

Committees on Arms Export Controls

Oral evidence: Arms export controls: Initial review, HC 965

Tuesday 15 December 2020

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Members present: Mark Garnier (Chair); Sarah Champion; Neil Coyle; Martin Docherty-Hughes; Mr Tobias Ellwood; Mrs Emma Lewell-Buck; Mark Menzies; Kate Osamor; Lloyd Russell-Moyle; Claudia Webbe.

Questions 71-119

Witnesses

I: Dr Sam Perlo-Freeman, Research Co-ordinator, Campaign Against Arms Trade, Roy Isbister, Arms Unit, Saferworld, and Oliver Feeley-Sprague, Programme Director for Work on Arms Control, Amnesty International UK.

Examination of witnesses

Witnesses: Dr Perlo-Freeman, Roy Isbister and Oliver Feeley-Sprague.

Q71 **Chair:** Good morning and welcome to this evidence session for the Committees on Arms Export Controls. This meeting forms part of our process of gathering evidence that will be used in analysing the annual report of the Government detailing what is going on with the arms export industry and export licensing. We have three witnesses from non-governmental organisations with us. Perhaps I can ask each of them to introduce themselves briefly.

Dr Perlo-Freeman: I am Sam Perlo-Freeman, a research co-ordinator at the Campaign Against Arms Trade. I previously worked for nine years at the Stockholm International Peace Research Institute on issues of military expenditure and arms industry and trade.

Roy Isbister: Good morning, I am Roy Isbister. I head up the arms unit at Saferworld.

Oliver Feeley-Sprague: Good morning. My name is Oliver Feeley-Sprague and I am currently the programme director for Amnesty International UK section's work on strategic export controls and this sector.

Q72 **Chair:** Thank you very much. Roy Isbister, what are your general



observations on this latest annual report, notwithstanding the fact that it is rather late?

Roy Isbister: Given that it is late, my overarching impression is that it is hardly the most significant report in the world. In terms of the content, it is very much based on reports from previous years, and in a way, although there are a lot of pages there, it does not tell us that much. It does not go into the kind of detail that lets us get into the guts of the way the UK regulates arms exports.

There have been a few things in the past on which we have looked for improvements, and I think the previous incarnation of the CAEC looked for improvements; I do not think we have really seen them. A couple of those would be on the case studies, which are a good idea, and we were pleased when they were introduced into the report a few years ago, but they begin to tell you a story and then they stop suddenly, just at the point where it might get interesting, so it is all very surface-level. On enforcement as well, there has been a call from the Committees to drill down much more, but we have not really seen that; it is pretty much the same as it has always been.

Q73 **Chair:** So the overall verdict is: an awful lot of words and not very much information.

Roy Isbister: Yes, I think so. There is one more thing on the enforcement side, just as an example. The report talks about compliance visits and the level of compliance—are companies doing what they need to, or not?—but it does not go into what happens if compliance is not good enough, and what has been done to try to improve compliance over time.

There are a couple of interesting little tidbits of information in there, I guess. For example, initial compliance visits—the first time companies are looked at—have better results than routine compliance assessments, so companies start better than they become. Why? What is happening there? How can that be changed?

The 2019 report talks about 15 ongoing prosecutions. It will be interesting to see what has become of those, but so far in the notice to exporters this year there is no information on any enforcement procedures that have taken place. It talks about the compound settlements that companies are charged when they are found to be in non-compliance as, I guess, a kind of lesser step than going through a full prosecution. There are just a few numbers about the number of compound settlements and the total cost, but who is not compliant? There was one penalty of £211,000 in 2019. Who was that, what did they do wrong, and what is happening to make sure that does not happen again?

In the US, there is naming and shaming, and that is used in part for its deterrent impact. Certainly, industry representatives in the UK have said that they are much more concerned about complying with US law than with UK law because the US takes this more seriously. It would be nice to see something in the report that delves down into those kinds of issues.

Q74 **Chair:** Dr Sam, you obviously take a great interest in some of these areas,



HOUSE OF COMMONS

for well-known reasons. Are the case studies on Saudi Arabia, for example, what you want to see, or do you think they should go into more detail? I am particularly interested in your thoughts on Roy's point about naming and shaming infringers of the rules.

Dr Perlo-Freeman: I generally second everything that Roy said. On compliance and enforcement, there does seem to be very little consequence for non-compliance: in 2019, there were zero prosecutions, and there have been only a handful in the past several years. There have been a small number of fines. You do not necessarily want to be purely punitive about this, but it is not even clear—there is no information about this—what is done in case of good-faith violations to help companies to be more in compliance. As Roy said, the naming and shaming of companies that repeatedly violate could have a significant deterrent effect.

Again, on the case studies, we get teasers on what Government policy is in respect of various situations of concern, but not really anything that we can get our teeth into as regards what this actually means in practice for Government policy on arms exports to these countries.

On Saudi Arabia, the report says what we would expect from the Government in terms of their position and how they have responded to the Court of Appeal judgment. We, of course, are not satisfied with the conclusion that the Government have come to that there is only a small number of possible violations of international humanitarian law by the Saudi-led coalition in Yemen, and that there is not a pattern of violation but only isolated incidents. Of course, this was all announced in July.

This seems to fly completely in the face of all the evidence we have on the ground from United Nations experts and from Mwatana for Human Rights, which is an incredibly brave Yemeni human rights organisation that operates in Sana'a and has people all over the country. It criticises the Houthis as much as it criticises the Saudi-led coalition and the Hadi Government forces, doing so from within Houthi-controlled territory. These are a people who are not partisan; they are absolutely committed to telling the story of what is going on in Yemen as it is. They have identified patterns of violations in their many excellent—and very grim—reports. It seems hard to see, in the face of the evidence that they have of attacks on schools and hospitals, how the Government could have come to that conclusion, unless it were a sort of pre-ordained conclusion; that is all we can say. Of course, we are challenging that.

The Government say that they have their own evidence; if we get permission for judicial review, that will probably be heard in closed session. We hope that it is tested, so that the Government have to show how they arrived at those conclusions.

- Q75 **Chair:** We have some questions on Saudi Arabia a little later, which will give you a chance to talk about that. For the time being, I want us to stick to the report. Oliver, Roy made quite an interesting point: there seems to be a better level of compliance by newly licensed companies, and that compliance always seems to tail off a bit over time. Do you think the annual



HOUSE OF COMMONS

report really lets us know what engagement the Government are having with industry and stakeholders, in relation to not just the early, starting part, but the secondary part, and ensuring that people continue to be compliant?

Oliver Feeley-Sprague: To build on what Roy says, I think the report is interesting in the way that it throws up more questions than it answers. There are so many little tidbits in there that merit further probing, not just on the compliance issue, but on the transparency issue, for example. There is a hint that the Government are working on new systems to allow better reporting and transparency, especially over things such as open licences, but there is absolutely no detail about what that means. That has been an issue that the CAEC has been probing for at least a decade, if not longer.

Compliance is important because in CAEC's last full inquiry, it was a central feature of the findings and recommendations. It is slightly disheartening that after that, the trajectory of enforcement is still downwards: there was none last year, and there have been only three instances since 2016. There are so many questions that the CAEC has the ability—the unique ability here—to probe and cross-reference with some of the things that are said. We have talked about naming and shaming. I guess that there are all sorts of reasons why, in a public Government report, you cannot have full disclosure of every company detail, but that is something that the CAEC can do in private, in confidence.

For example, although there were no prosecutions, the report reveals that 110 warning letters were issued by HMRC during the reporting period. What was in those 110 warning letters? What are the kinds of things that HMRC is finding fault with, to the level that it has to write to companies? That seems to be something that the CAEC can inquire about, it can at least have an idea about the types of things that are being identified.

On compliance, the one thing that is worrying is that when you have done your visit, found an issue and revisited—so not just the initial compliance visits, but the revisits—the report shows that the figures actually get worse: 14% of companies are found not to be compliant with their licensing requirements on a second visit. That 14% seems quite a high number when we are talking about the export of goods that have such catastrophic effect when things go wrong. "Not compliant" is, by the Government's own admission, the most serious breach on a compliance visit, meaning that equipment could be exported outside of its licensing requirements overseas. That is one area that the CAEC can really get into; it can probe those kinds of figures in more detail.

- Q76 **Chair:** I will turn to Tobias Ellwood in a second. To follow up on that point, it is interesting that in the 2013-14 report, there were 450 seizures by HMRC of goods in breach of sanctions, but just 194 in this report, which is a reduction of more than half. This is a very difficult question to answer, but do you think that is a failure of enforcement, or are people genuinely more compliant?



Oliver Feeley-Sprague: It is difficult. We can go only by the statistical information, and the statistical information presented to us suggests a downward trend. There is less hard enforcement going on than there used to be back in the 2009-10 period, when we had double-figure court cases going through on this issue, compared with zero last year and only three since 2016.

We need to know, basically, what is being found in these visits. We need to find the narrative behind the statistics. That is a job for CAEC and its inquiries, its questions to Ministers, and its correspondence with the enforcement teams—to get to the bottom of whether companies are more compliant, or whether enforcement is becoming more lax. The statistics show that it is becoming more lax, so I think it is incumbent on the Government to demonstrate to you that that is not the case.

Chair: That is really helpful. Over to you, Tobias.

Q77 **Mr Ellwood:** Dr Perlo-Freeman, we spoke a little about transparency and openness, and the Government providing more information. When you are considering open licences, would you like to see more information put in the public domain, and if so, what would that be?

Dr Perlo-Freeman: Yes, very much so. It is not simply a matter of transparency of what the Government put in the public domain, though that is very important; it is what information the Government have in the first place. What we know very clearly is that when it comes to open individual export licences and open general export licences, it is not just that the Government do not tell us how much is exported under these licences; it is that they do not know, and they don't seem to be interested in knowing. It seems quite extraordinary that the Government do not actually have any clear picture of how much of what type of equipment is exported to whom of these extremely sensitive strategic exports. We know the value of contracts, which the Government publish very limited details of—that is the UK defence and security export statistics. We know the value of single individual export licences, but the Government themselves do not know the value of actual exports.

I know that this issue has come up before for CAEC. Years ago, under the coalition Government, there was even some movement towards trying to be more open and to gather and publish the information, which it seems was stymied at the last minute. Most EU states and the United States manage to collect and publish information on the level of actual deliveries under all types of licences and agreements. It is really hard to understand, as the companies have to keep records of their use of licences, why it is so hard for the Government to collect and publish these statistics on actual deliveries. That is the major issue of transparency with open licences.

Q78 **Mr Ellwood:** For the benefit of the Committee, would it be possible for you to describe a particular export licence, or a scenario where it is very clear that more information would be helpful to understand the wider picture? Do you have an example up your sleeve?



Dr Perlo-Freeman: I have not got one off the top of my head, but if you go through the Government's database, or through the Campaign Against Arms Trade's user interface, which is much better than the Government's database, you find OIELs that sometimes list several dozen types of items of equipment—components for this equipment, for the use of that—that are licensed to 30, 40 or more countries, all in one licence. It seems very hard to believe that any one company is actually going to be selling every one of these types of equipment to every one of these countries, some of which are often very small states with limited capacity. These big OIELs give an incredibly wide-ranging permission for deliveries, potentially, of a whole lot of stuff to a whole lot of countries. We can know absolutely nothing about what is actually happening within that.

Of course, when it comes to the open general export licences, the picture can be even more blurry. We have these extremely broad licences that cover very wide categories of equipment, sometimes to one country such as the United States, and sometimes to a long list of countries, or everyone except A, B and C, which dozens of companies might potentially be registered for. It is a very wide-ranging permission, and there is no information on what is actually happening.

Q79 **Mr Ellwood:** Essentially, what you are saying is that the companies collate this information anyway. They have this information. They could easily pass it on to Government, and Government could easily publish it. The question is: why is that not happening? Is that a fair summary?

Dr Perlo-Freeman: Yes.

Mr Ellwood: So my question is, why is that not happening?

Dr Perlo-Freeman: Well, that is a question that you could properly ask the Ministers; as the Committee overseeing it, that is your job to do. My guess would be that they simply do not see it as a priority, and that they are not sufficiently interested in really knowing what is going on and controlling it, or especially in revealing information about what is going on, to do the extra work—it would be some extra work—of collecting that information. Whether that is because they are so desperate to keep it a secret, or simply because they are insufficiently bothered to actually make the effort, I do not know.

Q80 **Mr Ellwood:** Obviously, we will put it to the Government, but I was curious to know whether you thought there was a reason beyond the clerical and administrative burden. Obviously, greater transparency must be in its interest. Actually, at the forefront of its entire annual report is the desire to strive for greater transparency.

Dr Perlo-Freeman: Yes.

Roy Isbister: Can I come in with an additional point that builds on what has been said, especially for the benefit of those who are relatively new to the Committee? Olly and Sam have both touched on this.

In 2013, the Government was very close to collecting and publishing the information that we have requested on OIELs. That was following a



consultation with industry to find out how difficult it would be and what the objections were. For the most part, industry was very relaxed about it. In July 2013, we were told, "At the end of this month, we will be going live with the new data collection and the whole system," and then it was stopped at the last second. It has never quite been revealed why that was the case. That is interesting to explore.

It is very frustrating to now see in the annual report the statement that Olly mentioned, which talks about working to "improve the reliability of the data...including the development of a new digital licensing system and a new Customs Declaration System. Once new systems are in place, we will be able to explore options for greater transparency". This is seven years after it was very close to happening, so it is a source of significant frustration. It is a huge gap—a really significant gap—for the UK, and becoming more so, because the Government is encouraging Government companies to apply for open licences, rather than standard individual export licences, wherever possible.

Q81 Sarah Champion: Gentlemen, I wonder whether you can help me. We have the eight criteria that the licences are measured against. Expanding on what you have been saying, can you give us your assessment of the adequacy of the consolidated criteria? It seems, from what you are saying, that we have some underlying problems. Can I start with Olly, then Sam, then Roy?

Oliver Feeley-Sprague: On this one, I will start by saying that the criteria, or the rules, are the bedrock of the international regulatory framework for the arms trade. It is not just the UK's consolidated national and EU criteria; it is the international arms trade treaty. The criteria are one of the three pillars that build the treaty. It is not that the criteria themselves are not fit for purpose; it is down to the level of interpretation and implementation of the rules.

The general point here is that the criteria themselves are and should remain a key bedrock of any regulatory system. For an organisation like Amnesty, objective case-by-case assessment of binding international standards that all countries should uphold is an important principle to ensure it is fair and non-discriminatory. That is clearly one of the key messages that was brought out during the negotiations for the arms trade treaty. This is not a subjective political tool to prevent people from getting guns; it is based on international objective standards to do with human rights and international law.

That said, although the criteria themselves should remain, of course that does not mean that there is no room for improvement. There definitely is room for improvement in how they get implemented. We might touch on this, but there are obviously concerns about the fairly narrow confines of criterion 8 and the role that DFID might have played in licensing because of the constraints of it. That doesn't mean that DFID didn't have a fundamental role in wider areas of export control policy, but just in terms of licence processing, that was an issue.



There are issues that while some of the criteria are, “Thou shalt not”—there is a prohibition on doing it where a clear risk is identified if you do not authorise—some of the criteria are a weaker standard: “Take this into this account”. There are tidying up things that could be done. There are questions about whether there should be a new focus on things like corruption, whether criteria 8 needs to be looked at, and whether there should be a new democracy clause.

I think we need to be mindful of the Black Lives Matter movement and the issues we have all faced around the world around disproportionality along racial grounds. Does the human rights framework of the criteria fully adhere to the issues of racism that we have seen around the world, which may be endemic in a number of cases? Those are questions that we need to address, but they do not undermine the fundamental nature of the criteria that we have. They should be a bedrock of the system going forward.

Q82 Sarah Champion: Thank you very much. Samuel, what are your thoughts. Are the criteria adequate? Is it the application that we need to be focused on?

Dr Perlo-Freeman: I think it is both the application of the current criteria and some aspects of where the criteria themselves could be improved. The criteria were written by countries with major arms-exporting industries that wanted to continue exporting large quantities of arms, so to some extent they were written with enabling that in mind. They allow enough room for interpretation in situations like in Saudi Arabia, where apparently very strong criteria could, where desired, be interpreted to allow continued exports.

However, the criteria as they are written in are some cases, like international humanitarian law, quite strong. It is about the application. I agree with Olly that there should be a specific corruption criterion. The arms trade is one of the areas of international trade most vulnerable to corruption for a whole host of reasons. We all know how damaging corruption is to democracy, trade—everything, really—so to have a specific criterion against exports where there is a clear risk of corruption being involved would be a very good idea.

The treatment of conflict is one that has recently been nagging at me. There is one specific criterion, though I notice that it is used very rarely in refusals. Criterion 3 states: “The Government will not grant a licence for items which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.” For one thing, it is a “would”, which sounds like a “would definitely”, rather than a clear risk. That is a very, very high bar to pass to apply that criterion. For another, there are purely internal conflicts, there are inter-state conflicts, such as Armenia-Azerbaijan—there is another criterion that talks about the risk of aggression—and there are also a lot of internationalised conflicts or civil wars where other countries get involved, like Yemen, Syria and Libya. The criteria do not seem to take account of that, so it would only provoke or prolong conflict in that country, not necessarily in another. There are all these cases of internationalised internal conflicts that fall between the two

stools of internal conflict and external aggression. Something to address that would be very desirable.

Q83 **Sarah Champion:** Very interesting, thank you. Roy, anything to add?

Roy Isbister: Most of it has been said. One thing to add is that the arms trade treaty comes after the national and EU level agreements or instruments. There has been some updating to take account of the ATT, but there could be more, for example, on the issue of gender-based violence with more explicit language, and, quite significantly, on the issue of facilitation. The arms trade treaty talks about “use or facilitation”—the risk of arms being used to commit or facilitate violations. That “facilitate” does not exist in the consolidated criteria. A standard understanding of international law is that if another concept is introduced with the word “and”, that is a different concept, and something additional that does not exist at the national level. It would be useful to expand on that because I think it can make a significant difference and improvement.

Another issue is something that we have raised before, which is the concept of a presumption of denial in certain cases or countries. It is fair to say that the UK system basically works on the principle that we will issue a licence unless there is a very specific reason why not to. There are circumstances, I suggest, where it is more appropriate to think, “Okay, it is not a full embargo situation, but our reflex is to refuse a licence unless we are given a specific reason why it is appropriate to export.” That might be something to look at.

Sarah Champion: Thank you.

Q84 **Mark Menzies:** This is for everyone, but we will start with Olly, Roy and then Sam, as you appear on my screen. What impact will the merger of DFID and FCO have on arms export controls?

Oliver Feeley-Sprague: Amnesty is not a development organisation. We are a human rights organisation. Typically, we would have our Oxfam colleagues here who would give a better indication of criterion 8.

I start with a general point that I touched on earlier. We all know that for export licensing decisions criterion 8 is a quite narrowly drawn. DFID’s role in licensing decisions is less than it might be in other cases because of the specific narrow focus that has been developed. That does not mean that DFID has not played a very significant role in the development of UK export controls in their widest sense. It is very important DFID’s voice is maintained, because there are obviously enormous implications for development and human rights issues for conflict-affected states that go way beyond the confines of criterion 8. That is why in the past DFID has been so strong in advocating strengthening controls in areas such as illicit trafficking and brokering. It was one of the key UK Government Departments pushing the agenda on, for example, small arms and light weapons, including the way small arms and light weapons are treated in the annual reports and the reporting requirements. For that category, for SIELs, we now have a standing situation where delivery numbers are given against licences. There is an issue about small arms and light weapons and open



licences, where that does not happen, but it does for SIELs, and I think we can thank DFID for those types of developments.

If we think back to the arms trade treaty, the Secretary of State actually went to the negotiations to intervene, and gave a statement on the Floor of the House, which shows how embedded DFID was in the development of the UK Government's approach to the arms trade treaty. These are things that must be maintained and captured, because that voice is very, very important. My plea regarding any merger is that we do not lose the area of policy that DFID brought.

Q85 **Mark Menzies:** That's great; thank you. Roy?

Roy Isbister: Apologies if I'm teaching my grandmother to suck eggs here, but when Olly talks about how narrow the application of criterion 8 is, it is possibly worth mentioning what that involves. Criterion 8 applies only in a fiscal sense, so it's only about the budgetary impact of the transfer; it has nothing to do with how the weapon might be used, although the use of the equipment might impact on development. It applies only to the country of receipt, so again, if the equipment is then used in another physical space, that is irrelevant to the application of criterion 8; and it applies only to countries that are eligible for ODA. Formally, you cannot look at criterion 8 for a country that is not eligible.

The most extreme and obvious example of what this means in practice is arms exports to Saudi Arabia that are then used in Yemen. I would argue that probably, of all transfers from the UK this century, these transfers have had the most significant developmental impact. Yemen as a country has been destroyed. It has suffered from epidemics of cholera, and it is on the brink of famine, and famine is a technical term—you are way past catastrophe by the time you get to famine. So here is a classic example of how the narrow drawing of criterion 8 can have an impact.

To look at the bigger question of the merger between DFID and the FCO, obviously it's too early at this point to say what the implications of this are going to be. I have colleagues at Saferworld who have been exploring this—it is important to our work—and so far we just do not know how it is going to play out, but there are a number of what I suppose you would say are flashing red lights going off at the moment.

When it comes to the focus of the Foreign Office, we hear more and more about its economic focus, on UK plc, as part of its brief. There is the increase we have seen in the defence budget recently, at the same time as the budget for development is being reduced from 0.7% to 0.5% of GNI. The Secretary of State for DFID is no longer on the National Security Council. So there are reasons to be concerned, but as I say, we do not know just yet.

It is also a bit frustrating that this has all happened without the direction, if you like, of the integrated review. We thought that was going to be giving the overall strategy and then things would fall out from that. It feels a bit



HOUSE OF COMMONS

"cart before horse" at the moment. We are anxious, but we are waiting to see.

Q86 **Mark Menzies:** That's great; thank you. Sam?

Dr Perlo-Freeman: I do not have a lot to add to that. There are many reasons to be concerned. The important thing is whether that strong development voice is maintained in the new system. That applies to export controls as well as to a whole range of other issues.

Q87 **Mark Menzies:** That's fine. We have loads of territory to cover, so please forgive me if I do not put all these questions to everyone.

Mr Isbister, what has been the reaction of your in-country staff to the merger of DFID and the FCO? Do they have any concerns about who they should be contacting about any specific export issues?

Roy Isbister: At the moment, it is just too early to say. I'm afraid I cannot give an intelligent answer to that. I suppose it is a case of "watch this space". We can keep an eye on that and if we do see any signs of change or of continuity, we can certainly let you know.

Q88 **Mark Menzies:** Do you anticipate more applications being referred to Ministers? Is it too early to say?

Roy Isbister: Could you elaborate a bit? On what grounds would there be more referrals to Ministers?

Mark Menzies: With the merger of the two Departments, do you think there is going to be a greater likelihood of export licences finding their way to Ministers? Without that wider governmental input from two Departments, do you think the FCDO will take more interest in the whole licensing regime, or do you think it will pretty much carry on as is?

Roy Isbister: I would hope that they would have a very strong view on all licences, but we are just going to have to see how that plays out. I don't think I can answer that.

Q89 **Mark Menzies:** That's fine. On that subject, what are your thoughts Olly and Sam?

Oliver Feeley-Sprague: To echo what Roy said, it is important for accountability reasons that as many significant licence decisions as possible are taken by Ministers. It is too early to say, but there is one hypothetical danger. In my understanding, usually referrals to Ministers happen where there are competing concerns within Government Departments—there are different views about whether a licence should go ahead. In areas where maybe a development issue was flagged, you obviously then would have four Government Departments giving advice, and now you have three, so there is perhaps less room for a divergent view, but that is a hypothetical concern; there is no evidence that that has happened.

The overall message that I would give is that I would like to see a significant proportion of licences being signed off by Ministers because it is important for accountability in the system.



HOUSE OF COMMONS

- Q90 **Mark Menzies:** With that in mind, are there any changes to the way in which licences are awarded that could separate the stuff that is routine and mundane from stuff that is absolutely red hot and needs to be thoroughly scrutinised? One of the criticisms that I sometimes hear about the current regime is that it does not differentiate day-to-day stuff that is relatively non-controversial and things that really need to be pulled out and thoroughly gone over with a fine-toothed comb.

Oliver Feeley-Sprague: Everything is interlinked, isn't it? This strikes back to our earlier concerns around transparency. One of the overriding faults of the UK reporting system is that it still does not allow us, as interested parties, to have a full view about what is mundane and what is lethal. Obviously, there is an entire mix of different types of licences and, from the way that the data is presented, it is impossible to pick out which are the really concerning ones.

We would be anxious about the decision from Liz Truss about Saudi Arabia, in that we now understand from the ministerial statement that, pending the review from the Court of Appeal, licences to Saudi are not automatically being referred to Ministers. A high level of sensitivity remains in that conflict. We all have our opinions, and we are very strongly of the opinion that there should be no UK transfers that could be used in Yemen, full stop. The humanitarian and human rights situation is so clear to us. The court case process is still very much ongoing and is not over. So I think that level of high sensitivity around what is an acknowledged, finely balanced decision from Government with all sorts of challenges should still be routinely referred to Ministers. It should not be derogated to officials to make those decisions.

- Q91 **Mark Menzies:** Olly, you brought up the issue of Black Lives Matter and said that was one of the key criteria that should be used when taking decisions. Have you got an example of an export that has brought concern to you with regards to Black Lives Matter?

Oliver Feeley-Sprague: Yes. You can compare and contrast the Government's record on the export of policing and security equipment into two different contexts where we as Amnesty have documented very similar patterns of human rights violations. For example, in Hong Kong, when the authorities there misused a variety of tear gas and policing equipment, the UK Government was very quick to announce in Parliament that it was going to revoke and suspend licences for that type of equipment.

Now, it took quite a long time—over a year, I think—for the statement and licensing data to match up, so there is an issue of speed in how quickly these things might be implemented, but compare and contrast that with the very similar levels of abuse we documented through the policing activities in the United States, where we did see tear gas and a whole variety of policing equipment misused against large numbers of people in the context of Black Lives Matter protests. The UK Government looked at the licences and concluded that there was not a clear risk. There has since been documented evidence of UK-supplied riot shields being used in those



HOUSE OF COMMONS

situations, and there are a number of—I think eight—current extant licences, SIELs and OIELs, in force for the United States.

I realise this is obviously a very challenging situation with the United States being a core ally, but the criteria are the criteria. We have to consider when there is a clear risk of serious violations of human rights. or us, policing of assemblies and demonstrations is a clear example of where the internal repression threshold should kick in. We see remarkable similarities between Hong Kong and the United States in the response by the authorities to protests, and a very different decision resulting between those two locations for licensing.

Q92 Mark Menzies: What about developing countries. With DFID's remit having been focused on certain parts of the globe, are there any issues where you have seen equipment being exported to developing countries and misused that DFID might have picked up?

Oliver Feeley-Sprague: Again, it is too early to say, because we do not have any licensing data that has been processed since the merger. The data that we are working to still has DFID as a key Department decision maker in those licences. It is one of those "watch this space" areas. There are certainly countries to which the UK Government has licensed equipment to which we would raise questions. Now, that does not mean that the UK has necessarily broken the criteria; it is just that the data presented to us in the report suggests that there is a case for clarification. A clear one here would be Nigeria.

Amnesty has been documenting serious levels of abuses—everything from torture to extrajudicial killings—on the part of the Nigerian military and particularly the Nigerian police. We have a number of licences in force for Nigeria, including two that were issued in this reporting period for end users noted as law enforcement. Given that we documented in June, I think, a 30 or 40-page detailed report about the conduct of a very notorious police unit in Nigeria called the special anti-robbery squad—the SARS unit—which is responsible for the most atrocious atrocities, with everything from torture to rape and killing, those sorts of licences in annual reports need probing because of what is happening on the ground.

Roy Isbister: Could I add something—

Chair: Sorry, Roy. This is really, really good stuff and I am very grateful to everybody, but we have got an awful lot to get through.

Mark Menzies: Sorry, Chair; I know we are up against the clock. I will draw stumps there and call it a day in the interests of time.

Chair: There will be plenty of opportunities for all these points to be made.

Q93 Kate Osamor: I have some questions about the merger, a lot of which have been answered. My first question is for Roy. In the past, there was criticism that DFID could use criterion 8 only to assess the economic capacity of the recipient country itself, not the development impact on neighbouring countries that might be on the receiving end of those



HOUSE OF COMMONS

exported arms. Do you think the departmental merger will resolve that problem, and if so, how? Or why not?

Roy Isbister: That feeds into what I was going to say in answer to the last question. The Nigeria case, for example, was in the context of criterion 8 and DFID. DFID basically would not get an effective say in that, because the size of those sales is too small to count in the DFID framework, so it would not cross the threshold that would allow DFID to get involved.

I guess we have the potential, with DFID coming into the FCO and those two Departments being put together, depending on how it is managed, to have a situation where the DFID lens can be applied to other transfers, such as the licences in Nigeria that have been referred to, because that is part of a broader departmental perspective. As long as those people and those issues are brought into the new FCDO assessment process, that could be a positive way to bring a developmental lens, if you like, into the broader framework. Having said that, there is no change to criterion 8, so the criterion itself is still limited in the way that it used to be.

Q94 **Kate Osamor:** Olly, would you like to add anything to that?

Oliver Feeley-Sprague: No, I don't think so. I think Roy has captured what I would say on that point.

Kate Osamor: Sam?

Dr Perlo-Freeman: Exactly. The issues with sustainable development, like the ones I mentioned earlier about conflict, are often cross-border issues. At the moment, the framework of the criteria does not allow that to be taken into account.

Q95 **Kate Osamor:** Lastly, to Roy, the 2019 annual report states that there were no refusals or revocations of the standard individual export licence and the standard individual trade control licence. Do you think that will change under the merger?

Roy Isbister: Again, because the criterion itself has not changed, I see no reason, so far, for any greater likelihood that criterion 8 would be invoked as the reason for refusing a licence. Depending on how the issues and the personnel are managed, as I say, you could get the developmental lens brought in, but that would not necessarily be the grounds on which a licence might be refused.

Oliver Feeley-Sprague: Can I come in with a quick additional point? The way that we understand the UK licence refusal process is that they essentially work down the criteria from 1 to 8. Because these things are interlinked, it is very likely that a licence that may well have flagged concerns under criterion 8 had also flagged concerns under criterion 2, for example. So the licence will be refused on the grounds of criterion 2, because that is the first one that they have come to in the list. That does not mean that no other criteria in the system were relevant to that licence refusal.



HOUSE OF COMMONS

More work could be done, especially in areas such as gender-based violence, for example, which is a requirement in the ATT but is not adequately reflected yet in the national consolidated criteria. There have been no specific licence refusals on the grounds of gender-based violence, but it is reasonable to assume that those considerations were part of an overall assessment under criterion 2 or any of the other criteria.

In the way that we report licence refusals, it may well be helpful in future to harness all the criteria that may well have been identified in that decision—so even if it was refused under criterion 2, to have a narrative explanation to say that there were also concerns under criteria 8, 4 and 6, if you see what I mean. They have made some effort to do that. I think there are a number of destinations where they list two types of criterion, but a more detailed explanation would give a more in-the-round understanding about how the criteria work together.

Kate Osamor: Thank you.

Chair: Thank you. We will go to Lloyd Russell-Moyle now. This is a quick heads-up that straight after that, we will have a slight change of order and go to Emma Lewell-Buck, because she has to push off. Lloyd, over to you.

Q96 **Lloyd Russell-Moyle:** I want to ask all of you what your main concerns are about the Government's undertaking around the changes in process following the Court of Appeal judgment. The Government say that they have changed a lot and they do not now need to worry about it, but has anything actually changed from your perspective?

Dr Perlo-Freeman: This is in relation to the breaches of the undertaking and the steps that they have taken.

Lloyd Russell-Moyle: Both the breaches of the Court judgment, which was to suspend licences, and the fact that they have now restarted all licences, saying that they have changed their systems sufficiently that they do not need to challenge that ruling because their activities will no longer be in breach. It is two elements, isn't it?

Dr Perlo-Freeman: On the breaches of the undertaking, it is hard to know what is actually going on internally. They say that they have put in systems to make sure that that sort of thing does not happen again. We have not heard reports of more breaches.

There is a broader problem than specific things to do with undertakings to courts, which is where you have got a decision by the Government that they will not export arms to X for use in Y—for example, to Saudi for use in Yemen, or to Turkey for use in Syria. The problem that seems to have come up in this case with the undertaking is that the DIT erroneously believed that Saudi land forces were not involved in Yemen, and that therefore exports of land equipment were okay, and the FCO knew that that was not the case.

Wherever you have this sort of conditional decision, whether it is due to a court undertaking or a policy decision about not selling arms to x for use in y, or for use for y, you have got the problem of: are Departments sufficiently



HOUSE OF COMMONS

talking to each other? Do you have systems sufficiently in place that information that is necessary to apply those decisions gets to the right places? We do not know if that is the case or not. Within any institution, departments not talking to each other sufficiently is a perennial problem.

As for the broader issue of the system for assessment of violations of international humanitarian law, no, we are not at all satisfied with what the Government have come up with. As I said before, the conclusion that there is only a small number of violations and no pattern of violations seems astonishing—not just to us, but to a whole range of other organisations, including Roy and Olly's organisations and organisations in Yemen on the ground.

There is the question of the adequacy of the MOD's tracker. When Emily Thornberry asked a whole load of questions about whether specific individual incidents recorded by the Yemen Data Project were included in the tracker, a rather large proportion—I think at least half—were not, in fact, on the MOD's radar at all.

There is the question of the threshold that has been applied—the bar that has been applied—and just how much benefit of the doubt Saudi Arabia has been given, and how much reliance they are putting on Saudi's own very dubious internal investigations.

When we see the JIAT and how Saudi Arabia investigated itself over Jamal Khashoggi, we really cannot have a lot of confidence in the way that they investigate themselves over their conduct in the war in Yemen. We do not find these conclusions credible as to a small number of incidents and no pattern. That is why we are challenging it.

Q97 **Lloyd Russell-Moyle:** We must not try and predetermine what the judicial review will go through. You will go through that in court and I will try and listen in to some of the sessions, as we all will.

In the last session, the Government said to us two things: one is that Ministers are no longer signing off, which you touched on earlier in your concerns. Secondly, they repeated their claim that this is not about looking at past issues, although that needs to be part of the mix, but it is looking at how the Saudis are co-operating with us going forward. Is that the kind of reassurance that you think is acceptable, or does that not give you any confidence that breaches will not happen again?

Dr Perlo-Freeman: No. The Court of Appeal ruling was that they did have to check the past record. We talked about the Government's process and the conclusions that they had come to.

In terms of their co-operation with the Saudis and their work going forward, the problem is that we have heard their story again and again. It is Lucy and the football. They apply these trainings, consultations and conversations with the Saudi Government to minimise the risk of future incidents, and they continue happening.



HOUSE OF COMMONS

We have no confidence at all that the various consultations and trainings and engagement that the UK Government have with the Saudi military and the Saudi Government are having any effect on the ground. This is especially true because the Government have made it very clear again and again that there are going to be no consequences to continued violations and the continued bombings of civilians and civilian targets and infrastructure.

The Government have implicitly made it very clear that whatever happens, they will find a reason why it is okay to continue to export arms and to continue to support and maintain the Saudi air force. When the Saudis know that this is the attitude of the UK Government, they have absolutely no incentive to improve their act, just as Trump's response to the Khashoggi murder has given them absolutely no concerns about the US attitude. Hopefully, that will change fairly soon.

Q98 **Lloyd Russell-Moyle:** Roy, your organisation has people working on the ground and they have been affected by some of this. A similar set of questions: do you have any confidence that breaches similar to this will not happen going forward? Have the Government done enough to make the application of their criteria more robust, or is it all window dressing?

Roy Isbister: It probably feels more like the latter than the former. Looking at the statement by the Secretary of State when she talked about the issue of how there was no pattern: they have looked at past cases and now they have said there was no pattern, so it is okay, we can proceed.

This falls down on two counts. On the first count, there doesn't need to be a pattern. There is the language of the criterion, which is that the Government will not grant a licence if there is a clear risk that the items "might be used for internal repression or in the commission of a serious violation of international humanitarian law". I have spoken to lawyers about this, and there is no requirement for pattern.

But it also breaks down even if a pattern were required. There is a pattern. I would heartily recommend that the Committee listen to a presentation given by Molly Mulready, a former Foreign Office lawyer, at an event hosted by the Human Right Lawyers Association last month. I can see you the link to this 15-minute presentation.

Lloyd Russell-Moyle: That would be useful.

Roy Isbister: It is really worth listening to. She tears apart this "no pattern" defence and leaves it in absolute tatters. Just to summarise it very briefly, she points out that there is the same perpetrator, the same conflict, the same conduct, which is airstrikes, the same weapons used, the same harm is caused, and the same international law concerns have been raised by all manner of international experts.

There is also the Yemen Data Project, which Sam mentioned. It is really interesting. I am sure there will be mistakes in there, but it identifies 23,360 air attacks, and in a third they have identified a military target, in a third or slightly less there is no military target, and in slightly more than a third they



HOUSE OF COMMONS

are not sure—maybe, maybe not. That has been consistent right through the five years of the conflict. There is a graph you can look at that shows that. The total number goes up or down, but those proportions stay relatively similar. The pattern is very clear but, like I say, a pattern isn't even needed.

The Government relies on Saudi reassurances. Sam has pointed out the Khashoggi case, where—I am going to call a spade a spade—the Saudis lied about what happened. They got found out; they lied again. They got found out again; they changed their story again. I am sure that Olly can talk about the cluster munitions case, where we saw a similar pattern of denial until they couldn't deny any more.

I can see no reason to have any more confidence that licences are being appropriately now.

Q99 Lloyd Russell-Moyle: I am keen to allow Olly to say something, but I know that we are pressed for time as well. If, Olly, you have anything that you want to add on that, please do come in.

Oliver Feeley-Sprague: There is so much to say. There is nothing I disagree with—there is nothing that Roy and Sam have said with which I do not agree 100%. At Amnesty, we were disheartened with the way the Government portrayed civil society research during the conduct of the court campaigns with its two-pronged attack that civil society was either not on the ground, and therefore didn't have a full picture, or was on the ground, and therefore couldn't have a full picture. You cannot win in that situation. We 100% stand by our research methodology. We were on the ground. We take authentication and verification very seriously—I know because I am one of the people who does it—so we stand by our findings.

We are clear, as is the International Committee of the Red Cross, that an established pattern is not the threshold by which criterion 2c should be judged; single individual isolated incidents are enough. So if the UK Government wants to argue against the ICRC, then fine, but we need to have that discussion.

Q100 Lloyd Russell-Moyle: Do we have any evidence that licences since the court case have ended up being used in this conflict?

Oliver Feeley-Sprague: As far as I am aware, no, because obviously at the moment with the covid-19 restrictions travel anywhere is very difficult.

Q101 Lloyd Russell-Moyle: It must make it harder for you guys.

Oliver Feeley-Sprague: Yes. We have not been able to get into Yemen. I know that Mwatana and other groups are there, but travel is restricted, and everybody is under restrictions because of the pandemic.

My last point here would be that this is the value of CAEC. I do not want to repeat this liked a cracked record, but it is regrettable that arguably two of the biggest decisions to affect UK export control since the Scott report, namely the Appeal Court judgment and the review of licences, including the admission by the Government that it had made some mistakes and the 70-



page report about rectifying those mistakes—these are not small things—happened without the benefit of CAEC being able to interrogate and probe the Government’s assurances.

I have one quick example of where the benefit of CAEC may well have come into play is that a lot was made of the decision to amend open general licences.

One of the implications of the mistake that was identified in September was that they amended something like 20 open general export licences, removing Saudi Arabia from eligibility for using those licences. That sounds great, and like something that we would applaud. We might think, “This should have been done ages ago, but it is good that it is being done now.”

The devil was in the detail. It only applied, as far as we can understand with some probing, to registrations after. Any company that was registered to use open general licences to Saudi could continue to use those licences if they had registered before the change came into play. What effect that had on preventing the supply of components and parts issued under those remains to be seen; it was probably negligible. That is entirely the type of thing that CAEC would usually pick up on.

Lloyd Russell-Moyle: Thank you.

Chair: I know Tobias wanted to come in, but I am very conscious that Emma Lewell-Buck has to leave in five minutes, so I will bring her in now.

Q102 **Mrs Lewell-Buck:** Morning all, and sorry if I am a bit rushed; I need to dash off to the Chamber. As you know, we end the Brexit transition period soon, and I am wondering if you see any pros or any cons of the UK diverging from the current criteria. That question is to all of you; I am happy for any of you to come in.

Oliver Feeley-Sprague: I will start. We were quite surprised to learn from the evidence that the Government gave a couple of weeks ago that they were no longer going to be part of the licence denial process within the European Union common positions system. They have told us in the past, and they said in their response to CAEC in 2018, that securing access to the denial notification system for both arms and dual-use goods would be a negotiating objective of the UK, and that maintaining a very close alliance with our European colleagues was important in this sector. In those two years, what has changed? Did we seek access and did the negotiations fail on that point, or have the Government changed their mind and decided that they do not want access to licence denial notification any more?

On the issue of dual-use goods, I think this is the first real case where alignment is likely not to happen. As you know, on exit day, which at the moment is 1 January, the UK will implement its version of the dual-use regulation that was in force when it left last year. That has since been recast. Negotiations were being done on it when the UK was still a member, but they ran out of time, so the trilogue process between the Council and the Parliament did not finish, and they did not find a way of agreeing the changes. We understand that they have now done that.



HOUSE OF COMMONS

I think the Government were slightly unclear about what the changes were. I have since found out what the changes are likely to be, and two main changes are coming our way in the European dual-use regulation. The first is that there is going to be a new category in the EU dual-use lists related to cyber-technology and internet monitoring software. There is a whole new category of goods that will now be subject to export controls in the frame of dual-use exports to do with cyber-security.

There is a new catch-all—a new end-use provision. For all of us who worked on this for a number of years, the development of end-use controls is seen as quite important. Within the dual-use regulation, there will now be a new end-use provision on cyber-equipment, which will basically say that if you are producing cyber-surveillance equipment that is not listed, i.e. it is not in our control list—this is important, because technology sometimes advances at a level beyond the pace at which the list can catch up—if you identify equipment on the list that nevertheless could be used for human rights violations and internal repression, the catch-all clause comes into play, so any Government under that system can reject a licence or impose a control on non-list goods.

I would say that those two areas—we have talked a little bit about the Khashoggi case and the role that internet surveillance and internet monitoring software played in that terrible event—are very important. At the moment, the UK has not committed to following suit. In a very short period of time, the EU will have additional controls on the dual-use sector that the UK may not have, including the new catch-all clause on human rights grounds for this area. That is an issue that needs to be rectified and, taking the Government at their word, close alignment with the EU on this sector—given that we are talking about the regulation of incredibly dangerous goods—is in everybody's interests. I hope we will follow suit and align.

Mrs Lewell-Buck: That is fascinating; thanks, Olly. Roy, do you have anything to add?

Roy Isbister: The dual-use regulation that Olly was just talking about is one of the ways in which divergence will happen, and it is likely to happen on an ongoing basis. It is almost just a technical issue. Technology and ideas advance, and there are various processes in place that create almost an automatic opportunity for change. In the EU common position, there is already a review timetabled for 2024. That will very likely lead to change and further separation between the EU and the UK, unless the UK chooses to make similar changes; we do not know whether that will happen.

A number of states in Europe, and also Canada, have announced themselves aligned to the EU common position criteria as a way of trying to maintain those kinds of links, and that would be an option for the UK. It is not necessarily a case of big change happening, and then suddenly there is a huge amount of divergence; it is probably more likely to be a drift as time goes on, which I think would be unfortunate.



HOUSE OF COMMONS

One tiny point: Olly picked up the denial notification and consultation mechanism. Officials reported to you last month that the UK would not be part of it, which came as a surprise to some officials from around the EU, who I checked in with afterwards. They thought that this was still up for discussion. It might be worth exploring what happened there in a little more detail.

Mrs Lewell-Buck: Thank you so much. I have more questions, Chair, but I need to go because I need to be in the Chamber. I am sorry if that was a bit rushed. Sorry I cannot stay and ask more questions.

Dr Perlo-Freeman: On that question, in terms of divergence on criteria, member states of the EU already can and do diverge in an upwards direction. They are free to impose stronger controls, and some do. Obviously, our concern would be the criteria being weakened, but we are not aware of any plans to do that, and we hope it does not happen. Of course, on those grounds, the arms trade treaty also sets something of a lower bar for that happening, but we certainly hope there will not be any weakening of the criteria.

Chair: Thank you.

Q103 **Claudia Webbe:** What do we know of sanctions under international criminal law for knowingly supplying weapons to end users who are violating humanitarian law?

Oliver Feeley-Sprague: I will quickly jump in here. As far as I am aware, if we are talking about individual criminal responsibility and the jurisdiction of bodies such as the International Criminal Court, we are not quite there yet. There is not yet an explicit tie-in between instruments such as the arms trade treaty and export licensing decisions, or those types of direct links to crimes. That does not mean that there will not be in the future, and there is some work ongoing to try to establish those links, especially under companies' responsibilities, so that is a "watch this space" one. It is an emerging direction of travel that we are likely to see develop in the next several years.

Of course, that would be a complete game changer. An international legal jurisdiction on licensing decisions, and criminal responsibility attached to those, would have a fundamental impact on licensing decisions to places like Saudi Arabia.

Dr Perlo-Freeman: As you may be aware, CAAT is part of a group of organisations led by the European Centre for Constitutional and Human Rights that put in a dossier to the ICC, to the Office of the Prosecutor, just over a year ago, regarding arms transfers to the Saudi coalition and their use in violations of IHL in Yemen, asking them to investigate both Government officials—elected and civil service—and company executives for potential complicity in war crimes and in violations of international humanitarian law.

There are some precedents from previous conflicts. For example, some of the charges against Charles Taylor were to do with supplying arms to actors



in neighbouring civil wars that were committing atrocities. One of the things that was established was that you did not necessarily need to demonstrate that it was exactly those specific arms that were supplied that were used to commit the specific atrocities.

There is the potential there to hold those supplying arms criminally responsible for their use in war crimes. We are waiting for the OTP to come back on this. We are not sure exactly when there will be a decision on opening a preliminary investigation, but yes, the ECCHR made a very comprehensive case as to why we think that that should be a thing.

Q104 **Claudia Webbe:** Thank you for that; I think that covers it. I wanted to check what we knew, because obviously it is very important to understand the sanctions.

People may be surprised to learn that, during a pandemic, the Government, through the Department for International Trade, have indicated that processing applications for strategic export licences was identified as a “business-critical operation”. The question I want to ask is this: do you have any concerns regarding the impact of the covid-19 pandemic on the licensing process and the robustness of the decisions and the evidence on which they are based? This question is to all of you. I don’t know who wants to start.

Oliver Feeley-Sprague: I am happy to start. I don’t want to hog the camera and the microphone, so I will be quick. We cannot really comment on the arrangements for working from home, as we are all doing, and on coping with covid and how that has played out in terms of the licensing decision process. I would come at this from a slightly broader angle. We are about to publish a report detailing 60 countries around the world that have used what we would say was disproportionate force in their ability to police and crack down on covid-19 demonstrations and assemblies. The pandemic rules do allow Governments to take public health measures and to restrict gatherings, events and people’s movements on public health grounds, but they are still bound by the international obligations on policing and human rights. You still have to police protests lawfully, and police lawfully.

We have documented, I think, 60 countries where there has been excessive use of police equipment—everything from tear gas to shields to batons—which I think places a spotlight on the licensing decisions. These are criterion 2 decisions. The use of tear gas, for example, is particularly problematic, for all sorts of reasons, in a pandemic. One is the likelihood of increased transmission, because one of the key effects of tear gas is coughing and sneezing—the aerosol-generation effects that are the most critical for transmitting the virus. If you are tear-gassing a crowd of people, you are in theory exponentially increasing the risk of transmission of covid among that gathering. You also have the direct public health effects of using a respiratory impairment weapon—a less lethal weapon—on someone who may have a compromised respiratory system because they have covid. That is a category of equipment that needs incredibly careful scrutiny because of the pandemic.



HOUSE OF COMMONS

We have seen an increase in the use of police crackdowns across the world in response to the pandemic. That is a challenge for licensing. Longer term, the direct and indirect impacts of the global pandemic, as we have unfortunately seen in the past, are likely to be drivers of conflict and instability in the world for years to come.

There is an important lesson here, if we go back to the Arab spring in the mid-2000s and the role that arms played in the build-up in the middle east and what happened in those situations. In the review that the Government undertook of its licensing decisions, the conclusions that it reached were that it needed to work harder on its projections, risk assessments and end-use monitoring. There was an acknowledgment that, perhaps, it had been slightly too lax with its export licensing to that region.

We could be in a similar situation in a five-year period in the response to the pandemic. That is a slightly wider way of answering, but as a human rights organisation, that is what I would say is the challenge of covid. It is about the decisions to sell weapons overseas.

Claudia Webbe: Thank you, Olly. Sam?

Dr Perlo-Freeman: Nothing to add to that.

Claudia Webbe: Roy? We might have lost him at that crucial moment. There you are; do you want to come in?

Roy Isbister: No. I did hear what Olly said, and that was fine.

Q105 **Claudia Webbe:** We have talked a lot about Saudi Arabia and criterion 2. Are there other end users of UK arms that this Committee should be paying close attention to with respect to criterion 2 violations?

Roy Isbister: Maybe I could respond first to that. I am very glad that you asked that question, because I think there are. Things have started to slip under the radar a bit because of the focus—for very good reasons—on Saudi Arabia.

As time has gone on, however, I think we are having a bit of a look around and seeing more and more areas where we would identify problematic contexts. A lot of them are in the same part of the world: the middle east and north Africa. They include Egypt, Turkey and UAE as particular countries that I would like to see a much harsher light thrown on.

There are a couple of other more thematic-type issues. Olly has already spoken a bit about the police and security equipment, but there are also sniper rifles, on the back of a recent Bellingcat report on the subject. The Committee raised questions in November to officials about the use of sniper rifles by Russia and others.

I have just done a little bit of research, which has turned up a wide range of countries that certainly raised eyebrows. They are receiving hundreds—or hundreds of sniper rifles have been licensed. That would be another more thematic issue. I see that we are almost out of time, so there is not time to



go into the detail, but that is something for us to return to, and hopefully for CAEC to return to as well. I will finish there.

Dr Perlo-Freeman: On Turkey, there was a pause in licensing, as is mentioned in the annual report, in response to Turkey's attack on Kurdish-led forces in Syria towards the end of 2019. There does not seem to have been a follow-up announcement, but it seems from the licensing database that the pause lasted about three months. Licences have since resumed, although there are fewer OIELs.

There are lots of reasons to be concerned about Turkey: Syria, Libya, Azerbaijan and places where Bayraktar drones have been used, either by Turkey or countries Turkey has sold them to. Those drones have bomb racks that appear identical to those produced by EDO MBM—L3Harris—in Brighton. There are also concerns about the potential for conflict with Greece. Turkey would therefore be a country for CAEC to focus close attention on, and it should ask Ministers what they have been doing since the review started in late 2019.

Claudia Webbe: Okay, thank you.

Q106 **Martin Docherty-Hughes:** Just quickly, we need to go back to the B word—to Brexit and what technically is left of any transition period. What are your main concerns about how arms export controls will operate from 1 January? Can you also say something about the Northern Ireland protocol, particularly given that Northern Ireland, with the protocol, will remain in in the single market? Roy, do you want to go first?

Roy Isbister: We are struggling a bit to work out how this is actually supposed to work in practice, with Northern Ireland being in a different situation. If that situation is maintained, does that create an opportunity for a two-step process for equipment leaving the UK under different rules and so on? I feel that there is a lack of clarity about how this will work, and a need to look into it in greater detail. That is the perhaps slightly unsatisfying answer.

Q107 **Martin Docherty-Hughes:** Do you honestly think, on 15 December, heading to 1 January, that that might now be a bit too late?

Roy Isbister: Yes. It feels very late in the day to still not have clarity about how this will work afterwards. There is lack of clarity on the licensing.

Q108 **Martin Docherty-Hughes:** And on data sharing.

Roy Isbister: Yes, and on data sharing. There is also concern about customs movements. We really should not be in this position two weeks away from the change, with Christmas coming in between. It feels like a very awkward spot.

Dr Perlo-Freeman: I do not know whether you have seen a notice to exporters about Northern Ireland that was sent out on 11 December. It says: "When stated on your application form that the location of your items is the UK, please could you confirm if the items are located in either Northern Ireland or Great Britain." Ditto for third parties, ultimate end user and item



HOUSE OF COMMONS

recipient: "specify Northern Ireland or Great Britain". There are clear implications for the export licensing regime from the Northern Ireland protocol and the fact that Northern Ireland seems to be remaining in the EU for these purposes.

- Q109 **Martin Docherty-Hughes:** Does that mean that in terms of export of arms from Northern Ireland, arms traders will share data with the rest of the European Union, but those in GB will not? Is that a possibility?

Dr Perlo-Freeman: That I don't know.

- Q110 **Martin Docherty-Hughes:** Olly, have you anything to add about this ridiculous situation?

Oliver Feeley-Sprague: The one word to characterise it is "mess". There are so many unanswered questions with just over two weeks to go, with a large public holiday in the midst of that. I have already highlighted one area that will imminently have an alignment issue. The dual-use regulation will change. New things will be controlled that are not currently controlled. From what we understand, under the Irish protocol, Northern Ireland will be subject to new regulations that the rest of the UK will not be. Further down the track, there are all sorts of issues around the notion that we will streamline customs procedures. Let us have a discussion about where export controls fit within streamlined customs procedures, because our first line of defence—outside of licensing—is the customs process identifying dodgy shipments or unlicensed activity.

- Q111 **Martin Docherty-Hughes:** Would those dodgy shipments be more likely to come from the UK than from Northern Ireland after the end of the transition period?

Oliver Feeley-Sprague: I am not going to be drawn on that.

- Q112 **Martin Docherty-Hughes:** From my perspective, it looks as though this might be the only negative impact for Northern Ireland, if you want to see it that way. I do not think it is a negative impact—I think remaining within a robust framework is a good thing—but there are certainly opportunities for the rest of GB if it is not under such robust protocols.

Oliver Feeley-Sprague: That is always a risk. We have also heard about the development of free ports. If we look back through the history of illicit diversion of weaponry, the free port system is very shaky, in terms of allowing those things to happen. I have yet to see any detailed documentation about how export controls and non-proliferation risks will be managed with the UK outside the EU framework.

Let us be fair. I know officials said that there are situations where the UK is a member of all the existing international agreements, and where data sharing is available, we obviously do that. However, none of those international agreements have anywhere near the level of sophisticated information and co-operation that exists in the EU system, and there seems very little prospect of that happening in the near future. If the UK sees these things as important, it will have to do some enormous lifting to raise the bar

in those international forums to replace what it is currently going to lose by falling out of the EU system.

Q113 Martin Docherty-Hughes: The Government will need to do some serious lifting, which I personally think they will be utterly incapable of doing. The incoming Biden Administration has made it quite clear that strengthening its co-operation links with the European Union is a key element of its repositioning the United States in the global order. I would have thought that remaining within these EU protocols would be essential to maintaining and rebuilding that global order. The mood from Washington is quite clear: that is where they want to go. Surely this will be a challenge, in terms of arms exports to the UK, if we are outside those protocols with EU partners.

Oliver Feeley-Sprague: We can go back to a point we made previously. The last time the Government went on the record to CAEC, they said that maintaining a very close relationship with these systems was a priority. That seems to have changed, given the evidence that was given to you two or three weeks ago. To interrogate why those changes happened and the implications of those changes is important—

Q114 Martin Docherty-Hughes: Nothing to do with the new President?

Oliver Feeley-Sprague: Well, there are issues there too, because the Biden regime is on the record as saying that it will pursue a different approach to places such as Saudi Arabia. Given the incredibly close connection between UK and US companies operating in Saudi Arabia, that may well tie the UK Government's hands and may have implications for the UK Government's licensing. For example, Paveway IV bombs for the Tornados are essentially under very complex licensing arrangements from the US, with all the ITAR restrictions on re-export provisions and clauses, because they are based on US technology. The US taking a different approach to Saudi Arabia will have implications for the UK licensing regime as well. We should not lose sight of that fact.

Martin Docherty-Hughes: Roy, do you want to come in briefly, or Samuel?

Roy Isbister: I stress what Oliver said about the US and ITAR and all those connections between UK and US industry. That gets very interesting if the US takes a different view from the UK on markets and so on.

Dr Perlo-Freeman: This is one of the things we are most hopeful about for the incoming Biden Administration. Joe Biden and many of his key aides have made very clear that they intend, unlike previous Administrations and unlike the UK Government, to hold Saudi Arabia accountable for its actions, and in particular to stop arms sales for use in Yemen. We do not know yet how far they will go in that. However, this has bipartisan support, and even some Republican Senators can see what a disastrous thing the Yemen war has been. If the Biden Administration follows through on these commitments, that will put the British Government in an extremely awkward and isolated position in relation to their approach to Saudi Arabia.

Martin Docherty-Hughes: I cannot imagine that that will be for the first



HOUSE OF COMMONS

or the last time, in relation to Brexit. Thank you, gentleman.

Chair: Thanks, Martin. Kate Osamor, you have been incredibly patient. I will come to you now.

Q115 **Kate Osamor:** Thank you, Chair. I have a question for everyone: what is your assessment of the systems in place to review existing licences when circumstances change in the destination country, or when new information comes to light? Could we start with Sam?

Dr Perlo-Freeman: There often seems to be a pattern when circumstances change. In principle, mechanisms exist for reviews to happen, and there is supposed to be a commitment to do so when circumstances change. In practice, the most we usually see may be a small number of revocations or suspensions of licences, but mostly what we see is a suspension of the issuing of new licences. That is something, but so much of the UK's arms exports go through open individual export licences—probably about half, based on the relative figures for contracts and for single licences—which are valid for three or five years. Open general export licences are valid indefinitely.

As Oliver said, in the Saudi coalition case, the countries were taken off the OGELs for new registration, but all the companies—certainly BAE Systems, which was already registered—continued to trade. This means that a suspension of new licences has only a limited effect on what is actually being exported. While the Government have the power, if they want to, to quite quickly review and suspend or revoke existing licences, that seems to be something that, in practice, they are reluctant to do in most cases.

Q116 **Kate Osamor:** In your experience, Sam, how effective is the monitoring that takes place of particular countries in order to be ready to block or suspend licences to those destinations?

Dr Perlo-Freeman: It seems to happen only when something major comes up. Because a large proportion of exports are components and sub-systems, it is hard to precisely identify which systems they are in and what is being done with them. For example, the British Government admitted that in relation to exports of all components to Israel. They were able to establish in 2008 that there were UK components in some of the weapons that Israel used in Gaza, but they have not made any similar assessment as far as we know in relation to subsequent outbreaks of war between Israel and Gaza. It seems that, in general, and again from the limited amount we have learned from Government statements over the years, they do not make any great effort to assess exactly what happens with UK components and sub-systems that go into certain main systems that may be used in various conflicts. Of course, we know that in Saudi Arabia it is the actual planes and bombs that are being used, but in a lot more cases it is the components, which are much harder to track, and there seems to be not very much effort to do so.

Kate Osamor: Thank you, Sam. I will close it there, Chair.

Roy Isbister: May I make just one quick point? I think the UK tends to be very reactive when stopping this practice, rather than proactive.



HOUSE OF COMMONS

If the situation has deteriorated to the point where you want to have an impact, the way you have an immediate impact is by suspending existing licences. That, as Sam said, is the last thing that happens. A new licence is a process. When you are applying for a licence, it is not as if you are going to deliver tomorrow; delivery is some way off in the future. So if you want to have an impact on a situation that has gone bad, you suspend licences. That should be the first action taken.

Oliver Feeley-Sprague: I will just add to what Roy said very quickly— I know we are over time. The “suspension” word is over-used and it implies something much greater than it actually is. The UK system does not suspend the licences; it suspends licensing processes. That essentially means that when it triggers it, the in-trays of officials and Ministers stop—what is in the system stops. It does not suspend any of the licences that are already in play, allowing deliveries. This is because the idea of the suspension mechanism came in from the response to the Arab spring. When crisis erupts, you want to freeze licences very quickly while a situation stabilises.

I think you really need to be moving to a situation where you can suspend licences, not just the licensing process. The UK Government does revoke, but it does not revoke that many, if you look at the annual reporting data.

Kate Osamor: Thank you.

Chair: We are massively over time, but we have a few other questions. We will move to the last question, which will come from Tobias Ellwood, who wants to ask something off-track. If any other members of the Committee have a final point that they want to raise, can you raise your electric hand? If you don't, Tobias will ask the last question and make his final points.

Q117 **Mr Ellwood:** Chair, thank you for that. I am conscious that we are wandering slightly away from the focus of what this Committee does, but given the audience that we have here, I thought it would be helpful to ask, first, about your positions on arms treaties. Many of them have now fallen out of date and are not honoured. Is this something where you think Britain should be more front-footed in trying to regroup and get the west to reconsider, not least with what has been said about Biden wanting to inject a bit of international resolve into what the west stands for? Dr Sam, would you like to go first?

Dr Perlo-Freeman: On arms control treaties?

Mr Ellwood: Yes.

Dr Perlo-Freeman: There has clearly been a deterioration in the international disarmament and arms control environment, both when it comes to nuclear and, to some extent, conventional weapons—the ATT. I hope that the new Biden Administration will renew efforts in that regard. The fault lies both with the Trump Administration and with a number of players.

There are all sorts of situations where conventional arms controls would also be highly desirable and confidence building. The mechanisms in Europe have



HOUSE OF COMMONS

atrophied. There are no effective arms control or confidence-building measures in the western Pacific, with the growing confrontation between the US and China. When you have a situation like that, there has to be a better answer than the US and China arms-racing each other for regional dominance. There are all sorts of ways that that can end badly. The idea that there could be an alternative control agenda there, between the countries in that region, just does not seem to be on the agenda.

Mr Ellwood: Thank you for that. Roy, can I ask you a different question? Going back to my time as Minister for the Middle East, I spent a lot of effort with other Ministers—not least John Kerry—trying to get a political solution for Yemen. Clearly, the war has been conducted at 20,000 feet and has not been successful. Consequently, we are here looking at difficult questions about arms control. Would it be useful for the Committees to visit Saudi Arabia—and Aden, if they could get in—to see up front what is happening and understand better what can be done about scrutinising what the Government are doing in this area?

Roy Isbister: I see the value in that. If you were to be going to Saudi Arabia with Yemen on your mind, then also going to the United Arab Emirates would be sensible. But I think you need to be very careful about access—who you can see, who you can talk to and what limitations are placed on the Committees—because from what we see in general about the way in which Saudi Arabia and the UAE respond to calls for greater transparency and meaningful transparency, they will run a pretty sophisticated operation to present the picture that they want to present. I think it is a case of going in with your eyes wide open and being very careful about the conditions and so on placed upon you.

Mr Ellwood: Thank you. Olly, any thoughts on either of those two issues?

Oliver Feeley-Sprague: For as long as I have been working on this and going back decades, the UK Government has always placed very strong emphasis on the rules-based system for international law as the thing that binds us all together, and that export controls are better pursued in concert with others. The idea is that export controls are a multilateral process and likely to be more effective in reducing harm if done in co-ordination with others, but what we have seen over the last five years is a drop-off of the effectiveness of those instruments. I would hope that the UK, in its new position in the world, will re-energise those processes.

The UK has the opportunity, for example, to re-energise its work on torture. There is a new UN process to develop a new set of global rules, building on the EU system for torture controls. The ATT requires an enormous amount of heavy lifting, and in many areas—including transparency and reporting—it is failing. The trajectory is that secrecy is increasing and the number of states reporting is dropping. Transparency is one of the three pillars that holds the ATT together: you have the rules, the export control systems and transparency, and one of the pillars is falling. The UK is not perfect, but it has some good record in the publication of transparency reporting and scrutiny, so there is a role for the UK to play here, and we abandon these instruments at our peril.



Roy Isbister: I am sorry to use up more time, but to build on what Olly said in the context of the ATT, it is also worth remembering that the UK has really been at the forefront of developing regional and international controls—indeed, the UK was a driving force in what was the EU code of conduct and became the common position. The UK was a driving force behind the arms trade treaty, so it is not as if the UK had to be dragged kicking and screaming, or was even just a passenger smiling and nodding; the UK led the charge.

We see now with the arms trade treaty that the UK is one of the states parties which is seen as potentially undermining the treaty, largely because of Saudi Arabia and Yemen. When the UK speaks on the ATT at international meetings relating to the ATT, there is almost internal eye-rolling from some states; they look at what the UK says and what the UK is doing and see a yawning gap. I would like to see the UK championing across the board, as Olly said and you suggest, Mr Ellwood, but it needs to be implementing at the same time—doing everything that it needs to do.

On transparency, under the arms trade treaty, the UK does not report on imports and has said that it does not have to, although it does. That undermines the whole idea of reporting in an arms trade treaty context. At the last Conference of the States Parties, which met electronically, the UK, along with France, objected to some pretty straightforward draft decisions that were simply designed to allow the arms trade treaty working groups that happen under the formal process to advance their work plan over the next year or two. The UK and France objected and prevented that from happening. It is not just about saying that we want these things to exist. It is about how the UK operates within those frameworks.

Dr Perlo-Freeman: On reporting transparency, one of the oldest—

Chair: Sam, we are running out of time. I would be delighted if you made your point very quickly. Lloyd Russell-Moyle wants to come in, and I will have to call it a day at that, Tobias.

Dr Perlo-Freeman: The UN register of conventional arms, one of the oldest mechanisms for reporting transparency on the arms trade, is declining in reporting. We recently found out that UK reports to that are deficient, in that they are based on licences, so there is the same open licence problem. There are only numbers attached to single licences, and exports only made under these, which are reported to UNROCA. That is another area where, because of the open licence issues, the UK's engagement in international transparency mechanisms is deficient.

Mr Ellwood: Thank you very much.

- Q118 **Lloyd Russell-Moyle:** We have received a letter that we will be publishing shortly, and I just wanted to quickly follow up on my question last week about the sharing of information where arms trades have been denied, or where there are issues around them. My understanding was that the arms trade treaty required states to share information between signatories. What is the level of sharing required? Is it a very minimal or more detailed



HOUSE OF COMMONS

level of co-operation? The Government have said that they cannot share with others unless they have signed a set of Government-to-Government data protection agreements. It would be interesting to know the level that international treaties currently allow.

Roy Isbister: There is no provision for the sharing of information on denials under the arms trade treaty. A diversion information exchange forum has been set up which is just for states parties, closed to the likes of us, where, in theory, there is an opportunity to talk in greater detail about cases of diversion. There is no obligation under the treaty for any of the states parties to participate in that. That has just been established, and we will see how that works. That is about it under the arms trade treaty.

Oliver Feeley-Sprague: There is a gap between treaty obligations and implementation systems. There is an obligation in the treaty that means that, where possible, states are encouraged to share information, including on prosecutions and judicial matters—there is an article in the treaty on that point. The problem is that there is no export control system that has been developed to allow states to do that. That is my point about the EU. The EU has those systems and a track record of over 50 or 60 years of developing them that no other multilateral export control forum has. If we are serious about stopping things like illicit diversion, then those are the kinds of systems we need to see the ATT develop. Notwithstanding what Roy said about the UK upping its game for its own implementation, the UK is a significant player in the international non-proliferation environment. It needs to be pushing these things.

Q119 **Lloyd Russell-Moyle:** If I can summarise what you are saying, there are some nice, warm words in there, but there are no binding commitments or mechanisms to actually fulfil them.

Roy Isbister: That was raised during the negotiations—the point about having something on the licence denials—and it was explicitly objected to by states.

Chair: On that note, we will have to draw to a close. We have now gone half an hour over time. Gentlemen, I thank you all for the last two hours—it has been fascinating. There is no question but that we could have gone on for another two hours and got more information from you. On that point, if there is anything that you think we have missed, please do feel free to provide it to the Committee and let us know. I am sure you will have some thoughts about stuff we could have raised. Your continued engagement with this Committee is important for all our investigations, so we are genuinely grateful to you. Thank you to all the members of the Committee who also have given the last two hours to us. It has been very interesting indeed.

Dr Perlo-Freeman: Thanks very much for having us. It is great to see CAEC up and running and quorate, and long may it continue.

Chair: Hear, hear to that.