



# Business and Trade Committee

## Oral evidence: UK arms exports to Israel, HC 690

Tuesday 21 May 2024

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Business and Trade Committee Members present: Liam Byrne (Chair); Antony Higginbotham; Ian Lavery; Julie Marson; Andy McDonald.

Foreign Affairs Committee Member present: Brendan O'Hara.

International Development Committee Member present: Chris Law.

Questions 46 - 117

### Witnesses

**I:** Kate Joseph, Director General, Economic Security and Trade Relations, Department for Business and Trade; Alan Mak MP, Minister for Industry and Economic Security, Department for Business and Trade; and the Rt Hon Andrew Mitchell MP, Deputy Foreign Secretary, Foreign, Commonwealth & Development Office.



## Examination of witnesses

Witnesses: Kate Joseph, Alan Mak and Andrew Mitchell.

**Chair:** Welcome to this afternoon's special session of the Business and Trade Committee in which we are scrutinising arms exports to Israel. I am very pleased to welcome colleagues from the International Development Committee and the Foreign Affairs Committee.

Ministers, I know that you will need no reminding of this, but for the record you will be aware of the resolution of the House on 12 August 1947, which says "that the refusal of a witness before a select committee to answer any question which may be put to him is a contempt of the House and an infraction of the undoubted right of this House to conduct any inquiry which may be necessary in the public interest". You will also have tattooed on your minds paragraph 1.3b of the ministerial code: "Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments and agencies". The ministerial code also states: "Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest". You will know, too, of the High Court decision on 10 July 2017, which reads "that there is an expectation, consistent with democratic values, that a person charged with making assessments of this kind"—such as decisions on arms export licences—"should be politically responsible for them". The political accountability in this session is important in the legality of decisions you take.

With those introductory words complete, Chris Law is going to open the questions.

Q46 **Chris Law:** Thank you, Chair, and this is a question for Minister Mak. What is the current value of UK defence and security exports to Israel?

**Alan Mak:** Thank you, Mr Law, and thank you, Chairman, and your colleagues for convening this session. Both the Deputy Foreign Secretary and I are pleased to be with you today. Apologies that we weren't able to align our diaries for the first offered date. After another exchange, we were able to agree on today, so thank you to you and your colleagues for your time. We are also joined by Kate Joseph, who oversees the work of the export control join unit and is here to provide some technical support.

Mr Law, you asked about the value of licences to Israel. The last year that we have full published data for is 2022. We granted licences for defence exports worth £42 million in relation to Israel. For wider context, that represents 0.15% of the UK's total defence export licences, and less than 1% of Israel's defence imports. So, £42 million is the figure for 2022. By way of wider context, our total exports to Israel on all categories that year were worth £3.6 billion, so that gives you a sense of the relatively low scale—low proportion—of the total. I can also help you by providing some slightly more up-to-date figures.



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**Chris Law:** Can we hear them, please?

**Alan Mak:** You can. For the 12 months to the end of quarter 2 in 2023—that is, to the end of June 2023—107 defence export licences were issued to Israel, and they were valued at £41 million. You can see that there is a relatively stable trend of relatively low defence exports to Israel. Indeed, since 2008, when this sort of record keeping began, £41 million a year is around the ballpark average. I will also mention for completeness that while we issue licences for certain values, they may not necessarily be taken up because the export may never take place, or it will take place only partially. I hope that gives you some context and a sense of the numbers we are dealing with.

Q47 **Chris Law:** Do you have any figures since October 2023? Can you tell me how many licences there are, how many have been granted since that time, and what is their total value?

**Alan Mak:** Since October 2023? So, since the conflict began—is that what you are getting at?

**Chris Law:** Correct.

**Alan Mak:** Let me give some wider context, and then I hope to be in a position to help the Committee. On 13 June this year, as you know, we are due to publish our next set of quarterly statistics, covering the period 1 July to 31 December 2023—in other words, filling in the last two quarters of 2023, where we have not—

**Chair:** The concern, Mr Mak, is that we are late on the quarterly stats. They are not six-monthly stats; they are quarterly stats.

**Alan Mak:** I am just coming to that, Chairman, but thank you for raising it. I am giving you the context before, I hope, providing help to the Committee.

On 13 June, you and the public will receive statistics that cover the period 1 July to 31 December 2023, thereby covering the two quarters of 2023 where no statistics are in the public domain. The current statistics, as I said in my earlier answer, cover the period up to the end of June 2023. No other country in the world offers the level of transparency and frequency of publication that we do.

You asked, what about after that period from the end of October '23 onwards—this year, for example? As you know, the Government's position is that we would not usually publish additional portions of future data ahead of their official publication date. However, due to the exceptional circumstances of this scenario and this issue, and the interest of this Committee, the House, the courts and the media, I have asked officials to prepare an ad hoc data release on an exceptional basis. That will cover the period of 7 October 2023 to the end of May 2024. It will cover the number of extant licences issued to Israel and the licences being processed during that period, and will also provide the number of granted and refused licences since 7 October and the applications that have come in. I expect



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to be able to release those on or around 7 June this year, so in just over two weeks' time. That will bring the dataset right up to date to the end of May.

Q48 **Chair:** You will appreciate, Mr Mak, that that is completely unacceptable to the Committee. These are quarterly statistics; they are late; you are under a ministerial code obligation to answer in full to this Committee; and we are asking you a question that you are empowered to answer. There is no legal obligation on you to withhold those statistics under the statistics Act that is often quoted in response to these questions, but we would expect this to be answered today.

**Alan Mak:** Are you referring to the statistics that will be published on 13 June, or the ad hoc data release?

**Chair:** The most recent statistics available to you as a Minister.

**Alan Mak:** Okay. Well, the statistics that are being prepared for the ad hoc release are not yet ready. As you will probably appreciate, they are complicated and take time to get right. I know that the Committee and the whole House have a strong interest in making sure that these statistics are available to Members and to others, so we want to get that right. In just over two weeks, we will have a dataset that is outside the normal cycle of publication, which will assist the Committee and will provide you with data that is right up to date.

Q49 **Chair:** Why are the quarterly stats late? Why are you having to produce two quarters at the same time?

**Alan Mak:** I am going to bring in Kate Joseph, but I will come back towards the end.

**Kate Joseph:** Thank you, Chair, and thank you, Minister, for the opportunity to add to the overall picture.

**Chair:** I do not want the overall picture, Kate; I want to know why the quarterly statistics are late.

**Kate Joseph:** We try to publish the quarterly statistics as quickly as possible, as you know. We aim to provide them usually within a three to four-month timeframe after the end of the period to which they refer. So yes, it is true that it has been longer than it would ordinarily be, and we are trying as quickly as we can to publish those statistics. Part of the reason for that is that we, as the Committee might know, have been updating our digital systems, so we have been dual running our systems, which has added to the level of complexity. The work to update those systems has meant that it has taken a little longer to get those statistics right. As the Committee knows, we take those statistics extremely seriously, and we need to make sure that they are absolutely correct, reliable, trustworthy and so on. That is not to make excuses for where we; we are doing the work as quickly as possible, and we are committing to do that by 13 June.



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**Chair:** It is an unfortunate time in the Department's life for those statistics not to be available.

**Kate Joseph:** We will publish them as soon as we possibly can. We have committed to 13 June, which is a little bit longer than we sometimes take, but we do not have a specific obligation for how quickly we publish them after the end of the time period.

Q50 **Chair:** We've got a matter of global controversy, the UK's position is under intensive debate here in this Parliament, and you cannot supply two Members of this House with stats that should have been published some time ago.

**Kate Joseph:** I will defer back to the Minister on some of those points, but first I will say that, as the Minister referred to, our transparency is considerably higher than that a lot of other countries—certainly, of most other countries—

**Chair:** The question is not about other countries.

**Kate Joseph:** If I may continue—

**Chair:** This is about a gold standard that this Parliament is seeking to set.

**Kate Joseph:** We will publish that data from 2023 on 13 June. In addition, over and above our commitment to publish our data on a quarterly basis, we are also agreeing to provide to the Committee in early June much more up-to-date data on this particular issue—export licences to Israel—which will take us up to the end of this month. That is fairly unprecedented. It is an ad hoc release on exceptional grounds. As you know, we provided information to the Court earlier this year as well, so on the issue of arms export licences to Israel, we have more up-to-date data than we have in terms of the global picture. We have data up to the end of November—

Q51 **Chair:** Have you provided to the courts data that is more recent than the data you are providing to Parliament?

**Kate Joseph:** We provided to the Court data that took us up to the end of November '23. That was not the full picture—

**Chair:** Has that data been provided to Parliament?

**Kate Joseph:** That data is now available to the Court. What we are proposing to do—

Q52 **Chair:** Hang on, this is an issue for the Minister. Are you telling us—are we hearing this correctly—that data provided to a court has not been provided to this Parliament?

**Alan Mak:** The ad hoc data release is designed to give the Committee and the whole of Parliament a comprehensive view of statistics—

**Chair:** That is not the question, Mr Mak. The question is, has data been provided to the Court that has not been provided to this Parliament?



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**Kate Joseph:** We have provided data to the Court, and that data has, I believe, been made publicly available by the claimants in court, and what we are now doing is providing a further update to that. If you will allow me to explain the situation: because that is what happened with the Court—because the data that we provided to the Court was then made public—we are now committing to the Committee that we will provide a more up-to-date version of that data, which will take us up to the end of May, because of our obligation to Parliament and to the Committee to provide that data.

**Chair:** As we sit here today, the courts of this land are better informed on the data for arms exports than the Parliament of this land.

**Kate Joseph:** I think that that data is now publicly available.

**Chair:** I am afraid that that is a very poor approach to ministerial accountability. Mr Law, do you have anything further to ask?

Q53 **Chris Law:** I guess just a comment. I wonder what the Minister will think about this: given the answers we have just received, what do you think the wider public and the media will make of the suggestions you have just made that you cannot provide evidence to this Committee in such an important and timely cycle that we are in just now? Do you not think they will be disappointed?

**Alan Mak:** No, I don't think they will—

**Chris Law:** I think they will.

**Alan Mak:** We are providing an ad hoc data release that is outside the normal cycle. We will bring the Committee and the whole House up to date with the full picture since the conflict started—

Q54 **Chris Law:** With respect, Minister Mak, since October 2023 we have been supplying licences for arms export to Israel, and you have not been able to give any answer with respect to that time. After seven months, you have not got a single answer to offer this Committee. Do you not think that the public, journalists here today, and all those who have been involved in focusing on this, need to hear some answers and to hear them now—not wait until the end of June?

**Alan Mak:** I provided you with data on our licences in the period up to 2022. I have also—

**Chris Law:** We are in 2024, going into June—

**Alan Mak:** Sure, and I am explaining how we are going to provide the data that covers the conflict. We have worked hard, and at pace, to create a data package that will be released on or around 7 June. That will bring the Committee and the whole House right up to date. It is much better to do this in a comprehensive way, rather than releasing small tranches.

Q55 **Chair:** I am going to move us on but, Mr Mak, you will be aware that in response to my letter of 4 April, the Department refused to provide information on the grounds that somehow it was subject to some sub



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judice problems. Those problems do not exist, of course, because the sub judice waiver covers information to this Parliament. You are now telling us that the courts have more up-to-date information than has been supplied to Parliament, and we are 48 hours ahead of a debate in Parliament on arms export controls. I think I speak on behalf of the whole Committee when I say that we are deeply unimpressed by your ability to provide up-to-date information to us. That will obviously have implications for the way that the Committee has to approach its arms scrutiny work over the days and weeks to come.

**Alan Mak:** Can I come back on a few of those points?

**Chair:** Of course.

**Alan Mak:** On the sub judice point, the Secretary of State wrote back to you to confirm that she was not seeking to use sub judice in relation to that issue. She was simply saying that the Government does not comment on legal proceedings, which is a long-standing convention. Obviously, the deputy Foreign Secretary and I, and Kate, are here to answer your questions, so there is no question of using sub judice as a shield by which we would not answer your questions. We clearly are.

In respect of the core question that you and Mr Law have asked about, which is whether the Government is forthcoming, open and transparent about providing data to you, we are very keen to do that. We recognise the interest from your Committee, the House and the courts, and we are providing you with comprehensive methodical datasets as quickly as we can.

**Chair:** I would suggest that an alternative approach would have been to lay the evidence you gave to the Court in the Library when you submitted it.

Q56 **Julie Marson:** Minister Mak, the Minister for the Armed Forces previously claimed that “the UK has provided no lethal or military equipment” to Israel since 7 October 2023. That was subsequently amended to say that “the UK Government has provided”. To set the record absolutely straight, has the UK exported lethal military and/or security goods to Israel since 7 October 2023?

**Alan Mak:** By way of background, the UK Government does not sell or ship defence exports to Israel, or provide lethal aid directly—unlike, say, the United States, which does do that from a state-to-state perspective. What we do in the UK is license private companies, some of which you will be aware of, to export products to Israel. That does include defence exports. As I said in my opening remarks to Mr Law, that accounts for less than 1% of Israel’s defence imports. In other words, we export relatively small amounts of kit to Israel when you look at it from an import perspective.

We have the strategic export licensing criteria, which you will be familiar with. That is the framework around which we make our decisions. Where





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licences conform to those guidelines, we will allow the export to take place.

To be very clear, the UK Government does not sell or manufacture or ship arms to Israel, but we have a rigorous licensing regime for companies that do that. It is legitimate that Israel has a right to self-defence. As we all know, it has been attacked horrifically over its history, including in recent times, so it does have a legitimate right to defend itself. But the products that are exported from the UK are done by private companies, not the Government.

**Q57 Julie Marson:** On that basis, why was that amendment made, because that actually takes it further away from what you are saying? The original statement was that “the UK provided” no military or lethal equipment, but it was amended to say that “the UK Government” provided no military or lethal equipment, which goes the opposite way from your clarification.

**Alan Mak:** I am not aware of the context of that statement, why it was made or the wider environment in which it was made. I can clarify that the UK Government does not manufacture or sell directly defence products to the Israelis, but we do license private companies to do so.

**Q58 Julie Marson:** Understood; thank you. Since 2008, the quantity of licences granted for the export of targeting equipment was the third highest after radar and electronic warfare components. A further 15% of the value of every F-35 exported to Israel is also produced in the UK, which Israeli military sources report being used in Gaza. How confident are you that export categories such as these will not be used to facilitate violations of international humanitarian law?

**Alan Mak:** I mentioned that the SELC, as we would call it—the criteria—are the framework by which we would assess exports, including defence exports to Israel. As I also said, Israel is a long-standing bilateral trade and defence partner. We have a long-standing relationship with Israel, therefore we license the export of defence products to them. They range from components for vehicles to some of the products that you mentioned, as well as UAVs and so on.

Even though the numbers are small, our relationship with Israel is important. The Foreign Secretary conducts an assessment, which you will also be aware of; it is evidence based and around Israel’s compliance with international humanitarian law. The test is whether there is a clear risk that anything that we export from the UK would be used for a serious violation of international humanitarian law. The assessment is that that threshold has not been met, and therefore the position remains unchanged. We continue to support Israel and to license exports for defence in a very rigorous, methodical and technical way. I hope that answers your question.

**Q59 Julie Marson:** I’m not sure. Can I be very clear? Are you confident that targeting equipment and F-35s—the contribution from the UK being a part of that—are not being used to facilitate violations of international





humanitarian law?

**Alan Mak:** Our process is evidence based, including information that goes to the Foreign Secretary and the FCDO, which then feeds into our process. We have a very clear test for what we would license and not license. Therefore, if the threshold is not met, the licensing will be allowed. So I am confident.

Q60 **Antony Higginbotham:** Minister Mak, we have just been talking about the F-35 programme. I will declare an interest: hundreds of jobs in Burnley are reliant on that programme. It is one of a number of major aircraft programmes—Typhoon, F-35 and now GCAP—that are reliant on multinational consortia coming together. The Deputy Foreign Secretary might also want to share a view on this. I wonder what you think the UK taking a position on F-35 component exports would do for the rest of the global consortia we work with, and whether that could then have an impact on other programmes that we work in global relationships with.

**Alan Mak:** You are right that the UK is a key member of the F-35 programme, which is a multinational programme involving our allies. Obviously, it is American led. We supply around 15% of the components of the aircraft during assembly and repair. We also supply components like the ejector seats for the aircraft. The majority of the components are exported to global supply hubs and global logistics hubs, where other members of the F-35 partnership can draw on those parts as needed.

When we allow exports, as I mentioned to your colleague, we also use the strategic export licensing criteria. Even though that is a quite a famous programme, it uses the same criteria as any other less famous exports. The test is the same. We have not found those exports to violate those criteria, and therefore they are allowed, but as you as you rightly say, we have international partners involved in that programme, and we continue to engage with them on defence, diplomacy and security issues.

Q61 **Antony Higginbotham:** I wonder if I could press you a little bit more. In the last couple of years, we have seen an example where Germany had some objections to the export of Typhoon—I think it was to Saudi Arabia, at that time. That will have had implications for Germany's reputation as a reliable partner in some of these global consortiums that we just cannot do some of these big projects without. Do you worry that if the UK went down the same route, that would have an impact on our reputation as a dependable partner?

**Alan Mak:** The UK is an important part of the F-35 programme. As you know, it is a fifth-generation jet that is used by many countries around the world—our allies—and I want the UK to be seen as a capable defence partner. Only last week I returned from a meeting with some of our international allies in relation to GCAP, the programme that you mentioned, which is obviously a separate programme.

We do have a good reputation for defence innovation. The F-35 programme is important. I am not aware that any of our allies involved in the programme at a national Government level has chosen to suspend any



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extant licences to Israel, and the F-35 programme continues. I want us to maintain our reputation as a reliable partner, but that does not prevent us from engaging with our allies on the issues around the middle east or in any other theatre. We speak frankly to them, as the Deputy Foreign Secretary will tell you, and the F-35 programme remains important.

Q62 **Chair:** Can I just check—was any UK-supplied equipment used in the World Central Kitchen convoy attack?

**Alan Mak:** We have no evidence that it was.

Q63 **Chair:** Was any UK-sourced equipment used in the lethal attack on Medical Aid for Palestinians in January?

**Mr Mitchell:** Can I help, Chair?

**Chair:** Please.

**Mr Mitchell:** We have not so far been able to identify any UK licences for any components or equipment for use by the IDF with the Hermes 450, which is the drone that is alleged to have been used in relation to the World Central Kitchen strike. It may be helpful if I add for the Committee that in the last 10 years we have granted a small number of export licences to Israel both for this drone type—that is, the Hermes 450—and for specially designed components for this drone. However, none of those were for the use of the Israel Defence Forces.

Q64 **Chair:** So as far as you know, no UK-sourced equipment was used in the lethal attack on Medical Aid for Palestinians in January.

**Mr Mitchell:** As far as I know, that is the case.

**Chris Law:** Does that include software that may be used in operations?

**Mr Mitchell:** As far as I know, the answer to that question is no—but given that is quite a wide question, if I find that there is any remote contribution made, I will of course write to the Committee, Chair.

**Chair:** Thank you very much.

Q65 **Andy McDonald:** Before I ask my question, may I return to Minister Mak? In terms of the F-35, the basic premise is that we are part of a global consortium, and we want to co-operate with that. Are you trying to suggest to the Committee that somehow—well, I will ask you the question: are the parts that will be produced in this country and that enter the programme identifiable? Do we know what they are?

**Alan Mak:** I understand that they are. I mean, that sort of level of components is really a matter for the MOD, but I understand that we would know what those were.

Q66 **Andy McDonald:** So if the decision was to impose sanctions and terminate a licence, that would not be any fetter to your contribution to the programme, because it would be specifically about parts that would be destined for deployment in this conflict. Is that right?



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**Alan Mak:** I didn't quite get your question. Would you mind repeating it?

**Andy McDonald:** If a part is identifiable and you know where it is going to be used, then presumably if you chose to make a decision to terminate an export licence, that would not have an adverse impact on the consortium that you have referred to—that work would go on unabated. It is simply that those parts could not be used for deployment in this conflict. Is that not right?

**Alan Mak:** I think that we are an important part of the consortium—

**Andy McDonald:** I accept that.

**Alan Mak:** Our contribution is around 15%, as I said to your colleague. That includes ejector seats and other parts. I must admit that in terms of the other parts, that is more for the MOD than for us.

**Andy McDonald:** But it is not going to fly without an ejector seat, is it?

**Alan Mak:** This is an evidence-led assessment, and the evidence suggests that the criteria have been met. There is no problem with us being part of the F-35 consortium, and therefore those parts continue to be sent, including to—

**Andy McDonald:** So it is the overarching assessment that is dominant here, not the parts themselves. Is that what you are saying to me?

**Alan Mak:** Well, we have a two-layered assessment. We look at each individual licence on a case-by-case basis. As I said to Mr Higginbotham, the fact that it is the F-35 and is famous does not make it different from any other component. We apply the same methodological rigour to that assessment as we would to other parts. The tests are comprehensive and the criteria have been met, so those parts continue to be used. From a broader perspective, our role in the F-35 programme remains very important to us as a country.

Q67 **Andy McDonald:** That is helpful because you are saying that the criteria are the dominant impact. Can I move us on? I am conscious of time.

Minister Mitchell, what is the UK Government's most current assessment of Israel's intent and capability to comply with international humanitarian law?

**Mr Mitchell:** Chair, I think it might be helpful, if you agree, if I set out what the process is. Then the context will be clear. The Government assess all export licence applications on a case-by-case basis against the strategic export licensing criteria. These criteria constitute guidance as required by the Export Control Act 2002. We last revised and laid the criteria before Parliament on 8 December 2021.

It is for the Secretary of State for Business and Trade, as the Committee knows, to decide whether to amend, suspend or revoke any relevant licences or to refuse any new licence applications. The Foreign Secretary has a responsibility to provide advice to the Secretary of State for



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Business and Trade in accordance with the criteria to inform these decisions.

It is paragraph (c) of criterion two that makes clear that the Government will: "Not grant a licence 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."

The Foreign Secretary's advice follows a methodology that the Court of Appeal accepted in judicial reviews. It draws on open-source evidence, intelligence, accounts of diplomatic and ministerial engagement and correspondence with the relevant country, in this case Israel. The analysis considers any patterns, trends or systemic weaknesses that might exist in the country's compliance with IHL. The IHL analysis is carried out by a team in the Foreign Office. Based on that, the export control joint unit offer advice on that, and that assessment means, in terms of export licences, that the Foreign Secretary offers advice to the Business and Trade Secretary.

The Foreign Secretary announced on 9 April that, having reviewed the most recent advice about the situation in Gaza and Israel's conduct—this is the answer to Mr McDonald's question—Ministers had decided that the UK position on export licences remains unchanged.

**Q68** **Andy McDonald:** So opposite the criteria of intent and capability, the UK Government's judgement is that Israel is in a satisfactory place on intent and capability. With reference to the ongoing operation in Rafah, you have said, alongside Lord Cameron and Lord Ahmad, on multiple separate occasions, that Israel does not have a credible plan to protect civilians. Without a credible plan in place, how can Israel demonstrate intent and capability to comply with international humanitarian law?

**Mr Mitchell:** With respect, that is not quite what we said. What we said is that we do not think an operation in Rafah should go ahead without there being a proper plan, and that we have seen no such plan, and therefore our position remains that, without seeing that plan, it should not go ahead.

**Q69** **Andy McDonald:** If you haven't seen the plan, how can you declare yourself content around Israel's intent and capability? You have no evidence. We have a chart in front of us that shows how you take things through certain steps. If that does not exist, how can it possibly be that you have declared yourself satisfied—if you have not seen a plan?

**Mr Mitchell:** The significant operation in Rafah, it appears, has not yet started and therefore we would not be—

**Q70** **Chair:** A hundred thousand people had to move. If that is not significant—

**Chris Law:** Six hundred thousand.

**Chair:** Six hundred thousand. If that is not significant, then what is?



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**Mr Mitchell:** Well, it is true that the Israel Defence Forces warned 400,000 to move, and 800,000 have moved, and we are seeking, along with our allies, to take care of them in the best way we can. The Committee will know that British aid has been delivered by maritime means, by the pier to the beach.

Q71 **Chair:** The displacement of 800,000 people would imply quite a significant operation, though.

**Mr Mitchell:** They have given a warning that 400,000 should go; 800,000 have chosen to go. But that of itself would not lead us to make a change in the assessment.

It is important to recognise that there is a very robust legal process here. It is set out in an Act of Parliament. It is a rolling legal process. It ends with advice, as I set out a moment ago, to the Business Secretary from the Foreign Secretary. The issue we are asked to adjudge is: does Israel have commitment, capability and compliance under the lines of paragraph (c) of criterion two, which I set out? When we look at it, we take account of humanitarian issues, issues to do with detainees and the military conduct of the IDF. We are not required to say that Israel has a clean bill of health. While we do not publish or comment on legal advice, we always act in a way that is consistent with it. That is the judgment we then deliver to the House and to this Committee.

**Chair:** Do go on, Mr McDonald.

Q72 **Andy McDonald:** The Government previously supplied some of its IHL assessments to the High Court, which are now public knowledge. Yes? The Government have stated, and the courts have agreed, that political responsibility for these decisions depends on parliamentary scrutiny, so we come back to the same issue. Why are the Government refusing to provide information that might explain their decisions to this Committee and to Parliament? Because there will be other assessments beyond those that have been disclosed.

**Mr Mitchell:** Mr Byrne is an extremely distinguished and senior member of a past Government, so he knows how the situation works. We are acting absolutely in accordance with the precedent of past Governments. Governments do not publish their legal advice, which is where Mr McDonald is perfectly properly heading, but we do not publish legal advice. The exception is only where there has been a summary of advice when British troops are being committed in action. The House will remember the precedent from Iraq, and when David Cameron—now the Foreign Secretary, then the Prime Minister—committed British troops in Libya, he did precisely that, and the then Attorney General, Dominic Grieve, presented that summary of legal advice. The position today, in this appalling catastrophe that has befallen Gaza, is different from that, and we are proceeding in precisely the same way that Governments of all parties proceed in these circumstances.

Q73 **Andy McDonald:** But the scale of this is enormous. You talk about 600,000 people moving—



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**Mr Mitchell:** Eight hundred thousand.

**Andy McDonald:** Eight hundred thousand—and you say some have chosen to go. What choice did they have to move? Was this just, “I think I want to go and live somewhere else”? Is that not a preposterous suggestion to make—that this is a matter of free will, to say, “I am going to move somewhere else”?

**Mr Mitchell:** No. I have set out the Government’s structure—the strategy that Governments follow: never revealing the legal advice but acting always in accordance with it. I have set that out and you saying to me, “This situation is so awful, should we not depart from that precedent?” My answer to you is, “No, we should not depart from it.”

Q74 **Andy McDonald:** What I am saying is that on the basis of credible NGOs, international bodies and partner countries, the threshold has long since been reached. People in this country and across the world are bewildered that the UK Government do not come to the same conclusion. What else has to happen before you would deem Israel to be in breach of international humanitarian law?

**Mr Mitchell:** I think it is incredibly important that these decisions are not reached at the whim of a Minister at the Dispatch Box, responding to the mood in Parliament, or from what is being said in a Committee. It has to be done with a process. I have set out—I hope, helpfully to the Committee—exactly how that process operates. Mr McDonald, I do not think you would expect Ministers of any party to operate outside those parameters.

To your point about the 800,000 people who now have decided to move—400,000 of them warned to do so by the IDF—they have moved as a result of the circumstances. On a rolling process, we continue to evaluate all these things, but as of now, there is no change to what the Foreign Secretary set out in April in Washington.

Q75 **Chair:** Can I bring the focus back to your judgment as a Minister on this point about intent to observe international humanitarian law? In your introductory answer, as you have set out eloquently to Parliament on a number of occasions, you said that a judgment of intent to comply is an important component in the way that you come to a judgment. That is quite right.

Lord Ahmad said to the Foreign Affairs Committee on 14 May: “I think Israel is really leaving many of its partners, including ourselves, pretty challenged on where we are currently on the issue of IHL”—international humanitarian law—“and how they are fulfilling their obligations”, and that, “there is no plan. Israel has not shown us a credible plan...They get a leaflet in the morning saying that they must move by the afternoon; it is a pretty stark choice.”

The question that we have is on this. We are going to go through each component of the decision-making framework, and we will start with intent. If we cannot see a credible plan to adhere to international





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humanitarian law in Rafah, we are trying to understand how you have made a judgment that, yes, Israel does have the intent to honour international humanitarian law. How can you come to that judgment in the absence of seeing a plan?

**Mr Mitchell:** This is the result of a legal process, on which we do not comment, but we follow the results of legal advice that we receive.

On the issue of intent, you will know, Chair, that in Britain we have legal advice on issues of targeting and lawyers embedded in troops which take decisions, and that the Israeli system is very similar. When we judge intent, we take into account a huge range of things. Incidentally, I think I set out the various sources—open source, and what various NGOs and so forth say—and how we take all those things into account, but on intent, which you mentioned specifically, the example I give you of the legal entities being embedded inside the decision-making process is quite an important pointer.

Q76 **Chair:** As you, Lord Ahmad and Lord Cameron have said, even in the absence of a credible plan to protect civilians, you have still reached a judgment that Israel has the intent to comply with international humanitarian law.

**Mr Mitchell:** We did our assessment and the Foreign Secretary announced it in Washington, and that remains the assessment of the Government.

Q77 **Chair:** Was that his assessment, or was that the advice put to him?

**Mr Mitchell:** He reaches his conclusions on the basis of the advice he receives; he then communicates those to Minister Mak's Secretary of State. He receives the Government's legal advice, and he acts in accordance with it. As I have pointed out—for reasons that are heavily precedented and that you, Chair, will understand—we do not publish that legal advice.

Q78 **Chair:** You are inviting the Committee to believe that—even in the absence of a plan to protect civilians in Rafah, and given everything that you have said—you still believe that there is intent to comply with international humanitarian law.

**Mr Mitchell:** The position today is unchanged—therefore, that includes the question you are asking me—since 9 April, when the Foreign Secretary made his statement in Washington.

Q79 **Chair:** Do you believe, Mr Mitchell, as the Minister, that Israel currently has the intent to comply with international humanitarian law in Rafah?

**Mr Mitchell:** It does not matter, Chair, what I believe; what is important is the legal process that informs that decision. That legal process continues on a rolling basis. The Foreign Secretary will receive the legal advice and, when he receives the legal advice, he will make a judgment, but as he has always confirmed—as I reconfirm—he acts in accordance with that advice.

**Chair:** Exactly. He, as a Minister, takes the decision, not the lawyers. That





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is why it is important to this Committee what you think, as the Minister, that will help shape the decision.

**Mr Mitchell:** I am not the Minister who makes the decision; the decision is made by the Foreign Secretary in this process, as I have described. Of course, I completely accept that process and the decision that the Foreign Secretary makes. He communicates that to the Secretary of state for DBT, and she exercises her judgment in accordance with it.

**Chair:** So this is a question that we would need to put to Lord Cameron.

**Mr Mitchell:** Well, no; I mean, he will give you the same answer, I suspect, that I am giving you.

**Andy McDonald:** It is his decision. You are saying you support him. Do you agree with him?

Q80 **Chair:** The question is, does the Minister taking the decision believe that Israel has the intent to comply with international humanitarian law in Rafah?

**Mr Mitchell:** The answer is that he would not have made the decision that he did unless he did believe that.

Q81 **Brendan O'Hara:** Do you think it would be fair to say that any reasonable person tuning in to this Committee today would say that it is quite obvious that this Government are finding political reasons to get the evidence to fit the criteria, because for political reasons they desperately want to continue to sell arms to Israel, when the evidence is simply not there?

**Mr Mitchell:** No, Mr O'Hara, I would not expect those tuning in to this important Committee to reach those conclusions. Indeed, I would hope they would reach the reverse: that ministerial whim—going with the flow of a Committee or a feeling in the House on any particular day—is not the right way to reach these decisions. You need to reach decisions through a very careful process. I have tried to lay out for the Committee precisely what that process is, and it is right that Ministers should act on the basis of legal advice—that is the basis of the rule of law. We act on the basis of legal advice; we do not publish it, but we act in accordance with it. Bear in mind that we get judicially reviewed from time to time, and therefore we have to be absolutely certain that we act in the way I have set out for the Committee.

Q82 **Brendan O'Hara:** Let me ask you about the rule of law. Does the UK Government regard international humanitarian law as an absolute, or is it a spectrum?

**Mr Mitchell:** International humanitarian law and the criteria under which we assess whether a country is abiding by international humanitarian law are precisely what I have set out. We have profound concerns about the humanitarian position inside Rafah, but that is separate from the issue of whether the criteria have been reached, which mean that we would determine there had been a breach.



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**Q83** **Brendan O'Hara:** I want to go back to the rule of law, which you brought up. I will ask again, do the UK Government regard international humanitarian law as an absolute or is it a spectrum?

**Mr Mitchell:** It has to be interpreted, and that is why we have the advantage of legal advice in making that interpretation. It goes back to the point I was making before, that this is not for the whim of a Minister; this is for a proper process, with the different stages that I have set out—properly conducted.

**Q84** **Brendan O'Hara:** Let me go back to 2019. In the evidence to the Court of Appeal regarding weapons sales to Saudi Arabia, the UK Government said of the use of those weapons in Yemen that Saudi breaches of international humanitarian law fell “well within the margin” of error “that would be expected in a conflict of this nature.” Where in the Geneva convention it says that to have a margin of error in international humanitarian law is acceptable, I do not know, but are the Government using that principle that was used for Saudi in 2019—that there is an acceptable margin of error within international humanitarian law—in assessing its decisions on Israel?

**Mr Mitchell:** I was not privy to those discussions—

**Brendan O'Hara:** Yes, but you are here on behalf of the UK Government.

**Mr Mitchell:** But also, as you may recall, Mr O'Hara, I was then profoundly opposed to the Government's policy on Yemen, so I certainly was not involved in the decisions and discussions that were going on then. I have been very clear that the key question we have to ask ourselves—that Ministers have to ask ourselves—and the duty that the Foreign Secretary has to discharge is: does Israel have commitment, capability and compliance? The judgment that the Government have made on the basis of legal advice is what was set out by the Foreign Secretary.

**Q85** **Brendan O'Hara:** I hear what you are saying, but what I want to find out is, are the Government acting within margins of error when it comes to compliance with international humanitarian law? It said in its own words that it has done it before, in terms of Yemen and Saudi, so is that still the policy now? If it is, what are those margins of errors within which the Government works?

**Mr Mitchell:** Well, I am not aware that the policy has changed since then, but the process you are asking me about is precisely as I have set out to the Committee. I do not think that I can helpfully add to that.

**Q86** **Brendan O'Hara:** Yes, but you must understand, from the point of view of this Committee and of parliamentarians, that very rarely do any of us get to speak to, address or question the Foreign Secretary. Therefore, your position is instead of that of the Foreign Secretary. When we are seeking deep policy positions within the UK Government, you are the person that we have to go to, so the question is, what are the margins of error that the UK Government works to within international humanitarian law?



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**Mr Mitchell:** Let me be clear about that. First, if Lord Cameron were here, I believe he would be giving precisely the same answers that I am giving. As the Chairman of the Committee knows very well, Government is seamless—collective responsibility determines that—so you would be getting the same response from him.

Secondly—just in case this was behind your question—Lord Cameron is extremely available. He appears before the Foreign Affairs Committee, and will do so again shortly. These questions that you ask me will undoubtedly be asked of him on those occasions, and I think you will get that response.

In terms of any latitude, which is what is behind your question, I have set out the legal process. The legal process makes the proper judgment, and Ministers act in accordance with the advice they are given. I really don't think I can be any more helpful than that, Mr O'Hara.

**Brendan O'Hara:** I fear you're right.

Q87 **Chris Law:** I have been listening to what you have been saying, Deputy Foreign Secretary. I know you have to wear two hats, because you are also Minister for international development and aid on the ground. I heard you talk about the profound concerns you have about the man-made humanitarian crisis in Rafah just now, so I want to bring your attention to Rafah, notwithstanding the starvation in northern Gaza.

Lord Cameron mentioned that the UK will oppose a major operation in Rafah if there is no "clear plan" to protect civilians. We have already established today that there is no clear plan. I don't know what a major operation looks like but, given that almost half the population has fled for their lives due to leaflets that have been dropped over them by the IDF, I want to ask what your opposition would look like. How will you make sure our arms export licences are being considered as part of the UK's overall response?

**Mr Mitchell:** We are clear, Mr Law, that we would not support a major operation in Rafah unless there is a very clear plan for how to protect people and save lives. As I said earlier, we have not seen that plan, and in these circumstances, we would not support a major operation in Rafah.

Mr Law asks me about the attitude of the British Government to what is happening in Rafah. We are doing numerous things. We are trying to get aid in. We press the Israeli Government on a daily basis to get more aid in, preferably by road, which is by far the easiest way to help—

**Chris Law:** On that point, how long has the Rafah border been closed?

**Mr Mitchell:** The truth is that effectively nothing has got through Rafah since about 6 May—

**Chris Law:** Does that suggest the Israeli Government is not listening?

**Mr Mitchell:** But the reason for that is that, in order for humanitarian supplies to flow in Rafah, there needs to be a deal between Egypt and Israel, and that is not a point that can be laid exclusively at the feet of



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Israel. Mr Law asks me what the Government is doing. We are seeking to increase the flow in every possible way we can. Because we cannot get it in by road, we are using these very expensive and unwieldy airdrops, and we are also seeking to take stuff over long distances by sea, then on to a pontoon, and then on to the beach.

**Chair:** Minister Mitchell, that does not sound like a scenario that one should face when working with a country that has intent to comply with international humanitarian law.

**Mr Mitchell:** Well, one would not wish to face it, but the position of Israel is that on 7 October, more Jewish people lost their lives in a pogrom of a kind that had not been seen since 1945 and the end of the holocaust. That is why the Government says—and I repeat extensively in the House of Commons—that Israel has the right of self-defence, but must abide by international humanitarian law, which is at the heart of what we are discussing this afternoon. We also need to do everything we can to get to a sustainable ceasefire so that, on the day after, we can move to a position where there is a serious and proper political process that delivers a two-state solution.

Q88 **Chris Law:** On that point, do you accept that starvation is being used as a weapon of war, given that UN figures show the number of children dying from starvation and malnutrition, particularly in northern Gaza but across Gaza? You talk about how much effort you are making to try to get aid in, which I fully accept, but that aid has not been getting in since the war began. I was out in Egypt in February, hearing exactly that. In fact, the aid that is getting in now is a lot less than what there was even before the war began, and even then, at that point, at least Gazans—people in Gaza themselves—could supplement their food with what they could grow. That is no longer sustainable. Do you accept, then, under the current circumstances, as you have said yourself, the profound concerns about what is going on? I know I am asking you to put your Minister's hat on here. Do you accept that starvation could be used as a weapon of war, and that would breach international humanitarian law, and would certainly ask us to reconsider our arms export licences.

**Mr Mitchell:** You cannot use starvation as a weapon of war and remain within international humanitarian law: that is clear. But a judgment is made, and we exercise that judgment on the basis of specific legal advice on these matters, and on the basis of that legal advice we have reached our conclusion. This is a rolling process, but as I have set out, as of today the judgment that has been made by the Foreign Secretary is the one that was announced in Washington.

Q89 **Chair:** Can I just check: is it your assessment that people are dying because of lack of access to aid?

**Mr Mitchell:** Whether or not that was my assessment would not directly affect the judgments on international humanitarian law, because the question is upon the issue of compliance and commitment and capability. But we are extremely worried about the position of children—and



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everyone, really—in Gaza, and the rising IPC figures, and that is why we are doing everything we can to make sure that Israel honours the promise it made to flood Gaza with aid and increase back to 500 the number of trucks that are getting in.

**Q90 Chair:** The Minister for the Middle East has said that “the facilities in hospitals are dire and people are dying because of a lack of” medicines, support “and basic amenities.” Do you share that analysis?

**Mr Mitchell:** I think the position of the hospitals is absolutely terrible, and the Minister for the Middle East of course is absolutely right to say that. That is why Britain and others are working with Israel to try and make sure that we get into Gaza the necessary food and medicines—and shelter particularly. There were 8,000 shelter kits landed from Britain at the weekend. It is also why our field hospital there has moved to a place where it can provide more treatment than it could where it was, and has treated thousands and thousands of people.

**Q91 Brendan O'Hara:** Very quickly, can I ask you the same question that I asked Lord Ahmad at the Foreign Affairs Committee last week? Why, in your opinion, are children dying of hunger and malnutrition in an area of the world in which food is plentiful, just 44 miles from Tel Aviv? Why are they dying?

**Mr Mitchell:** Because of the results of the appalling attack on 7 October—the extraordinary terrorist attacks by Hamas on that day.

**Q92 Brendan O'Hara:** So the appalling atrocity of 7 October led to crop failures—led to what? I mean, what is the direct link between that appalling atrocity and the death of innocent children from hunger 44 miles from Tel Aviv, in an area of the world where food is plentiful? Draw that line for me, please.

**Mr Mitchell:** On the issue of crop failure, that is a longer-term issue for the region, but it is the direct impact of the attack on 7 October, to which Israel has an absolute right of self-defence, but they must act within humanitarian law. So that is the answer to Mr O'Hara's question.

**Q93 Chair:** We had better move on. Deputy Foreign Secretary, can I just check something? We have done our best to reflect on this diagram the evidence that you have given to courts and that Lord Cameron has given to the Foreign Affairs Committee. I believe you did say earlier in your evidence today that the Government does take into account past breaches in international humanitarian law when it determines how reliable assurances of intent, capacity and commitment are. Is that correct?

**Mr Mitchell:** The Government takes into account all these things in reaching—I set out the different areas upon which we have to make a judgment. The Government takes into account all those things in its assessment of commitment, capability and compliance.

**Chair:** So past breaches is one of those factors.

**Mr Mitchell:** So—?



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**Chair:** So past breaches, or potential past breaches of international humanitarian law is one of those factors that is weighed in the balance.

**Mr Mitchell:** Yes. Obviously, it depends whether or not the breach is at variance with commitment, capability and compliance.

**Chair:** During the conflict in Yemen, I believe it was the Ministry of Defence that kept a tracker database—almost a continual register—of potential international humanitarian law violations. Does such a database exist in either your Department or Mr Mak's Department with regard to the conflict in Gaza?

**Mr Mitchell:** I am not aware of it existing in my Department.

**Alan Mak:** I am also not aware of it existing in our Department.

Q94 **Chair:** Are you aware that such a database might exist in the Ministry of Defence?

**Alan Mak:** I am not aware that such a database in that form exists.

**Mr Mitchell:** I am not aware, but perhaps we could double-check and write to you on that point?

Q95 **Chair:** That would be very kind. I ask about potential and real IHL violations and how you consider them, because in the summary defence that you provided to the courts last year you say something important at paragraph 43, on page 17. You are no doubt familiar with that, but I will read it for the record. It is quoting from an IHL assessment that the Government have made and says, "although Israel accepted that it was under an obligation to facilitate (but not to provide) humanitarian assistance in Gaza, the Israeli Response gave no detail of the reasons for restricting the quantity of supplies of food, water and medical supplies. The decision of the Israeli Cabinet of 18 October 2023 had linked the supply of humanitarian assistance to the release of hostages. The assessment noted that the absence of further explanation raised concerns regarding the commitment to comply with the obligation not to arbitrarily deny access to humanitarian assistance and was relevant to an assessment of Israel's overall commitment to IHL."

As we read this, a number of conclusions jump out. The first conclusion that jumps out is that the Government consider that there is an obligation to facilitate humanitarian aid and not to restrict supplies of food, water and medical supplies. Secondly, it would appear that the Government consider Israel to have breached that obligation. It says in the note, "restricting the quantity of supplies", which is recorded as a fact. It notes that there has been no response, and crucially, it then notes that there was additional evidence that the decision of the Israeli Government was what linked the provision of supplies to the release of hostages. That is significant, obviously, on intentionality. That would look to us as the Government basically saying to the courts, "Yes, there has been a breach of international humanitarian law." Mr Mitchell, have I read that correctly?





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**Mr Mitchell:** I think the most helpful thing I can do in answering that is to make clear that, in reaching any conclusion, engagement with the Government of Israel is an important part of the process, and the evidence base of the assessments includes an analysis of four things: the overall nature and dynamics of the conflict, which is very important in the context that Mr Byrne has just raised, covering the political, military, humanitarian and human rights context; the statements made by credible NGOs, international bodies and partner countries relating to the country's adherence to IHL; evidence from the country in question, including statements made by its Government and military representatives, and information regarding its military structures, processes and training; and the country's record of compliance, including legal analysis of specific allegations of IHL violations.

Q96 **Chair:** I have got the framework on the screen. We understand the framework, and I am grateful to you for setting it out again for us.

**Mr Mitchell:** But that is the basis on which these decisions are made.

Q97 **Chair:** I understand that, but what I am zeroing in on here is D, which is listed on the diagram in front of you: "The country's record of compliance, including legal analysis of specific allegations of IHL violations." It would appear in the court documents that His Majesty's Government have provided that the Government do accept that there was an IHL violation in the linking of the issue around unacceptable retention of hostages and the provision or facilitation of aid. I am asking you, do you accept that there was a violation of international humanitarian law in that instance?

**Mr Mitchell:** There may or may not have been, but in terms of the inquiry that the Committee is conducting, that is an issue on which legal advice would be given and received by the Foreign Secretary. On the basis of that legal advice, he would then reach his conclusions on whether or not international humanitarian law had been breached and whether—as I keep repeatedly saying—the three key criteria under 2c were breached, and then he would reach his conclusions. But for the assessment of that, the basis would come to him through legal advice, which he would then consider before reaching his judgment.

Q98 **Chair:** You will have no doubt seen the US State Department report to Congress, under section 2 of the National Security Memorandum, and you will no doubt know that it concluded—I am quoting here—that: "it is reasonable to assess that defense articles covered under NSM-20", which is the Act in question, "have been used by Israeli security forces since October 7 in instances inconsistent with its IHL obligations or with established best practices for mitigating civilian harm." Are you aware of that conclusion from the United States?

**Mr Mitchell:** The answer to your question, Mr Byrne, is that we note what our allies and partners conclude and do on all these matters, but we have our own processes and we stick religiously to those. Although we note what other countries are doing—I have a long list here of what other countries are doing—it is for Ministers, for the Foreign Office and the





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Department for Business and Trade, to follow the Acts of Parliament and the regulations, which I set out in my first answer to Mr Law, and to act on that basis. The fact that another country, even be it a very close friend like America, might have a different structure, or different conclusions even, is irrelevant. We use our own systems and we reach our own conclusions.

Q99 **Chair:** I appreciate that we use our own systems, but it is not irrelevant, is it? In the criteria that you have set out and rehearsed us for several times this afternoon, one of the factors that you consider—which is factor C on the diagram—is “Evidence from the country in question, including government statements, and information” on “military structures and training”, and then, under factor B, you take into account “Statements by credible NGOs, international bodies and partner countries”.

**Mr Mitchell:** Indeed.

Q100 **Chair:** So you would weigh this evidence from the United States when making a decision.

**Mr Mitchell:** Yes, but the important word is “weigh”, Chairman. We take all those things into account, and indeed other countries’ processes as well, but we reach our own conclusions, on the very precise basis that I set out for the Committee.

Q101 **Chair:** You will also be aware, because you have commented on it in public in the last 24 hours, of the statements made by the International Criminal Court in the issue of arrest warrants. You will notice that those arrest warrants include warrants for the arrest of Benjamin Netanyahu and Yoav Gallant, and you will know that among the many issues cited is starvation of civilians as a method of warfare, a war crime contrary to article 2(b)(xxv) of the statute. I just want to check that, despite what you have said about these statements, this would also be a factor that is weighed in category B when you are making assessments about capacity intent to stick to international humanitarian law.

**Mr Mitchell:** Of course, but you are referring to the statements I made in the House yesterday. The point I would make is this. Of course we are supporters of the ICC and we are signatories to the Rome Statute, but that does not mean that we are devoid of an opinion. The opinion of the British Government is that the ICC’s actions—although they are at a very early stage and there is a lot more water to flow under the bridge—are unhelpful if we are trying to get aid in, get the hostages out, get a sustainable ceasefire, and then move on to the day after and a credible plan to resolve this long-standing issue, which has poisoned the well of international opinion around the world.

Q102 **Chair:** You have very patiently taken us through the judgments that you have made on intent, capacity and commitment to honour international humanitarian law in Israel, and we have basically put to you four different pieces of evidence: the evidence that you yourself have given the House that there is no credible plan to protect civilians; the evidence that you have given to the courts that says there has been an IHL breach; thirdly, the conclusions reached by the United States that there had been an IHL



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breach; and fourthly, the evidence cited in the ICC arrest warrants. You are inviting us to believe that, when you put all four of those factors into an assessment, the conclusion you still reach is that Israel has the intent and capacity to follow international humanitarian law, and therefore arms export licences are still okay.

**Mr Mitchell:** That is precisely the right conclusion, but I want to emphasise that this is on a rolling basis; it is not a static process. We have an open mind about whether things could change. You asked me for the judgment of the Foreign Secretary, and I have set out what that judgment is.

I appreciate very much that the Committee is seeking additional information. It may be helpful—in view of the strength of feeling and the level of interest in the IHL assessment process which the Committee has articulated this afternoon—that, as a result, I look into what more detail we might be able to offer, in writing, on the IHL assessments in relation to Israel-Gaza, both in terms of process and substance. I will come back to the Committee and to Parliament on that.

I should just emphasise that no Government has sought to reveal its legal advice. We are sticking to the precedents of past Governments, including those of the Government in which you were a distinguished Cabinet member. We do not believe it would be right to do that, but in view of what has been said this afternoon, we will see what additional information we can provide. I will write to the Committee about that.

**Chair:** I am grateful. You will understand that when the Committee has before it evidence from yourself that there is no credible plan to protect civilians, the Court submission that you made saying that there was an IHL breach by Israel, evidence from the United States saying that there was an IHL breach by Israel, and the evidence provided in the ICC arrest warrant, many of us will look at that evidence in the round and wonder how on earth someone can make a rational decision to keep arms export licences open. I am, though, grateful to you for the offer that you have made. I am just going to bring in Mr Higginbotham.

Q103 **Antony Higginbotham:** I want to come back to the overall assessment that is made on strategic licences. I want to try to understand where the context for the conflict comes into it. Where in the assessment is the context of 7 October—the largest loss of Jewish life since the holocaust? Where is that factored in? Where is it factored in that, just a month or so ago, Israel suffered another significant attack from the state of Iran? Where is it factored in that Hamas continues to receive financial and military support from the Iranian state? From this diagram, I cannot see where all that is factored in. Is it factored in through the ECJU? Is it factored into the advice given to the Foreign Secretary? Is it factored in at the final stage, when the Secretary of State for Business and Trade comes to make her decision? Or is it peppered throughout the whole process?



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**Mr Mitchell:** You are identifying a number of important and interesting political points. For example, suppose we had decided that it was necessary for an arms embargo to take place about two and a half weeks ago, when it was put to us in Parliament. The subsequent weekend saw a direct Iranian attack—not just by drones, but by cruise missiles—on Israel, and British military personnel were in action and British weapons were used to defend Israel. I think that, politically, many people would have thought it bizarre if we had imposed at that earlier stage an arms embargo and yet were using our own resources and military assets to defend Israel.

I think that underlines the point that I am making, which is that we do not do these things as a whim of politicians; we do it in a way set down and authorised by Act of Parliament, agreed by Parliament. It is in precisely the way I set out in my first answer: there is a legal process which takes place; advice is given; judgments are reached; and then we account to Parliament, on the basis that Mr Mak set out, for the actions we have taken.

Q104 **Antony Higginbotham:** I appreciate that answer, but I am still not entirely sure where context applies. Is it at that Stage A—where it says, “The overall nature and dynamics of the conflict”—that context goes into it, or is it that it sits as an umbrella over the whole thing?

**Mr Mitchell:** The overall nature and dynamics of the conflict are an appalling attack on Israel on 7 October and the fact that, under international law, Israel has the right of self-defence for what happened, but that right of self-defence must be conducted in accordance with international humanitarian law. That is the context, if I have understood your question correctly, in which we are exercising these judgments.

Q105 **Andy McDonald:** As a preliminary, Deputy Foreign Secretary, do you accept that that is an accurate representation of the process that it has undergone? We have not put anything up there that is inaccurate?

**Mr Mitchell:** I have not seen it before today—

**Andy McDonald:** I have been staring at it for an hour.

**Mr Mitchell:** That is why, being a rather cautious and suspicious former Whip, I read into the record my own understanding—as the Chair noticed—which is pretty similar to that.

**Andy McDonald:** Perhaps you could write to the Committee and tell us whether we have it right or not? That would be helpful.

**Mr Mitchell:** Of course.

Q106 **Andy McDonald:** I would like to return to this issue of the evidence and compliance. The Foreign Secretary stated on 12 December 2023 that he was “satisfied that there was good evidence to support a judgment that Israel is committed to comply with IHL.” Why did he feel unable to state clearly that the evidence showed that Israel was committed to compliance, only that there was “good evidence” to support such a



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decision? There is an important distinction.

**Mr Mitchell:** Before I go precisely to that point, I have given the context: the attack at the hands of Hamas; Israel's right to self-defence within humanitarian law; very many civilians have been killed; and we want to see Israel take greater care to limit its operations to military targets and avoid harming civilians and destroying their property. My answer is that we continue to have grave concerns around humanitarian access, but we judge that Israel is committed to complying with international humanitarian law overall.

Q107 **Andy McDonald:** The Foreign Secretary said there was "good evidence" to support that judgment. Did you believe, when confronted with the same evidence, that Israel was committed to complying with international humanitarian law?

**Mr Mitchell:** Yes, I agree with the Foreign Secretary. We see the same material overall, and I agree with him.

Q108 **Andy McDonald:** But is there not a risk that that may not be accurate? If we go back to criterion 2, there is a clear risk that "items might be used to 'commit or facilitate'...a serious violation of international humanitarian law." He has not said categorically that he is convinced that Israel is committed to compliance, merely that there was "good evidence" to support that view. That suggests that there is some grey area between the positions. Is that not one of risk?

**Mr Mitchell:** It is important to recognise, as I said, that this is—the technical term is an iterative process. It is not set in aspic; it is a rolling process. It is important to be clear that the latest assessment informed our decision that there is not a clear risk that items exported from the UK might be used to "commit or facilitate'...a serious violation of international humanitarian law" in the conflict. That leaves our position on export licences unchanged and it is consistent with the advice that Ministers have received. As I said, we naturally keep the position under review.

Q109 **Andy McDonald:** That is a remarkable position given what we have just heard with the pronouncements from the ICC and the ICJ, and now the United States of America has expressed itself in the terms that the Chair has described. Are we really saying that the UK Government is content that there is no clear risk—or no risk—of Israel being in breach of IHL?

**Mr Mitchell:** The British Government is appalled at what is happening. It is doing everything it can to alleviate suffering and spending an inordinate amount of time with our very strong foreign service trying to look at the day after.

Q110 **Andy McDonald:** I am talking about today. If the British Government is appalled, what is it appalled about?

**Mr Mitchell:** We are appalled at the appalling attack that took place on 7 October. We are appalled at the situation in Gaza. British Ministers have set that out very clearly. Effectively, you are asking me the same question



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the Chair asked, and my answer to you is precisely the same as my answer to him.

Q111 **Andy McDonald:** Well, it is pretty incomprehensible. Mr Mak, given that the only test is whether there is a clear risk of serious violations, why did the Secretary of State for Business and Trade make the decision not to suspend the licences?

**Alan Mak:** As you rightly say, the criteria of the test are very clear. Criterion 2c is whether there is a clear risk that items exported from the UK might be used to commit or facilitate serious violations of IHL. As you have heard from the Deputy Foreign Secretary, the Secretary of State takes advice from the Foreign Secretary, who will have received information from the Foreign Office and the process that you referred to. She has regard to those factors and has come to the conclusion that the threshold has not been met, and therefore the position remains unchanged. But as the Deputy Foreign Secretary rightly said, we keep this under review on a rolling basis. We keep all licences under review; it is not preserved in aspic. The process is continuous.

Q112 **Chair:** I just want to check that we have this on the record. It is your view, Mr Mak, that there is not a clear risk today of a violation of international humanitarian law through keeping open our arms export licences to Israel?

**Alan Mak:** I am not the ultimate decision maker, but I am aware of the criteria and the role of the Secretary of State for Business and Trade as the decision maker. She has made that decision and she has made it based on the evidence she has received from the Foreign Secretary. That is the methodical and rigorous process that we have as a Government, and it has been followed.

**Chair:** It sounds like we need both the Foreign Secretary and the Secretary of State. Sorry, Mr McDonald, I interrupted you.

**Mr Mitchell:** On that point, Chair, I want to reiterate that the answers that the Committee would receive would be the same as the answers today.

**Chair:** I am grateful.

**Andy McDonald:** We would like the opportunity to find out.

**Mr Mitchell:** Thus obviating the need to bother their eminences.

**Andy McDonald:** Well, we needn't bother with anybody, then. We could just take anybody along the line.

**Chair:** Mr Lavery, did you want to come in?

Q113 **Ian Lavery:** Very briefly, just to follow on from Mr McDonald. I am slightly concerned about the fact that the eminent lawyers who have been advising Karim Khan, the ICC prosecutor, reached the conclusion that Israel was in breach of international law, which is completely



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different from what the Home Office lawyers have said. They have concluded that Israel was not in breach of any international law. I am wondering why there would be such a difference. How could these eminent lawyers advising Mr Khan, including Lord Justice Fulford, Judge Theodor Meron, Baroness Kennedy, Danny Friedman KC, Elizabeth Wilmshurst and Amal Clooney, among many others, be incorrect and the Home Office lawyers seem to be in the right place?

I have a couple of other minor points. Can the Minister confirm what type of legal training the Home Office lawyers have had in this field? Are they actually confident sitting in the Home Office and advising Ministers that Israel is not in breach of international humanitarian law?

**Mr Mitchell:** I am sure Mr Mak will want to answer this question, but may I have a go? They are not Home Office lawyers; they are the Government's lawyers, and they deliver legal advice. As I have repeatedly said, we never publish that advice, but we act in accordance with it. Presumably you, like me, Mr Lavery, are not a lawyer, and one of the things I would observe in answer to your question is that 600 lawyers set out one position in the press, on one side of this argument, and I certainly went to bed assuming that that was conclusive evidence. A few days later, 1,000 lawyers set out the precise opposite. That shows that it is possible to be a lawyer and reach a completely different conclusion from that reached by another lawyer. But equally, it shows the importance of Ministers having their own lawyers, who give them expert legal advice upon which they act and within which they remain.

Q114 **Ian Lavery:** I fully understand your reply, but how confident are you, Mr Mak and Mr Mitchell, that the Government lawyers—not the Home Office lawyers, but the Government lawyers—are confident in themselves that they are giving the correct advice and that Israel is not in breach of international law? Listen: I know that we shouldn't believe everything we read in the press. But it has been widely reported that people in the Home Office and Government advisers are deeply, deeply unhappy that they are being asked to advise Ministers that Israel is not in breach of international humanitarian law.

**Mr Mitchell:** It may be that Kate Joseph would want to say something on behalf of the civil service about that, because I understand that that is not precisely the position. But if Mr Lavery is asking me my personal opinion as a Minister about Government lawyers and the Government Legal Service, this is my third stint in government so far, and my experience of the Government lawyers throughout that time has been absolutely first class.

**Chair:** I am going to move us on, because a vote is imminent and I am keen to get one or two more points on the record.

Q115 **Andy McDonald:** If I may, Chair, can I address this to the Deputy Foreign Secretary? Lord Cameron noted in his 15 April 2024 letter to the Foreign Affairs Committee that he had reviewed the most recent advice about the situation in Gaza on 8 April 2024, which informed his decision not to recommend a change to licensing decisions. Can the Deputy





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Foreign Secretary tell us what time period was covered by that advice?

**Mr Mitchell:** I think it was up to the end of January.

Q116 **Andy McDonald:** The International Court of Justice provisional measures order of 26 January 2024 stated that “there is a real and imminent risk that irreparable prejudice will be caused to the rights” found by the Court to be plausible, namely the rights of Palestinians. How do you interpret this finding when considering potential clear risks of IHL violations by Israel in Gaza?

**Mr Mitchell:** This is the point about plausibility, I think, isn’t it? There has been a lot of misunderstanding about what the ICJ decided in its ruling on the provisional measures, and this was helpfully clarified in an interview on 25 April by Joan Donoghue, the former president of the ICJ, who presided over the Court that handed down the initial provisional measures order in South Africa’s case against Israel. I think it is important that I just repeat what she said: “The court decided that the Palestinians had a plausible right to be protected from genocide and that South Africa had the right to present that claim in the court. It then looked at the facts as well. But it did not decide—and this is something where I’m correcting what’s often said in the media—it didn’t decide that the claim of genocide was plausible. It did emphasise in the order that there was a risk of irreparable harm to the Palestinian right to be protected from genocide. But the shorthand that often appears, which is that there’s a plausible case of genocide, isn’t what the court decided.”

Q117 **Chair:** It is useful to get that on the record. I am going to suspend in a moment. On the current cycle for compliance assessment, I think that you have another compliance assessment due this week. Is that correct?

**Mr Mitchell:** I think it is imminent, yes.

**Chair:** It is imminent. Thank you very much. The Committee is grateful to you all for your evidence. We are very disappointed that Parliament is not going to have the up-to-date facts, which have been provided to the Court, ahead of the debate that we have on Thursday. Many of us will be fairly surprised at the judgments reached, given the framework that you have set out and the evidence that we have gone through today, but we are grateful to you both for the promise of answering some follow-up questions, with which we will write to you after this Committee. I am very grateful to the Deputy Foreign Secretary for the offer of help to understand the process of IHL decisions a little bit better. We look forward to seeing Mr Mak and departmental colleagues tomorrow during our visit to the export control joint unit. For now, thank you.