

Foreign Affairs Committee

Oral evidence: [FCO policy on arms exports](#), HC 868

Tuesday 13 December 2016

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Members present: Crispin Blunt (Chair); Ann Clwyd; Mike Gapes; Stephen Gethins; Mr Mark Hendrick; Mr Adam Holloway; Ian Murray; Andrew Rosindell.

Questions 1-50

Witnesses

Peter Jones, Director, Defence and International Security Directorate, Jessica Hand, Head of Arms Export Policy, and Helen Rawlins, FCO Deputy Head Export Control Joint Unit.

Examination of witnesses

Chair: Welcome to this afternoon's Foreign Affairs Committee evidence session on the FCO's role in policy on arms exports. I would be very grateful if our witnesses could identify themselves and state their roles for the record, please.

Peter Jones: My name is Peter Jones. I am the director for defence and international security in the Foreign Office.

Jessica Hand: I am Jessica Hand. I am the head of arms export policy in the Foreign Office.

Helen Rawlins: I am Helen Rawlins. I am the FCO deputy head in the export control joint unit.

Q1 **Chair:** Thank you very much for your written submission. Unfortunately, we received it about an hour and a half ago, so you may find some of our preparation for the session—all of our preparation, in fact—does not take your written submission to us into account. Forgive us if we stray into territory for which you may think you have already provided us with an answer; you will be able to answer again for useful emphasis.

Perhaps I can start with the general position around how a decision is taken. The ultimate decision, as I understand it, is taken by the International Trade Secretary under the new arrangements, and advice is given to the International Trade Secretary from other Departments, including from the Foreign Secretary as appropriate. Does the Foreign Secretary have a veto?



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Peter Jones: Would it help if I just talked through the landscape, including that question? Your description is absolutely right. The ultimate Secretary of State is the International Trade Secretary. One big development of the last year that I am sure you will be interested in is the creation of the joint unit—the export control joint unit—where we have brought together officials from the Department for International Trade, the Foreign Office and the Ministry of Defence into one unit to process export licences.

While that is a change, other things have not changed: the ministerial responsibilities and accountabilities have not changed; the ultimate responsibility of the International Trade Secretary is the same; the role of the Foreign Secretary to provide advice is the same; and the consolidated criteria against which we assess applications are the same as well. Although there is a change in the machinery of government, in terms of the unit, the ministerial roles and the criteria against which we assess cases have not changed at all.

It might just be worth saying a word on the joint unit and the context for that, if that would be of interest to you? Would that be useful for the Committee?

Chair: I am sure it would be.

Peter Jones: Just to give a bit of context, as you will be aware, there has been a move in recent years to create more joint units around Whitehall. The particular impetus here was the strategic defence and security review from a year ago, which mandated seven new joint units across government. Three of those are in my directorate's area of responsibility: one is on counter-proliferation and arms control; another does Euro-Atlantic security policy—that is NATO and European defence; and the third is the export control joint unit.

The aim with all of those is to try to bring the related parts of government together to create effectiveness benefits—not necessarily efficiency-driven in the first instance; if we can find efficiencies over time, that is what we will do—to try to make the operation of government more effective. The reason I mention that wider context is to make the point that this is not specific to the area of export controls. That is one important change, but it is in a wider landscape of bringing relevant parts of government together. Would it help if we talked that through in a little bit more detail?

Q2 **Chair:** You have submitted written evidence to us and you have just drawn on a substantial part of that in your explanation to me, so we now obviously have that evidence from you. In so far as you needed to illustrate the question, there was not actually a particular need for you to make that point since you have made it to us in writing; it would obviously have been infinitely more helpful if we had had rather more time for ourselves and our advisers to consider the written evidence. We will have to make the best of the session.

I will invite you to address the questions directly, and we will take it as



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read that we are contemporaneously going through your written evidence. If the questions are not covered in there and you can speak more widely around them, please do so. I am interested in how this actually operates. The responsibility is now for the International Trade Secretary to make a decision. If advice comes from the Foreign Office or Foreign Secretary saying, "We are not sure this is a good idea", how strongly does that language need to be couched for it to be a veto?

Jessica Hand: I think it is fair to say that there is no veto. The Foreign Secretary and the International Trade Secretary can take differing views; that does not happen very often, I have to say. If it looks likely that that is going to happen or, even at official level, we appear to be taking different stances, there are a number of mechanisms. At the official level, we have a weekly denials meeting where we discuss any case or licence application where any of the three advisory Departments are proposing to recommend refusal. It can be discussed at official level and, if necessary, ironed out then so that each can explain their rationale. If that cannot be resolved at official level, we have something called the dispute resolution mechanism or complex cases mechanism, whereby we invoke the Cabinet Office and discuss between the three Departments, moderated by the Cabinet Office, with the view of finding a consolidated solution. If absolutely necessary, we can go to ministerial correspondence.

Q3 **Chair:** Is that normal? Does it happen all the time? Is there a list of things about which there is a dispute every week?

Jessica Hand: No.

Q4 **Chair:** When was the last time?

Jessica Hand: The last time it was at that level was probably involving Israel.

Q5 **Chair:** When was that?

Jessica Hand: Around 18 months to two years ago.

Q6 **Chair:** Around the time of Protective Edge?

Jessica Hand: Yes—where there was that level of discussion about the position we were taking and the views people were taking.

Q7 **Chair:** What about at the lower levels?

Jessica Hand: At the lower levels, as I said, the denials meeting happens weekly. It is a frank exchange of people's perspectives on cases. Very often it means that one or another Department will go away and look at things again in the light of what somebody has said. More often than not, we come to an agreed position. Helen, you attend those meetings. I do not know whether you want to add anything.

Helen Rawlins: My deputy attends them at the moment but I have attended them in the past. Yes, the weekly denials meeting is an opportunity, as Jessica said, to discuss a case. The Department that is recommending the refusal will present the reasons, but each of the other



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Departments—we are talking about DIT, MOD and FCO—has the opportunity to ask further questions or to provide further evidence. The meetings are held in an atmosphere of constructive challenge. In my experience, it is usually possible to reach an agreement at official level. Sometimes it may take a few discussions while we ask for extra evidence, discuss it and see what weight we can attach to it, but it is tried and tested, and quite an effective mechanism at an official level to have cross-Whitehall co-ordination on this. It is unusual for cases to then have to be escalated further up the chain.

Q8 Mike Gapes: You said that you have a dispute resolution procedure, which was last invoked over Israel. Is it not surprising, given the controversy, that you have not had to go to that level of discussion with regard to Yemen and Saudi Arabia?

Jessica Hand: I would not say that we were using exactly that mechanism at the moment because it is fair to say that the current issue is so complex that everybody is trying to take everything into account. It is fair to say that all three Departments are looking at this in the round. Whereas in other cases, it is usually more clear-cut—for example, the Ministry of Defence will want to refuse, and the Foreign Office will be happy to agree and authorise a licence—in the case of Saudi Arabia and Yemen, we are all grappling with the complexity and delicacy of the situation.

Peter Jones: It may be worth adding that even, in normal running within the Foreign Office, you may have different perspectives. We might be trying to balance off a human rights consideration against some other aspect of the case. Although we talk about dispute resolution, in fact a lot of this is just a normal process of bringing together a coherent opinion.

Q9 Mike Gapes: Can you talk me through it? What format does the recommendation from the export policy team take when it goes to the International Trade Secretary? Can you explain and perhaps give us some examples of how that works in practice?

Jessica Hand: When a case is routine or relatively uncontentious, it is processed by the Foreign Office team. We take our view, but we then enter that view on the SPIRE database, which is the electronic system that the licences are—

Mike Gapes: I have been over in a past Parliament and seen it, so I am aware of that.

Jessica Hand: At a working level, that is how we communicate our view to the Department for International Trade.

Q10 Mike Gapes: If an exporter puts something in and they have had a relationship with this country and a particular company over several years, it would not be flagged up because it would be an open export licence, generally. Then you have the single ones—one-offs—which is perhaps a new situation. When do you decide you need to seek approval at ministerial level?



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Jessica Hand: We would normally only go to Ministers when a case was particularly complex or where we were forming what was essentially a new policy—if we were changing our approach in some way. To take the case of a country on which there were restrictions, if we thought we had reached the time where we should start relaxing those restrictions, we would take that to a Minister.

Peter Jones: Of course, the vast majority do not. They are handled at official level.

- Q11 **Mike Gapes:** In previous Parliaments, we had some discussion about Sri Lanka, where there were restrictions—this was 10 years ago. The restrictions were lifted because there was a ceasefire. The ceasefire broke down and then we found that large numbers of British small arms had been used in the conflict. You potentially have to make judgments about circumstances that change. Who is the pivotal source of your information when you make those judgments? Is it within the FCO or from another Department?

Jessica Hand: It would depend on the aspect of the criteria that was most important. If it was human rights, for example, the chances are that it is a Foreign Office decision, because we are responsible for human rights decisions. If it is international obligations such as sanctions regimes, it would be us. If it is issues that had a potential impact on national security and defence, it would be a Ministry of Defence decision.

- Q12 **Mike Gapes:** Your paper and the statement made in 2014 by the then Secretary of State, Vince Cable, refer to issues that are particularly sensitive or finely balanced. What makes an application particularly sensitive?

Peter Jones: There is an onus on us as officials to spot that and form a judgment. For example, if there is an emerging crisis or conflict situation in a particular country or part of the world, that would be a signal to us that we should consider whether a particular country is now no longer routine but deserves ministerial consideration. It could be the reverse as well.

- Q13 **Mike Gapes:** Would a country that is a long-standing ally and partner, which provides us with security assistance, intelligence and anti-terrorism advice and is a major economic partner and importer of British weapons worth billions of pounds be regarded as sensitive in the same way as a country that was just coming out of sanctions, with which we have not had that kind of relationship?

Jessica Hand: To some extent, yes, but the sensitivity is very specific to that country and that set of circumstances. There is no commonality of what the sensitivity might be.

- Q14 **Mike Gapes:** So you do not have a check-box list. You have to take each case at that time and use your judgment, with all the conflicting pressures coming in.



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Jessica Hand: When we say—we frequently do so—that we look at each case, case by case, we really mean it. We look at each case afresh. An application that comes in today for a country that we recommended refusal to yesterday does not necessarily automatically get refused. We will look at it on the merits as of now.

- Q15 **Mike Gapes:** If it is finely balanced, would you have a tendency to not grant the licence as your default position?

Peter Jones: The test is the criteria. We would assess against the criteria—the wording of the relevant bit of the criteria—and form a recommendation. I don't think there is a bias either way. We follow those as rigorously as we can.

- Q16 **Mr Hendrick:** To follow up on Mr Gapes' question, you used the words "sensitive" and "complex". How much do considerations such as the size of the commercial contracts involved or whether the country concerned is a strategic ally weigh in the decision-making process? Or is it looked at purely on whether it meets human rights or other criteria?

Jessica Hand: All of that is important background information to inform us, but ultimately our licensing recommendations are made on the basis of the eight criteria. For the licensing process, those are what come first.

- Q17 **Mr Hendrick:** So it doesn't matter how big the contract is or what the country concerned is?

Jessica Hand: Potentially, no.

- Q18 **Ian Murray:** I will follow up on Mr Gapes' questions, too. In your written evidence, you say "There are eight Consolidated Criteria. The FCO provides advice on six...and has lead responsibility for five", including all four mandatory criteria. In the FCO's eyes, is it acceptable that a different Secretary of State makes the ultimate decision?

Peter Jones: I do not know whether it is for us to have a view on that. That is the system we have. The role is tightly defined according to the criteria we have. That is the system we operate.

Jessica Hand: One of the things we find, particularly at the official level, is that the three-way division between the Ministry of Defence, the Foreign Office and DIT actually adds rigour to the process. By the end of the decision-making process, we are all generally content that we have reached the right decision.

- Q19 **Ian Murray:** If in the view of Parliament a decision is incorrect, or it transpires that it is incorrect, the person ultimately responsible is the Secretary of State for International Trade, who would be brought before the House to explain himself or herself. But the majority of the information for assessing against the criteria comes from a different Department. Given that this is such a difficult, contested, emotive issue, is that acceptable to the FCO?

Peter Jones: I do not think it causes us a problem as an institution. Previously, we have had both the then Business Secretary and the then



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Foreign Secretary giving evidence to the combined Committee—the CAEC—when we had that, and it seemed to work well as a model. It does not cause us an institutional difficulty, put it that way.

- Q20 **Chair:** Can I explore the operation of these criteria with a case study? Criterion Three, which is one of the mandatory criteria that you lead on, forbids the export of weapons that aggravate conflict or tensions in a country. Given the territorial disputes between the Kurdistan Regional Government and the Iraqi federal Government, how have we managed to export weapons to both of them at the same time?

Peter Jones: That might be one where, if you want a detailed country answers, we would need to come back to you in writing. But the test would always be against the criteria. Is there necessarily a conflict between the Government of Iraq and—

- Q21 **Chair:** Have you seen the territory that the KRG claim?

Peter Jones: It is slightly beyond our immediate remit, but the KRG and the Government of Iraq are both engaged against Daesh.

- Q22 **Mr Holloway:** What sources of information does the export policy team draw on in order to make its recommendations?

Jessica Hand: We refer in the first instance to our partners on our geographical desks who look after the country and the region concerned. We reach to the posts in those countries. If necessary, we also talk to our research analysts, our human rights department, our international organisations department—whoever might be relevant to that situation and have knowledge. We can also reach to technical experts in the Department for International Trade and in the Ministry of Defence about the weapons capabilities or the equipment capabilities, so that we understand what it can do. We look at open source reporting as well. We try to draw in as much information as is available at any one time.

- Q23 **Mr Holloway:** Presumably, the work with international organisations takes in what other Governments and other countries are doing.

Jessica Hand: Absolutely, and separately we have a co-ordination mechanism with European partners. Once a month there is a working group in Brussels, where these issues are discussed; so countries that are posing particular concerns, or weapons types or equipment types that are posing particular concerns, can be taken and discussed with European partners there.

- Q24 **Chair:** How often has the Foreign Office's recommendation not been accepted by the Business Secretary or the International Trade Secretary?

Jessica Hand: We scratched our heads about this one. In our memory, collectively, it hasn't. We would really have to go back through our records to see if beyond the time of the people at this table it has happened.

- Q25 **Mike Gapes:** Which is how many years?

Jessica Hand: Three or three and a half.



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Peter Jones: We could not immediately recall any cases.

Jessica Hand: Not one. Again, I think it is down to the fact that these complex cases and dispute resolution mechanisms are so strong that there have been cases where there has been a lot of exchange between Departments, but never one that we can remember where the recommendation has been refused.

Q26 **Ian Murray:** Can I follow up on that? The FCO leads on the four mandatory criteria, and of course there is a host of other debate that will go around the eight criteria. If the Foreign Office suggests that a licence should not be granted under the four mandatory criteria, has that ever not been accepted?

Jessica Hand: Again, I would have to go back in detail through the records, but not to my recollection.

Q27 **Ian Murray:** There has been criticism over a number of years, particularly from the Committees on Arms Export Controls, about the criterion that no licence should be granted if on balance it would seem that the Government is using that for internal repression or external oppression—I think those are the exact words. There is significant concern that that has been diluted over time. Is that something you recognise? Would you say that that criticism from that Committee is untrue?

Peter Jones: I do not think we would agree with it.

Q28 **Mike Gapes:** Switching subjects, the consolidated criteria are based upon the European Union's discussions over a number of years. Have you in the Department given any thought to what might happen in two and a half years' time, and whether we just incorporate those criteria or end up having something weaker than what we have now?

Peter Jones: I might ask Jessica to come in in a second—

Chair: Or even better.

Peter Jones: I think part of the story is that we would like to think our own standards have been spread to Europe, and have been adopted in other European Union countries; so we would like to think there is an element here of the UK setting the standard and then bringing others along. Also, more generally, if you look at the arms trade treaty, again I think we can take a degree of pride in the UK leadership that is reflected in that as we try to get similar standards operating globally. For the future we shall have to see, but obviously the UK will be able to make new choices in future.

Jessica Hand: I support that. I think my inclination would actually be to say that it is the reverse—that the UK was working on establishing a set of criteria long before it was in the EU mind to do so. As Peter has said, we were therefore prime movers in forming these criteria. Colleagues in the Department for International Trade are working in a very focused way at the moment on the implications of Brexit for the criteria. As I understand



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it at the moment, the inclination is they stand. Whether in the longer term we may adjust further is an issue for speculation, but I think in the short term, come whatever date is set where we finally make that break, these will stand.

- Q29 **Stephen Gethins:** Briefly on the topic Mr Gapes brought up, have you had any talks with the Commission or at a bilateral level, say with the French, on how that might work in years to come? Has anything happened yet?

Peter Jones: No.

- Q30 **Stephen Gethins:** Nothing? Even six months on—nothing yet?

Jessica Hand: No. Informal, speculative among ourselves-type: are you going to keep them, will they stay the same, what are we doing to do, how are we going to co-ordinate?

- Q31 **Stephen Gethins:** When you say among yourselves, you mean internally. So no talks at all so far.

Jessica Hand: Absolutely.

- Q32 **Ann Clwyd:** Do you treat allegations of IHL violations made by NGOs against Saudi Arabia, for example, in the same way as you treat such allegations against the Russian and Syrian armed forces?

Peter Jones: We try to apply the criteria consistently and equally to all countries, so there is equal treatment.

- Q33 **Ann Clwyd:** So you would approach the issue in exactly the same way if NGOs made allegations about Russians and Syrians.

Peter Jones: The nature of arms exports is different for different countries. Saudi Arabia is a large arms export market for us, and Russia clearly is not, but the criteria are the same.

- Q34 **Stephen Gethins:** Amnesty International has reported that it has evidence that a BL-755 cluster bomb, which historically was supplied by the UK to Saudi Arabia, was used in the current Yemen conflict. The Saudis have denied that was the case. What sources do the FCO use to assess that kind of contradiction when it occurs?

Peter Jones: We take all those sorts of reports very seriously, including the evidence provided by NGOs or reports that they have. We will always check them against other sources of information, notably through our own diplomatic networks—the embassies and high commissions that we have around the world. Sometimes reports like that turn out to be founded, and sometimes they do not. It is our job to try and use the full evidence and information suite available to us. That is the approach we would take.

- Q35 **Stephen Gethins:** In this case—and there have been a number of cases in the Yemen conflict—what kind of sources have been used to check up different allegations?

Peter Jones: Primarily the diplomatic network.



Stephen Gethins: Sorry, I didn't catch that.

Peter Jones: The embassies concerned will be able to speak to their host authorities in whichever country it is. They may have access to information themselves. Intelligence sources, for example, may be relevant in some cases. We will always take the full suite of information that we have.

Q36 **Stephen Gethins:** Sure, but you say "the full suite". Do you think that there is a lot of emphasis on the foreign Government against whom the accusation is being made? It sounds as though there is, if you are relying on the embassy network.

Peter Jones: We will try to form our own judgment. We will obviously talk to host authorities, but that is not to say that we accept everything that we are told at face value. We will try to form our own judgment.

Q37 **Stephen Gethins:** So in the case of this contradiction, who else would you use apart from having the foreign Government's assurances, especially in a case such as Yemen, where information can be difficult to come by?

Jessica Hand: In the case of this, we are relying very heavily on the expertise of MoD colleagues and analysts, who understand the weapons systems and what they can do much better than we do and can therefore advise us on the likely veracity of the sort of reports that we are seeing and hearing. Their advice is very important in all this, hopefully as an impartial base.

Q38 **Stephen Gethins:** And you are confident that there weren't any breaches of international humanitarian law and that you had enough evidence to allow you to make that judgment.

Jessica Hand: This particular situation is ongoing, so I cannot comment further at the moment.

Peter Jones: But we will try to be as rigorous as we can.

Jessica Hand: If there is new information tomorrow, we will take it into account.

Q39 **Stephen Gethins:** I think the Chair will want to move on, but this is something that the Committee is taking a particular interest in. If you have further information that you think we should consider—with particular relevance to the Yemen case—the Committee would want to take that into consideration, because I know there is a lot of information. I hope that the Chairman is okay with me asking for that.

Peter Jones: We understand the importance of that.

Q40 **Ann Clwyd:** Is the Government position, as you're explaining it, one in which Saudi Arabia—the country whose armed forces are accused of violating IHL, for instance, in the Yemen—is responsible for investigating in the first instance? You said it is their responsibility to investigate.



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Peter Jones: As I said, we will form our own judgments and recommendations to Ministers on the basis of all the information that we have. Some of that will be gained through our conversations with the local authorities, some will be our own analysis, and we will do as thorough a job as we can.

In terms of investigations in-country—

Jessica Hand: I think there is a difference. We do not have authority to go and investigate in Saudi Arabia without the permission of the Saudi authorities. In the first instance, we believe that it is fair and respectful to ask the Saudis to carry out their own investigation. Our expectations of their capabilities and military processes is such that they should have a chain of responsibility whereby they can investigate incidents where they appear to have made mistakes or acted erroneously. We would first look to them to do that. As I am aware, we are not ourselves looking to investigate in-country at the moment, but we are scrutinising carefully the information that is made available.

Q41 **Ann Clwyd:** Would you trust the outcome of such an investigation by the Syrian or Russian military in the Syrian war?

Peter Jones: As I said, we will try and use the same standards and rigour for whatever country we are talking about, and use our own judgment. In the end, it is our judgment, our recommendation and our advice to our Ministers. That is our responsibility.

Q42 **Mr Holloway:** This is hypothetical, so it is perhaps unfair, but let us say someone brought back a piece of a cluster munition that contained a serial number or reference number of some kind showing it had been exported by us to Saudi Arabia. What view would be taken of that?

Peter Jones: It is hypothetical, but I imagine that our MoD experts would be looking at it and providing information, which would form part of the analysis.

Q43 **Chair:** If you lose this judicial review, what are the consequences? Is it around one licence? What would be the wider effect?

Peter Jones: I am not sure we can answer that—the judicial review is ongoing and it is not our job to comment on the legal process as it unfolds.

Jessica Hand: Also, we cannot answer that until we know what the judgment is.

Q44 **Chair:** Then perhaps you can help us with some background on exactly what is being reviewed.

Jessica Hand: I do not have in my mind the absolute text of the challenge that was brought, but as I understand it, it is a challenge on our policy towards arms exports to Saudi Arabia in the context of the Yemen conflict.

Q45 **Chair:** So it is not a challenge to the granting of particular licences.

Jessica Hand: It appears to be anything and everything.

Peter Jones: Would you like us to send in some further information?

Q46 **Chair:** It looks as though Ms Rawlins is about to tell us. I can't believe it is not something you are following extremely closely.

Helen Rawlins: No. As my colleagues have said, we cannot really comment on judicial proceedings so we cannot talk in any detail about the judicial review.

Q47 **Chair:** You can because it is the subject of a ministerial decision. I have been advised that we are free to get into this territory because it pertains to a ministerial decision and therefore remains subject to parliamentary oversight.

Peter Jones: If you want a correct statement of where we are, we need to send you that in writing, because we do not have that immediately in our heads. Apologies.

Chair: If you lose the policy, what are the consequences?

Peter Jones: I am not sure we are in a position to answer that right now, but we will get an answer for you.

Q48 **Chair:** That would be helpful. What would you propose to do about it?

Peter Jones: As I said, I think we will have to come back to you on that.

Q49 **Chair:** If you lost the policy under the operation of the law as it currently stands, what conclusion should we have drawn?

Peter Jones: We are into speculative territory again, and it is very hard to answer.

Chair: But what is your commentary on the law you are required to operate? You have given us evidence that you think the United Kingdom has in a sense led good practice in this area and we should be proud of our role in the arms trade treaty, yet we might find ourselves in a position where the policy of the Government, as properly operated by your oversight in the licensing regime, is overturned under judicial interpretation of the law. Do you have a view on that?

Peter Jones: With respect, that is speculative. We do not know what the outcome will be, but we are proud of the system that we operate. We operate it as rigorously as we can. We believe it stands comparison with any others in the world. We are proud of our role in the arms trade treaty and the conversations that we have with our European and other partners. This is something in which we take professional pride.

Q50 **Chair:** Okay. I would be grateful if you supplied us that note about the consequences and, as part of that, the implications for our support of the members of the Saudi coalition going forward.

Peter Jones: Of course.



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Chair: Thank you very much for coming to give us evidence. Unless my colleague have any more questions they wish to put to you, that concludes the session.