HOUSE OF COMMONS

Business and Trade Committee

Oral evidence: UK arms exports to Israel, HC 690

Wednesday 24 April 2024

Ordered by the House of Commons to be published on 24 April 2024.

Watch the meeting

Members present: Liam Byrne (Chair); Antony Higginbotham; Jane Hunt; Ian Lavery; Andy McDonald; Charlotte Nichols.

Questions 1-45

Witnesses

I: Natasha Hausdorff, Legal Director at UK Lawyers for Israel, Lord Sumption, former Justice of the Supreme Court, Lord Ricketts, former UK National Security Adviser, and Richard Kemp CBE, former British Army Officer and former Head of the International Terrorism Team at the Joint Intelligence Committee.

II: Rt Hon Anne-Marie Trevelyan MP, Minister of State (Indo-Pacific) at Foreign, Commonwealth & Development Office, and Alan Mak MP, Parliamentary Under-Secretary of State at Department for Business and Trade.

Examination of witnesses

Witnesses: Natasha Hausdorff, Lord Sumption, Lord Ricketts and Richard Kemp.

Q1 **Chair:** Welcome to today's special hearing on arms exports to Israel. Under Standing Order No. 152, it is the responsibility of this Committee to oversee the work of the Department for Business and Trade, and arms export licensing is part of the DBT's policy area. This area of policy was formerly scrutinised by a Joint Committee, which struggled to be quorate and which had issued just two reports in the past four and a half years, so in January those arrangements were dissolved and this Committee assumed oversight of scrutiny of strategic export licences.

Since January, we have begun our work of scrutiny. In the light of the ICJ's provisional findings, we thought it important that we begin to bring evidence together in order to inform Parliament, and to ensure that parliamentary debates that follow from these hearings are as well informed as possible about the legal questions in play and the decisions that Ministers have taken.

Lord Sumption, if I can kick off with you, would you tell us why, having signed the letter with a number of lawyers, you believe that the UK Government should now be suspending strategic export licences?

Lord Sumption: Two areas of international law are relevant. One is international humanitarian law, which is in the process of becoming part of customary law, and the other is the international genocide convention. The genocide convention, which was the main line of argument in the letter that I signed, is important because it engages the responsibility of non-parties to the relevant conflict. It requires states that are party to the convention, including the UK, "to prevent and to punish" genocide, which in previous cases have been held by the ICJ to be being completely distinct obligations. The "prevent" part is a pre-emptive position; in other words, it is directed to prospective as well as actual genocide, and it is also directed to plausibly suspected genocide and not simply genocide that has been established as a fact.

There is a very well-known decision of the International Court of Justice that deals in some detail with the obligations of non-parties to the conflict. The decision in the Bosnia and Serbia case in 2007 basically establishes that all signatories to the convention have a responsibility to take "measures…within their power" that might contribute to preventing genocide. It is irrelevant, they said, that measures available to a signatory would not have been enough to prevent genocide; essentially, one needs to do what one can, even if that is not a great deal. That obligation, they said, comes into force whenever the signatory knows, or should know, that there is a serious risk of genocide, even if it has not yet happened and has not yet been proved. They may therefore have no certainty in order that this obligation should be triggered.

In the interim judgment of the ICJ on 26 January, the critical parts really begin at paragraph 45. Essentially, the Court started by looking at the

facts as they provisionally appeared to be. These are not definitive findings but provisional findings, based on material available. They found, first, that the Palestinians were a distinct group entitled to protection. Secondly, they made provisional findings on the scale of loss of life and damage to buildings, based on evidence given by the reports of UN agencies and the World Health Organisation. They went on to cite evidence of genocidal intent, consisting essentially of statements by the Israeli Defence Minister and the President of Israel, Mr Herzog, some of which take one aback by the intensity of the hatred they disclose for the people of Gaza.

The critical finding follows in paragraph 54. "The facts and circumstances mentioned above"—a reference to what I have just summarised—"are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible." That is a conclusion based on the facts and circumstances above.

I think it is being suggested in the letter that was subsequently sent by Lawyers for Israel that all that the ICJ was doing was accepting, as a matter of abstract law, that the inhabitants of Gaza had a right not to be subjected to genocide. I have to say that I regard that proposition as barely arguable. It seems to me absolutely clear that it was a conclusion based on a combination of the well-established interpretation of the genocide convention, and the facts as they provisionally appeared to be.

Q2 **Chair:** Ms Hausdorff, I am going to come to you with the same questions, but I am first going to step through a couple more with Lord Sumption, which I will then put to you. Lord Sumption, based on the argument that you have given us today, what is the risk that the UK Government could be taken to the ICJ and successfully prosecuted if it does not suspend strategic export licences today?

Lord Sumption: That is in part dependent on the politics, in the broad sense of the word, of international tribunals. I think it is unlikely that the UK Government, given the relatively small scale of its involvement in the arms trade to Israel, would find itself on the receiving end of proceedings at the ICJ, but I have to say that I and, I assume, the other signatories of the letter have proceeded on the basis that the UK Government would wish to comply with its international obligations, and not simply to avoid a situation in which its non-compliance was brought before the ICJ.

Q3 **Chair:** At the core of your argument would appear to be your interpretation of the phrase "plausible risk". You have a different interpretation of plausible risk from the argument rehearsed in the letter from UK Lawyers for Israel.

Lord Sumption: I think the difference is whether that phrase is referring to the facts of the current conflict in Gaza, or to the abstract question whether people in Gaza have the right to be protected. That is the essence of the difference, and I have explained why it seems to me to be perfectly clear.

Q4 **Chair:** Could you go back over why you believe your interpretation is the correct one?

Lord Sumption: Because the critical finding of the ICJ in the 26 January judgment is expressly stated to be based on the facts and circumstances mentioned in the paragraph preceding paragraph 54. Those facts and circumstances are, one, the status of the Gazans as entitled to protection, two, the scale of the conflict and the loss of civilian lives and property, and three, the arguably genocidal intent disclosed by a number of published statements by prominent Israeli Government personnel.

Q5 **Chair:** Natasha Hausdorff, I put the same question to you. On the basis of the two letters that you signed, could you set out for the Committee why you believe that strategic export licences should be kept open?

Natasha Hausdorff: Indeed. In fact, there has been further response—a third and a fourth letter. Those are addressed, and further detail is provided in an even more detailed response, which I have provided to the Committee in writing—I'm seeing some nods, so I understand that has been received by all Committee members. That document addresses not only the legal difference you have already drawn out, Chair, but the factual inaccuracies contained in the first and third letters.

In respect of the issue of plausibility, which is at the very heart of that difference, it is extremely important that we are very clear about what the Court said and did not say on 26 January. My noble and learned friend has previously correctly stated the finding of the Court in its provisional orders measure. He gave an interview on Sky News a few days after the first letter was circulated in which he stated that the ICJ has not held that Israel is guilty of genocide, but that there is a plausible case that the inhabitants of Gaza are entitled to the protection of the genocide convention. That is critical, because it is in contradistinction to the claims of the first letter that there was a plausible risk of genocide in Gaza.

I want to be clear at the outset: plausibility, at the provisional measures stage of the International Court of Justice, is a procedural matter; it is not about the alleged wrong being committed. The establishment of a prima facie case for the indication of provisional measures rests therefore on a finding that the rights claimed plausibly exist, not that there has been a violation of them. The case law clearly indicates, as does, I suggest, the wording adopted by the Court itself, that this is about whether those rights are subject to a legal determination: do they fall under the genocide convention?

It is very important to understand why the allegations of genocide are being advanced. It is not because there is any currency to the allegations—any real evidence to base them on. They have been advanced by South Africa as a legal hook because Israel is a party to the genocide convention, as is the UK. That is the basis on which it has brought Israel to the International Court of Justice. It is important to understand the origins of these proceedings through that lens when we come to analyse what the Court did in January, which was supported by its order on 28 March, which said it was not going to revisit its reasons for the provisional measures.

The 9 April follow-up—the third letter I referenced—also fundamentally misinterprets the necessary conditions for the indication of provisional measures. This is under article 41 of the Court's statute. The plausibility test was first introduced by the Court itself as a parameter—this was in the Pulp Mills case—because provisional measures give rise to obligations on states. The Court needed therefore to satisfy itself in the first instance that there was a "plausible case for the existence of the right claimed by the applicant". That was the wording used in Pulp Mills.

In the "obligation to prosecute or extradite" case, the Court found that the rights asserted by Belgium were plausible because they were grounded "in a possible interpretation of the Convention against Torture", and in the "certain activities…in the border area" case, the Court clarified that what was relevant to establish plausibility was only the plausibility of the claim as raised by the requesting party, and not the plausibility of any arguments to the contrary. The reasons behind that are clear when you read the 26 January order. I advocate the merits of doing so; it is not particularly long, and it is clearly expressed.

The Court made no determination of the issues of intention or of the substance of the allegations that South Africa has raised. It was clear that those were issues for the merits stage, which of course comes much later in these proceedings.

We also include, both in our response letter and in the detailed response, where I have reiterated it, a summary on how article 41 of the statute of the International Court of Justice works, from the established commentary. It says that "what is at stake in this context is exclusively whether the claim of the applicant is one being susceptible of a legal decision… Put plainly, the existence of a prima facie case rests on whether there is a plausible right claimed by the applicant, and the existence of a plausible right rests on whether the claim of the applicant is one that is susceptible of a legal decision". Again, it is not on whether a violation has occurred.

I respectfully insist that reading a finding of plausible risk that Israel is committing genocide disregards the Court's unambiguous statements, in particular at paragraph 30, where it says that it "is not required to ascertain whether any violations of Israel's obligations under the Genocide Convention have occurred." The Court's task is to establish whether the "acts and omissions" complained of by the applicant "appear to be capable of falling within the provisions" of the genocide convention. In the Court's view, some of the rights claimed by South Africa were. That is as far as the Court went. None of the acts alleged was found to be plausible, likely, arguable or at risk of happening.

The real and imminent aspect of the "irreparable prejudice" that is referred to in later correspondence by the writers of that first letter—this refers to paragraph 74 of the provisional measures order—is crucial for the justification of provisional measures, and it exists as a matter of course wherever genocide or ethnic cleansing is being alleged. Again, I'm afraid that that does not assist with the inserting of the plausible risk of genocide

into these findings. The condition of urgency has always been found on these sorts of cases.

However, if the writers of the letter were right and despite the very clear wording of the Court one were to encourage the Committee to read in findings that were not the case, the Committee has just been referred to, I believe, paragraphs 45 onwards, which contain several paragraphs of very inaccurate information that has been put before the Court. I think it is clear that the Court simply did not factor this into its decision making with respect to plausibility in any event, but if you are being asked to consider that it did, then I would certainly urge pause and circumspection.

Included at paragraph 46 are references to casualty figures that have been serially debunked. This has also been the subject of correspondence from UKLFI Charitable Trust, of which I have the privilege of serving as legal director, to the UK Statistics Authority. The continual references to some 33,000 casualties now do not even accord with what Hamas, the internationally proscribed terrorist organisation, are claiming; they have indicated that they do not have identifying information for about a third of those. So we are looking, inevitably, at much lower—something in the region of 21,000 or 22,000—casualties than those being claimed even by this internationally proscribed terrorist organisation. What those casualty figures also do not indicate is any differentiation between civilians and combatants. Now, Israel has been clear that it knows, as of February, that it has killed 13,000 terrorist operatives.

Q6 **Chair:** Before we go into disputes about the evidence base, let me bring you back to the question that I put to Lord Sumption: on the basis of your interpretation of the plausibility judgment that was in the ICJ provisional rulings, what is your assessment of the risk that the UK will be taken to The Hague and successfully prosecuted under the genocide convention?

Natasha Hausdorff: The first thing to be clear about is that the provisional measures order applies between South Africa and Israel, so it does not—

Q7 **Chair:** Indeed, but Nicaragua has now, for example, taken Germany to—

Natasha Hausdorff: Well, indeed. That was the first thing. It does not in and of itself imply any legal obligations for the United Kingdom. The line that I was elaborating—the basis of false information before the Court—has certain implications for what legal obligations, if any, might arguably be said to arise.

Where I have seen the majority of arguments linking to the UK being put forward is in relation to the UK's general obligation as a signatory to the genocide convention and also, separately, under common article 1 of the Geneva conventions. Germany's response to the case brought by Nicaragua is instructive: Germany provided a comprehensive rebuttal to the issues of complicity. The Bosnian genocide case has been referenced, and that was clear that at least active knowledge and awareness of the specific intent of the perpetrator is required.

Germany put forward very forceful legal arguments in respect of the case brought by Nicaragua, which has been criticised for having no legal or factual basis. I would say with relative confidence that the case against Germany is unlikely to succeed. Germany also put forward a very robust due diligence defence.

There is, however, an aspect that I urge the Committee to be very mindful of in respect of South Africa's case against Israel and now Germany in the case brought by Nicaragua, which is lawfare practices—seeking to wage politics through poorly argued and unsubstantiated cases at the International Court of Justice.

Q8 **Chair:** Is the line of argument that the probability of the UK being taken to The Hague and successfully prosecuted is low? That is the judgment I am trying to get from you.

Natasha Hausdorff: The judgment, I am afraid, is not necessarily a legal one, but a political one. In the context of the case brought against Germany, the probability of it being in any way successful is negligible. In that respect, I expect the outcome to give pause to Nicaragua's threatened cases against anyone else. However, statements—including by UK officials and politicians—that present a flawed interpretation of the International Court of Justice's provisional order of January, and that suggest, again without evidence, that the UK Government has legal advice that Israel is breaking international law, and others making, I am afraid, unsubstantiated and very problematic assessments, undoubtedly encourage actors such as Nicaragua to engage in lawfare not just against the UK, but against other law-abiding states.

Q9 **Chair:** Let us zero in on the key points of difference. Lord Sumption, based on what you have heard, where would you say those key points of difference in the argument might lie?

Lord Sumption: There are clearly differences in two areas. One, which I have already addressed, is what the ICJ provisional judgment means. On that, I would simply say that there are two reasons why one might fail the plausibility test: one is that there is no legal basis for it; and the other is that there is no factual basis for it, even on a provisional footing. This particular case was held by the ICJ to satisfy both tests. I do not claim to be an authority on the details of the conflict, but I am impressed by the fact that a Court of considerable prestige regarded this is as a matter that warranted interim measures on 26 January, and which did so for reasons that are set out, many of which are factual.

Part of my friend's objections seem to be an attack on the way in which the ICJ itself approached this. Since that is the only judgment that has been given so far by any international tribunal on this point, I would be inclined to give greater weight to it than to my friend's views about the quality of Nicaragua's case in another proceeding. This is a judgment based on reputable sources—the UN agencies, primarily, but also the World Health Organisation—and that seems to me to be something that

the Committee ought to be impressed by, although I would be the first to admit that it is not conclusive.

Q10 **Chair:** Natasha, do you have a quick response to that?

Natasha Hausdorff: On the casualties point, at least five statistical analyses have been carried out by statisticians, data scientists, biomathematicians and economists, including those from the Wharton School of the University of Pennsylvania, the Royal Melbourne Institute of Tech and the Washington Institute for Near East Policy. The figures, which include those put before the Court, do not add up and are likely fabricated or manipulated. As I was indicating, since 10 April, even Hamas has acknowledged that one third are unsubstantiated by identifying information.

I was also indicating—it is important that Committee members are alive to this—that no distinction is made by this internationally proscribed terrorist organisation between civilians and combatants, and no identification of the manner in which the alleged casualties have come to die. We know that Hamas is bombing its own civilians and shooting its own civilians. We know that rockets fired from Gaza towards Israel are also falling short in the Gaza Strip.

Q11 **Chair:** Is it fair to say that the argument you are presenting basically rests on, first, a legal interpretation around the plausibility judgment and, secondly, a dispute about the evidential base?

Natasha Hausdorff: As I phrased it earlier, the first and only real issue is the unambiguous application of the plausibility test that the Court adopted at the provisional measures stage. This is not new. This is how the Court deals with provisional measures. What I have said is in no way an attack on the International Court of Justice's provisional measures order. The fact that—this has been referenced—provisional measures were ordered is worth mentioning because it is the nature of those provisional measures that indicate, I think, what the Court was doing here. The dissenting Ugandan judge, the Ugandan Judge Sebutinde, called the provisional measures ordered in January "redundant". That was because they simply restated the existing international law obligations on Israel—namely, to comply with its obligations under the genocide convention. The only addition was a report that the Israeli representatives provided to the Court within the permitted timeframe.

The fact that the key orders being sought by South Africa—namely, that Israel be ordered to cease its operation with immediate effect—were not ordered by the Court gives further credence to the only reading, unambiguously, of the Court's determination of plausibility. That is the primary point. But the reason I reference the inaccuracy is not least because we do so in great detail in the document that I put before the Committee. If it were the case that what is being advocated is that the Court has actually considered these matters, which would in itself be highly unusual at the provisional measures stage, it will have done so on a

misinformed basis because of the extreme factual inaccuracies. That is something that would come into play were the original argument credible.

Chair: Mr Lavery, do you want to come in at this stage?

Q12 **Ian Lavery:** I want to ask about the High Court proceedings this week and the documents that were revealed on the export of UK weapons, which suggest that Foreign Secretary Lord Cameron and Trade Secretary Kemi Badenoch authorised UK arms sales to Israel a number of days after the air strikes that killed World Central Kitchen charity workers in Gaza, including, as we all know, three British citizens. Weeks on, the matter has not been assessed.

Court documents also reveal that Israel is not providing the UK Government with information on any specific incidents and continues simply to provide assurances after investigating itself. In that context, can the Government comply with the UK arms export regime? What is the perspective of each of the panellists here? What is your perspective on the UK's ability to uphold its obligations under international law, Lord Ricketts?

Lord Ricketts: I want to open by saying that the legal arguments are fascinating, but I am absolutely not qualified to address them. I come at this as a mere former practitioner and as an observer of what has been going on in Gaza over the last six to eight months. To come from the legal argument to the concrete nature of the activity on the ground, I entered the fray with an interview on the "Today" programme, in which I thought the time had come for the UK Government to suspend arms export licences.

It happened to be on 3 April and within about three hours the letter from the 600 judges and jurists, the first of the letters, was published. I had taken my cue from our own Foreign Secretary and the increasingly forceful rhetoric that we had heard from the Foreign Secretary in the weeks leading up to that about the situation in Gaza. I was not positioning myself in a debate about whether genocide was occurring, but, for example, we in the House of Lords heard from the Foreign Secretary on 5 March about "the dreadful suffering in Gaza" and "the danger of this tipping into famine and the danger of illness tipping into disease, and we are now at that point. People are dying of hunger". Then, on the radio a few days later, the Foreign Secretary again said it was "incredibly frustrating" that Israel was not taking the steps to allow more aid into Gaza amid a "terrible humanitarian situation". He reminded us that Israel is the occupying power and that that has responsibilities for the welfare and protection of the civilian population.

I think probably we will never know how many people have died in Gaza and certainly not in what circumstances, since journalists are more or less completely excluded from Gaza. We have all seen the images of what has been done in hospitals and civilian areas in Gaza. Whatever the casualty figures, they are high and they include a large number of medical workers and humanitarian workers who, of course, have special protection under international humanitarian law. I was cued on to this by the Foreign

Secretary saying on the radio that Israel has responsibilities and a judgment would be made, he said, "in the coming days"—that was on 8 March—on whether Israel remained compliant with international humanitarian law. So the issue was clearly in play within the Government at that point.

Then we had the attack on the World Central Kitchen convoy, with seven aid workers killed. It was clearly a deliberate attack on those vehicles because they were badged very clearly. The fact that perhaps Israel had intelligence suggesting there were Hamas combatants—to use your phrase—in the vehicles was clearly wrong, and seven humanitarian workers died. That was not an isolated incident. It was on that basis that I said, as a layman, that I thought there was ample evidence at this point for the Government to conclude that a suspension of our arms sales to Israel was justified.

Q13 **Chair:** For which there is a precedent, in August 2014.

Lord Ricketts: For which there is a precedent and, bearing in mind that we are not a major supplier of arms to Israel, my argument is open to the objection that it would be a gesture. Another way of putting it would be that we take seriously our published conditions and criteria for supplying arms, which, to criterion 2(c), is that the Government will judge whether "there is a clear risk that the items might be used to commit or facilitate a serious violation of international humanitarian law." That is the bar the Government have set themselves, and that is why I said that I thought the time had come to conclude that, recognising that I was a layman. We have now subsequently had the Foreign Secretary saying in Washington that the Government have had a further review of the evidence and their legal advice shows that they can continue arms supplies for the moment. Okay; fair enough. But I think it was right to put that issue out in public and that there has been a useful debate afterwards.

Ian Lavery: Lord Sumption?

Lord Sumption: I do not think I can add to what Lord Ricketts has said on that point. In answer to your specific question, I agree with him.

Q14 **Ian Lavery:** You agree with what Lord Ricketts said, despite what has been revealed in the High Court this week about the fact that the Foreign Secretary and the Business and Trade Secretary agreed to continue with UK arms sales following the incident with the World Central Kitchen workers in Gaza, and the fact that the Israeli Government are basically marking their own homework and they are not complying with what they need to comply with. They are not supplying the Government with the details of the investigation and what happened in those instances, which have been absolutely tragic. I think we would all agree on that. The view is that we still think that the Government are complying with the UK arms export regime and that the UK has the ability to uphold its obligations under international law. I am confused by that, I must say.

Lord Sumption: With respect, I do not think that what you have just said is at all inconsistent with what Lord Ricketts said a moment ago. I broadly

agree with the points that you have made and I think that they are essentially the same as the ones Lord Ricketts has made.

The fact is that there has been a lack of discrimination in the Israeli response, which is profoundly troubling and particularly affects the operations of humanitarian agencies like World Central Kitchen. I do not actually think that there is a difference here.

Natasha Hausdorff: If I may come in on that, I think the real issue here is that this analysis—or pseudo-analysis—is being advanced on a worrying false premise, even on the basis of what came out yesterday. The position was articulated by the divisional court in the Campaign Against Arms Trade case. The judgment that came out in the summer of last year was clear about the ability of the Executive to make decisions on export arms licensing, privy to information that is simply not in the public domain. It has the advantage of intelligence sharing by the states concerned. In this respect, as in that 2023 judgment—which referenced the assessments of the United States that were a factor in the Government's decision-making process vis-à-vis Saudia Arabia—we have had clear indications from the United States that, under its assessment, Israel has not violated international humanitarian law. Indeed, at the press conference in Washington, the Foreign Secretary echoed a very similar assessment.

With respect to the very tragic incident involving World Central Kitchen, it is extraordinary to hear it described as a "deliberate attack", when Israel has been abundantly clear about the mistaken identification and the regrettable mistake of that strike. This unfortunately happens with all law-abiding states. One only needs to think back to a recent, very well-publicised example in 2021, in the context of the evacuation of Kabul, and the US strike on an aid-worker and his family. It is not the case, and there is no evidential basis to suggest, that Israel's approach has involved a lack of discrimination. It is quite the contrary. Israel's consistent upholding of international humanitarian law—the principles of necessity, distinction, proportionality and precaution—have been the subject of detailed analyses through past conflicts, especially in the context of the High Level Military Group, and I believe the Committee has already been referred to its past reports. Also, in the context of the current conflict, that must be discerned from the analysis and conclusions that have been drawn by the Government in this instance.

There are a number of other issues that have been raised. I would stress that the casualty figure inaccuracies are significant because it is on that basis that these conclusions of indiscriminate attacks or disproportionality are being drawn. I am afraid that that is not only legally illiterate, in terms of the proportionality principle in international law, which is not about comparing casualty figures. It is very clearly about weighing the anticipated, direct and concrete military advantage of a strike against the anticipated collateral damage. It is an intention-based analysis, not an effects-based analysis. All of these misrepresentations of international law are essentially feeding the mispremise upon which these conclusions are being drawn. Likewise, reference to famine has been made. As of last

night, there were 650 lorries of humanitarian aid, post-inspection by Israel, that were awaiting distribution on the border, inside Gaza. Since the start of this war in October, there have been 24,018 lorries of humanitarian assistance delivered, which equates to 449,230 tonnes. By the World Food Programme's estimates, that is three times as much—

Ian Lavery: Chair, this is not anything at all to do with the question I asked, by the way. It is nothing at all to do with the question that I did ask.

Q15 **Chair:** Lord Ricketts, I think you were just indicating—there is a question for us, given the arguments that you have heard, as to how in Government this matter was settled in 2014, and how Government should be working today to make a conclusion.

Lord Ricketts: Let me just respond. I am sorry if I am legally illiterate, but when I talk about a deliberate strike on the World Central Kitchen convoy, I mean that there were three vehicles, and images have shown that each was struck with a precision weapon directly on the vehicle. So the Israeli forces intended to attack those vehicles; they clearly did not have accurate intelligence on who was in those vehicles, but that is a pretty critical point. It may well not be the only case.

One of the problems the British Government have here is that it is simply impossible to verify what happens in the tactical engagements that go on constantly in Gaza, often at night, which have been going on for six months. To say with any confidence that anyone knows what weapon was used and whether conditions of proportionality were met is extremely difficult. In most conflicts that I have been involved with, the press have been there—Sky News has been reporting from the other side of the frontline, and incidents have been very carefully documented. That is not the case in Gaza right now, so there is a great deal of difficulty.

On the question of how the Government go about it, some information was disclosed in the submission by the Government to the High Court in December in response to a Campaign Against Arms Trade case. They disclosed that they had set up within the Middle East department in the Foreign Office a process for examining the evidence and drawing conclusions from it.

Q16 **Chair:** We were invited to believe that the Foreign Office did an assessment and sent a recommendation to the Secretary of State for Business, and we are being asked to believe that No. 10 has no input into this decision. I would be interested in what reflections you have, as a former National Security Adviser, on that decision-making process and on whether it is an accurate representation of what could be going on now.

Lord Ricketts: I suspect that the decision-making process has not changed very much since my time in Government—I left in 2016. That is, it is the responsibility of the Business Secretary, or whatever the title of the job of the day is, and their Department to issue licences and to be accountable to Parliament for that. They do that on the basis of advice

from the Foreign Office and the Ministry of Defence, so there is a Whitehall process.

Q17 **Chair:** So no one in No. 10 opines.

Lord Ricketts: I do not recall arms export licence issues coming to me while I was National Security Adviser. If it is a much broader general issue, such as an arms embargo, then certainly it would; the arms embargo on Libya that we introduced in 2011 with a mandatory UN Security Council resolution was clearly a matter that came to No. 10. But decisions on individual arms export licences—"Should we export x or y equipment to that country?"—tend to be made in interdepartmental consultation.

Q18 **Chair:** So the Foreign Secretary will have written a letter to the Secretary of State for Business and Trade and copied in the Prime Minister's private secretary.

Lord Ricketts: Having said, "I have taken legal advice, and my advice is that this is still a legal action," as I understand it. As I say, a bit of detail on the process within Government was disclosed in the Government submission to the High Court in December: there is now an international humanitarian law compliance assessment process within the Middle East department. The text that was published then is clearly not the legal advice, but it shows an indication of the complexity and the difficulty for the Government in writing about this. The letter—advice, I think, to the Foreign Secretary—says, "we are satisfied that we do have sufficient information on compliance to inform our overarching view of Israel's compliance" with international humanitarian law that "the record of compliance does not reveal a pattern suggestive of unaddressed underlying systemic weaknesses which might undermine other material pointing towards an ability and willingness" to comply with international humanitarian law. That is a pretty formidable sentence to submit to the Foreign Secretary.

Q19 **Chair:** It is, and I think your argument is that there is no way that His Majesty's Government could have the information to make that judgment. Is that right?

Lord Ricketts: To be certain about that, no. It is a judgment; I think that is the key word. Clearly the judgment made by Foreign Office lawyers at the moment is that the legal base is there. There is a problem for Government—we have had this in many cases—where they assert and rest on legal advice that they have, but then are unwilling to publish that legal advice. It reminds me a little of the problems when the Government rely on intelligence, but then say, "We cannot publish the intelligence." It is an inherent problem—

Chair: I am going to pause you there, because I am going to bring in Andy McDonald, who will get into some of the mechanics of how these judgments are made.

Natasha Hausdorff: Chair, I am conscious that there is one member of the panel who has actual experience on the ground of these matters—

Chair: Yes, and Committee Members will put questions to the witnesses as they choose when they are asking their questions. Mr McDonald.

Q20 **Andy McDonald:** Lord Ricketts, I want to return to the chronology of advice. Yesterday in court, it was revealed that the Secretary of State for Business and Trade last reviewed and approved arms sales to Israel on 8 April, but on the evidence from that hearing, the Government has not reviewed whether Israel is committing IHL violations since 29 January in the context of export reviews, and it has not received any legal advice on whether Israel is complying with IHL on violations after 29 February. This would mean that the Secretary of State has not considered any violations or atrocities from the last three months in her decision to keep exporting arms to Israel. Given your experience, if there is such a gap in the chronology and the assessment base, is that something that you would think proper in terms of the conduct of the Government?

Lord Ricketts: I assume that the process is a periodic review—

Chair: That is not how it is described. It is actually described as a "continuing review".

Lord Ricketts: A continuing review. We had the Foreign Secretary saying in Washington just last week, "as required by the UK's robust arms export control regime, I have now reviewed the most recent advice about the situation in Gaza and Israel's conduct… The latest assessment leaves our position on export licences unchanged." He doesn't say when that advice was dated, and I have no knowledge—

Q21 **Andy McDonald:** No, that's the point. If it is the case that it hasn't considered any alleged violations or atrocities for the last three months, given that we are told that this ongoing review is on a fortnightly basis, that seems to be entirely inconsistent and unacceptable, does it not?

Lord Ricketts: Well, the Foreign Secretary finished by saying, "as ever, we will keep the position under review," and my advice to him would be to certainly keep the position under review and make sure he has the most up-to-date possible analysis on the basis of what has happened, including—

Q22 **Andy McDonald:** But you would accept that three months ago is not up to date.

Lord Ricketts: Yes, I would be surprised if the last legal advice they had was three months ago, given the intense public controversy about the World Central Kitchen attack and everything that has happened since then.

Q23 **Andy McDonald:** Okay. I will move on to the licensing criteria themselves. The Government says it will not grant a licence for arms exports "if it determines there is a clear risk that the items might be used to commit or facilitate a serious violation of international humanitarian

law". I will pause there, because this is a risk-based environment, not an evidence-based environment, and in terms of the facilitation of serious violations, we are not just talking about munitions and bullets and bombs; we are talking about starvation as well.

On 12 April, the Government referred to a parliamentary statement from 2020 when discussing the question of Israel's compliance with international law. According to that statement, the assessment of clear risk includes, among other things, whether a country has "genuine intent" and "capacity" to comply with IHL. We hear a lot about capacity, but we don't hear in this place a great deal about intent. In terms of that obligation to observe international law, it might be worth reminding ourselves of the four pillars of military necessity, humanity, distinction and proportionality. It is an open question, Lord Ricketts, Lord Sumption and Ms Hausdorff, but what evidence is there that Israel has a genuine intent and capacity to comply with IHL as part of its Gaza operations?

Lord Sumption: The Geneva convention of 1949 forbids indiscriminate attacks on civilians, indiscriminate destruction of civilian property, and destruction of food, water and other facilities necessary for survival, and imposes an obligation to allow humanitarian relief without limit. Those are obligations that, formally speaking, exist only in conflicts between states, which this is not. On the other hand, the same principles are applied as part of customary international humanitarian law. I think the problem is that the methods used by the Israel Defence Forces are necessarily indiscriminate. Essentially, what they are trying to do is to eliminate a needle in a haystack by destroying the haystack. Each shard of grain in that haystack is a human life, so I find it very difficult to see, on the information available in the public domain, how this can be regarded as a proportionate or a discriminate approach.

Lord Ricketts: If you look at the evidence of what has been happening in Gaza, Israel has complete control over access to Gaza by land, sea and air, and therefore it is within Israel's control to facilitate or impede the import of humanitarian aid. We have heard some of the numbers on aid that has been delivered. I don't know how that compares to the counterfactual of what would normally have gone to Gaza before the conflict, but the language of, for example, our own Foreign Secretary or Anthony Blinken, the US Secretary of State, has become increasingly exasperated with Israel's blockage of humanitarian aid. The international community have been forced to the extremities of airdropping pallets of aid into Gaza—by the way, that is an extremely dangerous process, since it can kill civilians—and even the US building a pier to allow aid to be delivered, because Israel has refused to open Ashdod port or facilitate sea access to Gaza.

The behaviour of the western countries shows that they are indeed feeling that Israel has been blocking access. I have already quoted Lord Cameron saying that it is "incredibly frustrating" that Israel is not taking the steps to allow more aid into Gaza amid "a terrible humanitarian situation". That is David Cameron's view, and throughout the time since was appointed, he has been very strong on this point.

As we know, Israel took every step to undermine UNRWA, the UN agency, with a lot of allegations about UNRWA staff being members of Hamas, and it effectively blocked UNRWA operations in the north of Gaza. World Central Kitchen withdrew after the attacks on its convoy. So the distribution of the aid that is piling up outside Gaza is itself extremely difficult. No doubt the situation within Gaza to distribute aid is very difficult.

I think that the evidence shows that Israel's allies have been increasingly frustrated that Israel has not been expediting aid at a point when there is a risk of famine and disease in Gaza, and a lack of water, essential supplies and medical facilities. Otherwise, why would the US, the UK and other western leaders have been speaking in the way that they have been?

Natasha Hausdorff: Mr McDonald, you asked specifically about evidence, and I would like to refer to the evidence that I had begun addressing earlier, namely the 449,230 tonnes of aid. It was asked how this compared with previous lorries of humanitarian assistance entering Gaza. It far outstrips the previous. It is also over three times the humanitarian provision that the World Food Programme estimates is required to feed the entire population of Gaza.

Therefore, we must ask ourselves, "What is the impediment?" Clearly, the 650 lorries that are waiting to be distributed factor into that, but it is also significant that over the last few days the Fatah authorities have been clear that Hamas in Gaza is hijacking aid, depriving civilians of that aid, stockpiling it and selling excess aid on the black market at inflated prices. It has also been accused of killing aid workers in an attempt to generate a humanitarian crisis. You may ask, "Why would it do so?" It is plain that Hamas's only aim in the current circumstances is to survive and to drive up international pressure on Israel, as it has been doing and the comments referred to are indicative of that, to cease its operation in Gaza. That, of course, would enable Hamas to survive and to continue not only to suppress and oppress the Palestinian civilians in Gaza but to fire rockets on to the Israeli civilian communities in Israel. That firing continued only yesterday. That is an important aspect of the evidence that we have: the volume of aid going in and the real reasons why there may still be shortages in Gaza.

The references to some of the legal requirements on aid are also important to be clear about. It was suggested to you that humanitarian relief is required "without limit". That is not correct. Article 23 of the fourth Geneva convention is very clear that the requirement to facilitate aid into Gaza is caveated, so that it is not diverted to enemy forces. In fact, the requirement doesn't apply where aid cannot be successfully provided without diversion. None the less, as in previous conflicts, Israel is going far above the actual requirements on it—

Andy McDonald: I think we have got it.

Natasha Hausdorff: Well, there are a few other matters, if I may. I come back to the casualty figures ratio. This is critical, because it is the basis upon which it seems all these allegations are being levied. The reason why it is important to have an understanding of how badly wrong—fabricated, manipulated—the casualty figures are is that it informs necessarily the casualty ratio that we see in Gaza, as regards other armed conflicts around the world. The UN statistics put the civilian to combatant ratio on general armed conflict at a very disturbing nine civilians to every one combatant. For the United States health authorities in Afghanistan and Iraq it was 3:1 and 5:1. Even taking into account the false figures that I have addressed, on any account, because Israel—

Andy McDonald: I want to bring Colonel Kemp in.

Natasha Hausdorff: Indeed, and I would invite you to do so, because he has clear experience of this, but may I just finish this point? It is one I have begun three times previously. The casualty figures in this war in the context of intense urban armed conflict are unprecedented, at around 1:1. That gives the lie to what we have been hearing about indiscriminate strikes or disproportionality, bearing in mind, of course, that it is not an effects-based analysis but intention.

Andy McDonald: Okay, so there is a tariff of acceptability here, in terms of ratios, and you are saying that figure quoted of 33,000 and rising, two thirds of whom are women and children, is inaccurate and you do not accept it.

Chair: Let's bring in Richard Kemp on that point.

Q24 **Andy McDonald:** I will. Colonel Kemp, with your significant military experience, I would be grateful for your guidance. We have heard about this issue of proportionality. Indeed, the Prime Minister has said that too many people have been killed. I have reminded the panel of the four principles of IHL, with which they are very familiar. Can I ask your opinion as a military operative—a renowned and decorated one at that—on whether the killing of surgeons in hospitals by sniper bullets as they go about their duties, or the dropping of dumb bombs on residential dwellings in pursuit of a military target, is within the bounds of accessibility and proportionality?

Richard Kemp: I am sorry—I think I got the gist of that; my line is not the best. I should just point out that I have been in Israel for most of the last six months, including spending time on the ground in Gaza on several occasions observing the actions of the IDF. I am here effectively as a representative of a kind of think tank called the High Level Military Group, which is made up of former chiefs of staff and senior military commanders from around the world.

Certainly, my direct observations, as well as my analysis of what I have seen in the media and elsewhere, is that Israel is doing all it possibly can to comply with international humanitarian law in Gaza. I have witnessed at first hand exactly the way this has been done. I could, but I will not, spend

your time enumerating all the different measures that the IDF takes to prevent the loss of innocent life on a battlefield. In my own experience of all the different military forces I have been involved with or observed, they are far in excess of what most other armies are able to do.

I will give you one brief example of a case. I was inside Gaza attending a command group meeting made up of three generals and a number of other officers discussing how best to deal with an important Hamas target that was very close to a refugee centre—a school that was being used to house refugees. These military officers spent 20 minutes out of the hour-long meeting trying to work out how best to deal with the target while minimising the loss of civilian life. That is a typical way that the IDF has been operating, quite contrary to the perception. As Lord Sumption rightly said, in some ways it is trying to find a needle in a haystack, but the IDF is extremely careful and, indeed, has lost many of its own soldiers' lives in trying to be very cautious about destroying the other pieces of hay in that haystack before getting to the needle.

Natasha's point about casualty numbers is very important. Our calculation, which is based on the most recent number given by Hamas of around 21,000 civilian casualties and then deducting the IDF's estimate of 12,000 terrorists killed, leaves something in the region of 9,000, maybe 10,000, civilians killed in this six-month conflict. When you consider the complexity of the situation, with Hamas fighters fighting deliberately from within the civilian population, trying to impel the IDF to kill their own civilians, that is deeply impressive. It is a terrible statistic to have to talk of, but it is deeply impressive and, as Natasha said, compares very favourably with the civilian-to-military casualty rates of other military forces, including Britain.

Q25 **Andy McDonald:** You are repeating the point, and of course all those deaths are terribly regretted. We see the pictures of the devastation in Gaza and the physical destruction of buildings. Given your experience, is that more consistent with a casualty death rate of 9,000 or with over 30,000? What does your experience tell you? Secondly, you, like the members of this panel, will have seen those images on social media of IDF soldiers taking great delight in some actions. They have horrified us. Now, that would not be tolerated in the British Army, so why have you got such faith in the IDF to observe those basic principles of international law?

I think we are having difficulties with the connection.

Richard Kemp: I got the gist of that. I have seen some of these images of IDF soldiers delighting in the situation they find themselves in, and of course that is totally unacceptable. But I would disagree that you wouldn't find that in other armies—certainly, we have experienced similar problems with our own soldiers in the British Army, as have the Americans. I would say that, when those events occur, the idea is to discipline the soldiers concerned. They don't, in my view, represent the overall opinion of the IDF. It is individual soldiers misbehaving, which unfortunately is what you get in an armed force. Indeed, the IDF Military Advocate General a few

months ago warned specifically against soldiers making videos of that sort and distributing them, which is deemed to be an offence in the IDF.

Q26 **Charlotte Nichols:** We spoke before about the Government's application of the strategic export licensing criteria having been subject to judicial review, and where these decisions have been taken previously in reference to Saudi Arabia during its military operation in Yemen. I am interested to know from the panel if you believe that recourse to judicial review is the most appropriate mechanism for challenging licensing decisions, and what other options there should be, if any, either for Parliament or for bodies outside Parliament, such as the Campaign Against Arms Trade? I will start with you, Lord Sumption.

Lord Sumption: Judicial review has its limitations because it is not the function of the court in judicial review to substitute its own judgment for that of the responsible Minister. I think judicial review has an important part to play, especially in cases where it is being alleged that the Minister has taken a perverse line. Actually, by far the most important restriction on Government, in my view, is its responsibility to Parliament, which highlights the significance of the deliberations of your Committee.

Natasha Hausdorff: I think judicial review is appropriate, but ultimately the check of judicial review is whether the proper process has been followed. Ultimately, the question of whether Israel is complying with its international humanitarian law obligations is best assessed by the Executive, and that was made clear by the divisional court's judgment in the Campaign Against Arms Trade case last year. That is because an assessment such as the one we have been discussing involves judgments about targeting and the appropriateness of targeting, and the people with the best expertise on those issues reside, most likely, in the MOD, and perhaps also the Foreign Office. They are the officials who have been conducting, in conjunction with lawyers, the assessments that the Government have been relying upon. I would highlight paragraph 166 of the divisional court's judgment last year, which clearly spells out the division of responsibilities.

What we have seen, unfortunately, in a number of judicial review applications that have been brought on these issues is an attempt to put forward a correctness review, as opposed to the proper process of judicial review, which is to assess the process by which Government officials and the Executive have conducted this. I will give you one example to highlight why it is so important that these assessments are made by experts with access to the closed material that those bringing the claims simply do not have. Arguments such as, "When one looks at the physical destruction of buildings, there is only one conclusion that can be drawn," lead to a misinformed basis upon which to draw conclusions and base analysis. Unfortunately, it fails to take into account the reasons for such widespread destruction—namely, that Hamas in Gaza have been using every second civilian house as part of its terror infrastructure, and have been turning mosques, schools and hospitals into terror bases—

Q27 **Charlotte Nichols:** I am trying to keep this just to the judicial review

itself, rather than a broader argument.

Natasha Hausdorff: Of course, but that is an example of assessments that are, unfortunately, conducted without proper information on the basis of often false information in the public arena, which have clearly informed some of the applications that have been brought. Thus far, I think the court has been dealing with them appropriately and relying on the information provided by the Government, often, unfortunately, in closed proceedings. That leads on to an assessment of whether there is any alternative, and Parliament has been suggested as an alternative.

We run into the difficulty that these decisions are necessarily based on sensitive intelligence that is shared—in this case, of course, by Israel—and that would not perhaps be as comfortably shared if the intended purpose was that that information would be provided outside the Executive. Unfortunately, judicial review is perhaps the only appropriate mechanism for the kind of analysis we are considering.

Charlotte Nichols: Lord Ricketts?

Lord Ricketts: I disagree on that, because I think it is unsatisfactory that a decision should be taken just by the Executive on the basis of material that cannot be made available to the public in an area as important, sensitive and controversial as this. I rather agree that judicial review has its place, but the real place to hold Ministers to account is here in Parliament, because these judgments are all made in a broader context. They all are judgments that require political judgment of complex facts. Even if all the complex facts cannot be made available to Parliament, at least the Minister can be held to account for the judgments that he or she has made. That is where we have come to on issues to do with the use of force and going to war. We have got to the point where it is now pretty well customary to publish at least a summary of the legal advice. For the Iraq war, of course, the full legal advice was produced in the end, but only two years later.

To reinforce the point, I think this Committee has an important role in holding Ministers to account where they have made judgments, as Lord Cameron and the Business Secretary have done in relation to Israel. They come here and explain, as far as they can in public, the basis on which they made that judgment. In the end these are political judgments, so more parliamentary scrutiny would be right.

It is also worth pointing out that the criteria for arms export decisions are now formidably long and complex—they run to many pages—so making a judgment on them is something that Ministers have to do against a very complex background, and I think parliamentary scrutiny of that is probably the best way to give the public confidence that it has been done as well as can be expected in the circumstances.

Q28 **Charlotte Nichols:** Thank you. I want to very quickly drill down into that point, because that is the crux of what we are trying to work out today, following the Committees on Arms Export Controls clearly not functioning

in the way Parliament would want them to. What is the role of this Committee, the Foreign Affairs Committee and other in holding Ministers to account for decisions around arms export licences? Natasha made a very worthwhile point: there are certain things you would not necessarily want to be entirely in the public domain, but there are still ways for Parliament, in closed sessions, perhaps with Ministers or other officials, to have a greater degree of scrutiny.

Reference has been made to lawfare, and the legal versus political distinction on some of these arguments. Do we get ourselves into a territory of arguing about whether we can, rather than whether we should, make decisions around this?

Lord Ricketts: Ministers, in the end, have to make decisions and then be accountable to Parliament for them right across the board—that is the way the system operates. They have to make judgments about how reliable that evidence base is, and they risk being taken to court if they do not have a firm legal base for the decision they have taken. But it seems to me that arms export licence decisions are no different from many other decisions made in foreign policy, defence policy, national security policy or even intelligence policy. The Intelligence and Security Committee manages to hold Ministers to account in an area that is highly sensitive and where much of the information cannot be disclosed. I think the process of parliamentary scrutiny is good.

Lord Sumption: I agree with what Lord Ricketts has said about the centrality of the political judgments involved, but it is not just a political judgment. The whole basis of the export control criteria for the export of arms is essentially a moral judgment about what the United Kingdom should be seen to be doing. It seems to me that there is a danger of allowing this to be too much taken over by specialised knowledge and expertise when, at the heart of it, essentially, is a moral judgment, and Parliament pre-eminently exists to impose upon Ministers its collective view as to what morality requires.

Natasha Hausdorff: There is a danger here—and to a certain extent it seems to me that the answers so far have been somewhat contradictory—in that the criteria, as they have been revised and set out, incorporate the legal considerations, the political considerations and the sensitive diplomatic foreign policy considerations. That is probably why the divisional court, in paragraph 34 of its judgment last year, highlighted that, "Judicial review is not, and should not be regarded as, politics by another means." Clearly, the courts are alive to these issues of lawfare that you have raised, but to suggest that these are decisions that should be led by purely moral assessments is particularly dangerous because these are inevitably predicated, as they have been in the public debate so far, by misinformation and by false, inaccurate statements that have been put into the public domain that do not bear scrutiny. It is Government that is in a position to assess those properly, because it is provided with a counterfactual, and the evidence in this instance from Israel is plainly either not in the public domain or, in the case of that which has been made public, is not being given nearly the amplification that the false

allegations have. Therefore, I think the courts so far have been expert in navigating what is a check on the Executive, and they are adopting the appropriate process.

Q29 **Jane Hunt:** This Committee is about trade, and I am going to ask all four of you a specific question about trade, starting with Lord Ricketts. Do you think that the comment that Lord Sumption made in the opening remarks is right? In terms of our trade being relatively small, he said something along the lines of us needing to do what we can, even if that is not a great deal. Is that true, and when is it acceptable to trade in arms?

Lord Ricketts: I think it is acceptable to trade in arms when the arms export licences meet the criteria set out by the Government. The UK does £70 billion-worth of arms exports a year, and they do that in accordance with the criteria. It is an important part of British industry, and it creates a lot of jobs, as your Committee will be very well aware. Arms exports are not in themselves wrong. The problem comes when the regimes using the arms are potentially going to use them in a way that contravenes their international humanitarian law and therefore our obligations. We looked at that very carefully over the case of Saudi Arabia, of course, in the Yemen war in 2015. There was a passage, via the High Court, in that, and the Government went back and revised its criteria for assessing them and then continued. I think that is the well-established process.

In the case of Israel, it is true that we are not a major arms supplier; I think the total was £42 million for the last recorded year, 2022. That is set against the many, many billions that come from the US, including the billions voted yesterday by the Senate. Therefore, you could say it is a gesture. I would say that the issue is not so much the volume; it is whether the Government are comfortable that the criteria are being met. If the criteria are not being met—even if only a very small part—then we should have the courage to stand up for our principles and accept that.

The point has also been made, of course, that Israel might retaliate against the UK by restricting Israeli arms sales to the UK. I am not clear, actually, about the extent of Israeli arms sales to the UK. I have looked at the Israeli websites, which disclose the global totals of Israeli arms sales but not the individual details, so I do not know that information. In any case, I think if we have a principle, we should stick to our principle. If the Government did decide that the international humanitarian law compliance issues were not being met, they should have the courage to go ahead and suspend the arms sales. For the moment, they have not done that.

That is the policy process that I would see. The Department for Business and Trade will be agreeing many arms export licences a year in line with the criteria, not arousing controversy. There are just some cases where much closer scrutiny is required.

Q30 **Jane Hunt:** Thank you very much indeed, Lord Ricketts. Lord Sumption, did I quote you correctly, and are you happy with what Lord Ricketts just said?

Lord Sumption: Yes, I would have given exactly the same answer as Lord Ricketts has just done, from a legal point of view. The arms control criteria, as stated to Parliament, broadly correspond to the international obligations of the UK under international humanitarian law. The question, therefore, is whether we are applying them, not whether we have got the right principles.

Jane Hunt: Thank you very much. Natasha?

Natasha Hausdorff: I certainly agree in terms of the application of the criteria and the applicable international law. What would the implications be, and what in fact are the implications—despite the Government's assessment so far, consistent also with the United States, that Israel is complying with international law—of the sorts of calls for suspension of arms? Well, I think there are significant political and diplomatic ramifications.

We have seen, only two weekends ago, an unprecedented and direct attack by Iran on Israel, which many have, I think correctly, suggested has been as a response to the sort of encouragement that Iran has taken from the rhetoric from the United States that was referenced earlier—it has also, in part, been coming out of the United Kingdom—vis-à-vis the application of international law in Israel's continued operation in Gaza. That has very real consequences for how emboldened Iran has felt. When we bear in mind that its operations so far have been through its proxies—Hamas, Hezbollah, the Houthis in Yemen, and proxies in Syria and Iraq—the significant development that we saw of a direct strike against Israel in that fashion is very relevant. The consequences of the, unfortunately, uninformed debate and calls for suspension of arms, despite those criteria having on no account been met, are very dangerous, I would suggest, for the UK also as a result.

Lord Ricketts: May I just respond to that? It seems to me a rather strange argument to make that Iran decided to attack Israel because of arguments made in the US and the UK about potential suspension of arms sales. I think a much more likely reason that Iran attacked Israel was because Israel attacked the Iranian consulate in Damascus and killed 13 people in the Iranian consulate in Damascus. If it had not done that, I do not think Iran would have attacked Israel.

Natasha Hausdorff: Well—

Chair: I am going to avoid us going down that particular line of questioning.

Jane Hunt: I did not want to start a political argument; I was going to talk about trade.

Natasha Hausdorff: I do appreciate that, but the Committee has just been told something that I am afraid is untrue.

Chair: The Committee is perfectly capable of making judgments about the evidence that we receive. Jane, do pursue the question.

Jane Hunt: I turn to Colonel Kemp.

Richard Kemp: The extent of British arms trade to Israel is extremely minor: it amounts to something like less than 0.9% of Israel's total arms imports. We provide no weapons to Israel, as I understand it; we provide only technical components to some systems that can be used for weapons or for dual purposes. Much of that is used in Israeli weapons that are exported to other countries for their own use, so it is very, very minor. On the other hand, the arms imports to Britain from Israel amount to about 2.7% of our total global arms imports. They include some very significant military hardware, including tank protection, something called the Trophy system, anti-aircraft defence systems, drones and some other things that are extremely useful for our armed forces.

Of course, as Lord Ricketts, I think, said, it would be wrong for us to base our decision on exporting arms to Israel purely on what we get in return, and the decision on exporting arms must be based on all the criteria we have been discussing today. But as I mentioned before, I have seen absolutely no evidence at all of deliberate breach of international humanitarian law by Israel, and certainly not anything approaching genocide. I believe that we have a moral, and perhaps legal, obligation to protect countries against genocide under the genocide convention. In this case, in my estimation we do not have a country—Israel—that is coming anywhere near committing genocide or attempting to, but we do have a country—Israel—that is defending against genocide.

On 7 October, military forces from Hamas, from Gaza, launched a major operation, deploying more troops against Israeli civilians and military than we sent to the Falklands in the Falklands war. It was a very, very significant attack. Hamas's charter spells out its determination to commit genocide against Jews and Israelis, and its actions do the same. Its leaders have repeated time and again their intention to pursue this. Unless we can be absolutely certain that Israel is breaching the law, I believe we should do all we can to support Israel in defending its own people against a genocide against the Jews in Israel.

Jane Hunt: Okay. Again, this Committee is about trade, but thank you very much indeed.

Chair: I am going to speed through the balance of questions here. Mr McDonald?

Q31 **Andy McDonald:** Going back to this business of the relatively small amount of exports going to Israel from this country—£42 million in 2022 and 114 standard individual export licences in 2022. Lord Ricketts, Lockheed Martin is the lead contractor for the F-35, which is built through an international coalition, with 15% of the value of F-35s made in Britain. Lockheed Martin itself said that "the fingerprints of British ingenuity can be found on dozens of the aircraft's key components".

The intellectual property may have gone, but is there not still an obligation on the United Kingdom, with reference to that significant contribution, to

think about steps to demonstrate that commitment? Even though it may not have a particular impact now—it may be beyond a demonstration—is that not in concert with the moral obligations of this country? Is that not a valid argument to make?

Lord Ricketts: If I understand your argument, you are saying that the UK should be prepared to take a view on how F-35s are used after we have supplied components for them and after they have been delivered by Lockheed Martin to third countries. That gets us into pretty difficult territory, because there will be British components in very many arms systems around the world, with many made by the US. The capacity of the UK to dictate how a weapon is used that has some components from the UK in it is quite limited, actually. I am not sure that is going to take us very far.

Q32 **Andy McDonald:** Lord Sumption, is there any obligation upon us to acknowledge the contribution we have made to this facilitation here and to take steps in response, be that through suspension of arms sales or something more nuanced, short of such a suspension?

Lord Sumption: Legally, we have to do what we can. We are not required to do things that are likely to have no or negligible impact, but we are required to do what we reasonably can. That includes assessing the effect that our decisions may have on other people who supply arms to Israel.

Q33 **Andy McDonald:** Ms Hausdorff, am I right to assume that you think we should not trespass anywhere near issues of arms suspensions?

Natasha Hausdorff: These matters are under consideration, but again the concern is that this analysis—or even this discussion—is being conducted on a false premise, which is that Israel is breaking international law.

Morality has been mentioned a number of times in this discussion. The point that Colonel Kemp makes is significant: there is an entity that has been subject to acts of genocide by Nukhba forces, the Hamas terrorists, and other terrorists who crossed the border on 7 October. If we are to talk about the UK's moral approach and the moral imperative under the genocide convention, with the responsibility that we have to prevent and punish genocide, the balance weighs entirely in favour of indisputable acts of genocide, documented by Hamas on GoPro, and as promised by its leadership again and again. The balance of morality falls squarely where the balance of law, politics and diplomacy have, which is continuing to support Israel as an ally of the United Kingdom in this fight against genocide.

Chair: I want to move us on, if that is okay. Super-brief please, Andy.

Q34 **Andy McDonald:** I just wanted to ask Lord Sumption whether he agrees that, if we are to make such judgments in this place, we would be better served by having sight of the Government's legal advice, albeit with matters that will cause difficulty redacted. Surely, if we are to make an informed statement or to come to a judgment in this place, we should

have sight of that advice.

Lord Sumption: I entirely agree. I have expressed my own view of the law, which is based on pretty careful study of the legal materials, but I would be the first to accept that lawyers are not infallible and that another point of view would helpfully inform not only the Committee, but those like me who have expressed opinions on the subject.

Chair: Witnesses have been very patient with us, but I am going to speed us up.

Q35 **Ian Lavery:** Before I ask Colonel Kemp a question, I want to say that I am slightly perplexed by Ms Hausdorff's contributions this morning. She said that there has been a raft of false information, extreme inaccuracies, mixed premises, misinformation, false information, factually incorrect information, untrue information and information given on a false premise—that is just a smattering of what has been said this morning. Will she give the Committee some advice? Who would be best to give a non-partisan, authoritative and accurate voice on this issue?

Natasha Hausdorff: The detailed response document that I submitted to the Committee goes through, on the basis of open source information, dealing with the inaccuracies that have been presented in the open correspondence to the Prime Minister, referred to as the Gaza letters. I refer the Committee to that analysis.

Other than that of course, it is the Government, the Executive, that is in the best position to draw those conclusions, on the basis of the advice that they have been given, because of—as previously addressed—the information that has been provided to it. In this instance, that is provided by Israel directly—intelligence, closed information, that the courts have previously considered in the Saudi Arabia case, provided by Saudi Arabia.

It did seem that the Gaza letters were encouraging a change of policy by the Government, predicated on that false information. If that is to be taken into account in any respect by the Committee, I encourage it to consult the detailed response document carefully, to understand where information is deeply misleading.

Q36 **Ian Lavery:** Colonel Kemp, what is your response to the suggestion that there might be a reciprocal move by Israel against the UK following a potential ban of UK arms exports? Would that not be much more significant because of the possible impact on UK-Israel defence co-operation and intelligence sharing? What would your view be of that?

Richard Kemp: I mentioned in my last answer the significant difference in arms trade between Israel and the UK. I would say that we are, in terms of military effect, certainly the net beneficiaries of that, in terms of our armed forces and Israeli technology supplied to us. If we were to cease arms trade with Israel and they were to reciprocate, we would undoubtedly be the losers in that.

In intelligence terms, I am somewhat out of date because it has been a number of years since I worked for the Joint Intelligence Committee. But

in my capacity there, I was well aware of very close intelligence relationships between Israel and the United Kingdom, from which the UK and Israel both benefited.

It is certainly my understanding, from media reports in recent years, that many British lives have been saved by Israeli intelligence, both here in the United Kingdom and in places like Afghanistan and Iraq. If an international dispute between the UK and Israel developed into Israel considering ceasing providing intelligence to us, I think we would be at a huge disadvantage, and potentially there would be a loss of British lives.

From my knowledge of the way that the Israeli Government and intelligence services operate, I think that, even if there was a real breakdown in relations between Britain and Israel, it is highly unlikely that Israel would cut off intelligence sharing with the UK. Indeed, Israel shares very important intelligence even with a number of other countries around the world that are considered its enemies. I think there would be a negative impact for us, but I do not believe that it would extend to a breakdown of intelligence sharing.

Q37 **Ian Lavery:** Lord Ricketts, do you agree?

Lord Ricketts: Yes, I agree with Colonel Kemp on that. I think it is uncomfortable to make the argument that we could not think of applying the criteria in our own arms export licensing because of concerns about reciprocal implications from the other country, but what Colonel Kemp says is just an example of the complexity of the decisions that Ministers have to make.

It is even longer ago, Colonel Kemp, that I chaired the Joint Intelligence Committee and was NSA, but I endorse what you say about the importance of UK-Israeli intelligence co-operation. I also agree with you that it would be unlikely to be put at risk, particularly where it came to risk-to-life intelligence, by a political dispute about the supply of a relatively small amount of arms. However, it is another reason for having parliamentary scrutiny of these very difficult decisions.

Q38 **Charlotte Nichols:** Export controls can be regarded as national security tools, for example in terms of non-proliferation, as well as foreign policy, diplomacy and international trade. Again, we come back to this discussion around what the UK can do versus what it should do. I note that the letter from UK Lawyers for Israel of 8 April 2024 states that "the UK has no obligation under international law to", before continuing—again, we are in the space of what the UK is obliged to do versus what we can decide to do. I am interested in drawing out that distinction.

Lord Ricketts, during your tenure as National Security Adviser, did these export control discussions cross your desk? Where was the balance in the decision making between what the UK is able to do, what it is obliged to do, and what it might choose to do for other considerations—political versus legal, for example?

Lord Ricketts: I don't recall individual arms export licence decisions coming to me and the Prime Minister during in my time as National Security Adviser from 2010 to 2012. Perhaps there were not any particularly controversial ones at that time. They were handled through the routine that we have talked about: the Trade Secretary consulting the Foreign and Defence Secretaries.

The issue that did come was the UN arms embargo on Libya, at the time of the Libya conflict, which was authorised by several UN Security Council resolutions, but that is a bit different from individuals. It does show that the issue of arms exports is a national security tool that can be deployed. Embargoes are often applied—of course, they are applied to a number of countries at the moment.

There is one point that, again, will be useful when the Committee comes to scrutinise these things. In the case of Libya, it was a very comprehensive arms embargo resolution. When we found that the situation in Libya had changed, a new regime, the national transitional council, had come in and we needed to be able to supply personal arms to UN staff and humanitarian staff, so we had to go back and change the resolution because it ruled out any supply of any arms in any circumstances to anyone in Libya. So the framing of the resolutions can need adaptation, but in my experience it is rare that individual arms export licences would get to the level of the Prime Minister and the National Security Council.

Q39 **Charlotte Nichols:** Thank you. Natasha, the discussion has been about whether the UK is obliged to suspend arms sales, in many respects, but we are not—I suppose the counterargument is that we are not obliged to trade with Israel, either. So where would you put the balance there?

Natasha Hausdorff: The UKLFI response dealt with the question of a legal obligation, because what the first letter had put forward to the Prime Minister was that the UK had a legal obligation to suspend. That was incorrect, not least because of the initial discussion we had on the question of plausibility, but also under, for example, the UN Security Council resolution that was being advanced, which formed a political resolution, not a legal one. So there is no legal obligation.

It then comes to a consideration of all the issues that have been addressed so far in relation to supporting a war that Israel is fighting against Iranian proxies. The UK has done so not just in the context of the arms that it has been exporting—the co-operation we have already heard about; the very limited export from here—but in the context of what we saw the RAF doing when it was deployed to defend Israel against Iran's direct strikes some two weeks ago. All this certainly comes into play, because it is important to factor in that this is a war that Israel is fighting against Iranian proxies not just on its own behalf, but on behalf of western liberal democracies like the United Kingdom and the United States.

The aid package that was referenced, which was passed by an enormous majority yesterday in Congress, is also indicative that the United States

recognises, despite some of the troubling rhetoric that we have heard, which is out of sync with the updates that we have had from COGAT, the unit of the IDF whose sole purpose is to provide humanitarian assistance for civilians—despite the fact that we have heard some concerning rhetoric, the position adopted has been robustly to support Israel: not just fighting the genocide referenced earlier, but fighting on our behalves, because Iran and its proxies make it clear that while they are starting with Israel, they don't intend to end there. So if we are looking outside the legal obligations as to the balance of the United Kingdom's interests, the answers on that, I respectfully submit, are pretty clear also.

Q40 **Charlotte Nichols:** Lord Ricketts, do you think that we could use our export controls in a more strategic advantageous way, outside the legal argument about whether we can? Again, I am back into the "should" argument, I suppose.

Lord Ricketts: I think the debate we have had for the last two hours shows the difficulty of using arms export licences as a political tool or a "strategic" tool, to use your word. In the end, it is essentially a political judgment made on the basis of legal evidence, and I think it is best to leave it like that.

You are right that the whole issue of arms sales is part of the foreign policy of the UK towards a particular country. For many years, it was very controversial with regard to Saudi Arabia. There were great concerns about what Saudi Arabia was doing in Yemen. Then, a few years later, we find that the UK is part of a coalition striking Houthi targets in Yemen because the Yemeni militias are attacking shipping.

So it is a very, very complex world. Things do change. I think it is best to leave arms export licensing where it is—as a political judgment made on legal criteria as best as Ministers can and subject to debate, scrutiny and challenge in Parliament and, if necessary, in court—and not try to use it for wider leverage purposes, which I think gets more and more difficult.

Q41 **Charlotte Nichols:** Thank you. Lord Sumption, is there anything that you would like to add?

Lord Sumption: The obligation, legally, is to do what we can. That undoubtedly leaves a margin of judgment to the UK as to what the best way of doing that is, but it is clear that they are obliged to do something. Arms sales have this special feature, which is not present in other kinds of sanctions: they are concerned with materiel that is directly being applied in the military policies that, at least arguably—I think very probably—break international humanitarian law.

Q42 **Antony Higginbotham:** I want to follow up on some points that Charlotte Nichols and Andy McDonald were talking about earlier, and then I will move on to another point. This is on the strategic approach to arms exports and whether there is any risk there. Lord Ricketts, I will address this to you, if that is okay, because I think it is probably most pertinent to your experience.

Andy McDonald mentioned earlier that the F-35 has component parts made here in the UK, and we were talking about the difficulties that we would have if we were to try to extrapolate from that end use. I was reminded of a case with Germany a year or so ago, with the export of Typhoon to Saudi Arabia. Is there a danger that, if we go down that route and apply more discretion, rather than the published criteria, we become a less reliable partner when we are trying to come up with international consortia to do some of these things that we just cannot do on our own?

Lord Ricketts: I think you raise a very important point, because as arms become more and more complex and expensive, it will be the case more and more that they are produced by consortia of countries. The Typhoon example is a very good one, and there are others in the land-vehicle area as well, I think. I would not want to see the UK routinely taking a different position from its allies on how weapons that include UK components could be used. I think it is important that we have a collective approach to that.

Therefore, I think that you are right to highlight the point, but if you are going to join a consortium of countries to manufacture an advanced weapon, you have to have confidence in your partners' arms-export policies, so that you do not find that arms including some of your components have been delivered to countries whose human rights records or international humanitarian law records are bad. I think that we discovered that Germany's tolerance level was probably lower—they were more sensitive to the use of the Typhoon aircraft than perhaps the US and the UK and other members of the coalition.

You have to have a hard-headed, pragmatic judgment and base your coalitions of producers on judgment and trust that countries will have a similar approach to arms exports as you. I think that that has largely been the case. We have been involved in many collaborative arms-development projects over the years, and many of them have been exported, and the cases where we have had serious difficulties with our partners have been very limited. So, it is an important issue of principle, but I think that, in practice, it is capable of being resolved.

Q43 **Antony Higginbotham:** When you say that there is a limited number of examples where it has been a problem, is that because we try to anticipate it very early on, or is it because we only really come up with programmes with allies that are of such a strategic nature that we can broadly get it, or is it something else? And how do we do that moving forward?

Lord Ricketts: The allies that we work with on the major weapons systems tend to be either the US or some combination of European countries—the French, the Germans, the Italians—for fighter aircraft, and I think that, in practice, it has largely been the case that we have had a similar approach to who we are willing to supply those arms to. Germany had a lower tolerance, particularly for Saudi Arabia, but the UK and France have tended to see very much eye to eye. For example, we have taken the same approach to the supply of Storm Shadow—or, as the French call it,

SCALP—to Ukraine. That was a highly sensitive decision, but the UK and France had no difficulty in taking it together.

So, yes, I think it is because we ally with countries to make these advanced systems where we have confidence that they will have a similar approach to exporting. That will also be more and more the case in the future, because more and more of these platforms will have to be exported in order to be viable.

Q44 **Antony Higginbotham:** I will move on to my next topic. We mentioned this very briefly earlier, but, earlier this month, we saw a direct attack from Iran on the state of Israel. I am going to ask each of you whether it has changed your positions, and whether you have reflected on your original positions, or what was in your original letters. I am particularly mindful of the comments that the Foreign Secretary made a couple of weeks ago, where he said that imposing an arms embargo on Israel would have looked "ridiculous" in the light of the Iran attack. What are your reflections, particularly because I am looking at the licences we have granted for export of items? Colonel Kemp, you are right that most of it is component parts. The biggest component part, from what I can see, is for military radars, which one would assume have played quite an important part in Israel responding to that attack.

Lord Ricketts: I do not think it has changed my mind, no. I still think it is right that we should apply the criteria we have set out rigorously. I do not personally think it is ridiculous to have taken that position in the light of the concerns that I and others have expressed in Gaza and then find that, when Israel was attacked—the UK had capabilities in the region. We were part of an existing operation overflying Iraq and Syria—Operation Shader—we were in a position to support Israel in its right of self-defence and we did so. I do not find those two positions incompatible at all, actually.

Lord Sumption: Neither do I. The Iran attack has not made any difference to the views that I signed up to in that letter, essentially because I do not think anybody denies the right of Israel to take steps for its own protection. The problem is the methods and the indiscriminate quality of the way that they have responded. That seems to me to be a factor that is completely unaffected by the fact that Israel is itself under attack from another quarter, namely, Iran.

Natasha Hausdorff: It is very interesting that we have seen such a focus on 330 drones, cruise and ballistic missiles launched directly at Israel last week, but the 12,000 rockets fired at Israel over the last six months have seemingly escaped public notice. That is 9,100 from Gaza targeting civilians in Israel, 3,100 from Lebanon by Hezbollah targeting civilians in Israel and 35 from Syria, all targeting civilians in Israel. So no, the Iran strike has certainly not changed the opinion, I think, of those who have been aware for a long time of the Iranian regime's genocidal intent to destroy Israel.

In respect to the previous reference that that was a response to a 1 April attack, it is important for the record to note that the alleged strike by Israel on 1 April, which is not one that it has acknowledged, was not against a consulate but a building next to it. Anyone who has seen images from the ground will note that the consulate remains intact. It was an annexe, which, by all accounts, was being used by very senior IRGC generals to continue to orchestrate the attacks that I have just outlined against Israel.

In that respect, the Prime Minister's remarks are interesting, because there has not been a significant change in the approach that Iran has taken, other than rather than relying only on its proxies for its genocidal war against Israel, it has taken the opportunity to engage directly. As I said earlier, there are many that argue that that is a result of the very concerning rhetoric against Israel, which has served to encourage the Islamic regime—I have said Iran and I must apologise and clarify that it is the Islamic regime and not, of course, the Iranian people, who are subject to just the same oppression and brutalisation, unfortunately, that the Palestinians have been suffering under Hamas in Gaza.

Q45 **Antony Higginbotham:** Thank you. Colonel Kemp, you will have much better knowledge of the countermeasure systems used to repel that Iranian attack. If there were not an export of radar components, would it have made a difference?

Richard Kemp: A key element of repulsing that attack was detection of the missiles in the air, which enabled British, American, French and Jordanian, as well as Israeli, countermeasures against it. I do not know whether our specific radar components were used, but they will have almost certainly made a contribution to that—*[Inaudible.]* The same goes for our components that we provide for the F-35 aircraft that were used by the Israelis both in repulsing the attack and, as I understand it, in making their very limited reply to that attack.

One thing that we might want to observe is that our participation, both in providing components and in flying RAF aircraft in defence of Israel, was noted by not only Israel but the Arab countries in the region. I think our standing would have increased among Arab nations as a result of that, because they have a deep fear of Iran as well as fear of Hamas. *[Inaudible]* countries are among the greatest cheerleaders for Israel in the war in Gaza, because they understand that Hamas, as an Iranian proxy, endangers them as well. It certainly did not change my perception of this whole picture, and if anything, I think it increased British prestige.

Chair: That concludes this panel. Thank you to everybody for your patience. We have run for nearly two hours, and you have provided your evidence in a calm, methodical and forensic way. We are incredibly grateful to you. You have done a great service to Parliament as we try and ensure that the House is well informed on the arguments in this debate. We would be grateful if on reflection after the panel you felt free to supply us with any further written information about points that you feel you didn't get across or observations on other evidence that you have heard.

We will go forward to ensure that much of this material is then used in our accountability sessions with Ministers.

Sitting suspended.

On resuming—

Chair: Welcome to the second panel of the Committee's inquiry into arms exports to Israel. Today we had hoped that we would be able to hear from Ministers in the Department for Business and Trade and the Foreign Office. As the Committee knows, we invited Ministers 20 days ago, and this was the first hearing after recess that we were asking Ministers to come and join us for. We did not hear from Ministers over the course of Easter. We therefore chased both Departments last week and received a reply on Friday that they were not able to be with us today despite 20 days' notice.

I have, however, received a message from the Deputy Foreign Secretary this morning apologising for his Department, and making it clear that the Foreign Office will participate at the earliest opportunity. I have to tell the Committee that, to my regret, we have not had any messages from the Department for Business and Trade, which has policy responsibility for arms exports strategic licences.

There are a number of questions that have emerged from our evidence that we would have put to Ministers. For example, how do Ministers interpret the ICJ's rulings on plausibility, and what would the implications be for strategic export controls? What is both the evidence and the reasoning behind the judgments that have been made about whether Israel has the intent and capacity to comply with international humanitarian law? The last legal assessment, as we heard, appears to have been at some point in December, after the Court filings that were published from 8 December. The Secretary of State decided to keep open licences on 18 December, but we do not know what subsequent assessments or judgments have been made. We do not know what assessments have been made since the events of 9 April. We do not know why just two factors—intent and capacity—and not others are considered when judgments are made about whether a clear risk is present. We do not know whether real-world outcomes could or should be considered.

We do not know whether Ministers are aware of negligence, of patterns of noncompliance or of a lack of commitment that might undermine the judgments that they have made. We do not know what examples they have considered, and we do not know what examples they have dismissed in their reasoning. We are not clear about who is among the decision takers, and we do not quite know what role is played by the Attorney General or No. 10.

We do not know yet definitively whether we can see the legal advice. There is a precedent for publishing legal advice, in 2018 on the EU withdrawal agreement, and in relation to action in Syria. Finally, we have to note that close allies such as Canada, Japan, Spain and Australia have made different judgments to us. They have not kept their open licences

open, and we need to know why our Ministers have taken a different position.

Those would have been the questions that we would have put to Ministers among others, but they are not with us today. In line with the guidance of the Deputy Speaker yesterday, I will raise this question with the Leader of the House tomorrow at business questions.