT), the EU Common Position on Arms Exports and the Consolidated EU and UK arms licensing criteria. Articles 6(3) and 7 of the Arms Trade Treaty, Criteria 2 and 6 of the EU Common Position and Criterion 2(c) all refer to respect of the recipient country for international law and require that export licences are not granted where there is a clear risk that the items might be used in the commission of a serious violation of IHL.

## 2 The crisis in Yemen

### A humanitarian emergency

9. Years of poverty, poor governance and insecurity had left Yemen the poorest country in the Middle East prior to the current crisis. However, the last 24 months of conflict and import restrictions have exacted a heavy toll on the civilian population and development in Yemen. On 1 July 2015, the UN declared Yemen a level 3 crisis, a category reserved for the most severe and large-scale humanitarian crises. It is estimated that some one fifth of people in need around the world as a result of conflict are in Yemen.<sup>4</sup> The International Development Committee described the situation in Yemen as “one of the worst humanitarian crises in the world, with 82% of the population in need of assistance.”<sup>5</sup>

10. It is difficult to compile authoritatively accurate casualty figures for the conflict in Yemen considering the complexities of the situation and the challenges faced by humanitarian monitors across the country. Estimates range considerably, with Tim Holmes from Oxfam telling the Committee that the figure could be as high as 6,100 killed and 35,000 injured,<sup>6</sup> which contrasts with the UN High Commissioner for Human Rights which has documented a total of 3,704 civilians killed and 6,566 injured.<sup>7</sup> The UN has confirmed that grave violations against children have increased dramatically as a result of the escalating conflict.<sup>8</sup> Nearly half of all school-aged children are out of school.<sup>9</sup> 2.8 million people are internally displaced.<sup>10</sup> Attacks on health facilities and staff, coupled with a lack of fuel and medicines, have left the health system on the brink of collapse.<sup>11</sup> Over half the population are living in ‘emergency’ or ‘crisis’ levels of food insecurity, with some governorates seeing as much as 70 per cent of their population struggling to feed themselves, which the UN has said shows the “the huge magnitude of the humanitarian crisis in Yemen.”<sup>12</sup> The crisis has also left the economy “on the verge of total collapse.”<sup>13</sup> A joint report by the World Bank, United Nations, Islamic Development Bank and European Union, published in August 2016, has found that the cost of damage to infrastructure and economic losses has reached \$14 billion. The UN Humanitarian Coordinator for Yemen, Jamie McGoldrick, said that “the scale and intensity of the humanitarian situation here is bleak—and by many measures it’s continuing to get worse.”<sup>14</sup> The level of need is simply staggering.

11. A cessation of hostilities was declared on 10 April 2016, accompanying ongoing peace talks in Kuwait, which has provided some relief for civilians and has improved humanitarian access across the country, although civilian casualties continued to mount

4 HC Deb 24 May 2016, Yemen: Cluster Munitions [Philip Dunne]

5 International Development Committee, 4th Report of Session 2015–16, [Crisis in Yemen](#) HC532, Summary Q 50

6 UN Office of the High Commissioner for Human Rights, [Press briefing note on Yemen](#), 10 June 2016

7 UN General Assembly Security Council, [Children and Armed Conflict](#), 20 April 2016, para 164

8 UNICEF evidence to IDC ([YEM 0015](#))

9 [“Some 13 million Yemenis need immediate help amid bleak conditions – senior UN relief official”](#) UN News Centre, 16 June 2016

10 UN Office for the Coordination of Humanitarian Affairs, [Humanitarian Needs Overview 2016- Yemen](#), (November 2015)

12 UN News Centre, [More than half of Yemen’s population now food insecure- UN](#), 21 June 2016

13 [“Some 13 million Yemenis need immediate help amid bleak conditions – senior UN relief official”](#) UN News Centre, 16 June 2016

14 [“Some 13 million Yemenis need immediate help amid bleak conditions – senior UN relief official”](#) UN News Centre, 16 June 2016

during that period: the UN High Commissioner for Human Rights documented 815 civilian casualties, including 272 deaths and 543 injured, between 11 April and 11 August 2016. Peace talks broke down in early August 2016, at which point hostilities resumed in earnest. Attacks with deadly consequences for civilians have been recorded by both sides to the conflict. The impact of the conflict on basic services, infrastructure and the economy is still being felt and the humanitarian crisis shows little sign of abating; in fact, it continues to get worse.<sup>15</sup> DFID has committed £85 million to the humanitarian response.

## The Saudi-led coalition's intervention

12. The escalation in hostilities and in humanitarian need in Yemen can be traced back to the Houthis' armed seizure of the capital and their march further south. The UN Panel of Experts on Yemen has also stated that "The Houthis, acting in consort with their affiliated political organization, Ansar Allah, have gradually assumed control of State institutions and brought about the current crisis."<sup>16</sup> The Saudi-led intervention began in March 2015 in response to the request of Yemeni President Hadi to halt the advance of the Houthi armed group which had forced the legitimate government into exile in Saudi Arabia. As explained by the Foreign and Commonwealth Office in its evidence to us:

The legal basis for the intervention in Yemen by the Saudi Arabian-led Coalition is host nation consent. President Hadi wrote to the UN Security Council (UNSC) on 24 March 2015 requesting a Chapter VII Resolution "inviting all countries that wish to help Yemen to provide immediate support for the legitimate authority by all means and measures to protect Yemen and deter the Houthi aggression". In that letter, he also informed the Security Council that he had requested assistance from the Arab League and the Gulf Co-operation Council to provide "all means necessary, including military intervention, to protect Yemen and its people from continuing Houthi aggression". In its Resolution 2216, the UNSC noted President Hadi's requests for assistance and also reaffirmed its support for "the legitimacy of the President of Yemen, Abdo Rabbo Mansour Hadi". President Hadi has therefore requested and consented to Saudi assistance in Yemen in broad terms. As such, that consent provides a legal basis for the Saudi military intervention.<sup>17</sup>

13. We heard that the situation in Yemen would have been much worse than the current humanitarian emergency without the Saudi-led military intervention. As Foreign Office Minister Tobias Ellwood MP told us:

However, had the Saudi-led coalition not been formed, the scale of violations of humanitarian law that would have taken place in Yemen would have been 10 times worse. The Houthis would have managed to get all the way down to the port of Aden and we would have had a completely failed state, far worse than the humanitarian catastrophe that is currently taking place, and despite the civil war that is actually there.<sup>18</sup>

15 ["Some 13 million Yemenis need immediate help amid bleak conditions – senior UN relief official"](#) UN News Centre, 16 June 2016

16 [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2016\\_73.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_73.pdf)

17 Foreign and Commonwealth Office ([UKY 0013](#)) para 28

18 Q204

14. Sir Simon Mayall, a former Middle East adviser to the MoD, further outlined the consequences of non-intervention:

If the Saudis had not intervened in Yemen, a combination of Iranian-backed Houthis, AQAP [al-Qa'eda in the Arabian Peninsula] and ISIS would have led to another awful bleeding sore, as we have seen in Syria. As William Hague said yesterday, yes, there is a price for intervention, but there is a price to be paid for non-intervention. The fact that we are going to thwart, I hope, Iranian ambition in Yemen and we have pushed AQAP out of Mukalla is only as a result of Saudi Arabian intervention [...] It is a matter of national importance to the Saudi Arabians to intervene in Yemen. We should be grateful, otherwise we would end up with another Iranian satrapy on the Bab el Mandeb.<sup>19</sup>

15. The International Committee of the Red Cross has noted that the obligation to have respect for and ensure compliance with IHL is “binding upon States involved in multinational operations, as well as on the International Organisations under whose auspices multinational operations are undertaken”.<sup>20</sup>

**16. There is a legal basis for the Saudi-led intervention in Yemen and a legitimate need to quell the armed uprising of the Houthi rebels. The UK has an interest in preventing the further deterioration of the humanitarian situation in Yemen that would accompany Houthi expansion in the country. There is also a security interest in denying extremist militant groups such as al-Qa'eda in the Arabian Peninsula (AQAP) further space to operate in Yemen. We agree with Sir Simon Mayall that we should be grateful for the Saudi-led intervention. However, the fact that the UN Security Council has conferred legitimacy on the military intervention does not automatically endorse the conduct of the coalition, as we explore below.**

## The conduct of the conflict

17. The UN has described a “particularly worrisome escalation of conflict”<sup>21</sup> which has been seen in Yemen. The intensity of the bombing campaign has attracted particular attention.

18. A report produced by Action on Armed Violence recorded in the first seven months of 2015 more civilian deaths and injuries reported from explosive weapons in Yemen than in any other country in the world.<sup>22</sup> Aerial bombing by the Saudi-led coalition was responsible for 60 per cent of civilian deaths and injuries from explosive weapons in Yemen.<sup>23</sup>

19. International Humanitarian Law (IHL) is based on the principles of distinction, proportionality and precaution. The principle of distinction obliges parties to a conflict to target only military objectives and not the civilian population or individual civilians or

19 Q134

20 International Committee of the Red Cross, *International humanitarian law and the challenges of contemporary armed conflicts*, October 2015, p 25

21 United National General Assembly Security Council, [Children and Armed Conflict: Report of the Secretary-General](#), 20 April 2016, para 6

22 [“State of Crisis: Explosive Weapons in Yemen”](#), Action on Armed Violence and UN OCHA, September 2015, p3

23 [“State of Crisis: Explosive Weapons in Yemen”](#), Action on Armed Violence and UN OCHA, September 2015, p7

civilian objects (e.g. homes, schools and hospitals). The principle of proportionality limits and protects potential harm to civilians by demanding that the least amount of harm be caused to civilians and, when harm to civilians must occur, it must be proportional to the military objective. Moreover, each party to the conflict must take all feasible precautions to protect the civilian population and civilian objects under its control against the effects of attacks.<sup>24</sup> Therefore, evidence of civilian casualties cannot be equated with evidence of violations of IHL. There have been allegations of violations of IHL committed by both sides to the conflict. However, as the UK does not supply arms to the Houthis or other armed opposition groups, this report will focus on the Saudi-led coalition airstrikes in Yemen.

20. On 2 June 2016, the United Nations published its annual report on Children and Armed Conflict, in which it highlighted the worrying situation in Yemen as well as the Saudi-led coalition's role:

The United Nations verified a sixfold increase in the number of children killed and maimed compared with 2014, totalling 1,953 child casualties (785 children killed and 1,168 injured). More than 70 per cent were boys. Of the casualties, 60 per cent (510 deaths and 667 injuries) were attributed to the Saudi Arabia-led coalition and 20 per cent (142 deaths and 247 injuries) to the Houthis [...] The United Nations verified 101 incidents of attacks on schools and hospitals, which is double the number verified in 2014. Of the attacks, 90 per cent caused the partial or complete destruction of schools or health facilities, while the remaining 10 per cent involved attacks on protected personnel, including students. Of the attacks on schools and hospitals, 48 per cent were attributed to the coalition, 29 per cent to the Houthis and 20 per cent to unidentified perpetrators.<sup>25</sup>

The same report also found a “fivefold increase in cases of recruitment and use of children by armed groups...Of the 762 verified cases of recruitment of children (all boys), the majority were attributed to the Houthis (72 per cent).”

21. In a report prepared for the UN Security Council by the Panel of Experts on Yemen in January 2016, 119 coalition air sorties relating to potential violations of IHL were identified:

The Panel documented that the coalition had conducted air strikes targeting civilians and civilian objects, in violation of international humanitarian law, including camps for internally displaced persons and refugees; civilian gatherings, including weddings; civilian vehicles, including buses; civilian residential areas; medical facilities; schools; mosques; markets, factories and food storage warehouses; and other essential civilian infrastructure, such as the airport in Sana'a, the port in Hudaydah and domestic transit routes.<sup>26</sup>

24 UN Security Council, [Letter dated 22 January 2016 from the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 \(2014\) addressed to the President of the Security Council](#), 26 January 2016, para 123

25 United Nations General Assembly Security Council, Children and armed conflict: Report of the Secretary-General, 20 April 2016, paras 167–169

26 UN Security Council, [Letter dated 22 January 2016 from the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 \(2014\) addressed to the President of the Security Council](#), 26 January 2016, para 137

22. The Panel further noted the coalition’s designation of the entire city of Sa’dah and region of Maran as military targets, confirming that “entire cities or governorates cannot be considered military targets, even with attempts to provide advance warning.”<sup>27</sup> The UK Government’s response to the UN Panel of Experts report has been to underline that the experts did not enter Yemen but relied on satellite imagery,<sup>28</sup> a criticism Mr Ellwood repeated in his evidence to our inquiry.<sup>29</sup> However, much evidence of IHL violations has been documented by organisations on the ground in Yemen. David Mepham, UK Director of Human Rights Watch, told us about the evidence they had documented:

We have been to the 36 sites; we have looked at the evidence and talked to eyewitnesses; we have talked to bystanders and looked at photographic evidence, where it has been available; and we have looked at the satellite imagery. Lawyers have pored all over it, and we are very confident that in the 36 cases we have documented—there may be a considerable number of further cases—violations of IHL have taken place.<sup>30</sup>

23. Amnesty International told us about the similar process they had gone through in documenting a further 30 examples of IHL abuses, in which “the laws of war have been violated, in particular the key principles of proportionality and distinction and the steps taken to minimise civilian casualties.” We heard about one example between May and July 2015 in the Sa’dah region, where a series of strikes resulted in the deaths of 100 civilians, 55 children and 22 women. Therefore, the majority of deaths in those particular strikes were women and children.<sup>31</sup>

24. Together, Human Rights Watch and Amnesty International documented a case in September 2015 in which the remnants of a British-supplied cruise missile had been identified from a strike on a ceramics factory. Evidence of all of the above airstrikes have been shared with the British and Saudi authorities, as David Mepham told us:

I was at a meeting with [the Foreign Secretary] several months ago when I gave him copies of our report and said, “These are the GPS coordinates; these are the strikes; these are the markets and schools that were hit.” Therefore, he has that evidence. The Foreign Office has had that evidence for months. It is extraordinary that the line comes back that they do not have evidence, when that evidence has been shared with them for a considerable period of time.<sup>32</sup>

25. It has been noted by a number of sources that the UK Government frequently cites Human Rights Watch and Amnesty International evidence in other conflicts, such as

27 UN Security Council, [Letter dated 22 January 2016 from the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 \(2014\) addressed to the President of the Security Council](#), 26 January 2016, para 129

28 HC Deb 28 Jan 2016, [Arms Sales to Saudi Arabia](#), c428 [Tobias Ellwood]; WH Deb 22 Mar 2016, [War in Yemen: First Anniversary](#), c517 WH [Tobias Ellwood]

29 Q191

30 Q3

31 Q8

32 Q4



Syria, but in Yemen the Government appears to be relying on assurances from the Saudi authorities.<sup>33</sup> In her written evidence to us, Dr Anna Stavrianakis of the University of Sussex states:

The UK government is thus currently both refusing to respond to published, documented evidence provided by independent experts; and relying on secret claims provided by the Saudi military. This creates an information black hole that makes it impossible for CAEC or other independent observers to properly assess UK government policy and hold it to account.<sup>34</sup>

26. As we heard from Professor Philippe Sands QC, in his opinion the Government should be cautious about relying on assurances from the Saudis:

The essence of our position is this. In the face of the overwhelming evidence of what is happening on the ground as a consequence of coalition attacks, as well as attacks from the other side—from the Houthi forces—it appears clear that the coalition forces are engaged in violations of international humanitarian law. In those circumstances, an assurance such as that at paragraph 6.28<sup>35</sup>, given by the Saudis, does not appear to be worth the paper it is printed on. If I were a Minister, I would be extremely anxious and worried about relying on such an assurance in the face of a report by a Security Council group of experts that makes it clear that the assurance is not accurate.<sup>36</sup>

**27. We have heard evidence of potential breaches of international humanitarian law by both sides of the conflict. The warring parties have potentially not adequately distinguished between civilian and military targets, which has caused enormous suffering; civilians account for half of those killed, and nearly three million people have fled their homes.<sup>37</sup> The UK Government has not responded to allegations of breaches of international humanitarian law by the Saudi-led coalition. We recommend that the Government press all parties to the conflict to comply with international humanitarian law to minimise harm to civilians and protect civilian infrastructure and continue to monitor the situation.**

### **Cluster munitions**

28. Human Rights Watch reported on 14 February 2015 that the Saudi-led coalition was using cluster munitions supplied by the United States in Yemen despite evidence of civilian casualties. It was noted in the UN Panel of Experts report that the military spokesman of Saudi Arabia, Brigadier General Ahmed Asiri, had indicated that Saudi Arabia had used cluster munitions on or against armoured vehicles in Yemen.<sup>38</sup> We were told that the UK

33 <https://news.vice.com/article/dead-civilians-uneasy-alliances-and-the-fog-of-yemens-war>, evidence given to the International Development Committee Q9 (Roy Isbister); UK Working Group on Arms (UKY 0012) para 7

34 Dr Anna Stavrianakis (UKY 0003) para 8

35 Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ni Ghraígh, [Legal Opinion: the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia's military intervention in Yemen](#), 11 December 2015, para 6.28

36 Q82

37 ["Some 13 million Yemenis need immediate help amid bleak conditions – senior UN relief official"](#) UN News Centre, 16 June 2016

38 UN Panel of Experts report, para 130

has not supplied cluster munitions to Saudi Arabia “for many decades”<sup>39</sup>. The UK has not supplied, maintained or supported these weapons since signing the Convention on Cluster Munitions in 2008. Even though neither Saudi Arabia nor the United States are signatories to the convention, the coalition’s alleged use of these weapons might contravene IHL and is significant for the UK Government which, as a signatory, is obliged to do all they can to prevent the use of cluster munitions in armed conflict. As Oliver Sprague from Amnesty International explained:

It is important in two ways. First, as a general view on the conduct of the hostilities, the UK is clearly saying that cluster munitions are a prohibited weapon and they can never have a legitimate use in conflict because of their disproportionate effect on civilians. Therefore, if an armed force is deploying those weapons, it should ring very clear alarm bells about the conduct of that armed force in relation to that conflict.

The second point is the legal position of the UK on the provision of cluster munitions. If you look at the cluster munitions treaty, it is very clear in its obligations. It is not just about whether the UK is being used to deploy them or selling them; it is about whether the UK is facilitating their use. That is not just whether it is on aircraft; it is UK personnel. My earlier point was that that is a question for the Government. The Government need to be very clear about what steps they have taken in this conflict to ensure that they are fulfilling their obligations under the cluster munitions treaty. Secondly, by using these weapons, Saudi Arabia and its allies are demonstrating a casual disregard for the rules of war, which should be a very important and significant factor in the UK’s decision whether or not to supply weaponry to them, given the examples of how they are being used.<sup>40</sup>

29. From a legal perspective, Professor Philippe Sands QC agreed that the reports on the coalition’s use of cluster munitions needed to be considered further by the UK Government:

It is certainly a factor that could be taken into account. I do not think that it is likely to be a dispositive factor as such. However, if a country uses weaponry of a particular kind, in particular circumstances, when it ought not to be doing so, one would form the impression that it is more likely to be doing other things that it ought not to be doing. That would push HMG to look with greater care at whether it is appropriate in all the circumstances to be contributing, where that is happening.

It is an interesting question. I would put it this way. You cannot say that it is irrelevant and you cannot say that it is dispositive, but it is certainly a factor I would want to know more about.<sup>41</sup>

30. On 23 May 2016, Amnesty International reported that they had identified and documented a UK-supplied BL-755 cluster munition used by the coalition on farmland

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39 Q187 [Philip Dunne]

40 Q37

41 Q77

in a village in northern Yemen.<sup>42</sup> In response to the Amnesty International report, the Foreign Secretary told the House of Commons that the Government had had assurances from Saudi Arabia that cluster munitions had not been used in the conflict in Yemen, but that the MoD would be urgently investigating the allegations.<sup>43</sup> As the then Minister for Defence Procurement, Philip Dunne MP, responded to an Urgent Question in the House:

Based on all the information available to us, including sensitive coalition operational reporting, we assess that no UK-supplied cluster weapons have been used, and that no UK-supplied aircraft have been involved in the use of UK cluster weapons, in the current conflict in Yemen [...] The Saudis have previously denied using UK cluster munitions during the conflict in Yemen, but we are seeking fresh assurances in the light of this serious new allegation.<sup>44</sup>

31. Mr Ellwood, Parliamentary Under Secretary of State at the Foreign and Commonwealth Office, raised cluster munitions (CM) in a letter to us on 18 May 2016, in which he confirmed that “the UK did provide CM to Saudi Arabia in the 1990s, but we understand that none of these CM have been used in Yemen and no UK-supplied aircraft have been used to deploy CM in Yemen.”<sup>45</sup> The evidence published by Amnesty International, five days after this letter was sent, raises serious questions about the Government’s understanding both in terms of the use of cluster munitions by the coalition in Yemen and the use of UK-supplied aircraft in deploying them.

**32. Both Amnesty International and Human Rights Watch have documented evidence of the Saudi-led coalition’s use of cluster munitions in Yemen. Cluster munitions are banned under the Convention on Cluster Munitions, to which the UK is a signatory, although Saudi Arabia is not. That notwithstanding, Saudi Arabia’s reported use of cluster munitions in Yemen could contravene international humanitarian law and calls into question the coalition’s wider respect for the rules of war. Evidence of a UK-supplied cluster munition dropped by the coalition in Yemen means this is a matter which the UK Government must address.**

***33. We do not believe that the UK Government can meet its obligations under the Convention on Cluster Munitions by relying on assurances from the Saudis. We recommend that the Ministry of Defence carry out its own investigation into the evidence of a UK-supplied cluster bomb found in Yemen. We also recommend that the Government, as a signatory to the Convention on Cluster Munitions, set out the steps it has taken not only to make sure UK-supplied aircraft and UK personnel are not in any way implicated in the use or deployment of these weapons, which is prohibited under the Convention, but also the steps it has taken to stop Saudi Arabia from using cluster munitions.***

42 Amnesty International UK, Press Release, [Saudi Arabia-led coalition has used UK-manufactured cluster bombs in Yemen: new evidence](#), 23 May 2016

43 Topical Questions 24 May 2016, 611 cc394–5

44 HC Deb, 24 May 2016, [Yemen: Cluster Munitions](#), c401

45 Letter from Tobias Ellwood to Chris White, dated 18 May 2016

## Investigations into reports of violations of International Humanitarian Law

34. It was noted by the International Development Committee that a proposal for an international independent mechanism for investigating violations of IHL in Yemen was tabled by the Netherlands at the UN Human Rights Council meeting in September 2015, but was not adopted in favour of a Saudi text which did not include any reference to an independent inquiry.<sup>46</sup> The UK supported the Saudi proposals that they investigate violations of IHL attributed to them in the first instance. As Mr Ellwood told us:

What Britain did, along with other nations, was to make sure that the text provided was eventually agreed unanimously, and that meant the onus was on the Saudis initially to do the investigation. I make it very clear that this is nothing new. When other countries, including ourselves, are in operations overseas and mistakes—collateral damage—take place, the country that is responsible conducts its own independent inquiry and presents the results.<sup>47</sup>

35. Members of the Saudi-led coalition including Saudi Arabia, the United Arab Emirates, Kuwait, Bahrain, Qatar, and Yemen, formed the Joint Incidents Assessment Team (JIAT) to investigate allegations of breaches of international humanitarian law in Yemen. Witnesses to the inquiry have questioned the efficacy and transparency of the JIAT, and have raised concerns about the time it has taken for the JIAT to publish its work.<sup>48</sup>

36. The Saudi authorities announced on 31 January 2016 the results of an investigation into the October 2015 airstrike on a Médecins Sans Frontières (MSF) facility in Sa'ada. Mr Ellwood wrote to us about the steps taken by the Saudis following this investigation<sup>49</sup>, as follows:

- Inviting MSF to Riyadh to discuss the incident and agree on new measures, including a hot line to MSF and greater protection for hospitals;
- Setting up a new investigation team outside Coalition Command to review all existing procedures and suggest improvements;
- Improving Saudi procedures on rules of engagement and targeting;
- Ensuring that people on the ground who are providing intelligence to Coalition forces are aware of all protected sites on the no strike list and have better means of communicating information to pilots; and
- Providing additional IHL training for Saudi officers and pilots, including courses supported by the US and UK.

37. On 4 August, the JIAT released the results of eight further investigations of incidents where there were allegations of violations of IHL. These investigations found that the

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46 International Development Committee, 4th Report of Session 2015–16, [Crisis in Yemen](#), HC 532, para 51

47 Q170

48 Q3, also see UN Office of the High Commissioner for Human Rights, [Zeid condemns repeated killing of civilians in Yemen airstrikes](#), 18 March 2016

49 Letter from Tobias Ellwood, dated 18 May 2016

Coalition had abided by the military rules of engagement in six out of the eight instances, and that mistakes were made in the other two, for which it will pay reparations to the victims' families. Mr Ellwood admitted:

I share the Committee's frustration that that information has been slow to come forward. This is a nation that is not used to sharing information in this manner and to having to expose internationally the details of what it does. This is the first time it has had to do sustained warfare. It must look up and answer to the international standards that we expect. We will make it very clear if we feel that it does not meet those standards, but we require time, and Saudi Arabia will require time, to provide the analysis that needs to be done in all these cases.<sup>50</sup>

38. The Yemeni National Commission of Inquiry was due to report on their investigations to the UN Human Rights Council in March 2015; instead, they agreed to provide an update later in the year. Mr Ellwood told the House on 4 July 2016 that they would now report back to the next session of the Human Rights Council in September<sup>51</sup>—12 months since the commission of inquiry was set up and six months after the original target. Mr Ellwood also told us about an Independent Committee with foreign advisors to investigate Saudi Arabian military activity in Yemen which was announced on 29 February 2016 and which the Minister expected would shortly begin work when he wrote to us on 18 May 2016.<sup>52</sup> Reports of IHL abuses cannot be verified without reports from the Saudis, without which those responsible cannot be held accountable nor reparations made. As a report on the Yemen crisis for VICE News in the US explained:

Mike Newton, a former US soldier and military lawyer and one of the leading American authorities on international humanitarian law, quibbles with the way groups like Amnesty International and Human Rights Watch interpret humanitarian law. For human rights organizations, establishing what appears to be a widespread pattern of indiscriminate attacks that cause large numbers of civilian casualties is enough to prove the law has been broken. But under the complex legal framework involved in such cases, Newton says, rights organizations would have to have highly precise details from the ground and from inside the coalition operations center, which they almost certainly do not.<sup>53</sup>

39. This process was clarified to us by Mr Ellwood, who said:

With any information that is provided to us via NGOs on the ground or, indeed, a UN expert panel, we must make sure that the Saudi independent investigations committee has the opportunity to investigate and make a report. Yes, it has been slow—far too slow—and they must improve. They have not had experience of this. They will report back and we will then make a judgment.<sup>54</sup>

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50 Q204

51 WA 41351 4 July 2016

52 Letter from Tobias Ellwood dated 18 May 2016

53 <https://news.vice.com/article/dead-civilians-uneasy-alliances-and-the-fog-of-yemens-war>

54 Q194

40. However, by repeatedly insisting that all UK extant arms licences to Saudi Arabia are compliant with the UK's legal obligations, the UK Government is making a judgement: that there is no risk that arms sold to Saudi Arabia will be used to violate IHL in Yemen. The then Minister for Defence Procurement, Philip Dunne MP, told us how the UK Government was able to make that judgement:

When an incident is brought to our attention, whether by the Saudis or by NGOs, we seek access to the operational reports which, as I have explained, the Saudis are willing to provide to us. We look at our own sources of information to see whether there is any information to which we have access from our own sources that might provide more or corroborating information in relation to the incident. Then we analyse that to see whether or not the incident appears to have involved a strike from the air and whether or not that strike might have been caused by weapons that we have supplied. We form an analysis in that regard, in relation to potential incidents, and encourage the Saudi armed forces to do their own investigation, to see whether they think that incident is or is not compliant with IHL.<sup>55</sup>

41. In its evidence to this inquiry, the Foreign and Commonwealth Office explained the basis for their judgement that arms export licences to Saudi Arabia are compliant with the UK's export licensing criteria:

In particular we note that: (1) the Saudi-led Coalition is not targeting civilians; (2) Saudi Arabian processes and procedures have been put in place to ensure respect for the principles of IHL; (3) Saudi Arabia is investigating incidents of concern, including those involving civilian casualties; (4) Saudi Arabia has throughout engaged in constructive dialogue with the UK about both its processes and incidents of concern; (5) Saudi Arabia has been and remains genuinely committed to IHL compliance. The Government is currently satisfied that extant licences for Saudi Arabia are compliant with the UK's export licensing criteria.<sup>56</sup>

Human Rights Watch wrote to the Foreign Secretary to contest each of the above five points.<sup>57</sup> When asked about the first point, Professor Philippe Sands QC told us that it depended on the meaning of "They are not targeting civilians". He argued that while it was unlikely that the Saudi authorities were identifying groups of civilians and targeting them, they were bombing entire towns or entire areas and that that is on its face a violation of international humanitarian law.<sup>58</sup>

42. David Mepham of Human Rights Watch described the claim that Saudi Arabia has been and remains genuinely committed to IHL compliance as "remarkable"<sup>59</sup> given the scale of civilian casualties from airstrikes in Yemen. He told us that, even under increased international scrutiny, Saudi conduct in Yemen had not changed:

The pattern of indiscriminate attacks we have described has continued. There was discussion the other day with the Saudis suggesting they may be

55 Q165

56 Foreign and Commonwealth submission, para 45

57 Human Rights Watch, [HRW letter to British Foreign Secretary Philip Hammond](#), 4 May 2016

58 Q66

59 Human Rights Watch, [HRW letter to British Foreign Secretary Philip Hammond](#), 4 May 2016

trying to scale back their military offensive, but the bombs continue to fall. A press release put out by the UN High Commissioner for Human Rights talked about a strike that took place last week that killed 106 civilians in a crowded village market in north-western Yemen [...] So I do not think there has been a change in the pattern of their conduct in this conflict.<sup>60</sup>

43. It is challenging for the public to effectively scrutinise the Government's claims as it has provided very little evidence in response to reports of IHL violations and is relying on information and reports from the Saudis to which independent observers are not privy. As we heard from Dr Anna Stavrianakis, "The Government's response thus far has been to say, "We have a policy. It's okay," or, "We've been reassured by the Saudis. It's okay," but there is a whole series of credible allegations the Government have simply not responded to."<sup>61</sup> She questioned why the Government had not responded to these criticisms and why it had not provided any evidence to refute them.

44. We were told that an international independent investigation into reports of violations of IHL is the most appropriate means for verifying incident information in a transparent and credible way. David Mepham of Human Rights Watch stressed to us the importance of an international and independent investigation in order to establish the facts. He pointed out that the UK Government had championed such an investigation in Sri Lanka at the same Human Rights Council meeting at which the Dutch proposal for an inquiry in Yemen was blocked.<sup>62</sup>

**45. The reports of violations of international humanitarian law in Yemen since September 2014 have been widespread, with all parties to the conflict being accused of failing to meet their respective obligations under international humanitarian law. We welcome the progress that has been made to date by the Saudi-led coalition to establish the mechanisms to investigate allegations of violations of international humanitarian law. We agree with the Government that it is appropriate for the Saudi-led coalition to investigate these allegations in the first instance. *However, further progress is needed to ensure that the Joint Incidents Assessment Team is transparent, credible, and publishes its investigations in a timely manner. We recommend that the UK Government offer its support to the Joint Incidents Assessment Team where appropriate so that it can meet these ends. We also believe that an independent, United Nations-led investigation of alleged violations by all parties to the conflict is necessary to supplement the internal investigations of the Saudi-led coalition. We recommend that the UK Government support calls for the establishment of such an investigation as a matter of urgency.***

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60 Q44

61 Q151

62 Q53

### 3 UK interests in the Gulf

46. As the National Security Strategy and Strategic Defence and Security Review 2015 (SDSR) outlines, “strong alliances and partnerships worldwide are more important than ever. In almost every aspect of our national security and prosperity, we must work with others, not because we cannot work alone, but because the threats and opportunities are global.”<sup>63</sup> The Defence Secretary set out the UK’s interests in the Middle East in evidence to the Defence Committee:

The Middle East, and North Africa to some extent, are fundamental to this country’s security, stability and prosperity. We rely on a series of partnerships in the region to help us manage threats from the region—crime, terrorism and now the challenge of migration—but we also need to ensure that the energy supplies that we rely on are secure and that our trade routes are secure, and that is why we maintain a credible and persistent defence presence in the region. This is a region that is extremely important to both our security and our economy.<sup>64</sup>

47. The then Minister for Defence Procurement, Philip Dunne MP, detailed further the importance of the region from a defence perspective:

In relation to Ministry of Defence support for military activities, we have some of our closest relationships with Gulf nations, in terms of training, exercising and now operations. The Kingdom of Saudi Arabia, specifically, is an important member of the coalition against Daesh in which we have been participating over Iraq and, more recently, over Syria. It is very important to us that the stability of the region is maintained by encouraging military stability there.<sup>65</sup>

#### *Instability in the Gulf*

48. We heard that the region is going through a period of instability. As Sir Simon Mayall wrote in his evidence to our inquiry:

After the chaos of Iraq, the continuing reverberations of the ‘Arab Spring’, the Syrian civil war, the rise of Da’esh, and the related terror and refugee crises in Europe, I remain amazed that there are still people that believe that pursuing policies and actions that unsettle and undermine the confidence and stability of our Gulf allies is a sound course of action.<sup>66</sup>

49. Sir Simon described the Gulf as “a region that, more than ever, needs help to combat internal threats, and to deter external challenges.” He argued that the UK, while not being a simply “uncritical onlooker”, had to present itself as a “reliable and understanding

63 National Security Strategy and Strategic Defence and Security Review 2015, cm 9161, para 5.18

64 Defence Committee oral evidence, [UK military operations in Syria and Iraq](#), HC 106, Thursday 26 May 2016, Q382 [Michael Fallon]

65 Q153

66 Lieutenant General (Retd) Sir Simon Mayall KBE CB (UKY 0015) para 8



friend” to allies concerned about their own security.<sup>67</sup> Michael Stephens, Research Fellow at RUSI, reiterated the point that the UK should reassure and support Gulf allies, in which military assistance and arms sales have a part to play:

The Gulf states as a bloc require a certain amount of reassurance, in the form of security guarantees and continued high-level access from members of the British Government, to feel that they are valued partners in a geostrategic relationship in which they have some severe security concerns that they feel have not been addressed sufficiently by either the United States or the United Kingdom. [...]. At times when the Gulf states feel more secure, especially because of our reassurances to them, there is a financial response. It can come in the form of defence sales, increased guarantees of investment in the United Kingdom and preferential viewing of our industry and our expatriate community above that of some of our competitors.<sup>68</sup>

50. In order to mitigate the risks of arms sales to territories viewed as unstable, criterion 5 of the consolidated EU and UK arms licensing criteria states explicitly that the defence and strategic interests of the UK or its allies “cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability.”<sup>69</sup>

**51. The Gulf is a region where the UK’s security and prosperity agendas overlap. It is in the UK’s strategic interests to support a secure, prosperous and politically stable Gulf and we recognise that military support and arms sales play a key role in that. However, there is a perception that our relationships in the region, particularly in terms of arms sales can counterpose our interests—understood as security, stability, jobs, and prosperity—against our values of respect for international law. There are also pragmatic judgements to be made about how to advance our values in a region where revolutionary or imposed changes of government have usually had catastrophic practical consequences and seriously reversed progress towards our values.**

52. The influence afforded to the UK from our close relationship with Gulf states was set out by Sir Simon Mayall, who told us:

When you commit to the security and reassurance of these countries, it pays back not simply in defence sales but in your capacity to influence them diplomatically on a whole range of things on which we want to engage. We are a values-based society. They are a values-based society. It is a different set of values, but they are increasingly globalised. Our capacity to influence is much better than that of Russia, China, Turkey or whoever else filled the vacuum that would be left by the British if we failed to demonstrate a degree of understanding and confidence in their long-term stability.<sup>70</sup>

53. Saudi Arabia is a long-standing ally of the United Kingdom and has often proved a valuable partner in geostrategic events; for example, it was a key partner in the coalition assembled to oppose the Iraqi invasion of Kuwait in 1990. The Government has long made the argument, at least as far back as the beginning of the al-Yamamah arrangement in September 1985, that defence exports to Saudi Arabia underpin our close strategic

67 Lieutenant General (Retd) Sir Simon Mayall KBE CB (UKY 0015) paras 1 and 6

68 Q131

69 Consolidated EU and UK arms export licensing criteria, criterion 5

70 Q142

alliance. Dr Robert Dover and Professor Mark Phythian from the University of Leicester suggested that the complexities in the relationship result in a lower bar being set for arms sales to Saudi Arabia. They describe:

A strategically important liaison relationship that provides hard and soft intelligence to the UK, and in providing the UK with the retention of some influence and so diplomatic advantage in the Middle East. These are important factors to the UK government because of the dangers it sees to the region and the oil markets of a political vacuum in Saudi Arabia. The special factors present with the Saudi case mean that the UK government facilitates a trade in military equipment that it would be unlikely to repeat for other governments with the same human rights or political risk profile.<sup>71</sup>

54. The then Minister for Small Business, Industry and Enterprise, the Rt Hon Anna Soubry MP, told us:

For what it is worth, I think that the relationship with Saudi Arabia is extremely complex. If only it were as simple as people sometimes wish it were, but it is complex and there are some very difficult balances to be struck. You might expect me to say this, but I think at the moment we have definitely got the balance right.<sup>72</sup>

**55. A strong and durable relationship with Saudi Arabia has enhanced the United Kingdom's work in advancing many of our shared and vital strategic interests. These include military action against ISIL in Syria and Iraq, combating manifestations of violent extremism and radicalisation, countering terrorist financing, confronting Iranian subversions of the existing state systems across the region, and providing immediate relief and long-term solutions for Syrian refugees. Furthermore, Saudi Arabia is a crucial and indispensable partner of the United Kingdom in our shared objective of reaching a political resolution to the conflict in Yemen, which was precipitated by the armed Houthi aggression. Our common security and economic interests run deep. Saudi Arabia's willingness to bear a greater share of the regional security burden, notably leading the coalition acting under the authority of the United Nations Security Council Resolution 2216 to restore legal authority in Yemen is a particularly welcome development.**

### **Defence industry**

56. The defence industry has been a success story for the UK, in terms of exports the UK is competing in the top three globally with the US and France. As the then BIS Minister, the Rt Hon Anna Soubry, told us:

The industry is a huge and various part of what we do in Britain. We do it very well. It has considerable benefit to our nation—to all the people who work in defence, in any event—and plays a huge part in what we do in the world. It is incredibly important for our exports and an important feature

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71 University of Leicester (UKY 0001) Executive Summary

72 Q228

of them. There is huge potential for future growth—rightly so. Like most exports, defence exports are good for Britain and good for the people of Britain, as well as those nations that receive them.<sup>73</sup>

57. In their evidence to this inquiry, Dr Robert Dover and Professor Mark Phythian from the University of Leicester described the UK’s defence industrial base as “a valuable source of employment and technology driven enterprise for both the military and civilian sectors. The economic footprint of the defence industrial base runs across many industries, including forming an important part of the research and enterprise lives of the UK Higher Education sector.”<sup>74</sup> ADS, the trade association for the UK’s aerospace, defence, security and space industries, confirmed that, in 2014, the UK’s defence and security industries generated a turnover of over £30 billion and secured an export business worth £12 billion. The industries sustain around 230,000 jobs including 6,500 apprenticeships and trainees.<sup>75</sup> We heard from Paul Everitt, Chief Executive of ADS, that the importance of defence exports went beyond their economic value; they also underpin international relationships and allow interoperability with key allies. In addition, strong exports sustain domestic capability, reducing cost to the UK taxpayer. He maintained that the licensing regime was implemented and uniformly applied.<sup>76</sup>

58. The UK’s defence industries are in a vulnerable position as defence budgets have contracted, placing a greater emphasis on export trade. ADS explained that “even as domestic budgets have been cut over the past decade, UK defence and security companies have achieved growth in exports. Exports also help reduce the cost of UK programmes by increasing production runs, and reducing unit costs through economies of scale. They help the industry by levelling out peaks and troughs of domestic demand. Crucially, they sustain key industrial capabilities that might otherwise be lost.”<sup>77</sup>

59. As Sir Simon Mayall told us, defence sales are part of a wider strategy of engagement and essential for building long-term alliances in the Gulf:

The thing on which I have always supported British defence sales is that if you buy a platform—Typhoon and, before that, Tornado—you initiate a 25-year relationship. People do not change platforms. When you have a relationship for 25 years, through Eurofighter [Typhoon], Tornado or a ship, the training aspect of that comes with it. People come to Sandhurst and Dartmouth. I happen to believe that British military training is some of the finest—if not the finest—in the world. I like to think that, by bringing people to this country, you imbue them with some of the values that we hold dear, which they take back with them, and that, to an extent, they take into their own armed forces the ethos that they pick up in the British armed forces.<sup>78</sup>

60. The Gulf, and in particular Saudi Arabia, is a vital market for the British defence export industry. The Foreign and Commonwealth Office confirmed that Middle East countries

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73 Q155

74 University of Leicester (UKY 0001) para 2

75 ADS (UKY 0016) para 7

76 Q104

77 ADS (UKY 0016) paras 11 and 12

78 Q142

accounted for 66 per cent of the UK's total defence exports in 2014.<sup>79</sup> It is estimated that Saudi Arabia will become the world's fifth-largest military spender by 2020, as it seeks to increase its defence budget by 27 per cent over the next five years. This is a regional trend which has seen states in the Gulf Cooperation Council increase their arms imports by 71 per cent in the last decade (2004–2014).<sup>80</sup>

61. This is not a new trend for Saudi Arabia, which has been described as the “mainstay of the UK's arms trade”<sup>81</sup> since the initiation of the Al Yamamah deals. The Government provides a great deal of support to maintain the arms export trade with Saudi Arabia. This is done through government-to-government contracts, in which the Ministry of Defence sign agreements for major defence sales with the Saudi Arabian Government, then places contracts with UK prime contractors (such as BAE Systems) to fulfil the UK's obligations. There are two main bodies at the Ministry of Defence who oversee the main contracts: the Ministry of Defence Saudi Armed Forces Project (MODSAP) and Saudi Arabia National Guard Communications Project (SANGCOM). These bodies monitor the progress and performance of the contracts and provide training and assistance to Saudi Arabia. In addition, the UK Government dedicates significant resources to promoting the defence trade in the Gulf. The Department for Business, Innovation and Skills has designated Saudi Arabia as a priority market for UK arms exports through UKTI DSO which aims to help UK defence and security companies to build and maintain relationships with overseas customers and to export their products.<sup>82</sup>

62. The importance of arms exports for our security and prosperity has been recognised in the SDSR, in terms of directly sustaining tens of thousands of jobs across the UK, generating economies of scale that reduce the cost of defence equipment to the Government and the taxpayer, and for underpinning long-term relationships with our international partners and helping us deliver wider foreign policy objectives.<sup>83</sup> The SDSR also identifies support for defence and security exports as a new core task for the MoD, with responsibility for managing all strategic defence export campaigns.<sup>84</sup> Paul Everitt from ADS detailed the wider remit of the MoD as being “greater willingness to engage with potential customers to provide insight, experience and guidance on the use UK military forces put that equipment to, how it is managed, how it is supported in theatre and what kind of procurement processes they go through.”<sup>85</sup>

63. The SDSR also proposes strengthening our defence relationships in the Gulf. Describing the region as a “significant source of both threat and opportunity”,<sup>86</sup> the Review refers to a new Gulf Strategy which would include the building a permanent and more substantial UK military presence and establishing a new British Defence Staff in the Middle East.<sup>87</sup>

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79 FCO submission para 17

80 Transparency International (UKY 0004) para 2.10

81 <https://www.caat.org.uk/resources/countries/saudi-arabia/arabian-connection#section1>

82 Foreign Affairs Committee, Fifth Report of Session 2013–14, The UK's relations with Saudi Arabia and Bahrain, HC 88, paras 64–5

83 SDSR para 6.61

84 SDSR para 6.62

85 Q115

86 SDSR, para 5.55

87 SDSR, para 5.57

64. **The UK defence industry is hugely successful and an important part of our export portfolio. Globally, the UK is one of the top three exporters of defence equipment with the US and France. While domestic budgets have faced reductions, exports have been essential in sustaining the industry in the UK, its manufacturing expertise and maintaining economies of scale to ensure value for money for our own armed forces and the taxpayer. It is an industry which has a value beyond the purely economic: defence exports build international relationships and ensure interoperability of equipment with our allies, and they underpin long-term alliances which help deliver our wider foreign policy objectives. They are vital both for our security and our prosperity.**

65. **The Gulf is a crucial market for defence exports, in particular Saudi Arabia to which over 30 per cent of all UK arms export licences in 2015 were approved.<sup>88</sup> As we move towards expanding our military presence and relationships in the Gulf, we would expect defence exports to that region to have a key role to play. However, this cannot be without conditions or without regard for the UK's international obligations.**

### UK support for Saudi Arabia and the coalition in Yemen

66. Yemen's geographical position gives its strategic importance, sharing a land border with Saudi Arabia to the north and with the vital shipping route of the Gulf of Aden to the South. The country is also home to al-Qa'eda in the Arabian Peninsula, which has grown in strength and territory over the course of the conflict.<sup>89</sup> Sir Simon Mayall wrote to us about the strategic importance of the Yemen conflict both to Saudi Arabia and the UK:

In my mind, the motives for the Saudi-led campaign in Yemen are quite clear. The operations themselves are critical to halting Houthi aggression, thereby setting the conditions for a political settlement, for restricting the operation of AQAP, for limiting the rise of IS-affiliated groups in Yemen and the wider region, and for hampering Iranian ambition close to the vital Bab al Mandab Straits. Saudi Arabia is defending its territory and interests in the same way any nation under similar threat would and, given the range of threats facing them, it is in the UK's strategic interests to support them.<sup>90</sup>

67. At the start of the Saudi-led coalition's military intervention in Yemen, the then Foreign Secretary, the Rt Hon Philip Hammond MP, confirmed that the Saudis were flying UK-manufactured aircraft in Yemen and set out the extent of UK support for Saudi Arabia:

We have a significant infrastructure supporting the Saudi air force generally and if we are requested to provide them with enhanced support—spare parts, maintenance, technical advice, resupply—we will seek to do so. We'll support the Saudis in every practical way short of engaging in combat.<sup>91</sup>

This support was detailed to us by the Foreign and Commonwealth Office, which told us that the Saudi Government had requested additional UK support after the escalation

88 See the values of military, dual-use and open licences in the Department for Business, Innovation and Skills [Strategic Export Controls: licensing statistics](#) 1st January 2015 to 31st December 2015

89 ["How Saudi Arabia's war in Yemen has made al Qaeda stronger and richer"](#), Reuters, 8 April 2016

90 Sir Simon Mayall submission, para 13

91 ["UK 'will support Saudi-led assault on Yemeni rebels - but not engaging in combat'"](#), The Telegraph, 27 March 2015

of the conflict in Yemen in March 2015. It explained that, as a result of this request, the Government, bearing in mind the UK's domestic and legal obligations, had accelerated the delivery of Paveway laser-guided bombs; increased training in targeting and weapon use; provided liaison officers in Saudi headquarters in order to observe the processes, increase the UK's insight into the air campaign and help to improve maritime access to Yemeni ports by identifying vessels that may be breaching the arms embargo; and assessed and fulfilled Saudi training needs to help strengthen defences at the Saudi southern border which has suffered repeated cross border raids.<sup>92</sup>

### **Recent arms sales to Saudi Arabia**

68. Department for Business, Innovation and Skills documents reported over £3.3 billion in arms sales to Saudi Arabia in the first twelve months of the conflict in Yemen, from April 2015 to March 2016—a thirty-fold increase on the preceding twelve-month period.<sup>93</sup> This included £1 billion of category ML4 weapons, which comprise bombs, rockets and missiles, for the 3-month period from July to September last year, up from £9 million for the preceding 3-month period for the same category of arms. In its evidence to the inquiry, the UK Working Group on Arms wrote that:

According to official UK reports, between 1 April and 31 September 2015, the UK issued Standard Individual Export Licences (SIELs) authorising £1.8 billion of combat aircraft and their spare parts and more than £1 billion of bombs and missiles for use by the Saudi Air Force. To put this latter figure in context, the value of munitions licensed for export to Saudi Arabia under UKML4 (bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, specially designed for military use, and specially designed components thereof) in the three month period from July to September 2015 is equivalent to the total that was licensed for export to the whole world (including Saudi Arabia) in the four-and-a-half years from January 2011 to June 2015 inclusive.<sup>94</sup>

69. In its evidence to this inquiry, the Foreign and Commonwealth Office set out the number and value of Standard Individual Export Licences (SIELs) granted in 2013, 2014 and 2015, with the following caveats<sup>95</sup>:

- The figures relate to licences granted in the specified period, not necessarily the value of sales or good shipped in that period;
- In 2013, one licence for combat aircraft was granted for approximately £1.5 billion, however because the goods had not been shipped by the time the licence expired, a further licence of a similar value was granted in Q2 2015. Therefore, the value of that one licence is counted in the totals for both 2013 and 2015;
- One licence in Q3 2015 for almost £1 billion of air-to-air missiles relates to a long-term contract for the delivery of a new munitions capability over a number of years made independent of the current operations in Yemen;

92 FCO submission, para 29

93 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/536943/16-342-strategic-export-controls-country-pivot-report-2016-qtr-1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536943/16-342-strategic-export-controls-country-pivot-report-2016-qtr-1.pdf)

94 The UK Working Group on Arms (UKY 0012) para11

95 FCO submission, para 34

- The vast majority of dual-use items in the table below are for 2 categories of equipment: (i) corrosive resistant manufacturing equipment (eg. pumps, valves) for use in industries such as oil, gas and petrochemicals; and (ii) equipment and software employing encryption for information security, which accounted for 87% of all dual-use licences granted.

Year	Military Items		Dual-Use Items	
	No. of SIELs	Value (£)	No. of SIELs	Value (£)
2013	128	1.6 billion	175	22 million
2014	129	80 million	181	55 million
2015	171	2.7 billion	115	103 million

70. Despite the intensity of the conflict and humanitarian crisis in Yemen and the body of evidence and allegations of violations of IHL by the Saudi-led coalition, no export licence application to Saudi Arabia has been refused due to non-compliance with the UK's arms export licensing criterion 2 since March 2015.<sup>96</sup> We were told by Dr Robert Dover and Professor Mark Phythian from the University of Leicester that it was difficult to assess whether the UK Government was “agnostic” about the real end-use of defence equipment exported to Saudi Arabia. They argued that it seemed that strategic relations with the Kingdom had led to “pragmatic interpretations of arms transfer licensing [...] What we can note is that there is a growing tension between an increasing accepted moral and ethical framework and some of these arms sales, and their end uses.”<sup>97</sup>

71. We also heard concerns that if the UK were to stop selling arms to Saudi Arabia, the Kingdom could buy their weapons from other exporters and as such there would be little if any impact on the coalition's aerial campaign in Yemen. Sir Simon Mayall, Former Defence Senior Adviser for the Middle East at the Ministry of Defence, told us that it is better for all involved that the coalition use UK-manufactured weapons:

From a practical point of view, given the level of Saudi commitment to this operation, I would rather see them use UK-manufactured, precision-guided missiles, and the latest targeting techniques (trained and advised by UK and US military), than to be using less accurate munitions and less restrictive rules of engagement.<sup>98</sup>

### **Defence engagement**

72. A report for VICE news in the US found that US and UK military advisers have helped the Saudi-led coalition to plan its airstrikes by participating in a Joint Combined Planning Cell command centre (JCPC). The report explained that the JCPC had been established at the beginning of the conflict in an effort to ensure that the conduct of the coalition campaign in Yemen met international standards. The Saudi Foreign Minister, Adel al-Jubeir, told journalists that UK and US personnel in the JCPC knew the Saudi targeting lists and what the coalition was and was not doing.<sup>99</sup>

96 PQ Arms Trade: Saudi Arabia 33665, 18 April 2016

97 University of Leicester (UKY 00XX), para 8

98 Sir Simon Mayall submission, para 11

99 <https://news.vice.com/article/dead-civilians-uneasy-alliances-and-the-fog-of-yemens-war>

73. However, not all airstrikes are conducted by the JCPC. VICE researchers reported that there are two types of airstrikes; the first are pre-planned, based on satellite imagery, reconnaissance from drones and aircraft and human intelligence on the grounds. These take into account whether the target was militarily important and what collateral damage is likely. The second sort of strike is contingent or “dynamic”, based on real-time intelligence. The decision to launch such strikes is taken within minutes rather than hours or days and the intelligence basis can be much thinner. The JCPC is focused entirely on pre-planned strikes, while dynamic strikes make up the vast majority—around 80 per cent—of coalition airstrikes.

74. The suggestion that UK personnel are assisting in the planning of 20 per cent of Saudi airstrikes was raised with us by Professor Philippe Sands QC, who put the following question:

Let us assume that 20% of the targeting activities are pre-planned and that the UK is involved in them and ensuring that they meet all international obligations; but if that 20% is effectively allowing the other 80% to take place, are you, by engaging in the 20%, facilitating the wrongdoing of the rest? That is a complex question morally and philosophically, but also legally.<sup>100</sup>

75. Mr Ellwood wrote to us to explain that the JCPC is a US body that works with Saudi Arabia to coordinate US military and intelligence support. In terms of the involvement of UK liaison officers in the JCPC, Mr Ellwood wrote:

Some JCPC liaison officers work in a regional HQ that helps to improve maritime access to Yemeni ports, by identifying vessels that may be breaching the arms embargo. Others work in the main JCPC HQ, helping to monitor the current situation in Yemen and facilitate communication with the GCC. Additionally, we have other liaison officers who sit within the Saudi Air Operations Centre, to improve our understanding of the air campaign. These are not part of the JCPC.<sup>101</sup>

76. The then Defence Procurement Minister, Philip Dunne MP, insisted that “we do not have personnel in the joint combined planning cell in relation to air operations.”<sup>102</sup> Explaining further that no UK personnel are involved in targeting decisions, Mr Dunne told us that UK liaison officers in the air operations centre were not involved in targeting decisions, but instead conducted training on doctrine for using UK-supplied weapons systems and provided advice on targeting processes.

77. Mr Dunne contended that the UK’s relationship with Saudi Arabia placed us in a “privileged position” in terms of the advice we give to the Saudi Arabian armed forces and access we have to information from within Saudi operations allowing us to conduct post-incident analysis of strikes.<sup>103</sup> We heard from Dr Anna Stavrianiakis that the UK Government seems to want it both ways, questioning the level of the UK’s involvement and knowledge of the Saudi processes and strikes. She said that the Government claimed

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100 Q95

101 Letter from Tobias Ellwood, dated 18 May 2016

102 Q157

103 Q228



to have knowledge and oversight of Saudi operations and had satisfied themselves that the conduct of these conformed to IHR. At the same time, she argued, the Government claimed not to be directly involved.<sup>104</sup>

78. The UK's support for Saudi Arabia's military intervention in Yemen has been extensive while remaining short of engaging in the actual combat. Professor Sands QC argued that the UK is in effect involved in the conflict; as "we characterise the nature, extent or depth of that involvement, it is impossible, on the basis of the evidence that is before us, to claim plausibly that the United Kingdom is not involved".<sup>105</sup> Our involvement extends from providing the planes and bombs for airstrikes to UK personnel in the Joint Combined Planning Cell and Saudi Air Operations Centre. This level of involvement without being a party to a conflict is unprecedented<sup>106</sup> and is a result of the "privileged" relationship the UK has with Saudi Arabia and its armed forces. There is again a difficult balance to be struck. We are not convinced that the Government has enough oversight of coalition procedures and operations to be assured that our arms exports are compliant with UK licensing criteria, particularly criterion 2c, while at the same time being sufficiently detached so as not to be implicated in coalition targeting decisions or in the conduct of the air campaign.

79. We are concerned about the involvement of UK personnel with the Saudi-led coalition and the contradictions we have heard regarding their roles. We were told that UK personnel are not part of the intelligence planning cells<sup>107</sup>, but that they are in the Joint Combined Planning Cell HQ<sup>108</sup>. We also heard that UK personnel are in Saudi Arabia to train, educate and teach best practice, which includes understanding international humanitarian law<sup>109</sup> and training air crews and planners how to go about assessing targets for the future<sup>110</sup>, but that our liaison officers "do not provide training, they do not provide advice on IHL compliance, and they have no role in the Saudi targeting chain."<sup>111</sup> This is an area in which there is much confusion and greater clarity is needed.

80. *We recommend that the UK Government provide more detail with regards to the role of UK personnel in Saudi Arabia, in particular answering the following questions:*

- *How many UK personnel are assisting the Saudi Arabian armed forces and in what roles, including BAE Systems employees;*
- *What is the extent of the involvement of each group of UK personnel with the Saudis' operations in Yemen; and*
- *How are UK personnel advising the Saudi Arabian armed forces on IHL and what level of understanding do they have of the coalition's regard for IHL in its operations in Yemen.*

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104 Q136

105 Q81

106 Q228 [Philip Dunne]

107 Q162 [Tobias Ellwood]

108 Letter from Tobias Ellwood dated 18 May 2016

109 Q162 [Tobias Ellwood]

110 Q158 [Philip Dunne]

111 Letter from Tobias Ellwood dated 18 May 2016

## 4 The UK's legal obligations

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### A global leader in the rule of law

81. As a key element of the UK's global influence to protect and promote our interests and values, supporting our security and prosperity, the SDSR sets out that we “will work with our allies and partners to strengthen, adapt and extend the rules-based international order and its institutions.”<sup>112</sup>

82. We heard, however, that the UK's continued authorisation of arms transfers to Saudi Arabia in the face of allegations that they breach the UK's international obligations like the Arms Trade Treaty (ATT), raises questions as to the UK's commitment to a rules-based international order, and damages the UK's standing within the international community.<sup>113</sup> The UK Working Group on Arms argued that the UK, by appearing to be ready to breach its international obligations, sent a message to other states that they could do the same.<sup>114</sup>

83. Professor Philippe Sands QC told us about the importance of the leadership position the UK holds internationally with regards the rule of law:

If I were a legal adviser to this Government, I would be saying, “It is time to start asking yourselves the right questions as to what your responsibilities and obligations are. Why, Minister? Because the United Kingdom is a global leader on the rule of law” [...] I think that what the United Kingdom does really matters, because the United Kingdom plays a leadership role on a lot of these issues. When the United Kingdom takes a lead in a certain area, many others will often follow.<sup>115</sup>

84. The UK Government has been at the forefront of work to establish systems of rules to regulate arms exports, our own national system of rules in the EU and, importantly, the ATT. Work to secure this was described as “at risk of unravelling by the current policies towards Saudi Arabia and the supporting coalition”.<sup>116</sup>

85. Dr Anna Stavrianakis told us that the conflict in Yemen has put the UK Government in a very difficult position regards its international obligations and its leadership in the rule of law:

The UK Government put themselves in a position of moral leadership by pressing for the arms trade treaty during the negotiating phases. Now that it has entered into force, there is a whole series of reputational politics associated with it, in being seen to lead and to uphold it in terms of implementation[...]The current situation in Yemen is quite unfortunate for the UK Government, because it has put them into a trap. They are caught

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112 SDSR [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/478933/52309\\_Cm\\_9161\\_NSS\\_SD\\_Review\\_web\\_only.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/478933/52309_Cm_9161_NSS_SD_Review_web_only.pdf) Para 5.2

113 UKWG submission, para 3

114 UKWG submission, para 9

115 Q79

116 Q1 [Oliver Sprague]

in a trap that sets large swathes of domestic public opinion, and their legal obligations, against their relationship with Saudi Arabia, so they are now in quite a tricky position.<sup>117</sup>

86. The argument that the UK Government is trapped was also made to us by Dr Robert Dover and Professor Mark Phythian, who contended that “the UK Government has placed itself in an invidious position of fighting a proxy war in Yemen alongside the Saudis, and thus has tied its own hands: it has virtually no choice but to supply military equipment into that theatre at ongoing reputation cost.”<sup>118</sup>

**87. We are concerned by the increasing perception that the Government’s position is inconsistent with its support for the rule of law and the international rules-based system. The onus is now on the Government to prove that it has complied with its obligations.**

### A robust licensing regime

88. In response to questions on arms transfers to Saudi Arabia, the Government has repeatedly insisted that the UK operates one of the most robust arms export control regimes in the world<sup>119</sup>. Paul Everitt, Chief Executive of ADS, argued that the UK’s licensing regime was held up as a benchmark for international best practice, and stressed the importance of the public availability of information.<sup>120</sup> Mr Everitt explained that arms exports are a regulated sector—once a company decides to sell overseas and applies for a licence, it is then up to Government to make the judgements and decisions about whether that licence would comply with our legal obligations. Accordingly, once the licence has been applied for, the individual company has “crossed a line where responsibility has to sit with the Government and those who are making the key decisions.”<sup>121</sup>

89. The Government assesses licence applications for compliance with arms trade law which, Professor Philippe Sands QC explained to us, operates in three distinct levels: the Arms Trade Treaty at the international law level; the EU common position at the European Union law level; and the consolidated EU and UK arms export licensing criteria at the domestic, UK law level.<sup>122</sup> Although Professor Sands and his colleagues from Matrix Chambers looked at all three levels when producing the legal opinion on *the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen*,<sup>123</sup> Professor Sands confirmed that the three levels do overlap:

Having concluded that both article 6 and article 7 [of the ATT] are not being complied with, you can effectively piggyback your way on to violations of the EU common position and the UK criteria, because both require, among

117 Q136

118 University of Leicester submission, executive summary

119 For example: Saudi Arabia: Arms Trade, 11 May 2016, 36869 [Tobias Ellwood]; Saudi Arabia: Arms Trade, 14 April 2016, 33214 [Tobias Ellwood]; Arms Trade: Saudi Arabia, 2 March 2016, 28765 [Anna Soubry]; Engagements, 27 January 2016, 605 c262 [The Prime Minister]

120 Q98

121 Q121 [Paul Everitt]

122 Q57

123 [Legal Opinion: the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen](#), Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ní Ghrálaigh, 11 December 2015

other things, a commitment to meet your international standards. If you are failing to meet your international standards, it follows that you are failing to meet your EU standards and failing to meet your domestic standards.<sup>124</sup>

90. We have received much evidence concerned with the UK Government's compliance with articles 6.3 and 7 of the Arms Trade Treaty, articles 2 and 6 of the EU common position, and criterion 2c of the UK's arms export licensing criteria, all of which refer to the respect of the recipient country for international law and require that the Government not grant a licence where there is a clear risk that the items might be used in the commission of a serious violation of IHL.<sup>125</sup> This evidence has questioned the robustness of the licensing regime.

### **Assessing risk**

91. In judging whether an export of defence equipment is compliant with the obligations above, the Government is required to carry out a risk-based assessment, looking at all available evidence. Oliver Sprague, of Amnesty International, told us that there was evidence of unlawful strikes by the Saudi-led coalition "in spades" in Yemen, where Amnesty believed that there was a risk that UK-supplied equipment could be used in future combat.<sup>126</sup> Dr Stavrianakis argued that the UK Government, by ignoring evidence of breaches of IHL and failing to conduct its own investigations, was setting "the bar for the risk assessment impossibly and inappropriately high".<sup>127</sup>

92. The concerns we heard about how the UK Government is investigating violations of IHL were widespread. Many witnesses argued that there is a considerable body of reliable evidence of such violations by the Saudi-led coalition, which indicated that there is an appreciable risk of defence equipment supplied by UK manufacturers being used in contravention of international law and the UK's international obligations.

**93. The UK Government operates a risk-based arms export licensing regime, requiring Government to assess the risk that arms exports might be used in violation of international humanitarian law. In the face of widespread allegations of violations of international humanitarian law in Yemen, it is difficult for the public to understand how a reliable licence assessment process would not have concluded that there is a clear risk of misuse of at least some arms exports to Saudi Arabia. At present, the Government's export licensing policy towards Saudi Arabia could be interpreted as not living up to the UK's robust and transparent regulations, nor upholding the UK's international obligations.**

**94. *The credibility of the Government's policy and practice of its arm export licensing regime has been called into question. In response, we recommend it issue a public explanation of its risk assessment process and what level of risk would trigger the refusal of a licence.***

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124 Q63

125 UKWG submission, para 26; Mwatana submission, para 23; Anna Stavrianakis submission, para 5; Q23 [Oliver Sprague]; Q57 and Q63 [Professor Philippe Sands QC]

126 Q27

127 Dr Anna Stavrianakis submission, para 10

### *A chain of responsibility*

95. We heard concerns regarding the Government’s understanding of the end-use of the equipment we supply to Saudi Arabia. Our attention was drawn to a parliamentary response by the Defence Secretary that “the use of equipment and weapons supplied to the Saudis is an operational matter for the Saudi military authorities. The Saudis have assured us that British-supplied munitions will be used in compliance with international humanitarian law and we continue to engage with them on these assurances.”<sup>128</sup>

96. Professor Philippe Sands QC raised this reliance on assurances from the Saudis as particularly problematic. He said that between June and October 2015, the Foreign and Commonwealth Office made a number of statements which had in common that they relied on assurances given to us by the Saudi authorities. He advised that governments could not simply rely on the reassurances of others, but that article 6 of the ATT imposed an explicit obligation on signatories to form a view.<sup>129</sup>

97. Dr Stavrianakis described this as a chain of responsibility, which “links the responsibility of the exporter to the behaviour of the importer, because it is incumbent on the exporter to assess the risk of how that equipment might be used—not will be used but might be used.”<sup>130</sup> Oliver Sprague from Amnesty International further clarified:

In order to establish a risk-based analysis of a licence, they have to have an indication about how that weaponry is used to discharge that function. If they are genuinely saying that how Britain’s weapons are going to be used is not a matter for them, it is impossible for a decision to be made to authorise those weapons lawfully on the basis of the relevant articles in the Arms Trade Treaty. They have to have some assessment of the prior knowledge on the uses to which the weaponry would be put. It is absolutely fundamental.<sup>131</sup>

98. According to Professor Philippe Sands QC, the chain of responsibility could be extended to individual ministers:

If I were a legal adviser to a Minister, I would say, “Minister, there is a reason, beyond this, why you need to look at this matter, which is that beyond international humanitarian law and international human rights law, there is now also international criminal law. International criminal law imposes responsibilities not on states but on individuals. If it turns out that the United Kingdom is supplying weapons in a conflict that is giving rise to systematic violations of international humanitarian law, I cannot exclude the possibility that, on some day in the future, you, as the person who supplied the weapons, could be hauled before some foreign national court, some domestic UK court or some international court.” If I were a Minister, I would want my legal adviser to say that.<sup>132</sup>

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128 [Yemen: Military Intervention](#), 7824WQ, 17 July 2015

129 Q60

130 Q150

131 Q32

132 Oral evidence to the IDC Q79

### *A lack of transparency*

99. The Department for Business, Innovation and Skills publishes the licensing statistics for UK arms exports on a quarterly basis.<sup>133</sup> We heard from Roy Isbister of Saferworld that the UK Government deserves credit for the timeliness of the information made available which allows observers to investigate what has been licensed for transfer up to the start of the previous quarter. He also raised the UK parliamentary oversight system as a model other countries might like to follow.<sup>134</sup> That said, there are limits to the information which can be extracted from the licensing statistics. As we heard from Dr Stavrianakis, statistics do not help her understand the licensing process and, in her view, serve to create the impression of transparency:<sup>135</sup>

What we see happening—well, I do not see anything happening, because what happens inside the licensing process is not made public. There is a black box of decision making. The Government will point to the fact that there is a process and say, “Our process is based on the rules that say that we will not export if there is a clear risk that the equipment might be used in internal repression. Because we have this process that means there can be no risk that the equipment will be used for internal repression, ergo these exports are fine.” That ends up becoming a circular logic. Without their publishing more information to allow independent observers to assess the veracity of those claims, I as an external observer cannot be confident that that is what is happening. We do not know [...] The wording is clear; the Government will not license an export if there is a clear risk that it might be used in internal repression. That still requires judgment. It requires choosing: which evidence and how we measure risk and so on.<sup>136</sup>

100. There is no public discussion about what happens within Government during the assessment of licence applications. For Dr Stavrianakis, the challenges this creates in examining arms exports have been further exacerbated since the start of the conflict in Yemen by the shortening of the processing time for licences to Saudi Arabia as follows:

- Q2, 1st April–30th June 2015: the median processing time for SIELs was 25 days, with 35% completed in twenty working days and 98% in sixty days. SIELs worth £1,736,807,764 were granted. The largest category was ML10 (aircraft, UAVs, and related good and components): £1,714,184,642.<sup>137</sup>
- Q3, 1st July–30th September 2015: the median processing time for SIELs was 14 days, with 78% completed in twenty working days and 100% completed in sixty days. SIELs worth £1,108,300,139 were issued. ML4 (bombs, torpedoes, rockets, missiles) was the biggest category: £1,066,216,510.<sup>138</sup>

133 Department for Business, Innovation and Skills and the Export Control Organisation, [Strategic Export Controls: licensing data](#)

134 Q39

135 Dr Anna Stavrianakis, follow-up evidence

136 Q144

137 Department for Business, Innovation and Skills, [Strategic Export Controls: Country Pivot Report 1st April 2015–30 June 2015](#), 20 October 2015, pp 262–265

138 Department for Business, Innovation and Skills, [Strategic Export Controls: Country Pivot Report 1st July 2015–30 September 2015](#), 19 January 2016, pp 249–254

- Q4, 1 October–31 December 2015: Median processing time: 12 days; 91% completed in 20 working days; 98% in 60 working days. SIELs worth £19,739,194 were issued. ML4 was again far and away the largest category by value (£3,705,539) followed by ML1 (firearms) (£1,005,560).<sup>139</sup>

101. At a time when the body of evidence to consider in assessing licence applications to Saudi Arabia and in measuring risk against licensing criteria was growing, the processing time for applications was in fact reducing. As Dr Stavrianakis told us:

If you look at the most recent licensing statistics, the median processing time has come down and the proportion of export applications completed within 20 working days has gone up. I am sure the Government would say, “See, everything is working fine,” but now I have even less idea of what is happening within that process. If the Government are so sure that what they are doing is fine, why have they not responded to any of the criticisms.<sup>140</sup>

102. **The Government points to its robust licensing regime as evidence that its arms export practices are responsible. However, by failing to provide persuasive evidence to support this statement or to respond to reports of breaches of international humanitarian law, the Government is preventing public scrutiny of its practices. It is problematic that, at the very time the Government was in receipt of reports documenting violations of international humanitarian law by the Saudi-led coalition the processing times for those licence applications were speeded up. The Government should provide a detailed explanation for those licensing decisions rather than a simple assertion that we have a rigorous licensing regime.**

103. We are grateful for the former Foreign and Business Secretaries’ respective offers for members of the Committees on Arms Exports Controls to have regular meetings with ministers and to visit the Arms Export Policy Department in the FCO and the Export Control Organisation in BIS. However, *we recommend that the Government implement greater transparency in the policy and practice of its arms exports. As a first step towards this, it should provide further details on the following:*

- *the changes in information, assessment methods and political direction which have occurred since the war in Yemen began;*
- *how differences in opinion between the departments involved in licensing are resolved; and*
- *how often decisions are being referred up the chain of political responsibility, and how far up these decisions go.*

104. As stated in paragraph 8, UK arms exports are bound by the obligations within the Arms Trade Treaty (ATT), the EU Common Position on Arms Exports and the Consolidated EU and UK arms licensing criteria. Articles 6(3) and 7 of the Arms Trade Treaty, Criteria 2 and 6 of the EU Common Position and Criterion 2(c) all refer to respect

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139 Department for Business, Innovation and Skills, [Strategic Export Controls: Country Pivot Report 1st October 2015–31 December 2015](#), 19 April 2016, pp 265–270

140 Q151

of the recipient country for international law and require that export licences are not granted where there is a clear risk that the items might be used in the commission of a serious violation of IHL.

105. The then BIS Minister, the Rt Hon Anna Soubry MP, clarified that the Government must consider each licence, for each type of weapon, on its own merit and “if it is found that there has been a breach of those criteria with an export licence, the answer is a very clear yes. We will revoke licences. We will suspend licences, if there is evidence.”<sup>141</sup> As explained in its evidence to this inquiry, the FCO judges export licences to Saudi Arabia as legally compliant.

106. Whilst the appropriateness of the framework of the law is a separate matter, with current legal obligations based on risk it is not necessary to prove that there have been serious violations of IHL for continued arms exports to be in violation of the UK’s legal obligations. While the Committee calls for further improvements in the transparency, efficacy, and timeliness of internal coalition investigations and the establishment of an independent UN-led investigation to supplement the Joint Incidents Assessment Team (JIAT), we acknowledge that it is not necessary for these to be concluded in order to prove that the UK’s exports are non-compliant with the UK’s legal obligations.

107. Professor Sands and his colleagues at Matrix Chambers argued in their legal opinion that, “it is reasonable to conclude that in such circumstances future transfers by the UK of weapons or items capable of being deployed against civilians or civilian objects would be used in a manner that is internationally unlawful.” They further concluded that “the UK has - or should be recognised as having - knowledge that weapons or related items exported to Saudi Arabia would be used in future attacks directed against civilian objects or civilians protected as such, or in the commission of war crimes in Yemen.”<sup>142</sup> On the basis of the evidence available, they added that the UK Government would have had knowledge that transfers of arms to Saudi Arabia would have constituted a breach of its obligations as early as May 2015.<sup>143</sup> As such, any arms exported to Saudi Arabia which could be used in the conflict in Yemen and for which their end-use is not restricted, they concluded, would constitute a breach of the UK’s legal obligations under domestic, European and international law.<sup>144</sup> In order to bring the UK into compliance with its legal obligations, they recommended that the UK:

should halt with immediate effect all authorisations and transfers of relevant weapons and items to Saudi Arabia, capable of being used in the conflict in Yemen, pending proper and credible enquiries into the allegations of violations of IHL and IHRL [International Human Rights Law] that have arisen and that could arise in the future.<sup>145</sup>

108. However, Matrix Chambers’ legal opinion was predicated on “the apparent absence of any credible or other investigations by Saudi Arabia into allegations of violations of IHL”, as it was published on 11 December 2015 before the JIAT had published the findings

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141 Q187

142 Legal Opinion: the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen, Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ní Ghrálaigh, 11 December 2015, para 11

143 *Ibid*, para 13

144 *Ibid* para 18

145 *Ibid* para 19



of any of its investigations. Furthermore, the opinion was reached “on the basis of the evidence and information available to us [Matrix chambers],”<sup>146</sup> whilst our inquiry has found that the Government does have access to material non-public information, such as operational reports from the Saudi-led coalition and information from the Government’s own sources.

109. The High Court has granted the Campaign Against Arms Trade, represented by Leigh Day solicitors, a judicial review of the decision by BIS Ministers to continue issuing licences for arms exports to Saudi Arabia in the light of allegations that exports might not be compatible with UK and EU legislation, after it ruled that they had an arguable case.<sup>147</sup>

110. The Campaign Against Arms Trade has also argued that the Government should suspend all extant licences to Saudi Arabia until the judicial review has concluded and proved that continued arms exports are compliant with the UK’s legal obligations.<sup>148</sup> This argument would mean simply that an arguable case of a clear risk of a serious violation of IHL being committed is enough to force the Government to cancel arms export licences.

111. The courts are the appropriate body to test whether or not HMG is compliant with the law. However, setting the threshold for the cancellation of arms export licenses as low as an arguable case of a clear risk of a serious violation of IHL, would be a dangerous precedent to set and could have results that are very damaging to the values and interests of the United Kingdom and the protection of the human rights that the law is aiming to sustain. Such a system could undermine the confidence of not just Saudi Arabia but all of our allies that anything but undisputed certainty that all operations were fully compliant with IHL would not disrupt defence relations in times of war. This denies the reality of any battlefield. This would cause considerable damage to domestic defence industries, the UK’s international relations, and the capability of our closest allies to conduct legitimate military operations, disproportionate to the real need to ensure that export of UK-manufactured weapons are compliant with the UK’s legal and moral obligations.

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146 Matrix Chambers, Legal Opinion, 11 December 2015, p3

147 <https://www.caat.org.uk/campaigns/stop-arming-saudi/judicial-review>

148 <https://www.caat.org.uk/media/press-releases/2016-09-07>

## Conclusions and recommendations

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### The Saudi-led coalition's intervention

1. There is a legal basis for the Saudi-led intervention in Yemen and a legitimate need to quell the armed uprising of the Houthi rebels. The UK has an interest in preventing the further deterioration of the humanitarian situation in Yemen that would accompany Houthi expansion in the country. There is also a security interest in denying extremist militant groups such as al-Qa'eda in the Arabian Peninsula (AQAP) further space to operate in Yemen. We agree with Sir Simon Mayall that we should be grateful for the Saudi-led intervention. However, the fact that the UN Security Council has conferred legitimacy on the military intervention does not automatically endorse the conduct of the coalition, as we explore below. (Paragraph 16)

### The conduct of the conflict

2. We have heard evidence of potential breaches of international humanitarian law by both sides of the conflict. The warring parties have potentially not adequately distinguished between civilian and military targets, which has caused enormous suffering; civilians account for half of those killed, and nearly three million people have fled their homes. The UK Government has not responded to allegations of breaches of international humanitarian law by the Saudi-led coalition. *We recommend that the Government press all parties to the conflict to comply with international humanitarian law to minimise harm to civilians and protect civilian infrastructure and continue to monitor the situation.* (Paragraph 27)
3. Both Amnesty International and Human Rights Watch have documented evidence of the Saudi-led coalition's use of cluster munitions in Yemen. Cluster munitions are banned under the Convention on Cluster Munitions, to which the UK is a signatory, although Saudi Arabia is not. That notwithstanding, Saudi Arabia's reported use of cluster munitions in Yemen could contravene international humanitarian law and calls into question the coalition's wider respect for the rules of war. Evidence of a UK-supplied cluster munition dropped by the coalition in Yemen means this is a matter which the UK Government must address. (Paragraph 32)
4. *We do not believe that the UK Government can meet its obligations under the Convention on Cluster Munitions by relying on assurances from the Saudis. We recommend that the Ministry of Defence carry out its own investigation into the evidence of a UK-supplied cluster bomb found in Yemen. We also recommend that the Government, as a signatory to the Convention on Cluster Munitions, set out the steps it has taken not only to make sure UK-supplied aircraft and UK personnel are not in any way implicated in the use or deployment of these weapons, which is prohibited under the Convention, but also the steps it has taken to stop Saudi Arabia from using cluster munitions.* (Paragraph 33)

## Investigations into reports of violations of International Humanitarian Law

5. The reports of violations of international humanitarian law in Yemen since September 2014 have been widespread, with all parties to the conflict being accused of failing to meet their respective obligations under international humanitarian law. We welcome the progress that has been made to date by the Saudi-led coalition to establish the mechanisms to investigate allegations of violations of international humanitarian law. We agree with the Government that it is appropriate for the Saudi-led coalition to investigate these allegations in the first instance. *However, further progress is needed to ensure that the Joint Incidents Assessment Team is transparent, credible, and publishes its investigations in a timely manner. We recommend that the UK Government offer its support to the Joint Incidents Assessment Team where appropriate so that it can meet these ends. We also believe that an independent, United Nations-led investigation of alleged violations by all parties to the conflict is necessary to supplement the internal investigations of the Saudi-led coalition. We recommend that the UK Government support calls for the establishment of such an investigation as a matter of urgency.* (Paragraph 45)

## UK interests in the Gulf

6. The Gulf is a region where the UK's security and prosperity agendas overlap. It is in the UK's strategic interests to support a secure, prosperous and politically stable Gulf and we recognise that military support and arms sales play a key role in that. However, there is a perception that our relationships in the region, particularly in terms of arms sales can counterpose our interests—understood as security, stability, jobs, and prosperity—against our values of respect for international law. There are also pragmatic judgements to be made about how to advance our values in a region where revolutionary or imposed changes of government have usually had catastrophic practical consequences and seriously reversed progress towards our values. (Paragraph 51)
7. A strong and durable relationship with Saudi Arabia has enhanced the United Kingdom's work in advancing many of our shared and vital strategic interests. These include military action against ISIL in Syria and Iraq, combating manifestations of violent extremism and radicalisation, countering terrorist financing, confronting Iranian subversions of the existing state systems across the region, and providing immediate relief and long-term solutions for Syrian refugees. Furthermore, Saudi Arabia is a crucial and indispensable partner of the United Kingdom in our shared objective of reaching a political resolution to the conflict in Yemen, which was precipitated by the armed Houthi aggression. Our common security and economic interests run deep. Saudi Arabia's willingness to bear a greater share of the regional security burden, notably leading the coalition acting under the authority of the United Nations Security Council Resolution 2216 to restore legal authority in Yemen is a particularly welcome development. (Paragraph 55)

8. The UK defence industry is hugely successful and an important part of our export portfolio. Globally, the UK is one of the top three exporters of defence equipment with the US and France. While domestic budgets have faced reductions, exports have been essential in sustaining the industry in the UK, its manufacturing expertise and maintaining economies of scale to ensure value for money for our own armed forces and the taxpayer. It is an industry which has a value beyond the purely economic: defence exports build international relationships and ensure interoperability of equipment with our allies, and they underpin long-term alliances which help deliver our wider foreign policy objectives. They are vital both for our security and our prosperity. (Paragraph 64)
9. The Gulf is a crucial market for defence exports, in particular Saudi Arabia to which over 30 per cent of all UK arms export licences in 2015 were approved. As we move towards expanding our military presence and relationships in the Gulf, we would expect defence exports to that region to have a key role to play. However, this cannot be without conditions or without regard for the UK's international obligations. (Paragraph 65)

### UK support for Saudi Arabia and the coalition in Yemen

10. The UK's support for Saudi Arabia's military intervention in Yemen has been extensive while remaining short of engaging in the actual combat. Professor Sands QC argued that the UK is in effect involved in the conflict; as "we characterise the nature, extent or depth of that involvement, it is impossible, on the basis of the evidence that is before us, to claim plausibly that the United Kingdom is not involved". Our involvement extends from providing the planes and bombs for airstrikes to UK personnel in the Joint Combined Planning Cell and Saudi Air Operations Centre. This level of involvement without being a party to a conflict is unprecedented and is a result of the "privileged" relationship the UK has with Saudi Arabia and its armed forces. There is again a difficult balance to be struck. We are not convinced that the Government has enough oversight of coalition procedures and operations to be assured that our arms exports are compliant with UK licensing criteria, particularly criterion 2c, while at the same time being sufficiently detached so as not to be implicated in coalition targeting decisions or in the conduct of the air campaign. (Paragraph 78)
11. We are concerned about the involvement of UK personnel with the Saudi-led coalition and the contradictions we have heard regarding their roles. We were told that UK personnel are not part of the intelligence planning cells, but that they are in the Joint Combined Planning Cell HQ. We also heard that UK personnel are in Saudi Arabia to train, educate and teach best practice, which includes understanding international humanitarian law and training air crews and planners how to go about assessing targets for the future, but that our liaison officers "do not provide training, they do not provide advice on IHL compliance, and they have no role in the Saudi targeting chain." This is an area in which there is much confusion and greater clarity is needed. (Paragraph 79)

12. *We recommend that the UK Government provide more detail with regards to the role of UK personnel in Saudi Arabia, in particular answering the following questions:*
- *How many UK personnel are assisting the Saudi Arabian armed forces and in what roles, including BAE Systems employees;*
  - *What is the extent of the involvement of each group of UK personnel with the Saudis' operations in Yemen; and*
  - *How are UK personnel advising the Saudi Arabian armed forces on IHL and what level of understanding do they have of the coalition's regard for IHL in its operations in Yemen. (Paragraph 80)*

### A global leader in the rule of law

13. We are concerned by the increasing perception that the Government's position is inconsistent with its support for the rule of law and the international rules-based system. The onus is now on the Government to prove that it has complied with its obligations. (Paragraph 87)

### A robust licensing regime

14. The UK Government operates a risk-based arms export licensing regime, requiring Government to assess the risk that arms exports might be used in violation of international humanitarian law. In the face of widespread allegations of violations of international humanitarian law in Yemen, it is difficult for the public to understand how a reliable licence assessment process would not have concluded that there is a clear risk of misuse of at least some arms exports to Saudi Arabia. At present, the Government's export licensing policy towards Saudi Arabia could be interpreted as not living up to the UK's robust and transparent regulations, nor upholding the UK's international obligations. (Paragraph 93)
15. *The credibility of the Government's policy and practice of its arm export licensing regime has been called into question. In response, we recommend it issue a public explanation of its risk assessment process and what level of risk would trigger the refusal of a licence. (Paragraph 94)*
16. The Government points to its robust licensing regime as evidence that its arms export practices are responsible. However, by failing to provide persuasive evidence to support this statement or to respond to reports of breaches of international humanitarian law, the Government is preventing public scrutiny of its practices. It is problematic that, at the very time the Government was in receipt of reports documenting violations of international humanitarian law by the Saudi-led coalition the processing times for those licence applications were speeded up. The Government should provide a detailed explanation for those licensing decisions rather than a simple assertion that we have a rigorous licensing regime. (Paragraph 102)

17. *We recommend that the Government implement greater transparency in the policy and practice of its arms exports. As a first step towards this, it should provide further details on the following:*
- *the changes in information, assessment methods and political direction which have occurred since the war in Yemen began;*
  - *how differences in opinion between the departments involved in licensing are resolved; and*
  - *how often decisions are being referred up the chain of political responsibility, and how far up these decisions go. (Paragraph 103)*

# Formal Minutes

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**Wednesday 14 September 2016**

Members present:

Crispin Blunt, in the Chair

Mr John Baron	Adam Holloway
Ann Clwyd	Daniel Kawczynski
Mike Gapes	Yasmin Qureshi
Stephen Gethins	Andrew Rosindell
Mr Mark Hendrick	Nadhim Zahawi

The following declaration of interest relating to the inquiry was made:

## **14 September 2016**

Daniel Kawczynski declared the following interest: Chair of Saudi Arabia All-Party Parliamentary Group in the 2010–15 Parliament.

Draft Report (*The use of UK-manufactured arms in Yemen*), proposed by the Chair, brought up and read.

Draft Report (*The use of UK-manufactured arms in Yemen*), proposed by Ann Clwyd, brought up and read, as follows:

## **Summary**

The conflict in Yemen has had tragic and disastrous effects on the civilian population and on the economic development of the country. The intervention of the Saudi Arabia-led coalition in support of former president Abd Rabbuh Mansur Hadi was supported by the United Nations Security Council and we recognise it as a legitimate operation under the aegis of international law. Saudi Arabia and other members of the coalition are key allies and partners of the United Kingdom in the region, relationships which are of long standing, and defence exports to these countries underpin these relationships.

There have been serious allegations of violations of international humanitarian and human rights law by the Saudi-led coalition in Yemen, including the targeting of civilian areas and medical facilities, and the use of cluster munitions. HM Government appears to have relied on assurances from the Saudi government that the coalition is operating within the boundaries of international law, despite the fact we heard evidence from credible sources to the contrary. Whilst we welcome the progress made by the coalition to establish the mechanisms to conduct investigations, further progress is needed to ensure that investigations are transparent, credible, and published in a timely manner. We recommend that the UK Government offer its support to the coalition where appropriate so that it can meet these ends. The Saudi government has taken too long to report to the UN Human Rights Council the results of its internal investigations into the alleged violations.

We believe that an independent, United Nations-led investigation of alleged violations by all parties to the conflict is necessary to supplement the internal investigations of the Saudi-led coalition.

Given that the UK has a long history of defence exports to Saudi Arabia and its coalition partners, and considering the evidence we have heard, it has been alleged that any violations of international humanitarian and human rights law by the coalition have involved arms supplied from the UK. HM Government has obligations under the Arms Trade Treaty, as well as European and domestic law, to ensure there is no risk that arms it has licensed might be used in contravention of international humanitarian law. We therefore recommend that HM Government suspend sales of arms which could be used in Yemen to Saudi Arabia until the independent, UN-led investigation has come to its conclusions and then review the situation again.

We are grateful for the former Foreign and Business Secretaries' respective offers for CAEC members to have regular meetings with ministers and to visit the Arms Export Policy Department in the FCO and the Export Control Organisation in BIS. However, the Government's arms export licensing regime is relatively opaque to the public, to whom it appears that the Government too often relies on assertion rather than positive evidence. We have made a number of recommendations for measures which could be introduced to make the system of licensing considerably more transparent than is currently the case. This would be a significant step forward in terms of our international obligations, not least under the Arms Trade Treaty, in the creation of which the UK was a leading player.

Finally, we call for the Government to respond in a timely fashion to this Report. This is a pressing issue. We will be seeking an early opportunity to debate our conclusions and recommendations on the floor of the House.

## **Chapter 1: Introduction**

### **Our inquiry**

1. The Committees on Arms Export Controls are a concurrent meeting of four select committees of the House of Commons—Business, Innovation and Skills; Defence; Foreign Affairs; and International Development—working together to examine the Government's expenditure, administration and policy on strategic exports, that is, the licensing of arms exports and other controlled goods. The four committees have been cooperating since 1999 as each has an interest in defence exports.

2. Following our re-formation in February 2016, we decided to conduct an inquiry into the use of UK-manufactured arms by the Saudi Arabian-led coalition in the conflict in Yemen. This was in response to public concern that such arms were being used in contravention of international law and the UK's international, European and domestic obligations. We called for written evidence, looking at the following issues:

- What are the UK's strategic interests in the Arabian Peninsula and in the wider Gulf region? To what extent and how are those strategic interests being advanced?
- What significance does the region play in terms of the UK defence and security industry?



- Are UK-manufactured arms being used by the Royal Saudi Armed Forces in the conflict in Yemen?
- Have there been any infringements of the UK Government's criteria for the granting of arms export licences with regard to the use of UK-manufactured arms in Yemen? If so, what should be done as a consequence?
- Should DFID's formal involvement in granting arms export licences be extended to consider the impact on the sustainable development of both the recipient country and countries where British arms may ultimately be used?

3. We heard evidence from Human Rights Watch, Amnesty International, Saferworld and Oxfam on the crisis in Yemen and the evidence of violations of IHL; from Professor Philippe Sands QC on the findings of his and others' legal opinion on the lawfulness of UK arms exports to Saudi Arabia in the context of the conflict in Yemen; from ADS, the leading trade body for the aerospace, defence and security industries; from leading experts on our relationship with the Gulf and our arms export policies; and from Ministers from the Foreign and Commonwealth Office, the former Department for Business, Innovation and Skills, the Ministry of Defence and the Department for International Development. We are grateful to all of those who gave oral and written evidence.

## **Background**

4. After the Arab Spring protests in Yemen in 2011, the Gulf Cooperation Council (GCC) agreed a transition agreement to transfer power from President Ali Abdullah Saleh, who had been in power since 1978, to his deputy Abd Rabbuh Mansur Hadi. The change in government did not translate into a change in governance and many economic and social problems persisted. As Saferworld reported, "deals made in the post-Saleh transition ultimately entrenched the same kleptocratic elite whose behaviour was driving Yemen into the ground – and Saleh was allowed to remain in Yemen with impunity to wreck further havoc." The transition unravelled in the autumn of 2014 when the Houthi armed group, with the support of forces loyal to former president Saleh, seized the capital Sana'a and then moved south towards Aden in March 2015, forcing President Hadi into exile in Saudi Arabia. Responding to a request from Hadi, Saudi Arabia formed a 10-member coalition, including Jordan, Egypt, Kuwait, the UAE, Qatar, and Bahrain, amongst other countries, to intervene in Yemen to halt the advance of the Houthis and reinstate the legitimate government. Since 26 March 2015, Saudi Arabia has led the military coalition in an armed conflict in Yemen.

### ***UK arms exports to Saudi Arabia***

5. The UK is a major supplier of defence equipment to Saudi Arabia and other countries in the Gulf. Saudi Arabia, the UAE, and Kuwait have been identified as "priority markets" for defence exports with the UK Trade and Investment's Defence and Security Organisation (UKTI DSO) and in 2015 over 30 per cent of all UK defence exports were licensed to Saudi Arabia. From April to December 2015, these licences included exports exceeding the value of £1.7 billion for combat aircraft and over £1 billion for air-delivered bombs. The Aerospace Industry in the UK is the second largest in the world and the largest in Europe. It employs nearly a quarter of a million skilled and technical workers across the UK with very significant numbers in the North and Midlands." During that

period, Saudi Arabia was conducting an aerial campaign over Yemen. The then Foreign Secretary confirmed at the very start of the conflict that the Saudi Royal Air Force were using UK-manufactured arms in Yemen.

### ***Allegations of serious violations of International Humanitarian Law***

6. Civilians have borne the brunt of the conflict in Yemen. Since March 2015, the UN High Commissioner for Human Rights has documented 3,539 civilians killed and 6,268 injured. All sides of the conflict are accused of serious violations of International Humanitarian Law (IHL) by the United Nations, other international organisations and non-governmental organisations. These organisations have documented a high number of potential breaches of IHL by the Saudi-led coalition and the Houthis. The Saudi-led coalition has established a Joint Incidents Assessment Team (JIAT), and are investigating allegations of violations of International Humanitarian Law. As of 4 August 2016, the JIAT had reported on nine incidents.

### ***Compliance with arms trade law***

7. UK arms exports are bound by the obligations within the Arms Trade Treaty (ATT), the EU Common Position on Arms Exports and the Consolidated EU and UK arms licensing criteria. Articles 6(3) and 7 of the Arms Trade Treaty, Criteria 2 and 6 of the EU Common Position and Criterion 2(c) all refer to respect of the recipient country for international law and require that export licences are not granted where there is a clear risk that the items might be used in the commission of a serious violation of IHL.

## **Chapter 2: The crisis in Yemen**

### **A humanitarian emergency**

8. Years of poverty, poor governance and insecurity had left Yemen the poorest country in the Middle East prior to the current crisis. However, the last 16 months of conflict and import restrictions have exacted a heavy toll on the civilian population and development in Yemen. On 1 July 2015, the UN declared Yemen a level 3 crisis, a category reserved for the most severe and large-scale humanitarian crises. It is estimated that some one fifth of people in need around the world as a result of conflict are in Yemen. The International Development Committee described the situation in Yemen as “one of the worst humanitarian crises in the world, with 82% of the population in need of assistance.”

9. Since 26 March 2015, the UN High Commissioner for Human Rights has documented a total of 3,704 civilians killed and 6,566 injured. This is equal to thirteen civilian casualties a day. Amongst those casualties, UNICEF has verified that 1,121 children have been killed and another 1,650 injured. The UN has confirmed that grave violations against children have increased dramatically as a result of the escalating conflict. Nearly half of all school-aged children are out of school. 2.8 million people are internally displaced. Attacks on health facilities and staff, coupled with a lack of fuel and medicines, have left the health system on the brink of collapse. Over half the population are living in ‘emergency’ or ‘crisis’ levels of food insecurity, with some governorates seeing as much as 70 per cent of their population struggling to feed themselves, which the UN has said shows the “the huge magnitude of the humanitarian crisis in Yemen.” The crisis has also left the economy “on the verge of total collapse.” A joint report by the World Bank, United Nations, Islamic Development Bank and European Union, published in August 2016,

has found that the cost of damage to infrastructure and economic losses has reached \$14 billion. The UN Humanitarian Coordinator for Yemen, Jamie McGoldrick, said that “the scale and intensity of the humanitarian situation here is bleak – and by many measures it’s continuing to get worse.” The level of need is simply staggering.

10. A cessation of hostilities was declared on 10 April 2016, accompanying peace talks in Kuwait, which provided some relief for civilians and improved humanitarian access across the country, although civilian casualties continued to mount during that period: the UN High Commissioner for Human Rights documented 815 civilian casualties, including 272 deaths and 543 injured, between 11 April and 11 August 2016. Peace talks broke down in early August 2016, at which point hostilities resumed in earnest. Attacks with deadly consequences for civilians have been recorded by both sides to the conflict. The impact of the conflict on basic services, infrastructure and the economy is still being felt and the humanitarian crisis shows little sign of abating; in fact, it continues to get worse. DFID has committed £85 million to the humanitarian response.

### **The Saudi-led coalition’s intervention**

11. The escalation in hostilities and in humanitarian need in Yemen can be traced back to the Houthis’ armed seizure of the capital Sana’a in September 2014. The UN Panel of Experts on Yemen stated that “The Houthis, acting in consort with their affiliated political organization, Ansar Allah, have gradually assumed control of State institutions and brought about the current crisis.” The intervention began in response to the request of Yemeni President Hadi to halt the advance of the Houthi armed group which had forced the legitimate government into exile in Saudi Arabia, and was supported by the UN Security Council. As explained by the Foreign and Commonwealth Office in its evidence to us:

The legal basis for the intervention in Yemen by the Saudi Arabian-led Coalition is host nation consent. President Hadi wrote to the UN Security Council (UNSC) on 24 March 2015 requesting a Chapter VII Resolution “inviting all countries that wish to help Yemen to provide immediate support for the legitimate authority by all means and measures to protect Yemen and deter the Houthi aggression”. In that letter, he also informed the Security Council that he had requested assistance from the Arab League and the Gulf Co-operation Council to provide “all means necessary, including military intervention, to protect Yemen and its people from continuing Houthi aggression”. In its Resolution 2216, the UNSC noted President Hadi’s requests for assistance and also reaffirmed its support for “the legitimacy of the President of Yemen, Abdo Rabbo Mansour Hadi”. President Hadi has therefore requested and consented to Saudi assistance in Yemen in broad terms. As such, that consent provides a legal basis for the Saudi military intervention.

12. We heard that the situation in Yemen would have been much worse than the current humanitarian emergency without the Saudi-led military intervention. As Foreign Office Minister, Tobias Ellwood MP, told us:

However, had the Saudi-led coalition not been formed, the scale of violations of humanitarian law that would have taken place in Yemen would have been 10 times worse. The Houthis would have managed to get all the way down to the port of Aden and we would have had a completely failed state, far worse than the humanitarian catastrophe that is currently taking place, and despite the civil war that is actually there.

Sir Simon Mayall, a former Middle East adviser to the MoD, further outlined the consequences of non-intervention:

If the Saudis had not intervened in Yemen, a combination of Iranian-backed Houthis, AQAP [al-Qa'eda in the Arabian Peninsula] and ISIS would have led to another awful bleeding sore, as we have seen in Syria. As William Hague said yesterday, yes, there is a price for intervention, but there is a price to be paid for non-intervention. The fact that we are going to thwart, I hope, Iranian ambition in Yemen and we have pushed AQAP out of Mukalla is only as a result of Saudi Arabian intervention [...] It is a matter of national importance to the Saudi Arabians to intervene in Yemen. We should be grateful, otherwise we would end up with another Iranian satrapy on the Bab el Mandeb.

13. The International Committee of the Red Cross has noted that the obligation to have respect for and ensure compliance with IHL is “binding upon States involved in multinational operations, as well as on the International Organisations under whose auspices multinational operations are undertaken”.

**14. We agree that there is a legal basis for the Saudi-led intervention in Yemen and the legitimate need to quell the armed uprising of the Houthi rebels. We also agree that the UK has an interest in preventing the further deterioration of the humanitarian situation in Yemen that would accompany Houthi expansion in the country. There is also a security interest in denying extremist militant groups such as AQAP further space to operate in Yemen. However, the fact that the UN Security Council has conferred legitimacy on the military intervention does not automatically endorse the conduct of the coalition, as we explore below.**

### **The conduct of the conflict**

15. The UN has described a “particularly worrisome escalation of conflict” which has been seen in Yemen. The intensity of the bombing campaign has attracted particular attention. As the UK Working Group on Arms wrote in its evidence to us:

Of notable concern is the pattern of harm resulting from the use of explosive weapons in populated areas, including aircraft bombs, rockets and mortars. This practice puts the civilian population at considerable risk of death and injury and has a serious negative impact on communities. A report produced by Action on Armed Violence (AOAV) and UN OCHA analysing violence in Yemen between 1 January and 31 July 2015 showed that explosive weapons killed and injured 4,493 civilians in that time period. When aerial bombing took place in populated areas civilians made up 93 per cent of resulting deaths and injuries.

16. The AOAV report also recorded in 2015 more civilian deaths and injuries reported from explosive weapons in Yemen than in any other country in the world. Aerial bombing by the Saudi-led coalition was responsible for 60 per cent of civilian deaths and injuries from explosive weapons in Yemen. In its written evidence to us, Article 36 adds that “in recent airstrikes on crowded market places in Sana’a and Hajja governorates in February and March, at least 145 civilians were killed, including 33 children. The UN High Commissioner for Human Rights condemned the attacks and noted that the distinction between legitimate military targets and civilian ones by coalition forces is at best woefully inadequate and that these incidents may constitute international crimes.”

17. International Humanitarian Law (IHL) is based on the principles of distinction, proportionality and precaution. The principle of distinction obliges parties to a conflict to target only military objectives and not the civilian population or individual civilians or civilian objects (e.g. homes, schools and hospitals). The principle of proportionality limits and protects potential harm to civilians by demanding that the least amount of harm be caused to civilians and, when harm to civilians must occur, it must be proportional to the military objective. Moreover, each party to the conflict must take all feasible precautions to protect the civilian population and civilian objects under its control against the effects of attacks. Therefore, evidence of civilian casualties cannot be equated with evidence of violations of IHL. There is compelling evidence of systematic violations of IHL committed by both sides to the conflict. However, as the UK does not supply arms to the Houthis or other armed opposition groups, this Report will focus on the Saudi-led coalition airstrikes in Yemen.

18. On 2 June 2016, the United Nations published its annual report on Children and Armed Conflict, in which it highlighted the worrying situation in Yemen as well as the Saudi-led coalition's role:

The United Nations verified a sixfold increase in the number of children killed and maimed compared with 2014, totalling 1,953 child casualties (785 children killed and 1,168 injured). More than 70 per cent were boys. Of the casualties, 60 per cent (510 deaths and 667 injuries) were attributed to the Saudi Arabia-led coalition and 20 per cent (142 deaths and 247 injuries) to the Houthis [...] The United Nations verified 101 incidents of attacks on schools and hospitals, which is double the number verified in 2014. Of the attacks, 90 per cent caused the partial or complete destruction of schools or health facilities, while the remaining 10 per cent involved attacks on protected personnel, including students. Of the attacks on schools and hospitals, 48 per cent were attributed to the coalition, 29 per cent to the Houthis and 20 per cent to unidentified perpetrators.

The same report also found a "fivefold increase in cases of recruitment and use of children by armed groups [...] Of the 762 verified cases of recruitment of children (all boys), the majority were attributed to the Houthis (72 per cent).

19. In a report prepared for the UN Security Council by the Panel of Experts on Yemen in January 2016, 119 coalition air sorties relating to potential violations of IHL were identified:

The Panel documented that the coalition had conducted air strikes targeting civilians and civilian objects, in violation of international humanitarian law, including camps for internally displaced persons and refugees; civilian gatherings, including weddings; civilian vehicles, including buses; civilian residential areas; medical facilities; schools; mosques; markets, factories and food storage warehouses; and other essential civilian infrastructure, such as the airport in Sana'a, the port in Hudaydah and domestic transit routes.

20. The Panel further noted the coalition's designation of the entire city of Sa'dah and region of Maran as military targets, confirming that "entire cities or governorates cannot be considered military targets, even with attempts to provide advance warning." The UK Government's response to the UN Panel of Experts report has been to underline that the experts did not enter Yemen but relied on satellite imagery, a criticism Tobias Ellwood

MP repeated in his evidence to our inquiry. However, much evidence of IHL violations have been documented by organisations on the ground in Yemen. David Mepham, UK Director of Human Rights Watch, told us about the evidence they had documented:

We have been to the 36 sites; we have looked at the evidence and talked to eyewitnesses; we have talked to bystanders and looked at photographic evidence, where it has been available; and we have looked at the satellite imagery. Lawyers have pored all over it, and we are very confident that in the 36 cases we have documented—there may be a considerable number of further cases—violations of IHL have taken place.

21. Amnesty International told us about the similar process they had gone through in documenting a further 30 examples of IHL abuses, in which “the laws of war have been violated, in particular the key principles of proportionality and distinction and the steps taken to minimise civilian casualties.” We heard about one example between May and July 2015 in the Sa’dah region, where a series of strikes resulted in the deaths of 100 civilians, 55 children and 22 women. Therefore, the majority of deaths in those particular strikes were women and children.

22. Together, Human Rights Watch and Amnesty International documented a case in September 2015 in which the remnants of a British-supplied cruise missile had been identified from a strike on a ceramics factory. Evidence of all of the above airstrikes have been shared with the British and Saudi authorities, as David Mepham told us:

I was at a meeting with [the Foreign Secretary] several months ago when I gave him copies of our report and said, “These are the GPS co ordinates; these are the strikes; these are the markets and schools that were hit.” Therefore, he has that evidence. The Foreign Office has had that evidence for months. It is extraordinary that the line comes back that they do not have evidence, when that evidence has been shared with them for a considerable period of time.

23. It has been noted by a number of sources that the UK Government frequently cites Human Rights Watch and Amnesty International evidence in other conflicts, such as Syria, but in Yemen the Government appears to be relying on assurances from the Saudi authorities. In her written evidence to us, Dr Anna Stavrianakis of the University of Sussex states:

The UK government is thus currently both refusing to respond to published, documented evidence provided by independent experts; and relying on secret claims provided by the Saudi military. This creates an information black hole that makes it impossible for CAEC or other independent observers to properly assess UK government policy and hold it to account.

24. As we heard from Professor Philippe Sands QC, in his opinion the Government should be cautious about relying on assurances from the Saudis:

The essence of our position is this. In the face of the overwhelming evidence of what is happening on the ground as a consequence of coalition attacks, as well as attacks from the other side—from the Houthi forces—it appears clear that the coalition forces are engaged in violations of international humanitarian law. In those circumstances, an assurance such as that at paragraph 6.28, given by the Saudis, does not appear to be worth the paper

it is printed on. If I were a Minister, I would be extremely anxious and worried about relying on such an assurance in the face of a report by a Security Council group of experts that makes it clear that the assurance is not accurate.

Ministers' assurances were subsequently undermined by the corrections made by the FCO on 21 July 2016 to statements and written answers given by Ministers over the previous seven months to clarify that the Government does not in fact assess whether breaches of IHL have taken place (as discussed in paragraph 39).

**25. We have heard evidence of serious breaches of IHL by both sides of the conflict. The warring parties have potentially not adequately distinguished between civilian and military targets, which has caused enormous suffering; civilians account for half of those killed, and nearly three million people have fled their homes. The UK Government has not responded to allegations of IHL breaches by the Saudi-led coalition in any meaningful way and we are concerned that our support for the coalition, principally through arms sales, is having the effect of conferring legitimacy on its actions. We recommend that the Government press all parties to the conflict to comply with IHL to minimise harm to civilians and protect civilian infrastructure and continue to monitor the situation closely, with an on-going review of evidence provided by a range of sources.**

#### *Cluster munitions*

26. Human Rights Watch reported on 14 February 2015 that the Saudi-led coalition were using cluster munitions supplied by the United States in Yemen. It was noted in the UN Panel of Experts report that the military spokesman of Saudi Arabia, Brigadier General Ahmed Asiri, had indicated that Saudi Arabia had used cluster munitions on or against armoured vehicles in Yemen. The UN High Commissioner for Human Rights has also verified reports of cluster munitions dropped by coalition forces and resulting in civilian casualties. We were told that the UK has not supplied cluster munitions to Saudi Arabia "for many decades". The UK has not supplied, maintained or supported these weapons since signing the Convention on Cluster Munitions in 2008. Even though neither the US, Saudi Arabia, nor Yemen are signatories to the convention, the coalition's alleged use of these weapons might contravene IHL and is significant for the UK Government which, as a signatory, is obliged to do all they can to prevent the use of cluster munitions in armed conflict. As Oliver Sprague from Amnesty International explained:

It is important in two ways. First, as a general view on the conduct of the hostilities, the UK is clearly saying that cluster munitions are a prohibited weapon and they can never have a legitimate use in conflict because of their disproportionate effect on civilians. Therefore, if an armed force is deploying those weapons, it should ring very clear alarm bells about the conduct of that armed force in relation to that conflict.

The second point is the legal position of the UK on the provision of cluster munitions. If you look at the cluster munitions treaty, it is very clear in its obligations. It is not just about whether the UK is being used to deploy them or selling them; it is about whether the UK is facilitating their use. That is not just whether it is on aircraft; it is UK personnel. My earlier point was that that is a question for the Government. The Government need to be very clear about what steps they have taken in this conflict to ensure that they are fulfilling their obligations under the cluster munitions treaty. Secondly, by using these weapons,

Saudi Arabia and its allies are demonstrating a casual disregard for the rules of war, which should be a very important and significant factor in the UK's decision whether or not to supply weaponry to them, given the examples of how they are being used.

27. From a legal perspective, Professor Philippe Sands QC agreed that the reports on the coalition's use of cluster munitions needed to be considered further by the UK Government:

It is certainly a factor that could be taken into account. I do not think that it is likely to be a dispositive factor as such. However, if a country uses weaponry of a particular kind, in particular circumstances, when it ought not to be doing so, one would form the impression that it is more likely to be doing other things that it ought not to be doing. That would push HMG to look with greater care at whether it is appropriate in all the circumstances to be contributing, where that is happening.

It is an interesting question. I would put it this way. You cannot say that it is irrelevant and you cannot say that it is dispositive, but it is certainly a factor I would want to know more about.

28. On 23 May 2016, Amnesty International reported that they had identified and documented a UK-supplied BL-755 cluster munition used by the coalition on farmland in a village in northern Yemen. In response to the Amnesty International report, the then Foreign Secretary told the House of Commons that the Government had had assurances from Saudi Arabia that cluster munitions had not been used in the conflict in Yemen, but that the MoD would be urgently investigating the allegations. However, the MoD confirmed they were not conducting any investigation, beyond calling for assurances from the Saudis. As the then Minister for Defence Procurement, Philip Dunne MP, responded to an Urgent Question in the House:

Based on all the information available to us, including sensitive coalition operational reporting, we assess that no UK-supplied cluster weapons have been used, and that no UK-supplied aircraft have been involved in the use of UK cluster weapons, in the current conflict in Yemen [...] The Saudis have previously denied using UK cluster munitions during the conflict in Yemen, but we are seeking fresh assurances in the light of this serious new allegation.

29. Tobias Ellwood raised cluster munitions (CM) in a letter to us on 18 May 2016, in which he confirmed that "the UK did provide CM to Saudi Arabia in the 1990s, but we understand that none of these CM have been used in Yemen and no UK-supplied aircraft have been used to deploy CM in Yemen." The evidence published by Amnesty International, five days after this letter was sent, raises serious questions about the Government's understanding both in terms of the use of cluster munitions by the coalition in Yemen and the use of UK-supplied aircraft in deploying them.

30. **Both Amnesty International and Human Rights Watch have documented evidence of the Saudi-led coalition's use of cluster munitions in populated, civilian areas in Yemen. Cluster munitions are banned under the Convention on Cluster Munitions, to which the UK is a signatory, although Saudi Arabia is not. That notwithstanding, Saudi Arabia's reported use of cluster munitions in populated areas in Yemen would**



contravene IHL and calls into question the coalition's wider respect for the rules of war. Evidence of a UK-supplied cluster munition dropped by the coalition in Yemen means this is a matter which the UK Government must address.

31. *We do not believe that the UK Government can meet its obligations under the Convention on Cluster Munitions by relying on assurances from the Saudis. We recommend that the MoD carry out its own investigation into the purported use by the coalition forces of a UK-supplied cluster bomb, further to evidence found in Yemen. We also recommend that the Government, as a signatory to the Convention on Cluster Munitions, set out the steps it has taken not only to make sure UK-supplied aircraft and UK personnel are not in any way implicated in the use or deployment of these weapons, which is prohibited under the Convention, but also the steps it has taken to stop Saudi Arabia from using cluster munitions.*

### Investigations into reports of violations of International Humanitarian Law

32. It was noted by the International Development Committee that a proposal for an international independent mechanism for investigating violations of IHL in Yemen was tabled by the Netherlands at the UN Human Rights Council meeting in September 2015, but was not adopted in favour of a Saudi text which did not include any reference to an independent inquiry. The UK supported the Saudi proposals that they investigate violations of IHL attributed to them in the first instance. As Tobias Ellwood told us:

What Britain did, along with other nations, was to make sure that the text provided was eventually agreed unanimously, and that meant the onus was on the Saudis initially to do the investigation. I make it very clear that this is nothing new. When other countries, including ourselves, are in operations overseas and mistakes—collateral damage—take place, the country that is responsible conducts its own independent inquiry and presents the results.

Members of the Saudi-led coalition including Saudi Arabia, the United Arab Emirates, Kuwait, Bahrain, Qatar, and Yemen, formed the Joint Incidents Assessment Team (JIAT) to investigate allegations of breaches of international humanitarian law in Yemen. Witnesses to the inquiry have questioned the efficacy and transparency of the JIAT, and have raised concerns about the time it has taken for the JIAT to publish its work.

33. The Saudi authorities announced on 31 January 2016 the results of an investigation into the October 2015 airstrike on a Médecins Sans Frontières (MSF) facility in Sa'ada. Tobias Ellwood wrote to us about the steps taken by the Saudis following this investigation, as follows:

- Inviting MSF to Riyadh to discuss the incident and agree on new measures, including a hot line to MSF and greater protection for hospitals;
- Setting up a new investigation team outside Coalition Command to review all existing procedures and suggest improvements;
- Improving Saudi procedures on rules of engagement and targeting;
- Ensuring that people on the ground who are providing intelligence to Coalition forces are aware of all protected sites on the no strike list and have better means of communicating information to pilots; and

- Providing additional IHL training for Saudi officers and pilots, including courses supported by the US and UK.

On 4 August 2016 the Joint Incidents Assessment Team (JIAT), comprising 14 members from coalition states, reported its conclusions to eight further incidents they had investigated. The JIAT found that the coalition had abided by military rules of engagement in six out of the eight incidents and in only one of the instances in which errors were made were there civilian casualties and therefore reparations required. The JIAT reported that “Coalition forces are committed to observing the rules laid down in international conventions on humanitarian law and in particular not directly targeting civilians during military operations and take all measures to preserve their safety and lives.” The JIAT’s legal adviser said that the work of the JIAT in assessing the incidents “depends on ensuring the legal aspects of target operations that are compatible with the international law, and on using the American and British mechanism to assess accidents in addition to the law of armed conflict. Mr Ellwood admitted:

I share the Committee’s frustration that that information has been slow to come forward. This is a nation that is not used to sharing information in this manner and to having to expose internationally the details of what it does. This is the first time it has had to do sustained warfare. It must look up and answer to the international standards that we expect. We will make it very clear if we feel that it does not meet those standards, but we require time, and Saudi Arabia will require time, to provide the analysis that needs to be done in all these cases.

34. The Yemeni National Commission of Inquiry was due to report on their investigations to the UN Human Rights Council in March 2015; instead, they agreed to provide an update later in the year. Mr Ellwood told the House on 4 July 2016 that they would now report back to the next session of the Human Rights Council in September—12 months since the commission of inquiry was set up and six months after the original deadline. Mr Ellwood also told us about an Independent Committee with foreign advisors to investigate Saudi Arabian military activity in Yemen which was announced on 29 February 2016 and which the Minister expected would shortly begin work when he wrote to us on 18 May 2016. As a report on the Yemen crisis for VICE News in the US explained:

Mike Newton, a former US soldier and military lawyer and one of the leading American authorities on international humanitarian law, quibbles with the way groups like Amnesty International and Human Rights Watch interpret humanitarian law. For human rights organizations, establishing what appears to be a widespread pattern of indiscriminate attacks that cause large numbers of civilian casualties is enough to prove the law has been broken. But under the complex legal framework involved in such cases, Newton says, rights organizations would have to have highly precise details from the ground and from inside the coalition operations center, which they almost certainly do not.

This process was clarified to us by Mr Ellwood, who said:

With any information that is provided to us via NGOs on the ground or, indeed, a UN expert panel, we must make sure that the Saudi independent investigations committee has the opportunity to investigate and make a report. Yes, it has been slow—far too slow—and they must improve. They have not had experience of this. They will report back and we will then make a judgment.

35. However, by repeatedly insisting that all UK extant arms licences to Saudi Arabia are compliant with the UK's legal obligations, the UK Government is making a judgement: that there is no risk that arms sold to Saudi Arabia will be used to violate IHL in Yemen. The then Minister for Defence Procurement, Philip Dunne, told us how the UK Government was able to make that judgement:

When an incident is brought to our attention, whether by the Saudis or by NGOs, we seek access to the operational reports which, as I have explained, the Saudis are willing to provide to us. We look at our own sources of information to see whether there is any information to which we have access from our own sources that might provide more or corroborating information in relation to the incident. Then we analyse that to see whether or not the incident appears to have involved a strike from the air and whether or not that strike might have been caused by weapons that we have supplied. We form an analysis in that regard, in relation to potential incidents, and encourage the Saudi armed forces to do their own investigation, to see whether they think that incident is or is not compliant with IHL.

36. In its evidence to this inquiry, the Foreign and Commonwealth Office explained the basis for their judgement that arms export licences to Saudi Arabia are compliant with the UK's export licensing criteria:

In particular we note that: (1) the Saudi-led Coalition is not targeting civilians; (2) Saudi Arabian processes and procedures have been put in place to ensure respect for the principles of IHL; (3) Saudi Arabia is investigating incidents of concern, including those involving civilian casualties; (4) Saudi Arabia has throughout engaged in constructive dialogue with the UK about both its processes and incidents of concern; (5) Saudi Arabia has been and remains genuinely committed to IHL compliance. The Government is currently satisfied that extant licences for Saudi Arabia are compliant with the UK's export licensing criteria.

Human Rights Watch wrote to the then Foreign Secretary to contest each of the above five points. When asked about the first point, Professor Philippe Sands QC told us that it depended on the meaning of "They are not targeting civilians". He argued that while it was unlikely that the Saudi authorities were identifying groups of civilians and targeting them, they were bombing entire towns or entire areas and that that is on its face a violation of international humanitarian law"

37. David Mepham of Human Rights Watch described the claim that Saudi Arabia has been and remains genuinely committed to IHL compliance as "remarkable" given the scale of civilian casualties from airstrikes in Yemen. He told us that, even under increased international scrutiny, Saudi conduct in Yemen had not changed:

The pattern of indiscriminate attacks we have described has continued. There was discussion the other day with the Saudis suggesting they may be trying to scale back their military offensive, but the bombs continue to fall. A press release put out by the UN High Commissioner for Human Rights talked about a strike that took place last week that killed 106 civilians in a crowded village market in north-western Yemen [...] So I do not think there has been a change in the pattern of their conduct in this conflict.

A continuation of Saudi conduct was evident following the collapse of peace talks in early August 2016, when there was a swift escalation of hostilities and the resumption of reports of civilian deaths. In particular, on 15 August 2015, at least 19 people were

reported killed and 24 injured in an airstrike by the Saudi-led coalition on a hospital in Hajjah governorate supported by Médecins Sans Frontières. This followed airstrikes the previous week on a school in northern Yemen that killed 10 children and wounded 28 others, and on a potato-crisp factory which killed 14, mostly women.

38. In response to the Hajjah airstrike, the fourth on an MSF facility in Yemen, MSF announced that it was evacuating its staff from the six hospitals it supports in Northern Yemen. MSF explained:

“Given the intensity of the current offensive and our loss of confidence in the Coalition’s ability to avoid such fatal attacks, MSF considers that the hospitals in Saada and Hajjah governorates are unsafe for both patients and staff. The decision to evacuate the staff, which include obstetricians, pediatricians, surgeons and emergency room specialists, from a project is never taken lightly, but in the absence of credible assurances that parties to a conflict will respect the protected status of medical facilities, medical workers, and patients, there may be no other options. This is the case in Hajjah and in Saada governorate based on recent events.”

They repeated the need for an independent investigation, adding that previous coalition investigations related to MSF facilities have not been shared with MSF.

39. It is challenging for us effectively to scrutinise claims that extant licences for Saudi Arabia remain compliant with the UK’s export licensing criteria as the Government has provided very little evidence in response to reports of IHL violations and is relying on information and reports from the Saudis to which independent observers are not privy. As we heard from Dr Anna Stavrianakis, “The Government’s response thus far has been to say, “We have a policy. It’s okay,” or, “We’ve been reassured by the Saudis. It’s okay,” but there is a whole series of credible allegations the Government have simply not responded to.” She questioned why the Government had not responded to these criticisms and why it had not provided any evidence to refute them. Statements and assurances from the Government that there is no evidence of breaches of IHL by the Saudi-led coalition, and that UK arms licences to Saudi Arabia remain compliant with the UK’s obligations, were brought into question when the Foreign and Commonwealth Office released a written statement on 21 July 2016 to correct statements and written answers made by three Ministers in the Department, including the Foreign Secretary, between January and June 2016. The corrections suggest that the assessments the Government told us it conducts into evidence of breaches of IHL, set out in detail by Philip Dunne in paragraph 37, have not in fact taken place. Statements made by the Foreign Secretary have been changed from “we have assessed that there has not been a breach of IHL by the coalition” and “our judgement is that there is no evidence that IHL has been breached”, to “we have not assessed” and “we have been unable to assess” that there has been a breach of IHL by the coalition.

40. A statement made by the then Foreign Office Minister, the Rt Hon David Lidington MP, was corrected to remove any reference to an MOD assessment of whether the coalition is acting in breach of IHL. A statement by Tobias Ellwood MP was amended along similar lines changing “we are doing our own assessments to understand whether the equipment we sell has any participation in that and indeed whether the breaches are by the Houthis or the Saudi Arabians”, to “We encourage the Saudis to conduct their own investigations to understand whether the equipment we sell has any participation in that and indeed

whether the breaches are by the Houthis or the Saudi Arabians.” These are significant changes to the evidence the Government has given to us and the House regarding their assessment of IHL compliance in Yemen. In his response to an Urgent Question in the House on this issue on 5 September, the Minister, Tobias Ellwood, did not provide further clarity to that given in his original Written Statement and accompanying letter to the Committee Chair. These corrections not only damage confidence in cross-Whitehall co-ordination and competence but, more importantly, undermine the Government’s view that there is no clear risk that UK arms licensed to Saudi Arabia will be used in violations of IHL in Yemen.

41. We were told that an international independent investigation into reports of violations of IHL is the most appropriate means for verifying incident information in a transparent and credible way. David Mepham of Human Rights Watch stressed to us the importance of an international and independent investigation in order to establish the facts. He pointed out that the UK Government had championed such an investigation in Sri Lanka at the same Human Rights Council meeting at which the Dutch proposal for an inquiry in Yemen was blocked.

42. **The reports of potential violations of IHL in Yemen since September 2014 have been widespread, with both parties to the conflict being accused of failing to take the necessary and proportionate precautions to protect civilians. We are not convinced that Saudi Arabia is best placed to investigate reports of IHL breaches and their lack of progress in reporting findings only confirms our concerns that they are obstructing the process. Since September 2015, the Saudis have announced the results of nine investigations, despite having received evidence of at least 185 incidents from the UN, Human Rights Watch and Amnesty International. Moreover, a number of the Saudi investigations reported results which contradict evidence documented by the UN. This raises concerns about the credibility of the process. Following the FCO corrections to written answers and statements made by Ministers on the conflict in Yemen, it is unclear what analysis the Government has undertaken to assess the risk that UK arms transfers to Saudi Arabia might be used in breach of IHL. Without credible investigations, neither the Saudi-led coalition nor the Houthis are being held accountable for their actions and it is Yemeni civilians who bear the consequences.**

43. *We welcome the progress that has been made to date by the Saudi-led coalition establishing the mechanisms to investigate allegations of violations of International Humanitarian Law. However, further progress is needed to ensure that JIAT is transparent, credible, and publishes its investigations in a timely manner. We recommend that the UK Government offer its support to the JIAT where appropriate so that it can meet these ends. We also believe that an independent, United Nations-led investigation of alleged violations by all parties to the conflict is necessary to supplement the internal investigations of the Saudi-led coalition. We recommend that the UK Government support calls for the establishment of such an investigation as a matter of urgency.*

### Chapter 3: UK interests in the Gulf

44. As the National Security Strategy and Strategic Defence and Security Review 2015 (SDSR) outlines, “strong alliances and partnerships worldwide are more important than ever. In almost every aspect of our national security and prosperity, we must work with

others, not because we cannot work alone, but because the threats and opportunities are global.” The Defence Secretary set out the UK’s interests in the Middle East in evidence to the Defence Committee:

The Middle East, and North Africa to some extent, are fundamental to this country’s security, stability and prosperity. We rely on a series of partnerships in the region to help us manage threats from the region—crime, terrorism and now the challenge of migration—but we also need to ensure that the energy supplies that we rely on are secure and that our trade routes are secure, and that is why we maintain a credible and persistent defence presence in the region. This is a region that is extremely important to both our security and our economy.

The then Minister for Defence Procurement, Philip Dunne, detailed further the importance of the region from a defence perspective:

In relation to Ministry of Defence support for military activities, we have some of our closest relationships with Gulf nations, in terms of training, exercising and now operations. The Kingdom of Saudi Arabia, specifically, is an important member of the coalition against Daesh in which we have been participating over Iraq and, more recently, over Syria. It is very important to us that the stability of the region is maintained by encouraging military stability there.

### *Instability in the Gulf*

45. The region is going through a period of instability. As Sir Simon Mayall wrote in his evidence to our inquiry:

After the chaos of Iraq, the continuing reverberations of the ‘Arab Spring’, the Syrian civil war, the rise of Da’esh, and the related terror and refugee crises in Europe, I remain amazed that there are still people that believe that pursuing policies and actions that unsettle and undermine the confidence and stability of our Gulf allies is a sound course of action.

Sir Simon described the Gulf as “a region that, more than ever, needs help to combat internal threats, and to deter external challenges.” He argued that the UK, while not being a simply “uncritical onlooker”, had to present itself as a “reliable and understanding friend” to allies concerned about their own security. Michael Stephens, Research Fellow at RUSI, reiterated the point that the UK should reassure and support Gulf allies, in which military assistance and arms sales have a part to play:

The Gulf states as a bloc require a certain amount of reassurance, in the form of security guarantees and continued high-level access from members of the British Government, to feel that they are valued partners in a geostrategic relationship in which they have some severe security concerns that they feel have not been addressed sufficiently by either the United States or the United Kingdom. [...]. At times when the Gulf states feel more secure, especially because of our reassurances to them, there is a financial response. It can come in the form of defence sales, increased guarantees of investment in the United Kingdom and preferential viewing of our industry and our expatriate community above that of some of our competitors.

46. Transparency International, on the other hand, wrote that the instability of the Gulf states should be a red flag for arms exports. It argued that governments with weak

control over their security sectors are highly unreliable partners for the UK, and that such regimes were, in fact, the sources of likely future security crises, as we have seen happen in Syria and Libya.

47. In order to mitigate the risks of arms sales to territories viewed as unstable, criterion 5 of the consolidated EU and UK arms licensing criteria states explicitly that the defence and strategic interests of the UK or its allies “cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability.”

48. **The Gulf is a region where the UK’s security and prosperity agendas overlap. It is in the UK’s strategic interests to support a secure, prosperous and politically stable Gulf and we recognise that military support and arms sales play a key role in that. However, our relationships in the region, particularly in terms of arms sales can counterpose our interests – understood as security, stability, jobs and prosperity – against our values of respect for international law. There are also pragmatic judgements to be made about how to advance our values in a region where revolutionary or imposed changes of government have usually had catastrophic practical consequences and seriously reversed progress towards our values.**

49. The influence afforded to the UK from our close relationship with Gulf states was set out by Sir Simon Mayall, who told us:

When you commit to the security and reassurance of these countries, it pays back not simply in defence sales but in your capacity to influence them diplomatically on a whole range of things on which we want to engage. We are a values-based society. They are a values-based society. It is a different set of values, but they are increasingly globalised. Our capacity to influence is much better than that of Russia, China, Turkey or whoever else filled the vacuum that would be left by the British if we failed to demonstrate a degree of understanding and confidence in their long-term stability.

50. Saudi Arabia is a long-standing ally of the United Kingdom and has often proved a valuable partner in geostrategic events; for example, it was a key partner in the coalition assembled to oppose the Iraqi invasion of Kuwait in 1990. The Government has long made the argument, at least as far back as the beginning of the al-Yamamah arrangement in September 1985, that defence exports to Saudi Arabia underpin our close strategic alliance. Dr Robert Dover and Professor Mark Phythian from the University of Leicester suggested that the complexities in the relationship result in a lower bar being set for arms sales to Saudi Arabia. They describe:

A strategically important liaison relationship that provides hard and soft intelligence to the UK, and in providing the UK with the retention of some influence and so diplomatic advantage in the Middle East. These are important factors to the UK government because of the dangers it sees to the region and the oil markets of a political vacuum in Saudi Arabia. The special factors present with the Saudi case mean that the UK government facilitates a trade in military equipment that it would be unlikely to repeat for other governments with the same human rights or political risk profile.

51. The then Minister for Small Business, Industry and Enterprise, Anna Soubry told us:

For what it is worth, I think that the relationship with Saudi Arabia is extremely complex. If only it were as simple as people sometimes wish it were, but it is complex and there are some very difficult balances to be struck. You might expect me to say this, but I think at the moment we have definitely got the balance right.

52. **The UK's relationship with Saudi Arabia is characterised by compromise. We agree with Ministers that there are balances to be struck, but we are not on the whole as confident that we have that balance right. The UK Government needs to explain its claims that defence exports to Saudi Arabia give us a close and influential relationship with the Kingdom and allow us to play an important role in the Middle East, and show where this has been the case. We recommend it uses this influence, firstly to put pressure on the Saudis to allow independent international investigation of claims of IHL violations, and secondly to persuade them to conduct coalition operations in Yemen in accordance with international standards.**

### Defence industry

53. The defence industry has been a success story for the UK, in terms of exports the UK is competing in the top three globally with the US and France. As the then Business Minister, Anna Soubry, told us:

The industry is a huge and various part of what we do in Britain. We do it very well. It has considerable benefit to our nation—to all the people who work in defence, in any event—and plays a huge part in what we do in the world. It is incredibly important for our exports and an important feature of them. There is huge potential for future growth—rightly so. Like most exports, defence exports are good for Britain and good for the people of Britain, as well as those nations that receive them.

54. In their evidence to this inquiry, Dr Robert Dover and Professor Mark Phythian from the University of Leicester described the UK's defence industrial base as “a valuable source of employment and technology driven enterprise for both the military and civilian sectors. The economic footprint of the defence industrial base runs across many industries, including forming an important part of the research and enterprise lives of the UK Higher Education sector.” ADS, the trade association for the UK's aerospace, defence, security and space industries, confirmed that, in 2014, the UK's defence and security industries generated a turnover of over £30 billion and secured an export business worth £12 billion. The industries sustain around 230,000 jobs including 6,500 apprenticeships and trainees. We heard from Paul Everitt, Chief Executive of ADS, that the importance of defence exports went beyond their economic value; they also underpin international relationships and allow interoperability with key allies. In addition, strong exports sustain domestic capability, reducing cost to the UK taxpayer. He maintained that the licensing regime was implemented and uniformly applied.

55. The UK's defence industries are in a vulnerable position as defence budgets have contracted, placing a greater emphasis on export trade. ADS explained that “even as domestic budgets have been cut over the past decade, UK defence and security companies have achieved growth in exports. Exports also help reduce the cost of UK programmes by increasing production runs, and reducing unit costs through economies of scale. They help the industry by levelling out peaks and troughs of domestic demand. Crucially, they sustain key industrial capabilities that might otherwise be lost.”



56. As Sir Simon Mayall told us, defence sales are part of a wider strategy of engagement and essential for building long-term alliances in the Gulf:

The thing on which I have always supported British defence sales is that if you buy a platform—Typhoon and, before that, Tornado—you initiate a 25-year relationship. People do not change platforms. When you have a relationship for 25 years, through Eurofighter [Typhoon], Tornado or a ship, the training aspect of that comes with it. People come to Sandhurst and Dartmouth. I happen to believe that British military training is some of the finest—if not the finest—in the world. I like to think that, by bringing people to this country, you imbue them with some of the values that we hold dear, which they take back with them, and that, to an extent, they take into their own armed forces the ethos that they pick up in the British armed forces.

57. The Gulf, and in particular Saudi Arabia, is a vital market for the British defence export industry. The Foreign and Commonwealth Office confirmed that Middle East countries accounted for 66 per cent of the UK's total defence exports in 2014. It is estimated that Saudi Arabia will become the world's fifth-largest military spender by 2020, as it seeks to increase its defence budget by 27 per cent over the next five years. This is a regional trend which has seen states in the Gulf Cooperation Council increase their arms imports by 71 per cent in the last decade (2004 – 2014).

58. This is not a new trend for Saudi Arabia, which has been described as the “mainstay of the UK's arms trade” since the initiation of the Al Yamamah deals. The Government provides a great deal of support to maintain the arms export trade with Saudi Arabia. This is done through government-to-government contracts, in which the Ministry of Defence sign agreements for major defence sales with the Saudi Arabian Government, then places contracts with UK prime contractors (such as BAE Systems) to fulfil the UK's obligations. There are two main bodies at the Ministry of Defence who oversee the main contracts: the Ministry of Defence Saudi Armed Forces Project (MODSAP) and Saudi Arabia National Guard Communications Project (SANGCOM). These bodies monitor the progress and performance of the contracts and provide training and assistance to Saudi Arabia. In addition, the UK Government dedicates significant resources to promoting the defence trade in the Gulf. The former Department for Business, Innovation and Skills designated Saudi Arabia as a priority market for UK arms exports through UKTI DSO, which aims to help UK defence and security companies to build and maintain relationships with overseas customers and to export their products.

59. The importance of arms exports for our security and prosperity has been recognised in the SDSR, in terms of directly sustaining tens of thousands of jobs across the UK, generating economies of scale that reduce the cost of defence equipment to the Government and the taxpayer, and for underpinning long-term relationships with our international partners and helping us deliver wider foreign policy objectives. The SDSR also identifies support for defence and security exports as a new core task for the MoD, with responsibility for managing all strategic defence export campaigns. Paul Everitt from ADS detailed the wider remit of the MoD as being “greater willingness to engage with potential customers to provide insight, experience and guidance on the use UK military forces put that equipment to, how it is managed, how it is supported in theatre and what kind of procurement processes they go through.”

60. The SDSR also proposes strengthening our defence relationships in the Gulf. Describing the region as a “significant source of both threat and opportunity”, the Review refers to a new Gulf Strategy which would include the building a permanent and more substantial UK military presence and establishing a new British Defence Staff in the Middle East.

**61. The UK defence industry is hugely successful and an important part of our export portfolio. Globally the UK is one of the top three exporters of defence equipment with the US and France. While domestic budgets have faced reductions, exports have been essential in sustaining the industry in the UK, its manufacturing expertise and maintaining economies of scale to ensure value for money for our own armed forces and the taxpayer. It is an industry which has a value beyond the purely economic: defence exports build international relationships and ensure interoperability of equipment with our allies, and they underpin long-term alliances which help deliver our wider foreign policy objectives. They are vital both for our security and our prosperity.**

**62. The Gulf is a crucial market for defence exports, in particular Saudi Arabia to which over 30 per cent of all UK arms export licences in 2015 were approved. As we move towards expanding our military presence and relationships in the Gulf, we would expect defence exports to that region to have a key role to play. However, this cannot be without conditions or without regard for the UK’s international obligations.**

#### **UK support for Saudi Arabia and the coalition in Yemen**

63. Yemen’s geographical position gives its strategic importance, sharing a land border with Saudi Arabia to the north and with the vital shipping route of the Gulf of Aden to the South. The country is also home to al-Qa’eda in the Arabian Peninsula, which has grown in strength and territory over the course of the conflict. Sir Simon Mayall wrote to us about the strategic importance of the Yemen conflict both to Saudi Arabia and the UK:

In my mind, the motives for the Saudi-led campaign in Yemen are quite clear. The operations themselves are critical to halting Houthi aggression, thereby setting the conditions for a political settlement, for restricting the operation of AQAP, for limiting the rise of IS-affiliated groups in Yemen and the wider region, and for hampering Iranian ambition close to the vital Bab al Mandab Straits. Saudi Arabia is defending its territory and interests in the same way any nation under similar threat would and, given the range of threats facing them, it is in the UK’s strategic interests to support them.

64. At the start of the Saudi-led coalition’s military intervention in Yemen, the then Foreign Secretary, Philip Hammond, confirmed that the Saudis were flying UK-manufactured aircraft in Yemen and set out the extent of UK support for Saudi Arabia:

We have a significant infrastructure supporting the Saudi air force generally and if we are requested to provide them with enhanced support – spare parts, maintenance, technical advice, resupply – we will seek to do so. We’ll support the Saudis in every practical way short of engaging in combat.

This support was detailed to us by the Foreign and Commonwealth Office, which told us that the Saudi Government had requested additional UK support after the escalation of the conflict in Yemen in March 2015. It explained that, as a result of this request, the Government, bearing in mind the UK’s domestic and legal obligations, had accelerated the

delivery of Paveway laser-guided bombs; increased training in targeting and weapon use; provided liaison officers in Saudi headquarters in order to observe the processes, increase the UK's insight into the air campaign and help to improve maritime access to Yemeni ports by identifying vessels that may be breaching the arms embargo; and assessed and fulfilled Saudi training needs to help strengthen defences at the Saudi southern border which has suffered repeated cross border raids.

### ***Recent arms sales to Saudi Arabia***

65. Department for Business, Innovation and Skills documents reported over £3.3 billion in arms sales to Saudi Arabia in the first twelve months of the conflict in Yemen from April 2015 to March 2016 – a 30 fold increase on the preceding twelve-month period.” This included £1 billion of category ML4 weapons, which comprise bombs, rockets and missiles, for the 3-month period from July to September last year, up from £9 million for the preceding 3-month period for the same category of arms. In its evidence to the inquiry, the UK Working Group on Arms wrote that:

Since airstrikes began in Yemen in March 2015, HMG has licensed for export to Saudi Arabia equipment and components from nearly every category from the UK Military List (UKML). However, it is the scale of some of these licensed exports that is truly astounding. According to official UK reports, between 1 April and 31 September 2015, the UK issued Standard Individual Export Licences (SIELs) authorising £1.8 billion of combat aircraft and their spare parts and more than £1 billion of bombs and missiles for use by the Saudi Air Force. To put this latter figure in context, the value of munitions licensed for export to Saudi Arabia under UKML4 (bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, specially designed for military use, and specially designed components thereof) in the three month period from July to September 2015 is equivalent to the total that was licensed for export to the whole world (including Saudi Arabia) in the four-and-a-half years from January 2011 to June 2015 inclusive.

66. The largest export licence was for £1.7 billion of fighter jets, granted in May 2015. In July 2015 the UK approved the export of £990 million of air-to-air missiles. In September 2015, it licensed the sale of £62 million of bombs and in February 2016, it licenced £522 million of military aircraft to the country. All four sales took place after the Saudi-led coalition began airstrikes in Yemen in March 2015.

67. In its evidence to this inquiry, the Foreign and Commonwealth Office set out the number and value of Standard Individual Export Licences (SIELs) granted in 2013, 2014 and 2015, with the following caveats :

- The figures relate to licences granted in the specified period, not necessarily the value of sales or good shipped in that period;
- In 2013, one licence for combat aircraft was granted for approximately £1.5 billion, however because the goods had not been shipped by the time the licence expired, a further licence of a similar value was granted in Q2 2015. Therefore, the value of that one licence is counted in the totals for both 2013 and 2015;
- One licence in Q3 2015 for almost £1 billion of air-to-air missiles relates to a long-term contract for the delivery of a new munitions capability over a number of years made independent of the current operations in Yemen;

- The vast majority of dual-use items in the table below are for 2 categories of equipment: (i) corrosive resistant manufacturing equipment (eg. pumps, valves) for use in industries such as oil, gas and petrochemicals; and (ii) equipment and software employing encryption for information security, which accounted for 87% of all dual-use licences granted.

Year	Military Items		Dual-Use Items	
	No. of SIELs	Value (£)	No. of SIELs	Value (£)
2013	128	1.6 billion	175	22 million
2014	129	80 million	181	55 million
2015	171	2.7 billion	115	103 million

68. Despite the body of evidence of violations of IHL by the Saudi-led coalition, no export licence application to Saudi Arabia has been refused due to non-compliance with the UK's arms export licensing criterion 2 since March 2015. We were told by Dr Robert Dover and Professor Mark Phythian from the University of Leicester that it was difficult to assess whether the UK Government was “agnostic” about the real end-use of defence equipment exported to Saudi Arabia. They argued that it seemed that strategic relations with the Kingdom had led to “pragmatic interpretations of arms transfer licensing [...] What we can note is that there is a growing tension between an increasing accepted moral and ethical framework and some of these arms sales, and their end uses.”

69. We also heard concerns that if the UK were to stop selling arms to Saudi Arabia, the Kingdom could buy their weapons from other exporters and as such there would be little if any impact on the coalition's aerial campaign in Yemen. It was therefore suggested that the UK is being asked to “take action specifically against British industry, British workers and British communities.” Sir Simon Mayall told us that it is better for all involved that the coalition use UK-manufactured weapons:

From a practical point of view, given the level of Saudi commitment to this operation, I would rather see them use UK-manufactured, precision-guided missiles, and the latest targeting techniques (trained and advised by UK and US military), than to be using less accurate munitions and less restrictive rules of engagement.

### *Defence engagement*

70. A report for VICE news in the US found that US and UK military advisers have helped the Saudi-led coalition to plan its airstrikes by participating in a Joint Combined Planning Cell command centre (JCPC). The report explained that the JCPC had been established at the beginning of the conflict in an effort to ensure that the conduct of the coalition campaign in Yemen met international standards. The Saudi Foreign Minister, Adel al-Jubeir, told journalists that UK and US personnel in the JCPC knew the Saudi targeting lists and what the coalition was and was not doing.

71. However, not all airstrikes are conducted by the JCPC. VICE researchers reported that there are two types of airstrikes; the first are pre-planned, based on satellite imagery, reconnaissance from drones and aircraft and human intelligence on the grounds. These take into account whether the target was militarily important and what collateral damage is likely. The second sort of strike is contingent or “dynamic”, based on real-time intelligence. The decision to launch such strikes is taken within minutes rather than hours

or days and the intelligence basis can be much thinner. The JCPC is focused entirely on pre-planned strikes, while dynamic strikes make up the vast majority—around 80 per cent—of coalition airstrikes.

72. Tobias Ellwood wrote to us to explain that the JCPC is a US body that works with Saudi Arabia to coordinate US military and intelligence support. In terms of the involvement of UK liaison officers in the JCPC, Mr Ellwood wrote:

Some JCPC liaison officers work in a regional HQ that helps to improve maritime access to Yemeni ports, by identifying vessels that may be breaching the arms embargo. Others work in the main JCPC HQ, helping to monitor the current situation in Yemen and facilitate communication with the GCC. Additionally, we have other liaison officers who sit within the Saudi Air Operations Centre, to improve our understanding of the air campaign. These are not part of the JCPC.

73. Explaining that no UK personnel are involved in targeting decisions, Mr Dunne told us that UK liaison officers in the air operations centre were not involved in targeting decisions, but instead conducted training on doctrine for using UK-supplied weapons systems and provided advice on targeting processes.

74. Mr Dunne contended that the UK's relationship with Saudi Arabia placed us in a "privileged position" in terms of the advice we give to the Saudi Arabian armed forces and access we have to information from within Saudi operations allowing us to conduct post-incident analysis of strikes. We heard from Dr Anna Stavrianakis that the UK Government seems to want it both ways, questioning the level of the UK's involvement and knowledge of the Saudi processes and strikes. She said that the Government claimed to have knowledge and oversight of Saudi operations and had satisfied themselves that the conduct of these conformed to IHR. At the same time, she argued, the Government claimed not to be directly involved.

75. **The UK's support for Saudi Arabia's military intervention in Yemen has been extensive while remaining short of engaging in the actual combat. Professor Sands QC argued that the UK is in effect involved in the conflict; as "we characterise the nature, extent or depth of that involvement, it is impossible, on the basis of the evidence that is before us, to claim plausibly that the United Kingdom is not involved". Our involvement extends from providing the planes and bombs for airstrikes to UK personnel in the Joint Combined Planning Cell and Saudi Air Operations Centre. This level of involvement without being a party to a conflict is unprecedented and is a result of the "privileged" relationship the UK has with Saudi Arabia and its armed forces. There is again a difficult balance to be struck. We are not convinced that the Government has enough oversight of coalition procedures and operations.**

76. **We were told that UK personnel are not part of the intelligence planning cells, but that they are in the Joint Combined Planning Cell HQ. We also heard that UK personnel are in Saudi Arabia to train, educate and teach best practice, which includes understanding IHL and training air crews and planners how to go about assessing targets for the future, but that our liaison officers "do not provide training, they do not provide advice on IHL compliance, and they have no role in the Saudi targeting chain." This is an area in which there is much confusion and greater clarity is needed.**

77. *We recommend that the UK Government provide more detail with regards to the role of UK personnel in Saudi Arabia, in particular answering the following questions:*

- *How many UK personnel are assisting the Saudi Arabian armed forces and in what roles, including BAE Systems employees;*
- *What is the extent of the involvement of each group of UK personnel with the Saudis' operations in Yemen; and*
- *How are UK personnel advising the Saudi Arabian armed forces on IHL and what level of understanding do they have of the coalition's regard for IHL in its operations in Yemen.*

#### Chapter 4: The UK's legal obligations

##### A global leader in the rule of law

78. As a key element of the UK's global influence to protect and promote our interests and values, supporting our security and prosperity, the SDSR sets out that we "will work with our allies and partners to strengthen, adapt and extend the rules-based international order and its institutions."

79. We heard, however, that the UK's continued authorisation of arms transfers to Saudi Arabia in the face of compelling evidence that they breach the UK's international obligations like the Arms Trade Treaty (ATT), raises serious questions as to the UK's commitment to a rules-based international order, and damages the UK's standing within the international community. The UK Working Group on Arms argued that the UK, by appearing to be ready to breach its international obligations, sent a message to other states that they could do the same.

80. Professor Philippe Sands QC told us about the importance of the leadership position the UK holds internationally with regards the rule of law:

If I were a legal adviser to this Government, I would be saying, "It is time to start asking yourselves the right questions as to what your responsibilities and obligations are. Why, Minister? Because the United Kingdom is a global leader on the rule of law" [...] I think that what the United Kingdom does really matters, because the United Kingdom plays a leadership role on a lot of these issues. When the United Kingdom takes a lead in a certain area, many others will often follow.

The UK Government has been at the forefront of work to establish systems of rules to regulate arms exports, our own national system of rules in the EU and, importantly, the ATT. Work to secure this was described as "at risk of unravelling by the current policies towards Saudi Arabia and the supporting coalition".

81. Dr Anna Stavrianakis told us that the conflict in Yemen has put the UK Government in a very difficult position regards its international obligations and its leadership in the rule of law:

The UK Government put themselves in a position of moral leadership by pressing for the arms trade treaty during the negotiating phases. Now that it has entered into force, there is a whole series of reputational politics associated with it, in being seen to lead

and to uphold it in terms of implementation[...]The current situation in Yemen is quite unfortunate for the UK Government, because it has put them into a trap. They are caught in a trap that sets large swathes of domestic public opinion, and their legal obligations, against their relationship with Saudi Arabia, so they are now in quite a tricky position.

82. The argument that the UK Government is trapped was also made to us by Dr Robert Dover and Professor Mark Phythian, who contended that “the UK Government has placed itself in an invidious position of fighting a proxy war in Yemen alongside the Saudis, and thus has tied its own hands: it has virtually no choice but to supply military equipment into that theatre at ongoing reputation cost.”

**83. The UK’s support for the Saudi-led coalition in Yemen, primarily through arms sales in the face of evidence of IHL violations, is inconsistent with the UK’s global leadership role in the rule of law and international rules-based systems. The very rules the UK championed—represented by the Arms Trade Treaty—are at risk of unravelling. As an instigating member of the ATT, the UK should not set the example to other signatories that it is not bound by its obligations. This puts the UK’s own international reputation at risk and we are concerned that the UK’s voice will ring hollow in advocating for compliance with IHL on global platforms.**

#### **A robust licensing regime**

84. In response to questions on arms transfers to Saudi Arabia, the Government has repeatedly insisted that the UK operates one of the most robust arms export control regimes in the world. Paul Everitt, Chief Executive of ADS, argued that the UK’s licensing regime was held up as a benchmark for international best practice, and stressed the importance of the public availability of information. Mr Everitt explained that arms exports are a regulated sector—once a company decides to sell overseas and applies for a licence, it is then up to Government to make the judgements and decisions about whether that licence would comply with our legal obligations. Accordingly, once the licence has been applied for, the individual company has “crossed a line where responsibility has to sit with the Government and those who are making the key decisions.”

85. The Government assesses licence applications for compliance with arms trade law which, Professor Philippe Sands QC explained to us, operates in three distinct levels: the Arms Trade Treaty at the international law level; the EU common position at the European Union law level; and the consolidated EU and UK arms export licensing criteria at the domestic, UK law level. Although Professor Sands and his colleagues from Matrix Chambers looked at all three levels when producing the legal opinion on the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen, Professor Sands confirmed that the three levels do overlap:

Having concluded that both article 6 and article 7 [of the ATT] are not being complied with, you can effectively piggyback your way on to violations of the EU common position and the UK criteria, because both require, among other things, a commitment to meet your international standards. If you are failing to meet your international standards, it follows that you are failing to meet your EU standards and failing to meet your domestic standards.

86. We have received much evidence concerned with the UK Government's compliance with articles 6.3 and 7 of the Arms Trade Treaty, articles 2 and 6 of the EU common position, and criterion 2c of the UK's arms export licensing criteria, all of which refer to the respect of the recipient country for international law and require that the Government not grant a licence where there is a clear risk that the items might be used in the commission of a serious violation of IHL. This evidence has questioned the robustness of the licensing regime.

### Assessing risk

87. In judging whether an export of defence equipment is compliant with the obligations above, the Government is required to carry out a risk-based assessment, looking at all available evidence. Oliver Sprague, of Amnesty International, told us that there was evidence of unlawful strikes by the Saudi-led coalition "in spades" in Yemen, where we know UK-supplied equipment is being used and could be used in future combat. Dr Stavrianakis argued that the UK Government, by ignoring evidence of breaches of IHL and failing to conduct its own investigations, was setting "the bar for the risk assessment impossibly and inappropriately high".

88. The concerns we heard about how the UK Government is investigating violations of IHL were widespread. Many witnesses argued that there is a considerable body of reliable evidence of such violations by the Saudi-led coalition, which indicated that there is an appreciable risk of defence equipment supplied by UK manufacturers being used in contravention of international law and the UK's international obligations.

89. **The UK Government operates a risk-based arms export licensing regime, requiring Government to assess the risk that arms exports might be used in violation of IHL. In the face of widespread allegations of violations of IHL in Yemen, it is difficult for the public to understand how a reliable licence assessment process would not have concluded that there is a clear risk of misuse of at least some arms exports to Saudi Arabia. At present, the Government's export licensing policy towards Saudi Arabia could be interpreted as not living up to the UK's robust and transparent regulations, nor upholding the UK's international obligations.**

90. *The credibility of the Government's policy and practice of its arm export licensing regime has been called into question. In response, we recommend it issue a public explanation of its risk assessment process and what level of risk would trigger the refusal of a licence.*

### *A chain of responsibility*

91. We heard concerns regarding the Government's understanding of the end-use of the equipment we supply to Saudi Arabia. Our attention was drawn to a parliamentary response by the Defence Secretary that "the use of equipment and weapons supplied to the Saudis is an operational matter for the Saudi military authorities. The Saudis have assured us that British-supplied munitions will be used in compliance with international humanitarian law and we continue to engage with them on these assurances."

92. Professor Philippe Sands QC raised this reliance on assurances from the Saudis as particularly problematic. He said that between June and October 2015, the Foreign and Commonwealth Office made a number of statements which had in common that they



relied on assurances given to us by the Saudi authorities. He advised that governments could not simply rely on the reassurances of others, but that article 6 of the ATT imposed an explicit obligation on signatories to form a view.

93. Dr Stavrianakis described this as a chain of responsibility, which “links the responsibility of the exporter to the behaviour of the importer, because it is incumbent on the exporter to assess the risk of how that equipment might be used—not will be used but might be used.” Oliver Sprague from Amnesty International further clarified:

In order to establish a risk-based analysis of a licence, they [MoD] have to have an indication about how that weaponry is used to discharge that function. If they are genuinely saying that how Britain’s weapons are going to be used is not a matter for them, it is impossible for a decision to be made to authorise those weapons lawfully on the basis of the relevant articles in the Arms Trade Treaty. They have to have some assessment of the prior knowledge on the uses to which the weaponry would be put. It is absolutely fundamental.

The FCO written statement on 21 July 2016, however, corrects statements made by Ministers from the FCO, including the Foreign Secretary, to clarify that the Government has not made assessments of any breaches of IHL by the Saudi-led coalition in Yemen. This raises serious concerns regarding the Government’s assessment of the risk that arms sold to Saudi Arabia might be used in the commission of a violation of IHL.

94. According to Professor Philippe Sands QC, the chain of responsibility could be extended to individual ministers:

If I were a legal adviser to a Minister, I would say, “Minister, there is a reason, beyond this, why you need to look at this matter, which is that beyond international humanitarian law and international human rights law, there is now also international criminal law. International criminal law imposes responsibilities not on states but on individuals. If it turns out that the United Kingdom is supplying weapons in a conflict that is giving rise to systematic violations of international humanitarian law, I cannot exclude the possibility that, on some day in the future, you, as the person who supplied the weapons, could be hauled before some foreign national court, some domestic UK court or some international court.” If I were a Minister, I would want my legal adviser to say that.

### *A lack of transparency*

95. The Government publishes the licensing statistics for UK arms exports on a quarterly basis. We heard from Roy Isbister of Saferworld that the UK Government deserves credit for the timeliness of the information made available which allows observers to investigate what has been licensed for transfer up to the start of the previous quarter. He also raised the UK parliamentary oversight system as a model other countries might like to follow. That said, there are limits to the information which can be extracted from the licensing statistics.

96. There is no public discussion about what happens within Government during the assessment of licence applications. For Dr Stavrianakis, the challenges this creates in examining arms exports has been further exacerbated since the start of the conflict in Yemen by the shortening of the processing time for licences to Saudi Arabia as follows:

- Q2, 1st April – 30th June 2015: the median processing time for SIELs was 25 days, with 35% completed in twenty working days and 98% in sixty days. SIELs worth £1,736,807,764 were granted. The largest category was ML10 (aircraft, UAVs, and related good and components): £1,714,184,642.
- Q3, 1st July – 30th September 2015: the median processing time for SIELs was 14 days, with 78% completed in twenty working days and 100% completed in sixty days. SIELs worth £1,108,300,139 were issued. ML4 (bombs, torpedoes, rockets, missiles) was the biggest category: £1,066,216,510.
- Q4, 1 October – 31 December 2015: Median processing time: 12 days; 91% completed in 20 working days; 98% in 60 working days. SIELs worth £19,739,194 were issued. ML4 was again far and away the largest category by value (£3,705,539) followed by ML1 (firearms) (£1,005,560).

97. At a time when the body of evidence to consider in assessing licence applications to Saudi Arabia and in measuring risk against licensing criteria was growing, the processing time for applications was in fact reducing. As Dr Stavrianakis told us:

If you look at the most recent licensing statistics, the median processing time has come down and the proportion of export applications completed within 20 working days has gone up. I am sure the Government would say, “See, everything is working fine,” but now I have even less idea of what is happening within that process. If the Government are so sure that what they are doing is fine, why have they not responded to any of the criticisms.

98. **The Government points to its robust licensing regime as evidence that its arms export practices are responsible. However, by failing to provide persuasive evidence to support this statement or to respond to reports of IHL breaches, the Government is preventing scrutiny of its practices. It is problematic that, at the very time the Government was in receipt of reports documenting violations of IHL by the Saudi-led coalition the processing times for those licence applications were speeded up. The Government should provide a detailed explanation for those licensing decisions rather than a simple assertion that we have a rigorous licensing regime.**

99. We are grateful for the former Foreign and Business Secretaries’ respective offers for CAEC members to have regular meetings with ministers and to visit the Arms Export Policy Department in the FCO and the Export Control Organisation in BIS. However, *we recommend that the Government implement greater transparency in the policy and practice of its arms exports. As a first step towards this, it should provide further details on the following:*

- *the changes in information, assessment methods and political direction which have occurred since the war in Yemen began;*
- *how differences in opinion between the departments involved in licensing are resolved; and*
- *how often decisions are being referred up the chain of political responsibility, and how far up these decisions go.*

### *Suspending licences*

100. In coming to the conclusion that arms export licences to Saudi Arabia are compliant with the UK's commitments, Professor Philippe Sands QC suggested the Government had been "misdirecting" themselves:

The essential problem that we have identified is that the United Kingdom has not made the inquiries that it should have been making. If it makes those inquiries properly, fairly and independently, we think that it is likely that it will come up with a particular conclusion, but we cannot say that for certain. We have to assume that those inquiries will be made in good faith, on the basis of the facts that are available. The essence of the problem is a failure of the Government to direct themselves to the right questions. Having asked the wrong questions, they have reached answers that are implausible.

101. For example, we have heard from the Government that the Saudi-led coalition are not targeting civilians and as such, the Government is currently satisfied that extant licences for Saudi Arabia are compliant with the UK's export licensing criteria. As we set out in paragraph 37, it is unlikely the coalition are identifying civilians as targets, however; coalition airstrikes have resulted in a very high number of civilian casualties, whether intentional or not. The UN has attributed 60 per cent of civilian casualties to Saudi-led coalition airstrikes. That, Professor Sands told us, becomes an issue of intent:

Are they intending to target civilians? We do not have any evidence that, in their terms of engagement—rules of engagement—that is what they are doing, but it is what they are doing inevitably, as a consequence of the kinds of activities they are engaging in. It is not appropriate to look to the issue of intent in terms of the obligation. The authority for that is a judgment of the International Court of Justice— [The Bosnia v. Serbia case] [...] it makes it very clear that the question of what you intend to do is not dispositive in avoiding a wrongdoing by that particular state.

102. The then Business Minister, Anna Soubry, clarified that the Government must consider each licence, for each type of weapon, on its own merit and "if it is found that there has been a breach of those criteria with an export licence, the answer is a very clear yes. We will revoke licences. We will suspend licences, if there is evidence."

103. Professor Sands and his colleagues at Matrix Chambers in their legal opinion argued that, in light of the evidence of violations of IHL by the Saudi-led coalition and in the absence of any credible investigations into those violations by Saudi Arabia, "it is reasonable to conclude that in such circumstances future transfers by the UK of weapons or items capable of being deployed against civilians or civilian objects would be used in a manner that is internationally unlawful." They further concluded that "the UK has - or should be recognised as having - knowledge that weapons or related items exported to Saudi Arabia would be used in future attacks directed against civilian objects or civilians protected as such, or in the commission of war crimes in Yemen." On the basis of the evidence available, they added that the UK Government would have had knowledge that transfers of arms to Saudi Arabia would have constituted a breach of its obligations as early as May 2015. As such, any arms exported to Saudi Arabia which could be used in the conflict in Yemen and for which their end-use is not restricted, they concluded, would constitute a breach of the UK's legal obligations under domestic, European and international law. In order to bring the UK into compliance with its legal obligations, they recommended that the UK:

should halt with immediate effect all authorisations and transfers of relevant weapons and items to Saudi Arabia, capable of being used in the conflict in Yemen, pending proper and credible enquiries into the allegations of violations of IHL and IHRL [International Human Rights Law] that have arisen and that could arise in the future.

104. Professor Sands is joined by the European Parliament, which passed a resolution to this effect, Human Rights Watch, Amnesty International, Saferworld and Save the Children, among others, who have called for a suspension of arms exports to Saudi Arabia. The Netherlands and Germany halted arms sales to Saudi Arabia in early 2016.

105. Foreign Office Minister Tobias Ellwood pointed out that the UK has revoked or suspended licences, for example to Russia, Egypt and Yemen, where other aspects of the bilateral relationship continues, including a human rights dialogue. Philip Dunne reminded us of the wider consequences of suspending licences:

We routinely assess—not constantly, but routinely—that certain applications for new arms exports do not meet the clear criteria that have been set. The criteria have different levels. As a result of those refusals, from time to time we lose defence business with a whole host of countries, including some of our closest allies.

106. **Saudi Arabia is one of our closest allies. However, the weight of evidence of violations of IHL by the Saudi-led coalition in Yemen is now so great that it is very difficult to continue to support Saudi Arabia while maintaining the credibility of our arms licensing regime. The failure of the Government to support the establishment of an independent international investigation to provide conclusive evidence on IHL violations in Yemen, on which to base arms export licensing decisions, has allowed for the transfer of items to Saudi Arabia very possibly in contravention of the UK’s legal obligations. We believe it is in the interests of all those involved in arms exports that arms transfers are seen as responsible. While such doubt and uncertainty about IHL compliance in Yemen exists, the default position of the UK Government should not be to continue to sell weapons but to pause until it is satisfied that allegations have been properly investigated.**

107. *In the case of Yemen, it is clear to us that the arms export licensing regime has not worked. We recommend that the UK suspend licences for arms exports to Saudi Arabia, capable of being used in Yemen, pending the results of an independent, United Nations-led inquiry into reports of violations of IHL, and issue no further licences. In addition, the UK Government should investigate whether any licences so far issued have led to the transfer of weapons which have been used in breach of IHL. This suspension must remain in place until such time as the UN-led inquiry can provide evidence that the risk that such exports might be used in the commission of serious violations of IHL has subsided.*

### A role for development

108. There are undeniable costs of conflict on a country’s development. The UK Working Group on Arms explained that these costs were both direct and indirect, including dealing with refugees and IDPs, as well as loss of development and economic decline. They continued, “Oxfam has calculated that armed conflict cost African countries as a whole an average of \$18bn each year between 1990 and 2005.”

109. Yemen faced a range of deep-seated development challenges prior to the current crisis including rapid population growth, gender inequality, poor provision of basic services, a weak economy, corruption and youth unemployment. As a result of a cycle of conflicts and political crises, both poverty and inequality had increased over the last 15 years, making Yemen the poorest country in the Middle East. DFID has had a long-standing presence and commitment to tackling poverty in Yemen, which included £247.8 million in aid to the country between 2011 and 2014. However, the current conflict forced the Department to withdraw its staff from Yemen and suspend its longer-term development programmes, seriously threatening any progress that had been made.

110. The use of UK arms transfers to Saudi Arabia in Yemen has exposed a weakness in the laws which regulate the arms trade, in that the impact on development is only considered in the context of the recipient country. Criterion 8 of the consolidated EU and UK arms export licensing criteria states that:

The Government will take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, IMF and Organisation for Economic Co-operation and Development reports, whether the proposed transfer would seriously undermine the economy or seriously hamper the sustainable development of the recipient country.

111. When licence applications are considered by the Government, the Export Control Organisation circulates the applications to the FCO and the MoD, and where there are development concerns, DFID is consulted solely in relation to criterion 8. As Roy Isbister from Saferworld told the International Development Committee:

To my mind, the exports to Saudi, which might be used in Yemen, of all UK arms exports are those that are having the most impact on development, and yet DFID has no formal role. It is excluded from any formal role in giving an opinion on those arms exports, because the arms exports are to Saudi, which is a non-ODA-eligible country, so DFID has no say [...] To me, that is a fundamental problem. It is easy enough to address, but it is something that should be looked at.

112. We heard from Tim Holmes from Oxfam that the situation in Yemen presents a strong case for expanding the scope of criterion 8:

In this particular case, there is a very strong justification for looking not just at the recipient country but where those arms would be used and the impact it would have on its development. As we all know, the right to development is a well-known right and is agreed across the UN, and it is very important to consider that. It is also important in terms of coherence across the UK Government. A risk assessment that would involve formal consultation with DFID would prevent undermining UK development policy, or the contradiction between development policy and wider security and foreign policy. Therefore, formal involvement is vital and should be seen as an equal voice, not a subsidiary one to other conversations.

113. We were told by the then DFID Minister Desmond (now Sir Desmond) Swayne that his Department was only required to consider whether the recipient country can afford the arms export and whether purchasing the arms would seriously undermine their

development effort. He advised that any involvement of DFID in considering the end-use of weapons would intrude on criterion 4 (“Preservation of regional peace, security and stability”) which is the preserve of the FCO.

114. Concerns were raised with us that the arms transfers to Saudi Arabia were undermining DFID’s response to the humanitarian crisis in Yemen. The UK Working Group on Arms made this link clear by contending that “as more arms have been transferred to the conflicting parties in Yemen, the worse the humanitarian situation has become.” Tim Holmes from Oxfam talked of a “multi-paradox” created by a “push for peace, humanitarian assistance and the provision of licences for arms.” As Roy Isbister told us, the situation in Yemen has not been helped by different government departments working at cross-purposes:

“It would be good if all the different policies of the Government could be facing in the same direction, and that is where there is a lack of coherence between feeding the fire on the one hand and saying that we need to put out the fire.”

115. Our predecessor Committees welcomed the Government’s commitment to consider periodically whether DFID should be involved formally in arms export licence assessments in addition to those under Criterion 8, for example those under Criterion 3 (“Internal situation in the country of final destination”) and Criterion 4 (“Preservation of regional peace, security and stability”). It also welcomed the Government’s policy decision to strengthen the application of Criterion 8 by excluding countries considered particularly low risk from the analysis to allow DFID to focus on the higher risk licences in greater detail.

116. **The transfer of arms to Saudi Arabia for use in Yemen has highlighted the limited role of DFID in arms licensing decisions which can ultimately have a significant impact on development and the work of the Department. It is clear that the humanitarian crisis which DFID is working to address in Yemen has been exacerbated by the flow of arms to Saudi Arabia which other government departments have licensed. This has created an incoherence between the Government’s development policy and its wider security and foreign policy.**

117. *We do not support the exclusion of DFID from licence decisions beyond those for ODA-eligible countries, and from considering the end-use of weapons, as a result of which DFID has had no formal role in assessing arms export licences to Saudi Arabia for use in Yemen. We recommend that the Government reassess whether DFID should be involved formally in arms export licence assessments in addition to those under Criterion 8, for example those under Criterion 3 (“Internal situation in the country of final destination”) and Criterion 4 (“Preservation of regional peace, security and stability”) giving regard to the use of UK-manufactured arms in Yemen. We also recommend that Criterion 8 be expanded to consider whether the proposed transfer would seriously undermine the economy or seriously hamper the sustainable development of the recipient country, and the country or countries where the proposed transfer might ultimately be used.*

Motion made, and Question proposed, That the Chair’s draft report be read a second time, paragraph by paragraph.—(*The Chair*)

Amendment proposed, to leave out “Chair’s draft report” and insert “draft report proposed by Ann Clwyd”.—(*Ann Clwyd*.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Noes, 6

Ann Clwyd

Mr John Baron

Stephen Gethins

Mike Gapes

Adam Holloway

Daniel Kawczynski

Andrew Rosindell

Nadhim Zahawi

Question accordingly negatived.

Main Question put and agreed to.

*Ordered*, That the draft Report proposed by the Chair be read a second time, paragraph by paragraph.

Paragraphs 1 to 111 read and agreed to.

Motion made, and Question proposed, That the Summary be agreed to.—(*The Chair*.)

Question put, That the Summary be agreed to.

The Committee divided.

Ayes, 6

Noes, 2

Mr John Baron

Ann Clwyd

Mike Gapes

Stephen Gethins

Adam Holloway

Daniel Kawczynski

Andrew Rosindell

Nadhim Zahawi

Question accordingly agreed to.

Motion made and Question proposed, That the Report be the Fourth Report of the Committee to the House.

Question put, That the Report be the Fourth Report of the Committee to the House.

The Committee divided.

Ayes, 6

Noes, 2

Mr John Baron

Ann Clwyd

Mike Gapes

Stephen Gethins

Adam Holloway

Daniel Kawczynski

Andrew Rosindell

Nadhim Zahawi

Question accordingly agreed to.

*Resolved*, That the Report be the Fourth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the report be made available, in accordance with the provisions of Standing Order No. 134

[Adjourned till Tuesday 11 October at 2.15 pm



## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Wednesday 23 March 2016

*Question number*

**Roy Isbister**, Arms Unit, Saferworld, **Oliver Sprague**, Programme Director, Military Security and Police, Amnesty International, **David Mepham**, UK Director, Human Rights Watch, and **Tim Holmes**, Regional Director, Middle East & Commonwealth of Independent States, Oxfam

[Q1–54](#)

### Wednesday 13 April 2016

**Professor Philippe Sands QC**, Matrix Chambers

[Q55–96](#)

**Paul Everitt**, Chief Executive Officer, ADS

[Q97–128](#)

### Wednesday 27 April 2016

**Lt Gen (retd) Sir Simon Mayall KBE CB**, former Defence Senior Adviser, Middle East, Ministry of Defence, **Dr Anna Stavrianakis**, Senior Lecturer in International Relations, University of Sussex, and **Michael Stephens**, Research Fellow for Middle East Studies, RUSI

[Q129–152](#)

**Philip Dunne MP**, Minister of State for Defence Procurement, Ministry of Defence, **Tobias Ellwood MP**, Minister for the Middle East, Foreign and Commonwealth Office, **Rt Hon Anna Soubry MP**, Minister for Small Business, Industry and Enterprise, Department for Business, Innovation and Skills, and **Rt Hon Desmond Swayne TD MP**, Minister of State, Department for International Development

[Q153–228](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

UKY numbers are generated by the evidence processing system and so may not be complete.

- 1 ADS ([UKY0016](#))
- 2 Article 36 ([UKY0010](#))
- 3 Campaign Against Arms Trade ([UKY0002](#))
- 4 Colchester Creek ([UKY0009](#))
- 5 Dietrich Klose ([UKY0007](#))
- 6 Dr Anna Stavrianakis ([UKY0003](#))
- 7 Foreign and Commonwealth Office ([UKY0018](#))
- 8 Foreign and Commonwealth Office ([UKY0013](#))
- 9 Human Rights Watch ([UKY0014](#))
- 10 Jamila Hanan ([UKY0006](#))
- 11 Lieutenant General (Retired) Sir Simon Mayall ([UKY0015](#))
- 12 Mrs and Dr Julie and Jim Maxon ([UKY0008](#))
- 13 Mwatana Organization for Human Rights ([UKY0011](#))
- 14 Save the Children ([UKY0017](#))
- 15 Southwest Initiative for the Study of Middle East Conflicts ([UKY0005](#))
- 16 Transparency International UK ([UKY0004](#))
- 17 UK Working Group on Arms /Contorl Arms UK ([UKY0012](#))
- 18 University of Leicester ([UKY0001](#))

## List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2015–16

First Report	The FCO and the 2015 Spending Review	HC 467 (HC 816)
Second Report	The extension of offensive British military operations to Syria	HC 457
Third Report	The UK's role in the war against ISIL following the Cessation of Hostilities in Syria in February 2016	HC 683
Fourth Report	The FCO's administration and funding of its human rights work overseas	HC 860
Fifth Report	Implications of the referendum on EU membership for the UK's role in the world	HC 545
First Special Report	The FCO and the 2015 Spending Review: Government response to the Committee's First Report of Session 2015–16	HC 816

### Session 2016–17

First Report	The UK's role in the economic war against ISIL	HC 121
Second Report	Equipping the Government for Brexit	HC 431
Third Report	Libya: Examination of intervention and collapse and the UK's future policy options	HC 119
First Special Report	The UK's role in the war against ISIL following the Cessation of Hostilities in Syria in February 2016: Government Response to the Committee's Third Report of Session 2015–16	HC 209
Second Special Report	The FCO's administration and funding of its human rights work overseas: Government Response to the Committee's Fourth Report of Session 2015–16	HC 545