



Committees on Arms Export Controls

Oral evidence: Use of UK-manufactured Arms in Yemen HC 928

Wednesday 23 March 2016

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Questions [1- 54]

Members present: Chris White (Chair), Crispin Blunt, Dr Lisa Cameron, Douglas Chapman, Ann Clwyd, Stephen Doughty, Stephen Gethins, Daniel Kawczynski, Dr Julian Lewis, Mr Virendra Sharma, John Spellar, Michelle Thomson, Stephen Twigg, Mr Iain Wright

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

Q1 Chair: Gentlemen, good afternoon. Thank you for attending the first inquiry of the recently reformed Committees on Arms Export Controls. I would like you to introduce yourselves on the back of the following question. What is your view of the UK's role in the crisis in Yemen, and how does it fit with the UK's part in the region and long-term strategic interests?

Tim Holmes: I am Tim Holmes, Oxfam's regional director for the middle east and for the former Soviet Union. Thank you very much for inviting us. I was in Yemen just a couple of weeks ago and hope to share some of my experiences there. I think the UK Government have done a great job through DFID in supporting the response to the humanitarian crisis there. It is a very important and significant role. We are concerned about the UK Government's role in the transfer of arms and the implications that has for exacerbating the ongoing conflict and the associated humanitarian consequences. As a relief and development organisation, we are very sensitive to the impact on, and protection of, civilians, and it seems that the role of arms transfers has contributed to that.

David Mepham: I am David Mepham, the UK director of Human Rights Watch. Human Rights Watch has been working on Yemen for many years. Since the start of the Saudi-led coalition intervention in March of last year we have been monitoring extremely closely the conduct and behaviour of the various parties to the conflict. We are not a humanitarian organisation. Therefore, we do not work specifically on humanitarian issues, but our sense is that DFID's and the British Government's role in respect of humanitarian issues has

been a very positive one, but we are concerned, to echo some of Tim's comments, about the role the British Government have played through their diplomatic and armed support for the Saudi-led coalition. We have documented lots of examples of violations of the laws of war by the Saudi-led coalition, as well as by the Houthis, which perhaps we will come to in the discussion.

Oliver Sprague: My name is Oliver Sprague and I am the programme director for Amnesty UK's work in this area, specifically arms export controls. I have been doing that job for about 20 years for a number of civil society organisations. Like Human Rights Watch, Amnesty has been documenting and researching violations of international human rights and humanitarian law that have taken place in the conflict in Yemen, but I guess the reason we are here today is our track record in looking at arms export controls. All the good work the UK Government have done over the years in establishing the EU system of rules, their own national system of rules and, importantly, the international arms trade treaty is, we think, at risk of unravelling by the current policies towards Saudi Arabia and the supporting coalition.

Roy Isbister: I am Roy Isbister. I head the arms unit at Saferworld, which is a conflict prevention organisation. My particular area of expertise is looking at arms issues. As is often the case, as the last of four, I am not sure I should waste the Committee's time by repeating what colleagues have already said. I would simply endorse their message, and maybe as we get into further detail I can say more.

Q2 Chair: Am I right in thinking that as a group you will be making a joint written submission to this inquiry?

Tim Holmes: We will certainly be providing written evidence. We have not discussed it being joint evidence, but we will certainly be engaging with one another.

Chair: That is fine; I just want to clarify it.

Roy Isbister: Possibly, I can say a bit more than that. Not all of us will be producing a joint submission, but there will be a submission by some of us who are on the UK Working Group on Arms and members of the Control Arms Coalition. For example, Human Rights Watch is not part of the UK working group per se, so I cannot speak on behalf of it.

Chair: That is very helpful. That will inform the inquiry. Perhaps I can tease out a few issues through the Committee and ask the Chair of the DFID Select Committee to start.

Q3 Stephen Twigg: I thank our witnesses this afternoon. Some of you gave evidence to the International Development Committee's inquiry into Yemen. Can I focus at this point on the issue of alleged violations of international humanitarian law, to which a number of you referred? Do you think there needs to be an independent investigation into these alleged violations? Can you say a bit about the current investigation that has been undertaken following the UN Human Rights Council last September?

David Mepham: Human Rights Watch's view is that there have been multiple examples of violations of the laws of war by the Saudi-led coalition, as well as by the Houthis. We have documented abuses by both sides, but probably the focus of the discussion this

afternoon is more around abuses by the Saudi-led coalition because of the British relationship. We have identified specifically 36 strikes by the Saudi Arabian-led coalition that we judge to be unlawful and contravene international humanitarian law. For a long time, we had a presence in Sana'a. Because of the deteriorating security situation we no longer have a permanent presence, but we have been going in and out of Yemen very regularly throughout the conflict. We have been to the 36 sites; we have looked at the evidence and talked to eyewitnesses; we have talked to bystanders and looked at photographic evidence, where it has been available; and we have looked at the satellite imagery. Lawyers have poured all over it, and we are very confident that in the 36 cases we have documented—there may be a considerable number of further cases—violations of IHL have taken place.

Amnesty may speak to the cases they have identified, but it is also worth saying that a report by a UN panel of experts published in January of this year, I think, found 119 sorties that they judged had contravened IHL. It seems to me that there is a substantial body of evidence to suggest that such violations are taking place. The British Government's line is that such violations are not taking place or they have not yet seen compelling evidence of it.

On your point about investigations, the view of Human Rights Watch is that there should be a proper international independent investigation. So far, we have a Yemeni commission, set up following the Human Rights Council meeting in September 2015, which has not conducted a single investigation. It is not a serious process; nothing has been looked into. In January, a Saudi committee was set up, but shortly thereafter the Saudis made it clear that they would not be investigating individual strikes. Therefore, the local investigative processes are not adequate and credible, which is why I think your letter to Justine Greening was absolutely right in saying that the British Government should be supporting an international independent investigation into allegations that we and others have documented.

Q4 Stephen Twigg: David, can you give perhaps one or two examples of the 36 you identified? The Foreign Secretary in a speech last month said that there is no evidence of breaches of international humanitarian law. That is a very strong response to what you are telling us.

David Mepham: I find that an extraordinary statement, given the extensive body of evidence from Amnesty, Human Rights Watch, the UN panel and the High Commissioner for Human Rights. All those organisations have documented this. We have documented examples in lots of reports, which I can share with the Committee and have shared with the Foreign Secretary. I was at a meeting with him several months ago when I gave him copies of our report and said, "These are the GPS co-ordinates; these are the strikes; these are the markets and schools that were hit." Therefore, he has that evidence. The Foreign Office has had that evidence for months. It is extraordinary that the line comes back that they do not have evidence, when that evidence has been shared with them for a considerable period of time.

Q5 Daniel Kawczynski: Mr Mepham, you say you have identified 36 strikes. Out of how many?

David Mepham: We do not know the total number of strikes, but these are 36 cases where we have gone to the sites of the attacks.

Q6 Daniel Kawczynski: I am very concerned you say that you do not know how many. Obviously, if a war is going on, you would measure the number of strikes you identify as violations in comparison with the total number of strikes, and then you will be able to compare what is going on with other theatres of war. You do not seem to know the number of strikes.

David Mepham: If you wanted to know the proportion, you are right; that would be a useful thing to know. A good question to put to the British Government is whether they know how many strikes have been conducted by the Saudi-led coalition. Are they monitoring that? Do they have a figure? Do they have statistics? We do not have a concrete statistic.

Q7 Daniel Kawczynski: Have you asked the Saudi authorities?

David Mepham: We have approached them. We have shared all our evidence with them and they have not responded to it. We have made available to the Saudi authorities the same information we have made available to the British authorities. The Saudis have not responded to our detailed evidence about the violations that have taken place. We would encourage them to do so.

Q8 Stephen Twigg: Perhaps we can hear responses to the original question from some of the other panellists. I have one follow-up and then I will stop.

Roy Isbister: Saferworld does not work in the way Amnesty and Human Rights Watch do, in that we do not do the examinations ourselves. To speak to the question about the investigations, we can look at a little bit of the history of why we have these Yemeni and Saudi investigations, which, from our perspective, do not look particularly credible. It relates back to last year when there was an attempt, led by the Dutch Government working through the Human Rights Council, to have established a proper, credible and internationally independent investigation. That was prevented from happening. I think the Saudis put up an alternative proposal, and, to the great disappointment of the Dutch Government, allies such as the US and UK supported the Saudi position. Therefore, we ended up where we are now.

As to the evidence Ministers gave to your Committee, we found it quite frustrating in that it was suggested that this is the way these international situations work and we have ended up with a happy compromise. I do not think it was a happy compromise at all. The Dutch were spoken about as if they were quite comfortable with it. That is not my understanding. The Dutch and their allies were on a hiding to nothing and had to make the best of a bad job. I did not recognise the representation by Ministers to your Committee as being an accurate description of the way it unfolded.

Oliver Sprague: I would contribute from the perspective of Amnesty International. Likewise with Human Rights Watch, we have documented at least 30 air strikes in the same way: we have been there; we have taken photographs; we have identified weaponry, where we have been able to do so; and we have spoken to and interviewed witnesses to try to see what the rationale might be behind the decision to target. In our view, in those 30 strikes, across the breadth of the conflict, the laws of war have been violated, in particular the key principles of proportionality and distinction and the steps taken to minimise civilian casualties. We have seen an incredibly large number of civilian casualties from

those strikes. I give one example. We looked between May and July of last year at the Sa'dah region, where a series of strikes resulted in the deaths of 100 civilians, 55 children and 22 women. Therefore, the vast proportion of deaths in those particular strikes were women and children.

We found no evidence that those sites were used for military purposes or that there were military units operating in the vicinity. The British Government have yet to answer questions about specific documented strikes and why in their view the necessary precautions to protect civilians had been taken, when the overwhelming evidence, not just from us and Human Rights Watch but from the United Nations and other credible organisations, is to the contrary.

Q9 Stephen Twigg: Parallels have been drawn between the Saudi-led coalition's actions in Yemen and those of the Assad regime and Russians in Syria. The Foreign Secretary said he believes the coalition countries have the capability and sophisticated weapons that allow them to comply with international humanitarian law in a way that, frankly, we have not always seen in Syria. Do you agree with that description by the Foreign Secretary of the way in which the Saudi-led coalition has behaved in Yemen?

Roy Isbister: I think the statement was that they had the capacity to behave in a certain way.

Q10 Stephen Twigg: As I understand it, the suggestion was that they had a greater technological capacity to avoid violations.

Roy Isbister: I do not think I would be comfortable to make a comparison without doing a little more background research into it, but capacity is only part of the issue. You can have the capacity, but the question is whether you use it. Regardless of whether there is the capacity, we see the practice as the problem.

Oliver Sprague: We have seen numerous examples of strikes by precision munitions, but in general they have failed to distinguish between civilian and military targets. Therefore, it does not matter which weapons you are using; how you are using them is what is important. For us, there is a very strong body of opinion to suggest that in well over 100 documented cases the laws of war have not been apparent in those strikes.

David Mephram: We have also documented 15 instances in which the Saudi Arabian coalition has used internationally banned cluster munitions.

Stephen Twigg: We will be coming to that.

Q11 Stephen Doughty: I have a few questions that follow on from what you have just said. I take you back to the evidence the UK Government have before them as to whether or not violations have taken place. Given the amount of open-source information you have referred to and what you have provided, and that the Government say they are also closely monitoring the use of UK-made weapons in Yemen—there is similar wording in the letter from the Foreign Secretary—why is the Foreign Secretary coming to a different conclusion? Is he getting bad information?

David Mephram: It is a very good question, and I hope it is one you will put to Ministers. My own gut feeling is that the British Government do not want to upset the Saudis. That is my gut feeling for why they take the position they do, because the evidence is so strong on

this side of the argument. The case is repeatedly put for the past 12 months that they have seen no evidence, and they would like to see some evidence presented to them, but the evidence has been presented in extensive detail.

Q12 Stephen Doughty: Do you think they have acquired their own evidence? Given they have said the UK is itself monitoring it, do they have their own evidence but are choosing to ignore it?

David Mepham: In response to parliamentary questions and in meetings we have had with Ministers and officials, they have said they look into some particularly high-profile cases. An interesting question for your Committee to put to them is: how many of the 36 cases we have documented, the 32 cases Amnesty has documented and the 119 cases identified by the United Nations has the UK looked into, and in what way? How thorough was their own process of investigation? Mr Ellwood, the Middle East Minister, was very dismissive of the report of the UN Panel of Experts. He said it was all based on satellite imagery; they had not been to the country, although we and Amnesty have. How is the UK conducting its own investigations? What kind of investigatory process do they have that leads them to the confident conclusion that all of us—Human Rights Watch, Amnesty and the UN—are wrong, not just once but 36 times and, in the case of the UN, 119 times? It strikes me as pretty implausible.

Q13 Stephen Doughty: Can I ask you about the specific issue of cluster munitions? The UK played a key role in agreement on the cluster munitions convention. It was a signatory and attended all the meetings and so on. We do not produce cluster munitions any more and stockpiles have been destroyed. Is there a potential conflict here with British assets being used in this situation to facilitate the delivery of cluster munitions that have been produced elsewhere?

David Mepham: We do not have evidence that British assets have been used to deliver the cluster munitions and that Britain is supplying them. Clearly, it is not doing that, but there is definitely evidence that cluster munitions have been used by the Saudi-led coalition in the 15 instances we have managed to document. The British Government seem incredibly reluctant to acknowledge that cluster munitions have been used, and in parliamentary answers they talk about “alleged use of cluster munitions”. I think the evidence is very strong that cluster munitions have been used in this conflict.

Q14 Stephen Doughty: Are there any other comments on that?

Oliver Sprague: We have documented, researched and identified the canisters that have been dropped. There are two specific types of US cluster munition and one specific type of Brazilian cluster munition. There is no indication that the UK Government have been responsible for supplying those, but the important thing to remember is that, as a signatory and state party to the 2008 cluster munitions treaty, they are obligated, as part of that, to do all they can to prevent the use of cluster munitions in armed conflict. Given that we are so active, not just through the supply of weaponry but the supply of maintenance staff and personnel—we have been told there are a number of liaison posts working directly with coalition military—the question is: what steps have the UK taken not only to make sure its personnel are not being in any way implicated in the use or deployment of these weapons,

which is prohibited, but what steps has it taken, given its proximity to the conflict here, to stop those weapons being used?

Q15 Stephen Doughty: You are saying that there could have been an indirect involvement but, at the very least, a sin of omission in not raising the issues, given our role in this.

Oliver Sprague: You would hope that the requisite Government Department, whether or not the MOD in this instance, would have some pretty clear written instructions to everybody working in Saudi about the law on cluster munitions. I have not seen that, but it might be worth seeing whether that instruction has been sent.

Q16 John Spellar: Who is providing the cluster munitions to the Saudis?

Oliver Sprague: We can assume that it is from US stocks and that the Brazilian canisters we identified have been supplied from Brazil. We know for a fact that the US Government have sold at least two types of cluster munitions in the past to Saudi Arabia, so it is reasonable to assume that they are the principal suppliers.

Q17 John Spellar: Is Russia a supplier?

David Mephram: I have not seen evidence that Russia is supplying them; we have not documented that.

Oliver Sprague: Russia is a supplier of cluster munitions, but we have not seen evidence that it has supplied them in this case.

Q18 Douglas Chapman: Mr Sprague, you recently said that “there is strong evidence that the present weapon sales to Saudi Arabia are not just ill-advised but actually illegal.” Could you elaborate on that comment? Is that something the other witnesses support from the evidence they have picked up?

Oliver Sprague: That very short, precise statement belies a wealth of evidence, so I shall try to keep my answer as succinct as possible to allow others to jump in. We are referring here to the binding obligations on the UK and its export control system, which is predicated on a risk-prevention methodology. Where there is a clear risk or likelihood that weapons of the type it wants to supply could be used in the facilitation of international crimes, it is obligated not to sell those weapons. That is very clearly specified in the UK’s own export control system and primarily under criterion 2 of the EU common position, and, very importantly and more recently, articles 6.3 and 7 of the international arms trade treaty.

In our view and the view of some eminent lawyers from Matrix Chambers we consulted on this, by continuing to authorise the type of equipment being used in Saudi Arabia—combat aircraft and associated spare parts, munitions, bombs, rockets and so on—given the evidence that suggests the laws of war are not being applied, the UK would be in violation of those three cornerstone principles of the UK’s own export control system, EU controls and, importantly, articles 6.3 and 7 of the arms trade treaty.

Q19 Douglas Chapman: We are a party to that. Is that a statement you sign up to?

Roy Isbister: I completely support what Ollie said. Saferworld and Amnesty commissioned this legal opinion. We were very struck by how strongly Matrix Chambers put its arguments. Its conclusions were very forthright, exactly as Ollie says.

David Mepham: We did not commission this particular legal opinion, but I hope the Committee will read the very powerful case by Philippe Sands et al as to the legal position.

Chair: Roy, you referred to Matrix Chambers. We have invited them to help in our inquiry.

Q20 Daniel Kawczynski: There does not seem to be a cigarette paper between any of you on this issue. You keep referring to the Saudis, but you are alleging that 10 sovereign states, all of whom are part of this coalition, are turning a blind eye to the horrific attacks you describe. How can you convince us that these 10 sovereign nations are all in a conspiracy to cover up these crimes?

David Mepham: I am not sure “conspiracy” is the right word. Human Rights Watch and Amnesty—Saferworld and Oxfam are in slightly different positions—have gone to the sites, looked at the facts and where the evidence leads, and reached the conclusions that follow from that.

Interestingly, the Minister for Human Rights, Baroness Anelay, was at an event held last night. She was commending Human Rights Watch for the rigour of its analysis and the way we go about investigations. The way in which we are investigating these things in Yemen is exactly the way we do it in other parts of the world, and on a very regular basis Foreign Office Ministers cite our work as a very credible source of evidence. That is what we have done. We have gone to the sites and looked at the evidence; and the conclusions we have set out in our reports, of which there are many, are based on that evidence.

Q21 Daniel Kawczynski: We had a presentation recently at RUSI with a very large assembly of diplomats, not just from the United Kingdom but from Europe, where the head of the Saudi Air Force explained to us not only the highly expensive precision weaponry it is buying from the United Kingdom but the fact that there are cameras on all the aircraft. When they go on bombing raids all this evidence is recorded, and if there is an allegation of misuse of any of these bombs the person concerned has to go directly to the Saudi command centre near Riyadh and answer the question, “Are you doing that? If not, why not?”

David Mepham: With respect, there is no evidence that the Saudis are conducting credible investigations. It is not the view of the UN High Commissioner for Human Rights or that of many other people that the Saudi process is a credible one. If the Saudis have nothing to hide and are very confident about their own processes, why would they not agree to an international investigation with genuine international expertise? Why will they not allow Human Rights Watch and Amnesty into the country to have conversations with them? Why do they not respond to our correspondence?

Q22 Daniel Kawczynski: Have you personally written to the head of the Saudi Air Force?

David Mepham: I personally have not. Human Rights Watch has shared all of its material with the Saudi authorities and we have had no response.

Q23 Mr Wright: Oliver, based on what you said about the arms sales being not only ill-advised but illegal, do you think that the policy of the UK Government should be to prevent arms sales to Saudi Arabia at the present time?

Oliver Sprague: If the UK Government were applying their own national criteria, specifically the ones that relate to prevention of violations of international human rights and humanitarian law, articles 6.3 and 7 of the arms trade treaty, article 2 and possibly criterion 6 of the EU common position, many of the export licences they are granting for use by the Saudi Air Force, knowing they are likely to be used in Yemen, should be suspended. Our organisation is now on record as calling for an arms embargo to be applied, importantly, on all sides to the current conflict in the use of weapons systems in Yemen. We believe that the UK Government—they have the necessary powers within their export control framework—should be revoking and suspending all current supplies.

Q24 Mr Wright: Should the policy position you are recommending be extended to other members of the coalition?

Oliver Sprague: For weapons systems that are capable of being used to facilitate crimes in Yemen, absolutely. That is a very important distinction. That is not a blanket denial of arms exports to everybody; it is a very careful calculation of the weaponry you are supplying that risks being used by any party in that conflict. Where the risk that those weapons can be used in that hostility is clear, then those weapons should be denied to all parties to the conflict, not just Saudi Arabia.

Q25 Mr Wright: You have talked about the present risk. Presumably that is heightened to an unprecedented scale because of the conflict in Yemen. Is that a fair summary, or do you think we should have had a UK position about restricting or stopping arms sales to Saudi Arabia going back many years?

Oliver Sprague: The current crisis brings into sharp relief some clear questions about knowledge of what is going on and the very real and credible risks that emerge because of that knowledge. The legal opinion we have referred to was specifically asked about this point. Its conclusion was that, given the amount of evidence available from at least May of last year, the UK Government should have had actual knowledge of the use to which weapons were being put, and it is that which should trigger them to suspend the weapons on that basis.

There is a much broader question, which we have looked at before numerous times in front of previous versions of this Committee, about whether the UK has been applying its risk-based structure systematically enough to countries where there are risks of human rights violations. Our collective view, especially the views of many of us—I will not speak for them—on the UK working group, is that the UK Government have not applied a suitable risk analysis and have been granting licences too easily to some of the very problematic regimes, including Saudi Arabia. I think that was also the conclusion of previous versions of this Committee.

Roy Isbister: Perhaps I may add something, which is not hugely different from what Ollie has already said. If you are looking at other members of the coalition, our policy recommendation is: do not supply arms where there is a risk they will be used in the conflict in Yemen, whoever happens to be using them. That would be our approach to it.

It is worth reflecting that the call for an arms embargo on Saudi Arabia has a political component to it on top of the purely technical question of this particular arms transfer or not. As a rule, you go that extra mile when you think the situation has reached a point where the standard rules do not apply. From our perspective, it feels like that is the situation we are in in Yemen, so the idea of going that extra step to the point of an arms embargo seems like the best way forward.

Q26 Stephen Doughty: The Matrix Chambers opinion sets out very clearly in 1.9 “that ‘the Royal Saudi Air Force is flying British-built aircraft in the campaign over Yemen’, and that UK-supplied weapons have been deployed and used by Saudi Arabia in the course of the conflict. Recent reports appear to confirm that a British-supplied weapon was used in the bombing of a civilian factory”. I understand the point you make about acting within the spirit of the convention we have signed, and the potential risk of indirect use. What examples can you share with us where there appears to be direct involvement of British-supplied assets or munitions in some of the violations you are reporting?

David Mepham: I can talk about that case, which is an interesting one, because Human Rights Watch and Amnesty jointly documented it. It took place on 23 September. It was a case in which a British-supplied cruise missile was used in a strike on a ceramics factory in which a man was killed. There was no evidence that there was any military facility anywhere in the vicinity. Mr Hammond, the Foreign Secretary, took part in a BBC “Newsnight” interview in November of last year in which he said, “We monitor very carefully the use of British-supplied equipment,” yet two months before he made that statement a British-supplied piece of equipment was used in an attack, which appears to have been an unlawful one, on a ceramics factory in northern Yemen.

Q27 Stephen Doughty: Are there other examples of which you are aware, not just that one?

David Mepham: That is the case we have documented, but there may be other cases we could refer to.

Oliver Sprague: The Foreign Secretary and the Ministry of Defence are on public record as saying they are aware that UK weaponry, both combat aircraft and precision munitions, are being deployed by Saudi Arabia. In many ways, identifying a specific made-in-the-UK component, which we did in the ceramics factory, is highly unusual, given the fact it is a high-explosive piece of equipment that has bombed a factory. The cornerstone principle of the rules that the UK Government must follow is that it is a risk-based analysis based upon likely conduct, looking at available evidence in the round. Is there evidence of illegitimate and unlawful strikes that are failing to apply the necessary standards of humanitarian law? We think there is, in spades. Is there a risk that equipment of the kind the UK Government are supplying, and have admitted are being supplied, could be used in future combat? We think the answer is yes. That is why we are so strong in our calls that the UK Government are in breach of their obligations.

Q28 John Spellar: The basis of the argument here is one sortie, one missile, one factory and one person killed.

Oliver Sprague: Absolutely not. We are saying that the Government have themselves admitted that their combat aircraft and precision munitions are being deployed. We were

in some ways fortunate to find a specific made-in-the-UK nameplate on a piece of high-explosive equipment in the remnants of a bombed-out factory, but the UK Government's obligations, which they fought so hard at the United Nations to establish, are to conduct a risk-based assessment of the likelihood that UK equipment could facilitate these crimes, based on available evidence of the conduct of hostilities. That conflict is using combat aircraft and precision munitions in a way that violates the laws of war.

Q29 Dr Cameron: How important is the Gulf region, particularly Saudi Arabia, to the British defence industry? Is the British aerospace industry sustainable without defence sales to Saudi Arabia and coalition partner countries?

Roy Isbister: It is blatantly obvious that the middle east is a very important market to the UK defence industry, and has been for some time. I do not think I am qualified to comment on sustainability, but that is shifting the goalposts, in that the Government have, on a number of occasions, in a number of environments—in the UK, Europe and ATT—taken the lead. It was the UK that pushed through the EU code of conduct and then the common position. In its own national law, most recently in 2014, there was a restatement of the consolidated criteria, stating very clearly the grounds for the decision to export or not. If you look at criterion 5, it states very explicitly that strategic economic considerations cannot take precedence over the criteria that relate to human rights and regional stability. In the context of this discussion, all I am looking for is for the Government to follow the rules that they have not only agreed to, but fought to get others to agree to.

Q30 Mr Wright: David, you mentioned the interview with the Foreign Secretary on “Newsnight” in November 2015. In that interview the Foreign Secretary said: “We’d always like to do more business, more British exports, more British jobs, and in this case very high-end engineering jobs protected and created by our diplomacy abroad. I know that some of them are being used in Yemen. That doesn’t fall foul of the export licensing criteria.” Do you disagree?

David Mepham: I disagree. The four of us have presented evidence as to how and why the Saudi-led coalition is committing multiple examples of violations of the laws of war, and the Foreign Secretary denies that is taking place, despite the substantial body of evidence that has been shared with him and the Foreign Office.

Q31 Dr Cameron: Do you have concerns that the UK Government are taking these issues into account in their decision making, given all of the evidence that you state you have already presented to them?

David Mepham: I do not quite understand the question. Which issues are being taken into account?

Q32 Dr Cameron: The issue about reliance upon arms sales to Saudi Arabia and coalition partners in terms of the economic impact on the UK.

David Mepham: I think that is a question to put to the Minister. Roy put it very well. The criteria are very clear about the expectations and requirements on Government. That is the

set of requirements to which they should adhere, and it seems to me it is for Ministers to explain their rationale for defence export policy.

Dr Cameron: We will follow that up.

Oliver Sprague: There are a number of instances where we believe that statements that Ministers have made to Parliament have not been reflected in their obligations. There was a very interesting example when the Ministry of Defence was asked about what evidence there was of UK-supplied weaponry being used in the Yemeni conflict. The answer that came back was that the use of UK-supplied weaponry in the conflict in Yemen was an operational matter for the Saudi Royal Air Force. That is fundamentally incorrect in our view. The entire purpose of our export control regime is to link the responsibility of the exporter to the eventual use of their weapons in a particular theatre. In order to establish a risk-based analysis of a licence, they have to have an indication about how that weaponry is used to discharge that function. If they are genuinely saying that how Britain's weapons are going to be used is not a matter for them, it is impossible for a decision to be made to authorise those weapons lawfully on the basis of the relevant articles in the arms trade treaty. They have to have some assessment of the prior knowledge on the uses to which the weaponry would be put. It is absolutely fundamental.

Q33 Dr Cameron: If those issues were not taken into account, it might be an abdication of that responsibility

Oliver Sprague: You should certainly ask why the Ministry of Defence issued that statement. I do not think it is the first time it has issued that statement. It would be good to probe what it meant by it.

Q34 Dr Lewis: I am new to this subject and I would be grateful for a couple of points of clarification. It is clearly the case, is it not, that if British-supplied aircraft were being used to drop weapons that have been designated as illegal, such as cluster munitions, that would carry an implication of guilt by Britain because its own aircraft have been used to discharge an illegal weapon. Are you suggesting that British aircraft are being used for that purpose?

Oliver Sprague: We have no evidence that that has happened. We know for a fact that the UK Government have not been involved in the supply of cluster munitions to Saudi Arabia, at least in the very recent past.

Q35 Dr Lewis: I was not suggesting they had been involved in the supply of cluster munitions. I was asking whether you were suggesting that British-supplied equipment, such as aircraft, was being used to drop cluster munitions supplied by somebody else.

David Mephram: We do not have evidence of that.

Q36 Dr Lewis: The basis of what you are saying is that, if a country such as Saudi Arabia is dropping cluster munitions, the British should not be supplying any weaponry at all, even if that weaponry is not involved in the discharge of cluster munitions.

Oliver Sprague: There are two issues here. One is—

Chair: I am going to have to cut you short. We have to go and vote. Ladies and gentlemen, we will come back as soon as we can.

Sitting suspended for Divisions in the House.

On resuming—

Chair: I am sorry for the interruption. Julian, perhaps you would remind us of your question.

Q37 Dr Lewis: I was trying to categorise exactly what you think is going on in respect of the use of what I will call illegal arms by the Saudis in Yemen. As I understand it, there is no question of the United Kingdom supplying illegal arms such as cluster bombs, so what I want to know is: are we supplying legal arms, such as aircraft, that could drop illegal arms, such as cluster bombs? If you do not know whether or not that is the case, is it your position that we should not be supplying any arms at all to a country that is using illegal arms, even though the arms we are supplying have nothing to do with the deployment of those illegal arms? I hope that is clear enough.

Oliver Sprague: I was going to answer that in two ways that I think address your main question. You are right: there is no suggestion that the UK has supplied this equipment, and we have no evidence to suggest that British planes are being used to drop them, but I suggest that is a question not for us but for the relevant Minister. It is important in two ways. First, as a general view on the conduct of the hostilities, the UK is clearly saying that cluster munitions are a prohibited weapon and they can never have a legitimate use in conflict because of their disproportionate effect on civilians. Therefore, if an armed force is deploying those weapons, it should ring very clear alarm bells about the conduct of that armed force in relation to that conflict.

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

Q38 Dr Lewis: Almost completely. I just want to clarify whether or not Britain, as a signatory to the cluster munitions convention, would in itself be doing something illegal in supplying arms that were not being used in relation to cluster munitions if the country to which it was supplying them was using such munitions, but completely independently of any military assistance that Britain was giving.

To get my other question in and bring matters to an end as far as I am concerned, why do you think—again, you may say it is a question to ask them—the Saudis would want to use

cluster munitions on civilian targets, knowing this would put them on the wrong side of the law, and it would be of little military value but would add to the terrorisation of civilians?

Oliver Sprague: You know what I am going to say. You should ask the Saudis that question. In general, Governments that use cluster bombs, wrongly in our view, continue to state the military utility of the weaponry. I am assuming that within the Saudi military system there is an assessment that using these weapons is lawful. There is a considerable body of international opinion, including one that the UK Government are very strongly behind, that says that is clearly not the case and that the use of these weapons is unlawful in all instances. The question that needs to be put to the UK Government is: what steps have they taken to prevent the use of cluster munitions in this conflict? That is the obligation they have signed up to under the treaty.

Roy Isbister: The way you put that question underlines Ollie's earlier point and raises serious questions about Saudi conduct. If they are doing something that has potentially very negative consequences and very little military value, there is a question about judgment that is relevant right across the board.

David Mephram: The British Government's position thus far is to refer to, "alleged use of cluster munitions." They do not even accept in their public statements that they have been used, which is deeply worrying.

Q39 Crispin Blunt: Do you think the oversight regime and the law that enables you to bring actions and come before this Committee is working satisfactorily?

Roy Isbister: Compared with some other jurisdictions, especially with regard to the timeliness of information made available, the UK Government deserve credit, because we are at least in the position to be able to investigate what has been licensed for transfer so far up until the end of September 2015. That is a big problem in a lot of other jurisdictions where that information tends to come a lot more slowly. Therefore, the Government are to be given due credit for that. Parliament is also to be given due credit, and that is why we are delighted that the CAEC is up and running again. On numerous occasions, I have in other contexts spoken of the UK parliamentary oversight system as a model other countries might like to follow. We were worried that the CAEC was not going to reappear any time soon. Therefore, from that perspective, there are certain aspects of the oversight system here that are very good. I am not sure whether that quite answers the question.

Q40 Crispin Blunt: I am reasonably satisfied with what appears to be a yes. This will be the first inquiry of its type the Committee has undertaken into a specific theatre of operations, so in that sense it is new. Do you welcome that?

Roy Isbister: Certainly I do. I think it is a good idea, and I hope it is a precedent for others to follow.

Q41 Crispin Blunt: Can I invite you to look at the conflict in the round? Is it correct that the Saudi intervention in Yemen was authorised by unanimous resolution of the Security Council?

David Mephram: Yes.

Q42 Crispin Blunt: Have you documented war crimes on the other side?

David Mepham: We have published that—it is all available on our website—as well as by the Saudi coalition.

Q43 Crispin Blunt: Is it the first time that Saudi Arabia has led a coalition operation of this kind?

Oliver Sprague: It is not the first time it has used military force in Yemen. Amnesty was one of the few organisations to document a similar pattern of indiscriminate attacks in Yemen in 2008. I cannot recall whether that was part of an international coalition or it was Saudi Arabia on its own. It has used military force in Yemen before, and in 2008 we saw a similar pattern of indiscriminate attacks taking place there too.

Q44 Crispin Blunt: Have you identified any change in coalition military behaviour in the course of the management of this conflict. In other words, has the controversy around how they have conducted this campaign caused them in any way to change the way they are conducting their operations?

David Mepham: I think the short answer is no. The pattern of indiscriminate attacks we have described has continued. There was discussion the other day with the Saudis suggesting they may be trying to scale back their military offensive, but the bombs continue to fall. A press release put out by the UN High Commissioner for Human Rights talked about a strike that took place last week that killed 106 civilians in a crowded village market in north-western Yemen. That was condemned by the UN High Commissioner for Human Rights, who said they had not taken appropriate steps either to investigate it or prevent a recurrence of such incidents. That took place last week; 106 civilians were killed in a crowded market. So I do not think there has been a change in the pattern of their conduct in this conflict.

Q45 Crispin Blunt: Are you aware of any change in their use of advice from, say, ourselves or the United States in terms of their targeting capability?

David Mepham: That is an extremely good question to put to the Ministers who appear before you. I think there is a degree of opacity.

Crispin Blunt: You will be following this.

David Mepham: We will be following this very closely, but there is a parliamentary response that talks about six military advisers working very closely with the Saudis. The Prime Minister has said they are not involved in individual targeting decisions, but an absolutely critical question to ask them is: what are these people doing? If they are giving advice on how the Saudis should conduct this war in accordance with IHL, it does not appear they are doing a very good job of it. If they are involved in targeting, that would be deeply problematic. So the question to probe them with is: what is the role of these people? What advice are they giving, and is it being taken well by the Saudis?

Roy Isbister: We see no indication that that role is changing. I am not aware of anything to suggest that there is a change. If we are talking about the role of the UK in targeting advice, or how to organise targeting, a report has just been published about the proportion

of sorties in which UK and US targeting experts are involved. A very extensive investigation just carried out by VICE says that in about 20% to 30% of targeting decisions the US and UK have some level of involvement, whatever that is. These are the pre-planned strikes—the ones that have the largest proportion of planning—but the majority take place outside that framework. That is potentially quite relevant here. An interesting question to ask Ministers would be: over what proportion of strikes do they have some level of oversight, and exactly what level of oversight is it?

Q46 Crispin Blunt: This Committee in the last Parliament concluded that there was an inherent conflict between the promotion of arms exports to authoritarian regimes and at the same time strongly criticised their lack of human rights. Is a binary resolution required, in your view?

David Mepham: In a way, Roy has already answered that in response to an earlier question from the Committee. The guidelines are very clear. What is required of the UK Government is very clear in terms of assessing the risk of British-supplied equipment.

Q47 Crispin Blunt: I was trying to raise the level of discussion in a sense to the policy field. The operation of the law is clear, and you are using the law, as well as parliamentary oversight, to advance your case. I am trying to get you to reflect on the policy dilemmas that face Ministers who will come and give evidence to us.

David Mepham: It is hard to give a definitive answer, but it appears that in a place like Saudi Arabia the concern about arms exports and perhaps wider geopolitical considerations sometimes get in the way of a more honest conversation about human rights abuses both within Saudi Arabia and in Yemen. I think that is a reasonable assumption to draw from the experience of British policy towards Saudi Arabia in recent years.

Q48 Crispin Blunt: Do you think the Saudi Government are on the liberal or conservative end of policy when it comes to implementation of individual human rights in Saudi compared with their population?

David Mepham: That is a very hard question to answer, because it is difficult to have an honest conversation with ordinary members of the Saudi public about their views of the world. It is unquestionably the case—Human Rights Watch and Amnesty have documented this in great detail—that there is a whole series of very serious human rights abuses taking place within Saudi: most obviously, the treatment of women through the male guardianship system; the treatment of religious minorities; and the way in which migrant workers are treated. I do not think there is any doubt that Saudi has an extremely poor human rights record.

Crispin Blunt: By our standards.

David Mepham: By international standards. Saudi Arabia falls well short of the expectations set out in the universal declaration of human rights and other critical international human rights instruments. The Foreign Office itself acknowledges that its human rights record is deeply problematic, because Saudi Arabia has been identified for many years as a country of concern in the annual human rights report.

Q49 Crispin Blunt: Do you think UK engagement advances human rights on the whole in Saudi Arabia, including our defence relationship and our relationship overall, or does it hinder it?

David Mepham: It is a good question to answer. Our general sense—Amnesty must also contribute to this discussion—is that British Governments consistently have not done enough to press human rights concerns with Saudi Arabia. I suspect that may be because of the arms issue, the geopolitics and Saudi’s importance in the region. There is a whole series of very serious human rights concerns that we do not think get the level of attention they warrant in the way Saudi Arabia is treated more leniently than many other countries with comparable human rights abuses.

On the question of the defence relationship, it is difficult to say whether Britain’s arms exports to Saudi Arabia give them the opportunity to raise human rights concerns. I would return to Roy’s point. In a sense, you have to make a risk assessment about arms exports, and the human rights concerns should be raised at every opportunity in other appropriate forums.

Roy Isbister: For many years, we have heard about how you build a relationship and it gives you the opportunity to influence. Looking at the arms relationship in particular, clearly two parties in a relationship are trying to influence each other; it will not be a one-way street. There are examples from recent history that suggest that maybe it is the Saudi Government holding the whip hand in this relationship. If you look at the investigations into corruption by the Serious Fraud Office, the way they were closed down suggests that in the battle of influence the Saudi side won that one. I referred earlier to the issue of an independent investigation being raised in the Human Rights Council, and the fact that the UK’s support effectively created a toothless and meaningless system. That would suggest that in that case Saudi Arabia was winning, if you like. There may be other cases where the balance is different, but that is a couple of examples where I think the notion of “we will influence” is open to challenge.

Q50 Stephen Twigg: I have a two-part question on the role of DFID. What struck us in the International Development Committee was that a lot of the evidence we took said the Department was doing some great work on the ground in terms of humanitarian relief, but the policy in terms of arms sales to Saudi completely cancelled out what DFID was doing. If any of the witnesses want to comment specifically on that it would be helpful. I also have a question to Roy. When you gave evidence to the International Development Committee, you talked about how DFID was not consulted on arms exports to a country like Saudi because it was not a recipient of overseas development assistance, and that the rules could be changed so that, if a country is receiving arms that it might use in a theatre where the country is a recipient of UK aid, there could be some change in the system. Can you tell us more specifically what sort of change you would propose to enable that to happen?

Roy Isbister: Perhaps this time we should look to the development experts on the panel.

Tim Holmes: As has come out already in this Committee, the impact on civilians is not just as a result of Saudi coalition air strikes. The widespread ground fighting, sniper fire, destruction of infrastructure, the security vacuum in Aden and the de facto sea blockade have devastating consequences for civilians, as the previous Committee heard. That said, the UN estimates that 60% of civilian casualties have been the result of air strikes, which makes this a very pertinent conversation.

I would like to emphasise the urgency of these conversations. If you look at the number of casualties that have taken place over the past 12 months, 6,100 people have been killed and 35,000 have been injured. That averages 113 casualties per day. As we talk, this is an ongoing conflict that has serious humanitarian consequences. Oxfam staff have experience of many contexts and they have never experienced such intensity and devastation as is currently happening in Yemen.

There are some important statistics for all of us to be aware of: 2.4 million people have been forced from their homes; 14.4 million people are unable to meet their food needs; and four out of five people need humanitarian assistance. That is more than 21 million people in Yemen today. I am aware that this Committee is focusing very much on the arms trade, but there is a reason why this is so important and urgent. This is a crisis on a crisis and a catastrophe on a catastrophe. Even before this crisis, 10 million people were hungry. That is one of the highest malnutrition rates in the world. I am aware of time, but that is a brief preamble to re-emphasise the important role DFID is playing in its humanitarian assistance and its role.

As emerged from the previous discussions, there is a multi-paradox, if there is such a thing. There is a push for peace, humanitarian assistance and the provision of licences for arms. As far as Oxfam is concerned, to answer your next point, there would be significant value in DFID being involved in the export licensing regime. My understanding is that, currently, criterion 8 of the consolidated criteria looks primarily at whether a recipient country can afford to purchase those weapons and the implications it would have for its own development.

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

Roy Isbister: If you think of one particular type of export authorisation now taking place from the UK to anywhere in the world, which of those is having the most impact on development anywhere? I would say that it is the transfer to Saudi Arabia of equipment being used in Yemen. The idea that DFID has no formal voice in that discussion is crazy to me. The Minister for International Development, in giving evidence to your Committee, said, “Don’t worry; it’s fine, because I can talk to my friend here if I need to.” If you go all the way back to the 1980s, that kind of approach resulted in the scandal of arms to Iraq, and this was why the Scott report came up with the finding that we needed a formal system where the rules were clear and people followed those rules. Therefore, going back to the bad old days of having a chat with your mate if you need to is not good enough.

Q51 Stephen Twigg: So I am absolutely clear on the point, it is because Yemen is a recipient country; the argument is not that DFID should have involvement even in countries where there is no DFID involvement in humanitarian relief.

Roy Isbister: From my perspective, DFID is most qualified to comment on the development consequences of an arms transfer, no matter where it is. I do not anticipate

DFID wants to get involved with all 13,000 of the arms licences, or whatever the number is, issued each year. If that is the concern, I think it is a misplaced one.

Q52 Stephen Doughty: There has been a suggestion, which is also in the Matrix opinion, that UK-supplied assets have been used in the blockade of the ports, which may be impeding humanitarian access and supplies. Access for humanitarian reasons, versus combatant forces and so on, is always a complicated situation in an active conflict. What evidence are you aware of where humanitarian access and supplies have been directly blockaded or frustrated by UK assets, for example in the case of the port of Aden?

Tim Holmes: I have no evidence of that. All I am aware of is the outcome, which is a de facto blockade with limited items getting through where they need to. I am not sure which assets are involved.

Stephen Doughty: You are aware of items not getting through.

Tim Holmes: Definitely.

Stephen Doughty: But you are not clear about how they are not getting through.

Tim Holmes: Correct.

Stephen Doughty: Does anybody else have any evidence on that?

Chair: If there is any, you might like to write to the Committee. Daniel, I apologise. Unfortunately, your Committee is not quorate, so I cannot give you the opportunity to ask a question. We come to our last question.

Q53 Michelle Thomson: Gentlemen, I have been listening with great interest to your views. I will put a question to all of you that perhaps takes a step back a wee bit. We are just a couple of days away from the first anniversary of the beginning of the conflict. It is hard to see which side with what outcome will result in a military victory, whatever that means. I want to explore with you what you think the UK Government should be doing at this time to stop this becoming another Syria, another protracted conflict with uncertain outcomes, and obviously considerable humanitarian effect.

David Mepham: Obviously, the British Government are involved in trying to encourage a political resolution of this conflict, and we hope that that succeeds, but in today's discussion we have been focusing on what the role of Britain should be in relation to arms exports in terms of some of the more specific issues. The two specific recommendations Human Rights Watch has been making, which have been touched on in the conversation so far, are: a suspension of British arms exports to Saudi Arabia, pending a change in Saudi practice in the conflict; and a thorough investigation into the strikes that have taken place that we judge to have been unlawful. The second bit of that, which I would ask the Committee to press on Ministers, is the critical importance of an international independent investigation. I cannot see the basis on which the British Government are against that. How are they against an international independent investigation? They supported one for Sri Lanka. It is deeply ironic that in the Human Rights Council meeting in September, to which others have referred, they opposed an independent international investigation in respect of Yemen, but they championed the one they had advocated in respect of Sri

Lanka. If it is good enough for Sri Lanka, I do not see why it is not good enough for Yemen. That would be a very practical way to get to the truth. If there is dispute or controversy about the nature and veracity of these allegations, let us get an international body to make the assessment.

Tim Holmes: I would agree with that. In addition, we need to recognise that the humanitarian response must be substantially funded. Moving towards peace is what needs to happen, but we recognise that it is not just the humanitarian response. The UN consolidated appeal is only 12% funded at the moment for the coming financial year. That is a deep concern, but we also recognise the immediate humanitarian response and then reconstruction and development, which, given the scale of devastation, is absolutely massive. I think the UK Government's role in that in the international community is crucial.

To touch on the point about access, the UK Government could make greater use of the influence that they have, hopefully, with the Saudis and the rest of the coalition in ensuring access. A verification mechanism has been put in place. That needs to be started and delivered. I also emphasise the importance of humanitarian access in country. Humanitarian organisations in different parts are struggling to get visas and to get movement and access. Where there is a security vacuum, it is not possible for humanitarian organisations to do that. That is another role the UK Government could play.

One matter that has not come up, which some Members may not be aware of, is that there is an impending financial crisis in Yemen. The central bank and importers need support, and there is a significant problem if the financial system in Yemen collapses further than it has done. Subsidies on wheat and other products are being removed, so there needs to be a concerted effort to ensure that it does not collapse further.

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

David Mephram: It is all practical.

Roy Isbister: Your small practical measures do not seem to be very small to me. Please go ahead.

Q54 Stephen Doughty: As to whether enough is being done to protect the work of humanitarian organisations, I know that an Oxfam facility was targeted in a strike and that MSF facilities have been targeted. Do you think the UK has been doing enough in its liaison with the Saudi Government, for example, to ensure that humanitarian facilities are not accidentally or deliberately targeted?

Tim Holmes: The core of the whole conversation is around what influence the UK Government have on where coalition munitions end up. Three of our facilities have been damaged in different parts of the conflict, some we assume by air strikes. It does not seem to be happening. You referred to the example of MSF. The wide-scale destruction is not just about NGOs or humanitarian organisations; it is about social services, education and health across the board. The fact that that is still being damaged suggests that that influence is not sufficient.

Chair: Gentlemen, I must apologise for having had to interrupt the session a couple of times. Thank you for welcoming CAEC back again. You have informed the inquiry greatly, and I am sure the Ministers will have been listening intently to some of your suggestions. Thank you very much indeed, and I thank the Committee.