



Committees on Arms Export Controls

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

Wednesday 13 April 2016

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Questions [55 - 128]

Members present: Chris White (Chair), Crispin Blunt, Douglas Chapman, Stephen Doughty, Mr Nigel Evans, Mike Gapes, Mrs Helen Grant, Jeremy Lefroy, Amanda Milling, John Spellar, Michelle Thomson, Stephen Twigg, Mr Iain Wright

Witness: **Professor Philippe Sands QC**, Matrix Chambers, gave evidence.

Q55 Chair: Good afternoon, Professor Sands. Thank you very much for coming along to the Committees on Arms Export Controls and being willing to give evidence to this inquiry on UK-manufactured arms in Yemen. I will start with the first question, which is just an opening for you to explain a bit of your background and your expertise in this particular area.

Professor Sands: Sure. I thank you and the Committee for inviting me. I wear two hats. First, I am professor of law at University College London. I teach international law and have appeared before some of you on other occasions in relation to other matters. Secondly, I work as a barrister at Matrix Chambers. It is in that context that I appear before you on this occasion. With two of my colleagues, Professor Andrew Clapham of Geneva University Graduate Institute, and Blinne Ní Ghrálaigh, both members of the Bar, I was instructed by a number of non-governmental organisations to prepare a legal opinion on various issues related to the matters that are now before you. I have focused in that context on the legal.

It is not an issue that I had addressed in any way beforehand. I came to it as an independent person, applying legal principles. The result was a joint opinion; I think you have a copy of it. It is a legal opinion: “The lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen” and is dated 11 December 2015. We have not produced a supplement since then. I have read myself in to some extent on developments subsequently, including your work, but really our focus was in the couple of months that it took to prepare this rather lengthy opinion. Not all opinions are as long and detailed as this one. I express my appreciation to my two colleagues, who did a lot of the legwork on it.

Chair: Thank you. We will ask a bit more about that specific opinion in the next hour or so, but we will start by asking a little about your instruction.

Q56 Mrs Grant: Good afternoon, professor. You have just touched on this, but I would be grateful if you could go into a little more detail. What were the instructions that you and your colleagues received specifically from Amnesty, Oxfam and Saferworld?

Professor Sands: The specific subject that we were asked to address is on page 2, in the introduction: “We are asked to advise on whether the export by the United Kingdom...of weapons to the Kingdom of Saudi Arabia...in the context of its military intervention in Yemen breaches” the United Kingdom’s “obligations arising under domestic, European and/or international law.” It is fair to say that, when we accepted those instructions, we probably were not fully appreciative of the extent of the legislation we would have to delve into to address the totality of the issues. I suspect that many of you, if not all, in this room will be having a similar feeling. It is a rich area, let us say, in terms of both fact and law.

Q57 Chair: What would your opinion of the rich legislation be?

Professor Sands: We were asked to look at it at three levels. The way the law works now in the world we inhabit is that, effectively, it operates at three distinct levels. I am not prioritising them or giving them a hierarchy. Because I am a public international lawyer, I tend to focus on the international law side.

One level was the rules under international law—in particular, an international treaty of 2013, which came into force in 2014. That is the arms trade treaty, which you will certainly have come across. The United Kingdom played a leading role in elaborating that treaty. As you will know—it is a position that I have stated before in this House—the UK plays an extremely positive role in the development of international law. We first turned our attention to that treaty and, in particular, to two provisions: article 6 and article 7. Without wishing to prejudge your work in any way, I would say that those are the two provisions that were of the greatest interest to us and may be of the greatest interest to you. They are not particularly lengthy provisions, so you can home in on those.

At a different level, there is European Union law, where again the United Kingdom has played a strong, active and leading role. That is articulated in something called the European Union’s common position on arms exports. That is a 2008 common position that sets a number of criteria that the members of the European Union are required to take into account. It broadly reflects and is consistent with the international level, so there is an interplay. There is another aspect of the international level, but it is probably not of the same binding nature. Both the treaty and the common position effectively impose legal obligations. You also have the OSCE—Organisation for Security and Co-operation in Europe—principles governing conventional arms transfers. We took a look at those.

You have the international level and the EU level. The third level, as important as any other, of course, is the domestic, UK law level, and that is reflected particularly in three instruments we looked at: first, the Export Control Act 2002; secondly, the Export Control Order 2008; and, thirdly, the consolidated European Union and national arms export licensing criteria, which came into effect on about 3 June 2015, as announced in the House of Commons.

When we were given our instructions and asked to look at all three levels, we had to look at all three levels. That is why you have, in the end, an 89-page opinion. We would have hoped that it would be a lot shorter, but you have to go through each of the texts. When you are giving an opinion, you have to take the facts, such as they are known to you, and apply them to the law and the law to the facts.

In relation to the facts, we as members of the Bar are obviously extremely limited. We do not have fact-finding tools available to us to conduct our own investigations, so what do we rely on? We rely on what Government say, we rely on what the United Nations and other international organisations say, we rely on what private entities—non-government organisations—say, and on independent observers, including people on the ground. You will have seen a caveat, as I would put in any opinion that I do, that I rely on the facts as best I am able to find them.

On this occasion, I have to say that the facts were pretty compelling and powerful. Nothing that has happened since, as I have read—if I had read material that changed my view, I would certainly share that with the Committee—has caused me to hesitate and to think that perhaps we overstated, over-egged or took the facts too far. In fact, the most significant document—I am sure you are aware of it—is the Security Council report of experts, of January 2016, which essentially makes the same findings of fact as we do in relation to violations of international humanitarian law, in particular. You take the facts, you take the law and you do your best to meld them together, but, as with any opinion, you put in caveats, because you do not know everything.

Q58 Mrs Grant: Can you give an indication of the sorts of caveats and exceptions you made to your conclusions? Obviously three very experienced people worked very hard on this. How many man-hours? You are a lawyer. I used to be a lawyer, too, and you tend to make sure you put down your time. Can you give us an idea of how many hours the three of you put into producing this opinion?

Professor Sands: Sure. As you know from your work as a lawyer, lawyers work in teams. We all have various bits and pieces on at any particular moment. The way you would work on an opinion like this would be to divide it up and have different roles. You do not want the same people doing the same thing. I would say that the bulk of the work was done by Blinne Ní Ghrálaigh, who will have been responsible for preparing a first draft. I am afraid that I do not know how many hours were put in, but it will have been hundreds of hours. It will have been virtually full time for two months. Full time for us is not 35 or 40 hours a week; it is 70 or 80 hours a week.

Q59 Mrs Grant: So great care was taken with it.

Professor Sands: Huge amounts of effort were put in by Blinne Ní Ghrálaigh. Andrew Clapham will then have put in an amount—maybe a quarter of Blinne's, but a significant amount—on the factual issue, in particular. Because he is based in Geneva, he is very well connected with UN bodies and will have had his own input, to make sure that that was all right. Just to be very clear on this, it is always the case when Andrew, Blinne and I do an opinion that we do not rely just on the material that is given to us. Our reputations are on the line, so we want to make sure that, if we are forming a view as to what is going on in Yemen, what has been done by a Saudi or other military act or what has been done by the

United Kingdom, we do our best to find some corroboration for that. That is what takes extra time.

My role as, effectively, the lead counsel on it was to sit down with the whole, read through and make my comments and read myself in on the things I needed to read myself in on. I cannot remember, but I may have put in 100 hours over the course of two or three months. I will have gone through five or six drafts. When you go through five or six drafts, you start at page 1 and track-line every single line. I know that I did that myself on five or six drafts.

I can only speak for myself, but the reason I do that is that I act for a lot of Governments. My name is on this. If I make mistakes, it does not rebound on those who have instructed me; it rebounds on me. I am very comfortable that this reflects an honest, independent opinion, based on significant independent research. As I always tell people who instruct me, they do not give you an opinion and tell you what to conclude. Very often I am asked to write an opinion and people do not like the conclusion that I give. If we had formed that view, we would have written it in the opinion. That is what it would have said, and no doubt it would not then have been used. That has happened on other occasions, on other matters.

Q60 Stephen Twigg: Can I ask you to comment a bit further on the factual evidence that you considered, particularly around the question of alleged violations of international humanitarian law? The International Development Committee has received substantial evidence on that exact point, yet on the basis of that evidence the position of the British Government, as you will know, is that there are not such violations of international humanitarian law. Could you comment on the disparity between the opinion you formed, on the basis of the facts, and that which the British Government have formed?

Professor Sands: I have parsed very carefully what the British Government have said on this. The British Government do not say that there are no violations of international humanitarian law taking place. This is the nub of our opinion. What we say, effectively, is that the British Government have misdirected themselves as to the inquiry they have carried out.

On page 33 of the opinion, you will see a whole raft of statements made by Mr Tobias Ellwood, the Under-Secretary of State for Foreign and Commonwealth Affairs, between June and October 2015. Those coalesce around a single theme: we have relied on assurances given to us by the Saudi authorities. That is a very different thing from saying, “We have checked what is going on and are satisfied that there are no violations.”

That has continued. In particular, there is a statement made by Baroness Anelay on 19 October 2015 in the House of Lords, which again is worth looking at. I have come to respect greatly our Ministers and civil servants. We know that things are done very carefully. It is not inaccurate, but it is very carefully worded—although I would like to revisit what I have just said. On 19 October 2015, Baroness Anelay said: “We are aware of reports of alleged violations of International Humanitarian Law in Yemen including by the Saudi-led Coalition—alleged airstrikes resulting in civilian casualties and damage to civilian infrastructure—in Saada and elsewhere across the country.” Then you get to the crucial line: “We take such allegations very seriously and have raised our concerns with all parties to the

conflict in Yemen.” That is fine as far as it goes, but it is not saying that there are no violations.

Then Baroness Anelay says: “Any judgement on whether specific international war crimes have occurred is a matter for international judicial decision rather than for governments or non-judicial bodies.” That is where we think that she has fallen into error. As a result of the legal obligations imposed on the United Kingdom Government—indeed, on all Governments that are parties to these instruments—you cannot just rely on reassurances of others, and you cannot just say, “It is for others to form a view on this, not Governments.” Indeed, article 6 of the arms trade treaty, which we may want to look at, imposes an explicit obligation on Governments—on parties—to form a view.

That was the position up to that period. Then, of course, the Foreign Secretary spoke on 11 November 2015—not in this House, but on a BBC programme—and there was a shift of position. The Foreign Secretary said: “The Saudis deny that there have been any breaches of international humanitarian law...Obviously that denial alone is not enough.” Pause there. That is a significant change, because up to that point the position was, “They have given us assurances. That is good enough for us. We can carry on.” My suspicion would be—but you will need to ask him—that legal advice came in at some point between October and November. I have not seen it and am not privy to it—it is confidential—but I suspect that they will have been told, “You need to be a little bit more careful about what you say, because the previous assurances are not satisfactory.”

Then the Foreign Secretary proceeds to say, “We need to work with the Saudis to establish that international humanitarian law has been complied with. We have an export licensing system that responds if we find that it is not. We will then find that we cannot license additional shipments of weapons.” That is a significant change, because it indicates a recognition—correct—that there is a responsibility on each state to satisfy itself that there are no violations taking place.

What we do not have is that particular statement. If you have a copy of such a statement, I would be interested to see it. Certainly as at the time we did our opinion, we were not aware that the Government had formed the view that there were no such violations. In light of the Security Council group of experts’ report finding explicitly that there are violations, it would now be very difficult for such a conclusion to have legs.

Q61 Stephen Twigg: I probably framed the question wrongly. The Government have not asserted that there are no violations; they have not accepted that there are violations. That is probably how I should have put the question, for the record.

Professor Sands: I understood your question in that way. The language of Ministers has been very careful.

Chair: I appreciate your response. At some point, we may ask you to submit some written evidence on the arms trade treaty, if you would be willing. On a more precise note, over to you, Stephen.

Q62 Stephen Doughty: I will try to be very clear. I have read the opinion in detail. It is extremely thorough and comprehensive. You covered three areas—the ATT, the EU

common position and UK domestic law—in the three examples you gave. Is it your opinion that the UK is in breach of its legal obligations in all three of those areas, or more in one than in another? Can you briefly be specific about where you think that they have gone wrong in each?

Professor Sands: In relation to your first question, the answer is yes. We have concluded that they are acting inconsistently, on the basis of the evidence that is available to us, in relation to the obligations under the treaty, in relation to the EU common position and in relation to our own UK criteria, as enunciated, I think, by Mr Cable.

Q63 Stephen Doughty: In all three areas, essentially.

Professor Sands: Yes. The three really do overlap, as you will have seen in the text. When we turned our minds to the question of how you do such a thing, we wondered whether we should just meld it all together and look at the essence of the issue, but we thought, “No. If we do that, we will be criticised. We have to go through the palaver of looking at each one.” The reason we started with the arms trade treaty is that it is a commitment that is as clear and precise as any treaty might be. There is of course always room for argument as to what something means. Having concluded that both article 6 and article 7 are not being complied with, you can effectively piggyback your way on to violations of the EU common position and the UK criteria, because both require, among other things, a commitment to meet your international standards. If you are failing to meet your international standards, it follows that you are failing to meet your EU standards and failing to meet your domestic standards.

Q64 Stephen Doughty: Okay. The Government have submitted a memorandum to the Committee in the last day or so. It is very specific. I will read from it briefly.

Professor Sands: I have not seen it.

Q65 Stephen Doughty: No. I am sorry that you have not, but I will read you specifically what it says. At point 45, it says, “In particular we note that: (1) the Saudi-led Coalition is not targeting civilians; (2) Saudi Arabian processes and procedures have been put in place to ensure respect for the principles of IHL; (3) Saudi Arabia is investigating incidents,” and so on. They go through a list of things and conclude, “The Government is currently satisfied that extant licences for Saudi Arabia are compliant with the UK’s export licensing criteria.” What do you make of that, given the other evidence that you have had, particularly on the first point—that the Saudi-led coalition is not targeting civilians?

Professor Sands: I need to make it clear that I am not privy to what goes on behind the scenes between Her Majesty’s Government and the Government of Saudi Arabia. Whatever arrangements they have in place, they will be in a far better position than I am.

Q66 Stephen Doughty: What would you say on the first point—that the Saudi-led coalition is not targeting civilians? We heard evidence last week that there was heavy evidence that they were.

Professor Sands: It depends on what you mean by, “They are not targeting civilians.” Again, they are slightly weasel words. If you act for Governments and Ministers, you get used to creating a form of words that is accurate but does not fully give away the totality of

the story. Is there someone in Riyadh deciding that there is a group of individuals who are civilians that they wish to target and deciding to take them out? No. I doubt very much that that is going on. Is there a situation in which entire towns or entire areas are being targeted? We know that to be the case, because the Saudis themselves have said that is the case. It follows from that, as the Security Council experts indicated, that that is on its face a violation of international humanitarian law.

Q67 Stephen Doughty: That forms part of the misdirection you referred to that the UK Government are giving themselves, essentially.

Professor Sands: If they have asked themselves the question, “Are our Saudi friends explicitly targeting civilians, as civilians?” the answer is probably no. If the question is, “Are they targeting areas that are known to be populated by large numbers of civilians, where it is inevitable that they will be affected by bombs dropped in those areas?” the answer is surely yes.

We can get a little help from one source I was directed to over the last day, when I was preparing for today; I apologise for the fact that I have not had days to prepare. There was an appearance by the former Minister, Vincent Cable, at the end of the year—I think it was on BBC “Newsnight”—in which he revealed something about what had happened in terms of the issuing of these licences. I will quote from an article that I can leave with you, which was published on 11 March 2016 on the *vice.com* website. Mr Cable says, “I was having to make a judgment on the basis of good faith. I was given assurances we had sufficient oversight of the bombing activity to make sure that international humanitarian law would not be compromised.” That is an actual quote.

I do not know whether you have seen the article, but it goes on to describe two types of military intervention. One is what is called a pre-planned intervention, in which there is an entity called the joint combined planning cell, in which the United Kingdom apparently has a role. Under its terms of engagement, it is engaged in targeting particular objectives. But pre-planned operations, the article says, only account for about 20% of the total targeting. The other 80% is what is called dynamic targeting, where intelligence comes up instantaneously—perhaps on the ground—without the benefit of more sophisticated intelligence reporting. The article says that 80% of targeting is of that kind. It is said in the article that that is where the bulk of the problem arises, in terms of violating international humanitarian law.

Of course, I do not know whether one set of planes and one set of bombs is used for one type of activity and another for the other type. I suspect that is not the case, but that is something you may wish to inquire into. It would not be a sufficient answer to the facts on the ground and the evidence before us to take refuge in the fact—assuming it to be the case—that the United Kingdom participates in a joint combined planning cell in which there is no direct or incidental targeting of or effect on civilians, and then turns a blind eye to the other 80%. That is the nub of the issue. If I were sitting where you are sitting, I would want to know more about that.

Q68 John Spellar: Surely you are not saying that it is against international law for there ever to be a death of a civilian that may be tangential to a military objective. It is a question of proportionality, is it not?

Professor Sands: It is a question of proportionality. War is bad, wherever it happens, and inevitably there will be circumstances in which non-combatants, without being explicitly targeted, are injured or killed. The crucial question is the terms of engagement and, in particular, what you do when faced with a situation in which you have a target where there is a significant civilian population and it is inevitable that there will be civilian casualties.

Q69 John Spellar: One of the examples that you quote of British weapons being used was on a factory. I know not what the factory was manufacturing—nor, indeed, whether it was harbouring hostile elements—but one civilian was killed. If there was no good reason, that is a question mark, but if it was collateral damage, that surely is not proscribed by international law.

Professor Sands: If you target what is properly a military target and incidentally there is collateral damage—that terrible phrase—that is not disproportionate, in the sense of not significantly affecting very large numbers of people, or even significant numbers of people, on those particular facts, it will not be an issue. I fear that the facts on the ground in Yemen are not of that kind.

In our opinion, we have given 10 specific examples that troubled us very greatly, I have to say. None of us is new to this particular area, very sadly. The world is not a happy place. Over the last 20 years, I have had a lot of experience of looking at targeting. What appears to be going on in Yemen, in terms of entire communities being treated as targets—not just particular buildings, a particular street or a particular area within a locality, but an entire town—is, on its face, seriously problematic.

Q70 John Spellar: You have mentioned one or two international bodies. Do any other countries actually share your view? Have any major supplying countries taken action and imposed an arms embargo on the Kingdom of Saudi Arabia?

Professor Sands: I am afraid that I am not in a position to give you an answer one way or the other, just because I have not checked. I know that the European Parliament—

Q71 John Spellar: No, not the European Parliament; I exclude those sorts of supranational bodies. Have any other countries taken your view?

Professor Sands: I am not aware one way or the other, only because I have not looked. I do not know what happens in other countries, because we were not asked to look at that question. I am certainly happy to look at it, to give you an answer, but I have not looked at it. I do not know the answer.

Q72 John Spellar: You said that you were not working on instructions in that way. You were asked to look at the question. According to what you said earlier in your evidence, it is not as though you were asked to prepare a brief. You just said, “We were asked. We might even have come up with an answer that they didn’t like.”

Professor Sands: Yes.

Q73 John Spellar: So that could have been part of your considerations.

Professor Sands: To go back to the question at the beginning, we were asked to look at the situation on the export by the United Kingdom. If we had been asked to look at the export by other countries, it would have put us in a bit of difficulty—in this bit of difficulty anyway: we would have had to get assistance from people in those countries, such as the Netherlands or Germany, with languages that we may not speak. We are not in a position to get to the facts of what is going on. I accept entirely that they could have asked us to look at France, Germany, the Netherlands, Canada or the United States, but they did not do that. They asked us to look at the United Kingdom.

Q74 John Spellar: I merely point out that they might have had an agenda.

Professor Sands: They certainly have an agenda. In my experience, every NGO has an agenda.

Q75 John Spellar: Rather than a total search after truth.

Professor Sands: If there is ever such a thing as total truth—I don't know.

Chair: That is perhaps for another day, I would suggest.

John Spellar: It is rather relevant, Chair, to the broader scope of the inquiry—particularly as later we will hear from representatives of the defence industry—if we are being asked to take a position that is not shared by the rest of the world, to the detriment of British industry and British workers. There are international sanctions that take place, in which Britain participates, and we take action against countries that do not participate. If there is not general agreement, and we are being asked to take action specifically against British industry, British workers and British communities, I do not think that is irrelevant to the matter under discussion.

Chair: John, I take your point on board fully. In Professor Sands's defence, he was invited to respond to an inquiry on UK-manufactured arms. I ask Iain to follow up on that point, if there is anything to follow up on.

Q76 Mr Wright: You may have answered the question already, based upon the limitations of the commission. There is a spectrum of approaches from different countries. The US continues to export. Germany provided 66 export licences in the first half of 2015. France continues to export. Sweden does not; since the conflict with Yemen started, it has stopped. With the Netherlands and Denmark, there is a presumption of denial. As I said, you may already have answered my question. As far as you are aware, are other countries breaching international agreements in similar ways to the United Kingdom?

Professor Sands: In relation to the responsibilities of other countries, you would need to look at what their obligations are. For example, not every country is a party to the arms trade treaty. I do not recall whether the United States is; I think that it may not be, in which case it is not subject to articles 6 and 7.

EU members will essentially have the same commitments; but even if they have the same commitments, it does not necessarily lead inevitably to the conclusion that they are all in violation or not in violation. Every exercise will turn on its own facts. You could have a situation, hypothetically, in which two countries exist and we know that one of them—the

United Kingdom—appears not to be asking the questions that it ought to be asking itself as to what is happening on the ground. Let us assume that there is another country, in parallel, which has exactly the same obligations as the United Kingdom and is asking those questions and concluding, on the basis of having addressed itself to the right questions, that there is no violation and it is perfectly entitled to carry on supplying arms. It is not immediately apparent to me that that would be possible, but it is a hypothetical. Then you would need to ask yourself, “What exactly have they looked at? How have they formed that view?” Simply by reason of having been told, “They are also supplying, under the same obligations,” I would not form the view that it follows necessarily that they are in breach.

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

Chair: Thank you. We need to make some progress.

Q77 Stephen Twigg: Can I ask about cluster munitions? We have received evidence of the alleged use of cluster munitions by the Saudi-led coalition. There is no suggestion and no evidence of the UK providing those munitions—or, indeed, of any UK involvement that facilitates their use. However, do you think that the alleged use by the Saudi-led coalition of cluster munitions should be a consideration in legal terms with regard to whether the UK provides other arms, unrelated to the use of cluster munitions? I hope that is clear.

Professor Sands: I have understood your question. As I recall, the Saudis are not parties to the relevant international convention on clusters, but that convention also reflects in part obligations under general international law, sometimes known as customary international law. We dealt with that briefly on pages 87 and 88 of our opinion.

You have asked an interesting question. Let us assume that they are being used and that they violate international law of a general nature—that is to say, not a treaty. Is that a factor to be taken into account by the United Kingdom in determining what it should do? It is certainly a factor that could be taken into account. I do not think that it is likely to be a dispositive factor as such. However, if a country uses weaponry of a particular kind, in particular circumstances, when it ought not to be doing so, one would form the impression that it is more likely to be doing other things that it ought not to be doing. That would push HMG to look with greater care at whether it is appropriate in all the circumstances to be contributing, where that is happening.

It is an interesting question. I would put it this way. You cannot say that it is irrelevant and you cannot say that it is dispositive, but it is certainly a factor I would want to know more about. If I were the legal adviser to a Minister, I would want to know more about that, just as I would want to know more about a country’s overall commitment to fundamental human rights. Again, it is not dispositive. The fact that a country has an excellent record on human rights does not mean that it is not giving rise to violations. The

fact that it has a terrible record on general human rights does not mean that it is, but I think you want to form a view.

Essentially, you want to know whether the people who are taking these decisions in Saudi Arabia are likely to be the kind of people who are taking advice to ensure that reasonable minimum standards, commitments and obligations are being complied with. Part of the difficulty for many in looking at this story is that Saudi Arabia is not a country which that community, in particular, feels is paying a great deal of regard to those kinds of commitments and obligations. That is a reasonable factor to take into account in forming a view as to the likelihood of what will happen if you supply certain arms to that country, but it will not be dispositive as such.

Q78 Douglas Chapman: In the last month, as part of the Defence Committee, we visited the command and control centre in Riyadh. A considerable amount of care and attention was paid to making sure that any ordnance that was used was targeted at specific areas. There were several measures in place to make sure that nothing untoward happened with the use of those weapons.

You talked about the UK Government using weasel words to make it appear that we are meeting all parts of the export control mechanisms and to make it look as if we are aware of what the situation is, in a way, but that the Government cannot say that as a Government. The Committee has heard from Oxfam, Saferworld and a range of other third-party groups, which have expressed great concerns about the violations of international law that have taken place, resulting in the death of men, women and children in Yemen. There is a whole picture of mixed messages coming through from all those different players in the game.

Given the reputation of the UK in this area, would it not be wise for the UK Government to accept that we should follow our EU counterparts, Denmark and the Netherlands, in saying that until we have complete surety about what is happening in Yemen we should suspend export operations and take away these export control licences? Given our reputation in this area, should we actually be saying that there should be an independent, international inquiry into how we have got ourselves into this position?

Professor Sands: I want to be careful what I say, because it really is not for me to make policy prescriptions as to what the Government should and should not be doing.

Q79 Douglas Chapman: But you must have a view.

Professor Sands: My role is to identify what the legal obligations are and whether they are being met. Your question is a very important one. On the basis of what I see, the wrong questions have been asked. If I were a legal adviser to this Government, I would be saying, "It is time to start asking yourselves the right questions as to what your responsibilities and obligations are. Why, Minister? Because the United Kingdom is a global leader on the rule of law."

It comes back to something that was alluded to before and to the question from Mr Spellar. I think that what the United Kingdom does really matters, because the United Kingdom plays a leadership role on a lot of these issues. When the United Kingdom takes a lead in a certain area, many others will often follow. Step 1 is not for me to say, "Oh yeah,

you should stop selling this stuff to this, that and the other.” Step 1 is just to make sure that they are asking themselves the right questions. On the basis of what I have seen, I do not think that they are asking themselves the right questions. In those circumstances, if they were my client, I would say to them, “To preclude the possibility that you are engaging the United Kingdom in international wrongdoing, I would suspend what you are doing until you have worked out what the right questions are, asked the right questions and carried out the right inquiries.”

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

I have appeared before other Committees in relation to issues of complicity and torture. We know how the law works now. We know that imposing obligations on states is often insufficient. You need to go beyond that, to the individual decision makers. The decision makers are not necessarily the people in the planes who are pulling the triggers or flying the drones from London, or wherever they are flown from—they are the Ministers. A Minister ought to be aware of that. I ask the question: has the advice to Ministers on this issue homed in on, first, the responsibilities of the United Kingdom, if this is not lawful, and, secondly, the responsibilities of individual Ministers, if it is not lawful? That is the way I would approach it.

Above all, I would say that the UK is a global leader on the rule of law and I want the UK to remain a global leader on the rule of law. It is why, at the end of the day—here I speak personally, as an academic—it does not matter to me so much what other countries are doing. I care about the United Kingdom complying with its obligations. That is principally what we were asked to address.

Chair: We are going to vote shortly, but I would like to get in a few more questions.

Q80 Mike Gapes: I have two questions. First, from what you have just said about Saudi Arabia, can I take it that, regardless of the conflict in Yemen, if you were a legal adviser to the British Government you would recommend that Saudi Arabia should not be in receipt of UK arms at this time—that there should be a suspension? Am I taking what you have just said too far?

Professor Sands: I think you are taking it too far. If you apply the arms trade treaty rules, the EU common position and our own domestic criteria, there is no prohibition on supplying arms to countries that are not engaged in international conflicts using those arms or that are not using those arms in relation to their own populations.

Q81 Mike Gapes: Taking it a step further, how would you respond to the British Government's position that they are not involved in the conflict in Yemen, although they are selling arms to Saudi Arabia and Saudi Arabia is involved?

Professor Sands: On the basis of the evidence that is available to me, that is plain wrong. The United Kingdom is involved. The United Kingdom is engaged. We are told that the United Kingdom participates in something called a joint combined planning cell and that it provides weaponry that is being used. However we characterise the nature, extent or depth of that involvement, it is impossible, on the basis of the evidence that is before us, to claim plausibly that the United Kingdom is not involved. I will go as far as that.

Q82 Mike Gapes: Can I take you to page 65 of your opinion, where you quote the Government position? They say, "The Saudis have assured us that British-supplied munitions will be used in compliance with international humanitarian law and we continue to engage with them on these assurances." Is the essence of your position that we are not seeking sufficient assurances or not checking that the assurances are being carried out and that, therefore, we need to have an end-user process for all our arms exports in order to see, even years or perhaps decades after we sold those arms, how they are being used? Will that not require a massive boost to the number of personnel and defence attachés in all our embassies around the world? I happen to think that it is a good idea that we have more defence attachés and diplomats, but isn't this a question of implementation and checking that would require considerable resources for those Departments?

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

What ought to happen in these circumstances is that, faced with the evidence and the reality of what is happening, a Government should go back to the Government to which they are supplying weapons and say, "It is readily apparent that your assurances are inaccurate. We therefore need you to take certain steps." There are a number of options that are possible. If you decide that you want to continue supplying arms willy-nilly, you will really have to roll up your sleeves and get involved with those kinds of individual decisions on a very significant scale. That would impose a very significant burden. The alternative is to stop supplying arms. Then you do not impose that obligation upon yourself. There is another cost, of course.

Q83 Mike Gapes: Yes. The French, the Italians, the Americans or somebody else would supply the arms, and the Iranians would continue to supply arms to the Houthis and so on. In a sense, this is a wider issue, isn't it? It requires a political process as well.

Professor Sands: I think I appeared before you on some of the Iraq-related unfortunate stories—

Mike Gapes: A long time ago.

Professor Sands: There is a direct analogy. British troops get involved in Iraq. They work—

Q84 Mike Gapes: But there are no British troops in Yemen—

Professor Sands: Hang on. They work alongside, but not necessarily always with, Iraqi troops. Iraqi troops are said to get up to something. A British commanding officer or a British Government Minister goes to his or her counterpart and says, “Hey, what’s going on here?” They reply, “It’s okay. Everything’s fine. I give you an assurance that it’s all absolutely fine.” The Minister or commanding officer says, “Okay, I’ve been given assurances.” No. In those circumstances, you do not just accept the assurance. You have to do something beyond. That does not appear to be going on here in relation to the overwhelming number of sorties that seem to have been flown. That is the problem.

Q85 Mike Gapes: We are not rerunning the Iraq inquiry. We are talking about British arms exports. There is no British military presence in Yemen, so the question is much narrower.

Professor Sands: With respect, when one country supplies arms to another country, it becomes engaged in that conflict. It is not at the same level or scale—it is qualitatively different; but you cannot take refuge in the idea—

Q86 Mike Gapes: I am not taking refuge—I am asking you questions. I think that you are trying to answer different questions from the ones that I am asking you.

Professor Sands: Let us try again. I will try again with the question. If I have misunderstood, I apologise.

Mike Gapes: I will stop. I think that I am getting an answer to something else and that we are going off into other areas.

Chair: I am sure that Crispin will have another go.

Q87 Crispin Blunt: You said earlier that none of us is new to this. Of course, the truth is that the Saudis are. This is the first time that they have led a coalition operation of this kind. Would your judgment on the legality of future exports to Saudi Arabia change if it became clear that, concerns having been raised, potential breaches of international law having been identified and ourselves and the Americans having got in, as the Government evidence says, to train and assist the Saudis in conducting those operations, they had now made their processes compliant? If the Government were then faced with a request to resupply the Saudis with a particular type of ammunition and they had satisfied themselves that the processes were now compliant, having not been compliant in the early stages of the operation, would they be entitled, on a prima facie basis, to continue to supply licences?

Professor Sands: The three of us would go through exactly the same exercise. Presumably, we would be presented with evidence—

Q88 Crispin Blunt: I am making an assertion about it. Obviously I am asking you a hypothetical question.

Professor Sands: Yes, and I am trying to answer it. Are you asking what would happen if there had been a period in which weaponry had been used and there had been no violations?

Q89 Crispin Blunt: The situation that I am positing is that you have a country that for the first time is stepping up to the plate to take responsibility for regional security. It conducts those operations. It is not very good at it, because it has not done it before. Its allies, the United States and the United Kingdom, who are not taking part in the operation, then get a grip, in effect, of the Saudi targeting processes, because they are involved in the supply of equipment and for other reasons to do with the legal position they find themselves in. They say, “Look, you’ve got to make this properly compliant. It’s in everybody’s interest. You’ve got to have proper processes.” Those processes are then put in place. In effect, they learn the lessons and make the conduct of the operations compliant, if there are accusations that they have not been compliant. Then there is a request for a resupply. Is it legal?

Professor Sands: If it meets the requirements of the relevant legal instruments—of articles 6 and 7, of the common position and of the UK standards—it is not going to be prohibited. It is going to be allowed. The rules are very clear. They do not impose a blanket ban on selling to certain categories of countries. They do not impose a ban on countries that have in the past engaged in violations but have sorted themselves out to meet their international, regional and domestic obligations. To put it another way, there is nothing in these rules that says that historic wrongs—

Q90 Crispin Blunt: We are pressed. I think that you have answered the question. Finally, do you believe that the British Government have had misleading or incorrect legal advice, or have they simply not asked their lawyers the question? Where is the failure?

Professor Sands: I do not know what legal advice they have had, so I am not in a position to answer the question. What I do know is that the Government are normally very careful about seeking legal advice, so it would surprise me if there had been no legal advice at all, but not having seen that legal advice, I am not in a position to express any view on its quality.

Q91 Stephen Doughty: I want to ask about a very specific point. In your note, you say that the UK Government have exercised undue regard to “questions of ‘intent’ or ‘state of mind’”—

Professor Sands: Do you have the page that is on?

Stephen Doughty: I do not have the specific page; I just have the quote. You speak about “intent” or “state of mind” when considering the exports to Saudi Arabia. Can you explain what you mean by that? Is it again that they have asked the wrong questions?

Professor Sands: It goes to the point that you made earlier in relation to the statement of a day or two ago that you read out, that the Saudis were saying they are not targeting. That is what is implied by the issue of intent. Are they intending to target civilians? We do not have any evidence that, in their terms of engagement—rules of engagement—that is what they are doing, but it is what they are doing inevitably, as a consequence of the kinds of

activities they are engaging in. It is not appropriate to look to the issue of intent in terms of the obligation. The authority for that is a judgment of the International Court of Justice—

Q92 Stephen Doughty: The Bosnia v. Serbia case.

Professor Sands: Yes. It is at the bottom of page 41. I will not waste your time reading it out now, but it makes it very clear that the question of what you intend to do is not dispositive in avoiding a wrongdoing by that particular state.

Q93 Stephen Doughty: It is about what knowledge you should have, essentially.

Professor Sands: You will incur responsibility if you were aware, or should normally have been aware, of the serious danger that violations of international law would be committed. That is the question you should be asking yourself. In none of the statements that we looked at from the United Kingdom did it address that test. That is the test, we say, that Saudi Arabia should be applying and that the United Kingdom should therefore be applying.

Q94 Stephen Doughty: I have a very brief question, as I know that we are going to have to vote. Allegations were made this weekend in the press—in *The Guardian*, I believe, and in VICE News—about the presence, which undoubtedly we will not be party to, of UK special forces or other UK operatives in Yemen. If that were known to be the case, do you think there would be an issue in terms of potential knowledge of, involvement in and awareness of what the Saudis may or may not be doing?

Professor Sands: Again, it would turn on the facts. Are they involved in providing targeting information, or are they engaged in humanitarian efforts? The answer to your question can only be general. It would turn on what they were doing—if, indeed, they are there at all.

Q95 John Spellar: But even if they were providing targeting information, if they were trying to target the direction of munitions at exactly the right targets, they would actually be assisting the Saudis to make the right decisions, within those terms, would they not?

Professor Sands: In a sense, that is the \$64 million question. Let us assume that 20% of the targeting activities are pre-planned and that the UK is involved in them and ensuring that they meet all international obligations; but if that 20% is effectively allowing the other 80% to take place, are you, by engaging in the 20%, facilitating the wrongdoing of the rest? That is a complex question morally and philosophically, but also legally.

Q96 Chair: Professor Sands, thank you very much. We tried to get an awful lot into an hour. I appreciate all that you have told us. Thank you for your written submissions as well.

Professor Sands: If we can provide anything further, we will be very happy to do so.

Sitting suspended for a Division in the House.

On resuming—

Examination of Witness

Witness: **Paul Everitt**, Chief Executive Officer, ADS, gave evidence.

Q97 Chair: Thank you, everybody. I thank members for coming back as quickly as possible. Paul, thank you for coming in front of the Committee. Could you introduce yourself and the organisation you work for and give us a bit of background?

Paul Everitt: Thank you very much for the invitation to come along today. My name is Paul Everitt. I am the chief executive of ADS Group, which is the national trade association for the UK's aerospace, defence, space and security industries. I am also the chairman of Farnborough International Ltd, which is a wholly owned subsidiary of ADS that, among other things, organises the Farnborough international air show.

ADS has around 950 members. We would class around 850 of those as SMEs. The rest are a mixture of mid-caps and global multinationals. Most of our members, in one way or another, are regular users of the export control regime. As an organisation we help and support companies to promote their services and equipment to international markets. We do that predominantly by organising what we would call UK pavilions at major international aerospace, defence and security exhibitions around the world, but also by working closely with UKTI Defence and Security Organisation on facilitating either missions to key countries or inward visits to the UK.

As an organisation we play a key role in a number of the governmental initiatives to promote manufacturing, particularly the aerospace, defence and security growth partnerships, which are looking specifically at how we in the UK work to develop a proposition that gives us a greater opportunity to garner a greater proportion of growing civil aerospace, defence and security markets around the world. We believe that our sector is an important part of the UK economy, particularly our manufacturing economy. We provide high-value, long-term jobs, significant investments in skills development and, in particular, innovation and R and D, and, of course, apprentices, who are a core part of our industry.

Q98 Mrs Grant: Good afternoon. Can you tell us in general how stringent are the controls on export of defence equipment imposed by the UK Government?

Paul Everitt: The UK export licensing regime is widely regarded as one of the most robust and transparent operating around the world. For many international organisations, it is held up as the benchmark for international best practice. We feel that the level of scrutiny of each individual export licence application—the process that is undertaken and the process that sits behind it—is robust. The fact that, where licences are granted, all the information is open to public scrutiny and questioning makes it a very robust and stringent regime.

Q99 Amanda Milling: You mentioned that you represent a range of companies of different sizes, from multinationals to SMEs. I was wondering whether the UK Government's arms export control policy affects different types of companies in different ways, and how it does so and what that means in practice.

Paul Everitt: The licensing regime is applied in a consistent fashion across the industry, irrespective of the scale or size of the business. The experience of different sizes of

organisation varies. Clearly, larger players—particularly those who may be involved in the export of platforms, be they combat aircraft, helicopters or substantial systems—will be better resourced and will deal on a more strategic level with both the UK Government and the purchasing Government. Smaller businesses export either niche technologies or equipment that forms part of more sophisticated or specific products. I would not say that their marketplace is haphazard, but they respond to and pursue particular inquiries that come to them. For them, that is a more major task. Their experience with the export control regime and the Export Control Organisation is a bit more transactional. They are trying to get responses to the applications that they are making. Their focus is on things like how long it takes and what the bureaucracy level is. The larger businesses see it as one of the strategic steps along the route to successful completion of business.

Q100 Amanda Milling: On that basis, if the smaller companies do not necessarily have the resources in-house, who provides guidance in terms of policy?

Paul Everitt: As an organisation, we provide training. We work closely with the Export Control Organisation to provide training for companies, so that they understand the obligations, the information requirements and all the various elements that they need to put in place. One of the things we have been pushing for over a significant period of time is better availability of advice. While it is absolutely appropriate that licence applications should be assessed when they are made, if smaller businesses know that they have equipment that is classified as either high or low risk, and/or that their potential market, from which they may have received an inquiry, is high or low risk, that will condition what their expectations are and whether they decide to pursue that business. We believe that having better information up front would be helpful. As an organisation, we try to provide some of that, but we are not in a position to handle all the sorts of questions that might arise about particular pieces of equipment and technology.

Q101 Amanda Milling: You say that you are pushing for more information to be provided. Who are you pushing to provide that information?

Paul Everitt: The Export Control Organisation. We want it to have a more advisory function so that, ahead of the point when someone either starts the process of thinking about marketing a product in a particular territory or receives an inquiry, they can discuss with somebody whether it will be high or low risk and whether it will cause a lot of problems. I do not think that anyone is expecting absolute certainty, but there could be some advice that helps to condition people. If they know that they are dealing with something that is problematic, either because of the technology or because of the country, they know that the process may take longer, involving more resource and, potentially, an unsuccessful outcome. It is better that they know that before they start the process, rather than midway through.

Q102 Mr Evans: I want to follow on from Amanda's questions. In your experience, do you ever get the sense, when you are talking about much larger companies—BAE Systems, for instance, because we are talking about Saudi Arabia and arms exports—that a Government are more likely to look at their shoes and be a little more lax, because of the value of an order, than they would be for a much smaller company, where they can be a bit stricter, because the value of the order is not that high and not as many jobs are at stake?

Paul Everitt: No. I am fairly comfortable and confident that the regime is applied in an even-handed way, whoever is making the application.

Q103 Mr Evans: What makes you confident that that is the case, in your experience?

Paul Everitt: No experience that we have had to date suggests otherwise. I have had anecdotal conversations with various companies that are having trouble going through the export control process; it is taking time because it is being considered and assessments are being made—that kind of thing. There is no sense that one group of people are waved through and others are not. It is applied uniformly.

Q104 Mr Evans: You do not get the sense that simply because there are massive numbers of jobs and exports of huge value, they would be less strict on a bigger company than on a smaller one.

Paul Everitt: That is correct. I am confident that there is uniform application of the rules. We see it in two separate boxes. Clearly, defence exports are really important. They are important in underpinning international relationships. There are elements of interoperational activities with some of our allies. There is also a domestic benefit, in terms of sustaining capability and, in some cases, reducing cost for the UK taxpayer, in having export customers. Government are keen to support our defence export activities, but there is a very clear regulatory process. Once the business has been done and companies begin the process of applying for licences, that regime is implemented and uniformly applied.

Q105 Mr Evans: It is strict, and there is no sense that, “Oh, they could go to the French or the Canadians to get the same kit.” It is absolutely strict, irrespective of the fact that people could source elsewhere.

Paul Everitt: Yes. In terms of the regulatory process, it is as you have said. We are after business. There is strong support from Government, and we are always looking to see how we can do things better and be more competitive, but once we move over the line into that regulatory regime, the world is very different.

Q106 Michelle Thomson: Could I press a little more on this? I just want to tighten up the language from “do not get the sense”. Are you saying specifically that in all circumstances, regardless of the length of the relationships and the value add, in terms of the bottom line, to your company, there can never, ever, ever be any difference in the rigour with which the process is applied? Are you saying 100% that that will never, ever occur?

Paul Everitt: I am confident that it is uniformly applied.

Q107 Michelle Thomson: How confident?

Paul Everitt: I am confident. I am not aware of any circumstances where it has not been uniformly applied.

Q108 Michelle Thomson: You are not aware of any circumstances. I suppose what you are conceding, if you do not mind my putting words in your mouth, is that there may be circumstances where that has applied of which you are not aware.

Paul Everitt: Okay. Yes.

Q109 Michelle Thomson: Possibly.

Paul Everitt: Clearly there are things I will not be aware of. My general experience, and the general experience across the sector, is that this is a pretty tough, carefully policed, stringent and robustly applied regime, whoever you are and whatever the value of the exports that you are doing.

Q110 Michelle Thomson: I have a last wee question. I am asking this from a business background. When there is a theoretical risk in a process where you have these repeating relationships, particularly where it is a large business, you often test that process where there might be gaps, just through familiarity. How many spot checks do you do routinely? Is that part of your procedures?

Paul Everitt: ADS as an organisation does not apply for export licences. We represent people who do, so we can only gather information from people who are operating within the system. What I give you is the knowledge and input that they provide.

Chair: I am sorry to change the sequencing slightly, Iain. Stephen has a question.

Q111 Stephen Doughty: I apologise for the fact that I have to leave shortly. I want to ask a specific question about the response of the industry and particular companies to the allegations that have been made and to the legal opinion that we heard earlier today from Professor Sands. What has been their reaction to suggestions that the UK is in breach of its legal obligations and that some licences may have been granted in error? I want to ask you specifically about MBDA. Are you aware of any response from them to the allegations about the use of, I think, a Hakim 500 missile that was found in an attack on a ceramics factory in which civilians died?

Paul Everitt: I am not aware of any specific comments that have been made by companies in respect of the issues that you raise. Our general approach, under the export licensing regime—we are a regulated sector—is that we look to our regulator for the judgments and decisions that it makes, and we respect those. In circumstances where it approves a licence, we take that at face value. Where it refuses a licence, similarly, we take that at face value. We recognise that we are operating in an environment where those decisions might change. If they do, we respect those decisions and act appropriately.

Q112 Stephen Doughty: Essentially, you are entirely Government-led. It is not the case that an individual company might have its own view on an issue and might think that the Government should have granted a licence that they did not, or vice versa. There has not been feedback in the system at certain points.

Paul Everitt: There may always be occasions when people feel that a licence should have been applied, but we take the same approach, which is that there is a regulator and a set of regulations. It is the decision maker, and we respect those decisions.

Q113 Mr Wright: I want to follow the line of questioning that Amanda started. To what extent should defence manufacturers have regard to the end use of their equipment

when they sell for export, or is it a case of abdicating that to the regulatory regime? Is that regulatory process good enough?

Paul Everitt: The regulatory process requires very specific information about where it is going—to which country it is going, to whom in that country it is going and to what end use it will be put. We have to make that information available and be very clear on what it is. Then it is for the regulatory regime to make a judgment on whether or not that is appropriate.

Q114 Mr Wright: In terms of what the defence industry does, it provides that information, which is then evaluated, assessed and, ultimately, decided on by the regulatory process. I am not trying to put words into your mouth, but that works consistently and adequately.

Paul Everitt: Yes, I believe so. Because of the regime that we have, there is a level of transparency. From time to time, there are spikes of interest in what is happening in particular countries. I am not aware—I must be careful what I say here—that it has been evidenced that things that have been given permission for use in particular circumstances or for particular end users have found their way into being used in other ways. That is a reflection on the fact that it is a robust regime.

Q115 Chair: How would you describe your relationship with Government, in terms of defence exports?

Paul Everitt: We work very closely with Government on defence exports. We would see two major relationships. Our predominant one would be through the Department for Business, with UKTI Defence and Security Organisation, which is the predominant organisation for engaging with foreign Governments and identifying market opportunities that may be appropriate for UK businesses.

This reflects changes that were signalled in the strategic defence and security review. Clearly, the MOD has always had some involvement, but it now has a core requirement around defence exports, predominantly around three major product types: Typhoon campaigns, complex weapons and F-35 avionics. It has a wider remit, which we interpret as being greater willingness to engage with potential customers to provide insight, experience and guidance on the use UK military forces put that equipment to, how it is managed, how it is supported in theatre and what kind of procurement processes they go through. We work very closely with UKTI and the MOD. As I have articulated, we have a slightly separate relationship with the Export Control Organisation, in its regulatory capacity.

Q116 Chair: How visible to ADS is the work of UKTI or the BIS Department on what future projects or programmes could be going on?

Paul Everitt: The work that we are doing through the defence growth partnership is a key part of the work we are trying to focus on. We recognise that back in 2008 and 2009 many countries around the world saw recessions and consequent budget cuts. Those impacted particularly on domestic defence spending, not just in the UK but in a variety of other nations. Each and every one of them decided that their route to success—to make up the gap, so to speak—was to export, so export markets are and have become incredibly and intensively more competitive.

We are always looking for opportunities to raise our game. Government are part of that process. That is part of the work that the defence growth partnership is doing, particularly to try to differentiate what we in the UK offer. We are trying to present an understanding of the future challenges that countries face and to work on the innovation and technology that will both satisfy key demands here in the UK and, as a consequence, be attractive to some of our key international partners and allies.

Q117 Mr Wright: You will be aware that in the BIS Select Committee we are looking at exports and the role of UKTI. I have two questions. The defence industries are a significant part of the British economy, with turnover of £30 billion, exports of £12 billion, 230,000 directly employed people and 6,500 apprenticeships. They are a big part of what the economy does. How much of that is reliant on exports to Saudi Arabia?

Paul Everitt: We would say, as an industry, that we need a number of streams of business. Our primary stream of business is our domestic customer. Overwhelmingly, the UK defence industry's No. 1 customer is the UK. That is predominantly what we do. However, defence spending can be lumpy. Big projects do not come along all the time, so collaborative work with international partners and exports play a part in our business.

We see exports on a number of levels. From a governmental point of view, defence exports are part of the way in which we develop some of our strategic international relations. There is a sense that very few nations operate in combat situations alone, so exports provide a basis for interoperability, which is beneficial to many. Exports are also beneficial to the UK armed forces, because they mean that we can sustain capability and readiness at a level that we would struggle to do if we were only supplying UK demand, and at a cost that is lower than it might otherwise be.

If I am answering your question—

Mr Wright: No.

Paul Everitt: Saudi Arabia and exports are very important, but as part of a range of business streams that we, like any industry, need to have.

Q118 Mr Wright: How assertive are UKTI in this? Do they say to you and to your members, “The middle east is a good area. Saudi Arabia is a good customer. Given what you do, we will help you make sure that you get your licence”? Does it work like that?

Paul Everitt: No.

Q119 Mr Wright: How proactive are UKTI?

Paul Everitt: Under no circumstances would UKTI even get involved in that kind of discussion. UKTI's role is to work together with industry on identifying where key market opportunities are—which countries have large or increasing defence spend and whether that spend is likely to be in areas where the UK has key capability. UKTI would then look to facilitate engagement and meetings with key people and decision makers in those Governments. That is their role. They do not get involved in or seek to facilitate export licences.

Q120 Mr Wright: I go back to the line of questioning that Amanda started. You mentioned advice and information. UKTI would not provide that advice and say, “Based upon what you do as a defence manufacturer, I think you can get a licence.” It would not work like that.

Paul Everitt: No. They might have a view, but they would not present themselves as being a set of advisers. To a certain extent, that is why we have been pushing the ECO. You need an appreciation of the broader context—both the legislation that exists and different perspectives on countries and the relationships within them.

Q121 Stephen Twigg: You said earlier that there are spikes of interest in particular conflict situations in different parts of the world. The humanitarian crisis in Yemen and the impact of the conflict, including the Saudi-led coalition’s military strategy, have had a reasonable amount of coverage in the recent period. Has that coverage had any effect on your members’ views on exporting arms to Saudi Arabia?

Paul Everitt: It is as I reflected earlier. This is not a specific comment related to this particular conflict. As an industry, we have to operate within some sense of certainty, if that makes sense. The way we do that is to say, “We have a regulatory regime.” As individual companies, we make a decision about whether or not we wish to sell overseas the products that we are producing and in which markets we wish to sell them. That is a decision that companies make. Once they have made that decision, have applied for a licence and are in goal, they have crossed a line where responsibility has to sit with the Government and those who are making the key decisions.

Q122 Stephen Twigg: Do you not accept that there is a reputational issue? We have received evidence from experts and others on the reputational effect on the UK and the UK Government of the alleged violations of international humanitarian law by the Saudi-led coalition. Is there not also a reputational issue for your industry?

Paul Everitt: As an industry, we are very aware of our reputation, as we are aware of the UK Government’s. As we indicated in our submission, you can look at the judgments that are being made by international organisations. We quote Transparency International, which is clear in its endorsement that the UK has a robust and rigorous arms control regime and that UK businesses, in particular, are companies that operate to high standards.

I am not sure that I am answering your question directly, but I am giving you a strong indication. Earlier there was talk of the arms trade treaty. As an organisation and an industry, we are active supporters of that treaty. We see it as very important in ensuring that there is control of the proliferation of arms. We believe that those who operate in an appropriate way will, in the fullness of time, be better positioned in a marketplace, because of their appropriate behaviour.

Q123 Stephen Twigg: Basically, you are saying that you rely on the strength of the regime—decisions made by the Government—rather than any sense of your members having some responsibility themselves to look at allegations and to push humanitarian views.

Paul Everitt: As we heard from the previous speaker, this is quite a confused, complex area. Our judgment is that the UK Government are best placed to have access to the best quality of information on which to make decisions.

Chair: At some point in the future, we may ask you to let us know your thoughts on the arms trade treaty. Michelle has the last question.

Q124 Michelle Thomson: I will follow on from Stephen. We have been touching on the broader context of legislation, and you have, of course, to adhere to domestic and international regulations. If you were to have a role reversal and were suddenly to be in charge of arms control policy, how would you suggest that the arms control policy of the UK could be improved?

Paul Everitt: I would not have any suggestions on policy itself. When you look around the world, the regime that we operate in the UK can be tested against any other regime and seen to be pretty effective, strong and robust. There are some elements within it, in terms of operation, that we would certainly look to improve. Earlier, I mentioned advice to companies before they start the process. A high number of export licence applications—something like 50%—get returned for further information. We have pushed very hard to say that we should analyse why. Is it because the people who are filling in the applications are not very good at filling in the forms? If that is the case, there is a role for training, with which we as an organisation would be very happy to help. Is it because the forms and processes are not clear or because the information that is being asked for is not being asked for in an appropriate way? Those are areas where we could certainly make further improvements.

The other area that we have highlighted is the use of open, general export licences, which are available. There are about 50 in use in the UK. They are predominantly for low-risk products, going to low-risk markets. We think that a further drive to expand the use of open, general licences would mean that far more time and resources were available for more contentious issues, which would mean that those issues were processed more quickly. For many businesses, particularly small businesses, that is their biggest bugbear. We have been aware of situations where a company has been approached by an international Government that would like to purchase some equipment, the company has applied for a licence and that has taken so long that the Government have said, “Actually, we will buy from somebody else.” It is about making the system work more quickly and efficiently, so that, if there is a problem and an application is going to be refused, it gets refused, but, equally, if it is going to get through, it gets through. It should be done in a way that is more business friendly and works on more reasonable timetables.

Q125 Michelle Thomson: I can accept what you are saying in terms of business process, the time involved and, therefore, the cost, particularly to smaller businesses. To finish off on that, based on your vast knowledge of companies from BAE Systems right down to SMEs, are there any areas where you think that the process could be more stringent, rather than more effective?

Paul Everitt: I do not have any suggestions to offer, I am afraid.

Q126 Chair: Can I come in on that? You represent a number of different organisations, which work through a number of different countries' systems. Do you think that our system is more stringent and robust? How do we measure up?

Paul Everitt: Our sense of this, reflected in the comments of international NGOs, is that the UK has one of the most stringent and robust systems for export control. When other countries are interested in making their regime more stringent and robust, they look to the UK.

Q127 Stephen Twigg: Are you aware of the Dutch and Swedish systems, which Iain highlighted earlier?

Paul Everitt: Not the specific details of them.

Q128 Chair: On that note, thank you very much for coming in front of the Committee and answering all our questions. I am sure that if we need to ask for further information you will be happy to respond.

Paul Everitt: Absolutely. If there is anything more that you need from us, I will be more than happy to respond.