



Committees on Arms Export Controls

Oral evidence: The Arms Trade Treaty HC 428

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Questions [27 - 49]

Members present: Chris White (Chair), Douglas Chapman, Amanda Milling, Wendy Morton, John Spellar, Michelle Thomson, Mr Iain Wright

Witnesses: **Roy Isbister**, Arms Unit, Saferworld, **Dr Shavana Musa**, Faculty of Law, University of Manchester and **Oliver Sprague**, Programme Director, Military Security and Police, Amnesty International, gave evidence.

Q1 Chair: Good morning. Thank you for coming in, and particular thanks to witnesses who have already enjoyed these evidence sessions. I am going to ask a couple of questions, and then ask you to introduce yourselves for the record and give us a bit of background. First of all, how do you, as a panel, see the significance of the arms trade treaty in terms of international agreement? Secondly, how important, as you see it, is Britain's role in the creation of the treaty?

Dr Musa: I am Shavana Musa. I am from the University of Manchester. I have worked heavily in issues of international law and have recently been involved in analysis of the ATT. At the outset, I should say that the ATT is a very significant step in the regulation of the arms trade. It certainly has the potential, beyond simply symbolic means, to reduce illicit trade. One of intentions is to cause diversion to other countries with questionable human rights standards. In that respect, it is a very significant step. Also, it is an international agreement that many states have signed and ratified, so there is a global consensus. However, there are also states that have not ratified it. Once you have signed the treaty you are not under an obligation as such, but you do not want to undermine the contents of the treaty. However, the signature in itself does not force a state to adhere to the obligations. It is not an enforcement means as such. That is one point. In order for the ATT to be truly effective, it needs many more states to ratify it. The US, for example, has not ratified the treaty. It has signed it. Other states, which are big global importers and exporters, have not done so either, and that is very important.

Q2 Chair: You mentioned that the United States has signed the treaty but has not ratified it. How significant do you think that lack of ratification is?

Dr Musa: It is very significant. A signature signals an intention by a state, to say, "Okay, we like it. Maybe in the future we will take it a step further." Sometimes it is a

diplomatic step to appease tension; for example, the UK played a leading role in getting agreement from other states to sign and ratify. There are international relations and diplomatic means that states go through, but not ratifying the treaty is quite significant. A state could go through a process of accession without signing it, and that would be equivalent to ratification if they had not signed the treaty itself, but generally, ratification is very important in order for a state to comply—for a state to form part of an international agreement and adhere to its obligations.

Q3 Chair: Oliver, would you answer the same question, particularly in terms of how important you think it is that we have signed and ratified?

Oliver Sprague: For the record, my name is Oliver Sprague, and I am the programme director for Amnesty UK's work in the field of arms export controls. My background is probably 20 years' professional experience working in the main on export controls. We were part of the group that originally worked to establish the ATT in the first place, so you would expect me to say that it is an extremely significant international global agreement. It is the first agreement of its type that sets a regulatory framework at global level for the transfer of conventional weaponry. Before the ATT, there was no such mechanism. What existed was a patchwork of regional agreements. There was the UN sanctions regime, for example, but there was no global framework to manage export controls. In a globalised environment where no one country can really be responsible, because its export control policy relies on component chains, supply chains and so on, a global approach is probably the only mechanism by which you can control it. For our side, we think that the core objectives of the arms trade treaty have a humanitarian and a human rights-centred focus right from the start. The rules that are in place are to prevent weapons ending up in the hands of serial human rights violators or being used to fuel transnational organised crime, or for gender-based violence against women and children. Those things are extremely important.

Another question is about whether states are implementing the treaty properly in the first phases. This is still a very new international agreement. We can have a discussion afterwards about where the UK is in its record of implementation, but the agreement itself is extremely significant.

Q4 Chair: Bearing in mind the time of this meeting, would it be possible for you to send us your views with regard to implementation by the UK?

Oliver Sprague: Yes, we can do that.

Chair: That would be helpful. Roy, over to you.

Roy Isbister: I am Roy Isbister, and I lead the arms unit at Saferworld. I have been working on this for almost as long as Ollie. Effectively, I agree with much of what Ollie said. Maybe I can flip to the last question you asked, which was about the role of the UK in seeing the ATT come into being. The UK deserves an awful lot of credit. Among all political parties, when you go through the history of the treaty negotiations and pre-negotiations, across the board the UK played a very important role in seeing the arms trade treaty agreed. On that basis, we had high expectations of what it would mean in terms of the UK continuing to set an example once the treaty had been agreed and, speaking to a point that you might come to later, in its implementation. In some respects, we have been disappointed that the UK seems, to a certain extent at least, to be saying, "We've got the ATT and that's job done."

Chair: Thank you very much.

Q5 John Spellar: Dr Musa, you mentioned that the United States had not signed but, as far as I am aware, nor have China, Russia, India and Pakistan. The first two are very significant producers and are very active in the export market.

Dr Musa: Yes. I put those in the category of other countries that have not signed. Russia and China have not even signed the treaty. I said in my submission that it is something that highlights one of the issues of the ATT that certainly needs to be improved, if that is the right word.

Q6 John Spellar: That brings us to the question whether there is probably broader general acceptance about sales to irregular non-state bodies, and possibly a different international perspective on the state-to-state sales.

Dr Musa: The ATT certainly includes the idea of reducing illicit trade and reducing diversion, for example, to non-state actors. It certainly highlights the non-state actor side of things. Under international law, there are certain principles and criteria under which a state could be responsible, in a certain way, for unlawful actions to non-state actors—for example, if they have effective control.

Q7 John Spellar: But in that context, is there not concern as to whether the UK, as is often said in terms of our relationship with the EU, rigidly implements and, indeed, gold-plates regulations, compared with other countries that may be signed up to the regulations but actually, particularly on state-to-state sales, takes a different view of their obligations under the treaty?

Dr Musa: I could probably say two things on that. First, the UK's position is remarkably different in that it was quite heavily involved in negotiating the treaty. If you are going to lead the way to get a treaty such as the arms trade treaty, which is an international treaty, and garner support and get it enforced, there is also a responsibility at the other end of the spectrum to follow it through and implement it in the most stringent ways. The ATT, however, is quite explicit in saying that, while it must be applied in a very objective and consistent way, there is clearly an issue of variation in terms of the national control systems that it puts forward. It is obviously the case that the ATT lays out the foundations for an objective and consistent approach, but it acknowledges that there will be variations. That is not to say that the variations in the national control systems should violate the ATT or vice versa, so that there is a Catch-22 situation, but there is a margin of appreciation involved.

Q8 John Spellar: Doesn't that lead to concern that we get to a position where the UK, probably even more so if certain campaigners against the arms trade had their way, will completely constrain the British defence industry, whereas today's *Financial Times*, for example, records a major increase in German defence exports, which then runs counter to what everyone in the Government, or indeed Parliament, seems to be trying to achieve, which is to maintain and develop Britain's engineering capability and engineering employment, particularly in the north and the midlands?

Dr Musa: I don't think it does, because defence export promotion is not there to commit violations of international humanitarian law. It is really for the protection of security.

That is a key difference. While there might be a question of balancing interests between the obligations of the ATT and defence export promotion, as well as developing technical skills in that respect, it does not necessarily mean that the promotion of defence should be without regulation, and that it should not integrate due diligence in terms of adherence to international humanitarian principles. That could, in essence, cause more bloodshed unnecessarily and disproportionately and would violate international law. There is always a question. Companies always say there is a contradiction, but I don't think there needs to be. Ultimately, the ATT recognises that there will be a need for defence exports and arms exporting and importing for peace and security, but that is the key. It is something that I highlight when I talk about one of the areas that might be a focus for improving the ATT—in article 7, which in a sense creates an implicit loophole, because then states could technically argue, “Well, this transfer was in order to contribute to peace and security for that country but also for our country.” That is one of the areas that needs to be tightened and strengthened in the ATT itself.

Roy Isbister: Could I add a bit to something you have asked quite a few questions on? You talked about China, Russia, India and so on. There are often peculiarities for all the states that have not signed up to the treaty. For example, I would not put China and Russia in the same position at all. Russia is quite opposed to the treaty, and it is going to be some time before we see any change there. That is a problem. As to China, through the ATT negotiating process, we saw a shift in Chinese attitudes and policies and what they were willing to accept in the treaty, and certain licensing decisions that they have taken since then. The rationale that the Chinese gave for not signing the treaty was that they didn't like the process whereby it was taken to a vote in the General Assembly as opposed to being agreed by consensus, but there was nothing substantive in the treaty that they were opposed to. Probably in the medium term, it is quite conceivable to see a shift in opinion from India as well.

On the non-state actor question, it is interesting that there is no explicit statement in the treaty saying, “Thou shalt not supply to non-state armed groups.” Some states have taken that to mean that the treaty does not apply to supplying non-state armed groups, but that is not the case at all. The treaty applies to all transfers. If you apply the treaty in a rigorous manner, it becomes very difficult to justify supply to a lot of non-state armed groups. Boko Haram has been given as an example in discussions I have had in west Africa. Is it okay to supply Boko Haram? Of course not. You apply the treaty. You are not going to supply Boko Haram with arms.

In terms of the “If we don't supply, someone else will” issue, we go right back to the 1980s and the Scott report, to the change in UK legislation and the agreement of the UK code of conduct, which is now a common position. The negotiation of the arms trade treaty was all about acknowledgement that it was just a race to a very dirty bottom, if that was how you approached things. The whole idea behind regional multilateral control is to avoid that. It is a difficult, long-term fight to bring states up to a higher level. How many times have I said, “It's not the case that, if you've got the ATT on Tuesday, your problems with the arms trade are solved on Wednesday”? This is a process; it is a step and a move in the right direction—a big move in the right direction.

As to the German question—the much larger arms exports by Germany, or exports of much higher value, at the moment—we need to return to what the arms trade treaty is. The arms trade treaty is not about reducing the arms trade. The arms trade treaty is about

preventing illicit trade and irresponsible trade. Germany could increase its arms exports by a factor of 10, and that might all be fine and dandy if those particular exports did not raise problems under the articles of the arms trade treaty. Looking purely at volume does not give you the kind of picture that we need if we are going to make an assessment of what the impact of it is.

Chair: For your information, John, I will be meeting with Germany's equivalent of me next week, so we will raise some of those questions then.

Q9 Michelle Thomson: Good morning, everybody. We have started to touch on a couple of the areas that I wanted to explore. Going back to the ATT, in terms of how effective it is as an international agreement, I wanted to fly above the top in general terms, and ask what you see as its weaknesses, what you see as its strengths and what would need to happen, ultimately, for it to be more effective. I appreciate that you have already mentioned article 7, so possibly it is more of a high-level question—strengths, weaknesses and making it more effective.

Oliver Sprague: I think we would all say that an international agreement that took 10 years to negotiate is never going to be perfect, so we are where we are. There is a formal process to change the ATT through its amendment process, but that cannot take place until 2020. There are obviously a number of areas that we would like to see improved. Some of those areas include the way that ammunition, parts and components are controlled within the treaty, because at the moment they are separated as a hybrid mechanism. We want to see them much more fully included in the scope. There are other areas, such as obligations to report, that we would like to see tightened, but an awful lot can be done. Essentially, it is up to national Governments to implement it, through article 5, for example. There are an awful lot of things that can be done in the meantime to ensure that states are implementing it properly. For example, all sorts of implementation guides can be drawn up in parallel to the European Union common position users guide. There is a very detailed set of instructions for licensing officials about how to apply human rights and international humanitarian law criteria in export licensing decisions. There is clearly lots and lots of scope for those types of issues to be put into the ATT processes as we go forward. Remember, we have had only one meeting of state parties as yet; the second is in August this year.

National Governments are responsible for implementing the treaty. There are an awful lot of things that the UK Government can be doing to improve their implementation through technical measures and so on. We can go into some of those, if you want to explore the details. There is the top-level amendment of the treaty process, which we can do, but there is an awful lot of implementation and harmonisation that can be done across states, as we are now.

Q10 Michelle Thomson: This is obviously a question for you too, Roy and Shavana.

Dr Musa: I certainly agree that one of the key issues is implementation at national level. Adding to what Mr Sprague said, there is the question of reassessment, which is quite vague in the treaty. I have looked at the treaty contents in detail and married them up with the way that the UK, for example, is going forward with our obligations. There are a lot of things that could be included, both in the elaboration of guidelines on the ATT and in the national system, to talk about reassessment; for example, in the UK-Saudi case, which I am sure we

will talk about in this session, if there is lack of knowledge or there are a number of things that mean that an arms transfer goes through, and in the event it is found that there are violations of article 7 and article 6, what should be done in that instance? There is massive ambiguity around reassessment.

Of course, there are other issues on the implementation side. There are questions about template reporting obligations. At the moment, there is disagreement on coming together with a template. There was a meeting in Geneva this year, if I am correct, that failed to come to an agreement on templates, so they have put that aside. That would allow for harmonisation at national level to report and to make things a bit more transparent. As it stands, in terms of the UK, it is certainly not as transparent as the ATT requires it to be because there is an opaque process. There are criteria that clearly include the ATT within the national framework, but how the criteria are then applied and deliberated over is completely opaque. That information is not disclosed. There needs to be more transparency.

When I look at the wording of the ATT on an objective, consistent approach to an application, marrying that up with the UK's case-by-case approach, one of the other things that strikes me is that the UK seems to take a subjective approach, which, in a sense, contradicts the objective approach that was taken through the negotiations to make the process as apolitical as possible, with the recognition that obviously, in a realistic world, there is never going to be a completely apolitical system. That objective consistent clause was really included to try to minimise the political nature of the process, and that strikes me as being at odds with the way that the UK, for example, is applying a case-by-case approach, whether that is against the EU and national consolidated criteria or not. Clearly, as Mr. Sprague said, that again highlights evident weaknesses in the implementation side of things at national level, which is absolutely crucial.

Roy Isbister: We have to remember of course that the treaty was negotiated by 193 states—Ollie touched on this—some of which were fundamentally opposed to the idea of an arms trade treaty, and were happy to be as obstructionist as possible throughout the negotiation. That weakens what you can expect. It also creates the type of language that is designed to be constructively ambiguous. Sometimes I guess it falls to become destructively ambiguous. There is a lot in there that would not be drafted as I would have drafted it, but there is lots to play with. For example, we can look at the scope of the treaty, which refers to the seven major categories that are used in the UN Register of Conventional Arms. It talks about combat aircraft, but only combat aircraft, not other military aircraft. That is an example. There are a lot of things missing when you look at the scope in that sense, yet in another article—5.3—it talks about states being encouraged to apply the ATT to the widest possible range of conventional arms. It is the floor rather than the ceiling approach. We now have 85 or so states parties, which is pretty good progress given how long this type of treaty has existed, and a lot of states in that 85 are applying the treaty to a much wider range than the minimum that appears under “Scope”. The UK and all the states of the EU are applying it to the full range of military lists. Other states are doing the same. They are establishing the basic norm of, “Okay, this is what the ATT says and this is how states are implementing the treaty.”

Record-keeping is another little example. It says that states should have to keep records for at least 10 years. That is below the standard that existed already, so I don't know why it is in there—it was almost like a slip of the pen. States are going to keep records

for longer than that. A lot of practice is becoming established and norms are being built. Even though the treaty has many weaknesses, it does not mean that you cannot use the treaty to build a stronger body of practice. In certain respects, we are seeing that now.

Oliver Sprague: As we have touched on it, can I give you three things that the UK could do to help its implementation of the ATT? We touch on them in our submission, so I will very quickly summarise them. The first thing is that it is a best practice requirement—not an obligation—to introduce registration of arms brokers. We believe that the UK should introduce a register of arms brokers. As part of that process, it should have a fit and proper test—eligibility criteria—as to who can be an arms broker as part of registration. That is one area.

The second area is complicated, but it is really important. The UK says that our open licensing framework is really important, and it wants to put as many licensing processes as possible—non-controversial licences—through the open licensing process. A key requirement of things like open general export licences is to ensure that the recipients of those licences adhere to the relevant international, non-proliferation regimes that exist—the Australia Group, the Nuclear Suppliers Group and so on—as destinations for which you can use the licences; states have to abide by those regulations. The ATT as such does not even feature in our OGEL licensing system, so because the ATT is now the global instrument for the regulation of conventional arms exports, I think there is an incredibly strong case to amend UK OGEL licences to ensure that states parties or signatories to the ATT are reflected in the destinations where you can use the licences.

The third area is having a discussion with the technical experts in the UK Government who are upgrading our SPIRE export licence processing system—the electronic system that is the hub where we process licences and report on those licences. That system is being upgraded as we speak; you can look on the BIS website. There are a whole lot of things that that system could be doing to make it more ATT-compliant, especially in terms of reporting on imports, and in terms of transit, transshipment controls and, crucially, the link between customs processes and licensing processes—licensing and physical delivery of equipment. Has there been an ATT audit of that system, and what processes can be put in place to ensure that there is? I don't know the answer. That is probably something you should be asking the Government for, because there is a golden opportunity to improve a technical system that is vital to the way our export licensing system works and that can have enormous benefits for how the UK can implement the ATT. Those are three really quick things.

Q11 Michelle Thomson: Again, you have led to my next question, which is about how effective the self-policing of ATT is. You have already brought out some examples, as have the other witnesses, in terms of reporting obligations. In general terms, not just in the UK, what are your thoughts about the self-policing element of it internationally as well as for the UK?

Roy Isbister: It is probably quite early to say. I think that self-policing on its own will not be sufficient. It will be up to the treaty regime to shine a light on implementation by states.

Q12 Michelle Thomson: Should we have an international body, for example, that sits above it?

Roy Isbister: I think that is simply not going to happen. In relation to what the treaty has the capacity to do, every year there is supposed to be a conference of states parties, and

there is an opportunity in that conference to shine a light on actual implementation, looking specifically at implementation of articles 6 and 7, on prohibitions, exports and risk assessments, not just implementation in terms of “Have you got a national control list?”—process implementation—but actual licensed decision-making implementation. It would be a case of the states parties as a group looking at that. There is also potential for the conference of states parties to set up subsidiary bodies that would be tasked to look at that over the course of a year and report back to the conference. There are a number of mechanisms that you could use to shine the light. It is not the case that there is a supranational licensing body making decisions, but with the best will in the world, self-policing without that additional component is going to be limited in its success.

Picking up on the reporting point, part of it comes through the transparency element of the treaty. That is very useful. States are obliged to report on what their imports and exports are. Again, that creates the opportunity for states to examine each other’s practice. The reporting becomes very, very important. That goes back to the point I made right at the beginning about there being some disappointment about the way the UK has implemented the treaty as opposed to how it negotiated the treaty. The first annual reporting deadline has just passed; states were supposed to report on their imports and exports for 2015 by 31 May. The UK met its reporting deadline, but it did not meet its reporting obligations. It is obliged to report on imports and exports. Those can be authorisations or actual deliveries, but they have to be both. The UK reported on its authorised exports—the licences granted—but it did not report on its imports. The UK has to set an example. Other states look to the UK. Other states know the role that the UK has played in this, and they look to the UK to set an example. For the UK not to report at all on imports is really disappointing. It is a confusing report, in that at the top it says “Exports”. I have asked a number of people to look at it and to say whether they are reporting on their deliveries or on their licences. Everybody looks at it and says, “Well, it’s deliveries; it’s exports.” It is not. They are reporting on licences. That is just an example of where the UK needs to do better, for the ATT to do better.

Q13 Michelle Thomson: Do you have anything to add, Mr Sprague?

Oliver Sprague: Yes. It is on a technical point that Roy mentioned about importing. That is one area where the UK’s existing machinery and practice is out of step with what it is required to do under the ATT, because we do not run an import licensing system across the military list. We run an import licensing system only where there are obligations under various pieces of firearms legislation. For things that come under the definition of firearms legislation—essentially, small arms and light weapons—we have an import licensing requirement, but for all the other military equipment, we don’t, and we are required under the ATT to have that in place.

On Roy’s point about the UK’s report, the UK met the 31 May deadline for its report. We report on imports. We have an import licensing system, so there are records available to show how many small arms and light weapons we imported. The UK left that section completely blank in its report to the UN of 31 May. We have to assume, therefore, either that we did not import small arms and light weapons of any kind into the UK during that reporting period, or that the UK has not yet developed its reporting sufficiently to meet those requirements. I do not know the answer. I would suggest that we did import small arms and light weapons during that reporting period.

Roy Isbister: I am sorry to go on, but there is another aspect that is very important to us; it relates to the use of the open licences. The UK cannot report because of the way in which open licences work. The UK cannot report on quantities under open licences, because those quantities are unknown. When it is reporting on export authorisations, it is reporting only on standard individual export licence authorisations. The Government are encouraging more and more use of open licences, so, as time goes on, that information is becoming more and more partial and leaving more and more outside what is reported. On a number of levels, the UK's reporting is disappointing. To me that would suggest that in future the UK needs to report on actual deliveries—exports and imports—rather than on licences.

Michelle Thomson: I am conscious of the time, Chair.

Q14 Chair: Thank you, Michelle. You two guys are obviously in agreement about reporting on imports. Have you written to the Government to get a response as to why that wasn't included in the report?

Roy Isbister: I have had an exchange. Let me see if I can remember it. I don't want to misquote, but I can follow up with something—

Q15 Chair: I do not want you to say something that you are not absolutely sure of.

Roy Isbister: I can say quickly—it feeds back to what Shavana was saying—that there was no agreed reporting template, and the UK doesn't want to spend a lot of resources developing a certain reporting methodology that might change because of a reporting template change in the future, so it simply reproduced its report to the UN Register on Conventional Arms. I think that is an accurate description. I will certainly get back to you if I have misrepresented.

Chair: Please do.

Oliver Sprague: Not to be too critical, while I think it is true that the report does not meet its obligations, it is one area that we can work on with the UK to improve. Even in the Government, there is an acknowledgement that they can do a lot better than just submitting the UN register report, which is the minimum requirement. Let's hope that next year, with a bit of pressure, the UK reporting will be better.

Q16 Chair: Thank you for that very positive answer. Moving on to a bit more of the practicality of the treaty, how do you think the risk assessment that the signatories are obliged to undertake is working?

Roy Isbister: I suppose we come back to the situation with Saudi Arabia, Yemen and so on, which is a key test on that.

Q17 Chair: Could we hold off from that element for a moment and just talk about risk assessment in general?

Roy Isbister: If you are just talking about the UK, maybe you are coming back to the fact that the UK has always argued that the criteria for the licence decision-making process, as envisaged by the arms trade treaty, do not create any significant additional obligations that the UK is not already subject to under national and EU law. The UK would argue that those

standard rules apply. I would tend to go along with that—Ollie has been looking at denials a bit—and as a general rule that is probably the case. There may be a question to be asked about whether the criteria in the treaty are quite as inconsequential for the UK and change to the UK system as presented. The language around facilitation is an example. The EU common position on the national consolidated criteria, in terms of human rights violations and international humanitarian law violations, refers to risks of equipment being used to commit violations. The arms trade treaty introduces the language of facilitation, so it talks about equipment being used to commit or facilitate the commission of violations. There is a question about what the new language means. To me it is a broadening of the criteria. It is not clear as yet whether the Government consider that to be a change at all. That is something I am trying to interrogate, I guess.

Dr Musa: To follow on from that, what I have seen from the UK Government is that they talk about “clear risk.” In a sense, that is a bit narrower in terms of the criteria that they use in the risk assessment. The ATT is certainly a lot broader and it then reduces the possibility under its criteria, as Roy mentioned, of even facilitating any particular process that would then result in violations of international humanitarian law. There is some tension between the narrow approach that the UK is using and the quite broad approach that the ATT is using. In that respect, I think the UK is possibly getting away with approving particular licences, using a narrow approach that is not completely, in my opinion, in harmony with the ATT.

Oliver Sprague: I echo what Roy said, but it is really important to remember that, in the ratification process that the UK Government undertook to make the ATT applicable to UK law, it tied the UK’s risk assessment to the existing EU common position criteria, which are “clear risk that might”. It applies all the risk assessment thresholds to the ATT to the “clear risk that might” standard. That is really important when talking to the Government and asking them about licensing.

It is difficult to see what effect the ATT has had on licensing, because, for example, there are issues with our annual reports. It is very difficult in the annual reporting process to really get into the weeds about where licences are granted and where they are approved. There are a lot of illustrative footnotes in the figures that can help you, but that qualitative information around end users and end use is missing from the report. I had a very cursory look at two reporting periods, one pre-ATT and one post-ATT. I looked at calendar year 2013, pre-ATT, and at 2015, post-ATT, to see what was going on in overall licensing statistics. One way that you can look at it is by how many licences are being refused. Pre-ATT in 2013, the UK Government were refusing about 1% of their single individual export licences—about 150 licences. Post-ATT, in 2015, that had risen to 2.4% of export licences; the figure had risen from 150 to 330. Licence processing times also increased significantly, which is not necessarily a good thing for industry. In the pre-ATT period, export licences were taking 14 days to process on average. In the 2015 period, they were taking 17 days to process.

That suggests to me that in those two periods, first, licences were clearly taking longer to process, so the scrutiny process to put them forward was taking more time, and, secondly, we were denying more licences. It is too early to say whether there is cause and effect—whether the ATT caused that—because there could be all sorts of reasons why those statistics

might fluctuate, but it is at least one indication that the ATT is having some effect on the overall export control system in the UK.

Chair: Thank you very much for that. We have quite an important question from Douglas, but could I ask you to be very precise in your answers, please?

Q18 Douglas Chapman: I have a straightforward question. By continuing to supply Saudi Arabia while the conflict in Yemen is ongoing, is the UK in breach of the treaty?

Oliver Sprague: In your previous investigation, we were very clear on that point. Yes, we believe it is clearly in breach of article 6.3 because the UK Government ought to have had knowledge from all the information that is available to them that those crimes are taking place in Yemen—those serious violations of international humanitarian law. It is also in breach of article 7, as, because of that, there was obviously a clear risk that they might take place. It was not just us who said that. It was the legal opinion that we commissioned from Matrix Chambers. It was very, very clear on that, and I think Phillipe Sands, when he gave evidence to this Committee, was very clear on that point, too. It is not just the ATT that we think they are in breach of. We think they are in breach of criterion 2 of the EU common position and the corresponding national consolidated criteria too.

Roy Isbister: I agree with him.

Dr Musa: I obviously have not done anything on the ground. I have not entered any of the territory. I have relied on evidence from organisations that have done that research. I would say that, yes, according to the international humanitarian law and human rights prescribed as part of the treaty's criteria that a state should consider in the process of approval or rejection of a licence, it has in essence violated the ATT.

Q19 Douglas Chapman: As a very quick supplementary, I noticed last week that a judicial review was announced in terms of this situation. When the Defence Committee was in Riyadh in February, people in Saudi were saying that the core part of the conflict might be over in a few months. Clearly, that is not the case. The judicial review needs to take place before February 2017, which is six or seven months away. What do you think should happen between now and that review starting or being under way?

Oliver Sprague: We have been making these calls for months and months, and the call remains: while there is a clear risk that UK equipment might contribute to and facilitate serious violations of international law in Yemen, the UK should suspend its extant export licences to all end users who risk using those weapons in that conflict. I do not mean just Saudi Arabia but all the coalition partners. It is also important to state that we have called out all sides of this conflict for violating international humanitarian law, not just Saudi Arabia and the coalition. The UK has no arms export or strategic relationship with the other side, the Houthis, so we cannot really criticise the UK Government for supplying weaponry to that side. That is why we are so strongly talking about Saudi Arabia in this context, but we must recognise that violations have been taking place on all sides.

Chair: Thank you.

Q20 Mr Wright: Can I take you back to the promotion of defence exports? Roy, I was struck by something you said earlier in response to John Spellar—that the arms trade treaty is not about reducing arms exports. The SDSR has placed the promotion of defence exports at the centre of trade policy. I have two questions on that, for all of you. Do you agree with that? Is it appropriate, and is it compatible with the aims of the ATT?

Roy Isbister: As it feeds on something I said, perhaps I could start. I do not agree that that is a sensible approach. The question of arms procurement, arms supply and arms export should not be set on the basis of economic policy. Those are strategic questions. They are questions that relate to human rights, humanitarian law, and so on and so forth, all the things that you find referenced in the arms trade treaty. That should be the basis of our policy, as I would see it. I am sorry, what was the second part of that question?

Q21 Mr Wright: Is the promotion of defence exports, which is at the heart of the SDSR, compatible with the ATT?

Roy Isbister: It does not have to be incompatible, depending on where you are promoting your arms exports and to whom. From the way that policy appears to be instituted in the UK, I would say that it is very difficult to reconcile with the aims of the arms trade treaty.

Q22 Mr Wright: Let me push you a bit further. In terms of the role of UKTI, the Government's target is promoting £1 trillion-worth of exports in defence, and arms exports are key to that. Do you think that defence exports should have such a central role in trade policy for Britain?

Roy Isbister: No.

Oliver Sprague: I agree with Roy. I re-emphasise that, if you are looking at the ATT as an instrument by which defence sales are stopped, you are looking at the wrong instrument. That is not what it is. It is a regulatory framework. It allows sales conditional on use and on the harm that they are likely to cause. Our view is genuinely—I don't want to sound too flippant on this—that, within the export promotion side of things, it is almost as if the ATT has never really been heard of. There is clearly a case to bring the ATT much more centrally into that role, because it is the global regime that has been put in place to ensure that defence exports across the world are managed responsibly. If you are going to be promoting defence sales, adherence to that global standard would seem to me an absolutely fundamental principle before you can even start negotiating those deals. What I would like to see is clear evidence that adherence to the ATT forms a very important part of our defence export promotion side of things. I share Roy's general observation that promotion is incompatible with our security objectives and with humanitarian law standpoint.

Dr Musa: I certainly agree that the ATT needs to be a part of that process. I can only talk from a very legal perspective. As I said earlier, there does not need to be a tension between defence for the promotion of peace and security as opposed to simply the trade, and having the ATT as a foundation for going through that process. Although I certainly think that the protection and security of other countries, and the exporters' security, is very important, they are not mutually exclusive. There can certainly be integration of the idea of the promotion of peace and security as opposed to the simply economic.

Chair: We now come to the question that gets asked at every Select Committee at the moment.

Q23 Amanda Milling: It is very topical. You know what's coming, don't you? Nearly two weeks ago the UK voted to come out of the European Union. What impact do you think that will have on our arms export control policy and procedures?

Oliver Sprague: That question is impossible to answer in the five minutes we have. I really implore this Committee to investigate that issue next year to investigate that particular issue. The danger is that some very fundamental EU co-operative arrangements come under the spotlight, and because they are niche, technical and specialised they could be forgotten about in the overall scheme of things. Somebody needs to be making sure that BIS has this under control, and the Home Office in some areas, too.

In these areas, by and large, it is a sovereign national discussion. Export licensing and the movement of strategic goods is a national competence, but for all sorts of reasons, the European Union has become a key institutional mechanism by which we can address some of the proliferation concerns, the strategic concerns and the security concerns. We co-operate with Europe in a number of key areas in different ways for different reasons. That means that we have a set of arrangements that have very significant influence and impact, and they are all different. We need to map what these arrangements with the European Union are, why they exist in the first place and what kind of models we want to see replaced.

To take one example, the EU regulation on dual-use goods regulates an incredibly significant sector of our industrial output. It covers a whole range, anything from oil and gas to banking to aerospace. Dual-use goods are internationally agreed as areas that can facilitate the development of weapons of mass destruction or advanced military capability. There is an international agreement that is not EU-based that these are regulated goods, and we need to be very careful about how we trade them around the world, because it is in no one's interest to allow the development of weapons of mass destruction. How that gets translated within the EU is that, basically, the EU has a regulatory framework that allows that trade within the EU itself along single market rules, or single market rules-lite, with one or two exceptions. Basically, it allows the trade to and from to continue. Removing ourselves from that process means that the regulatory barriers have to go up, because these are internationally regulated goods. We need to find a way of ensuring that the dual-use sector in the UK is not put at commercial disadvantage, but at the same time protect the very reasons why they are regulated in the first place, which is to prevent the development of weapons of mass destruction. That is one area.

The second area we can look at is firearms, and the firearms directive. Again, it is a legal competence for the UK to be responsible for how it manages firearms. There is an international recognition that, for things like transnational organised crime and terrorism, the relationship between small arms, light weapons and those processes is clear. The way we deal with those is to work internationally with our partners to exchange information and have systems in place so that the system is managed and we have some control of what is happening. The UK does that through a number of mechanisms, but it currently does it through the EC firearms directive, which is currently undergoing review. Again, we need to have something in place to cover the firearms policy.

Lastly—I am sorry I am going on about this—we have the EC regulation on torture goods. This is something very dear to my heart, because it is something that Amnesty

worked very hard to establish in 2006. That agreement is, essentially, about the human rights objectives that the UK Government share, and that basically the EU shares and the UN shares and the elimination of torture around the world. No one is going to argue that the elimination of torture around the world is not in the interests of every member Government of the United Nations. The EU set out its stall on this and said, “Okay. To fulfil those objectives, we are going to agree as 28 members a system to, essentially, outlaw the trade in torture goods. We are going to have a mechanism of administrative co-operation, we are going to have a technical expert committee and we are going to have a system of laws that national Governments will implement to ensure this happens.”

I would argue that the elimination of torture worldwide and a regulation to stop the trade in those weapons is an important plank in our human rights policy. Again, if we are going to remove ourselves from those instruments, we need to find a way of replacing them with something else and agreeing a new set of rules and regulations to replace them. I am not saying that there is not a way for us to continue to work with our European colleagues on this, because of course we are going to, but at the moment we have a completely blank piece of paper about how these things are going to move forward. These are really complicated technical areas. They are in place for very good reasons for all our security. They have to be replaced by something that is workable going forward, and we might not have very long to do it. I will stop there.

Roy Isbister: There are a few other things. We have talked around this to see what all these things are. The intra-community transfer directive is relevant; it complicates, in the language of the EU, the competence issue, because it is designed to streamline the movement of military items among EU member states, crossing intra-EU borders. Perhaps ironically in the circumstance, it is largely based on the UK’s open licensing system, and is trying to stretch that into other EU member states for intra-EU trade. In the event that the UK is not a member of the EU, in terms of exports from the UK into the EU—there is a lot of guesswork here—maybe there is not that significant a change, but potentially there is a more significant impact on items that are moving from EU member states into the UK. Again, that is something that needs to be thought through so that the strategic and military co-operation interests of the UK and EU member states are taken into account. There is a lot more than just looking at the common position and thinking, “What’s going to happen with that?”—although that is not insignificant either.

Dr Musa: Without sounding like part of the campaign, once the legal process goes through and if and when Brexit happens—at the moment legislation needs to be repealed—the UK is not going to have a seat at the table, as such. Without sounding as though I am repeating much of the campaign, that leaves a massive gap in how much influence the UK is going to have on all these issues—on the law. That is a big issue. The UK is certainly going to co-operate with the EU, I am sure, but now that we are a little bit removed from that inner circle, that is something to be quite apprehensive about, particularly since the UK was very influential in getting support from other EU states. When we are out of it, how much impact will we have? More internationally speaking—I am hypothesising here—non-European states, non-western states, have been questioning the UK’s position as a permanent member of the UN Security Council. Again, not being part of the EU will place more of a question mark. This is all me hypothesising and talking from a legal and academic perspective. I am aware that we have run over.

Oliver Sprague: It is also worth saying that we are starting these discussions already with colleagues in the Foreign Office and in BIS. We very much hope that what is going to

happen will be like what happened in the 2000s when we were looking at the review of export control legislation in the UK and a multi-stakeholder working group was set up between us. We have started conversations with industry, too, on this issue because they are quite concerned about what comes next. We need to work out what comes next, and we are hoping that that process will be set up as soon as possible.

Chair: Thank you very much, panel. In your last answer you gave us a great deal of food for thought. Oliver, we will have to accept your suggestion that we need to have a look at this going forward, and certainly when we have some sort of formal arrangement. Thank you very much for your time this morning. It has been very helpful, as always.