HOUSE OF COMMONS

Committees on Arms Export Controls

Oral evidence: UK Arms Exports during 2016, HC 666iiii

Wednesday 9 May 2018

Ordered by the House of Commons to be published on 9 May 2018.

Watch the meeting

Members present: Graham P. Jones (Chair); Ann Clwyd; Leo Docherty; Mike Gapes; Chris Law; Emma Little Pengelly; Priti Patel; Faisal Rashid; Gavin Robinson; Lloyd Russell-Moyle; Stephen Twigg; Henry Smith; Catherine West.

Questions 190-216

Witnesses

I: Dr Lucie Béraud-Sudreau, Research Fellow for Defence Economics and Procurement, International Institute for Strategic Studies, Dr Anna Stavrianakis, Senior Lecturer in International Relations, University of Sussex, Andrew Feinstein, Executive Director, Corruption Watch UK, and Ian J Stewart, Senior Research Associate, Centre for Science and Strategic Studies, War Studies Department, King's College, London.

Written evidence from witnesses:

– Dr Anna Stavrianakis

- Corruption Watch UK

Examination of witnesses

Witnesses: Dr Lucie Béraud-Sudreau, Dr Anna Stavrianakis, Andrew Feinstein, and Ian J Stewart.

Q190 **Chair:** Thank you very much for coming in. I have got to give a quick warning: we are going to have to get through this session quorate in probably 40 to 45 minutes at the most. I do not think there is much chance of an overrun, so we will need very brief and succinct answers if you possibly can. We will have to start pretty quickly. Would you like to introduce yourselves very briefly, please?

Ian J Stewart: Ian Stewart. I run an academic research programme at King's College London, focusing on illicit trade and export controls.

Dr Béraud-Sudreau: I am Lucie Béraud-Sudreau, a research fellow for defence economics at the International Institute for Strategic Studies.

Andrew Feinstein: Andrew Feinstein. I am the executive director of Corruption Watch and the author of "The Shadow World: Inside the Global Arms Trade".

Dr Stavrianakis: Hello. I am Anna Stavrianakis. I am a senior lecturer in international relations at the University of Sussex.

Q191 **Chair:** Thank you. Mr Stewart and Dr Béraud-Sudreau, the Government is encouraging greater use of open licences in preference to standard licences. What potential advantages and disadvantages do you see in that?

Ian J Stewart: It is clear that open licences expedite the licensing process. There are less cases for Government reviewers to handle and, since such a large number of cases require things like further information to be sought from the exporter before processing, there is a clear reduction in the licensing burden.

At the same time, my view is that it is transferring risk from Government to companies—outsourcing risk a bit—in part because it becomes the company, as opposed to the Government, who determines whether or not the rating of the item is correct. So it is speeding things up, but it is transferring risk from Government to companies.

Dr Béraud-Sudreau: I will not repeat what Mr Stewart said—I have a rather similar view. In France, this system was introduced only recently—in 2014—so the advantages and disadvantages are hard to see yet. The aim was similar—to simplify the process for industry—but, at the same time, this does put the burden more on the industry itself, and it shifts the roles between state and industry. There is more burden sharing on export controls between the state and companies.

Q192 **Chair:** How does that change towards open licences differ from other countries in Europe?

Dr Béraud-Sudreau: In France, it is not much used yet, because the general licences are not seen as very useful for the major companies. They are used more by small companies who export spare parts, rather than bigger companies who export complete weapons systems, because those are not covered in the general licenses in France.

Q193 **Chair:** Back to Ian: how confident are you that the Government's compliance auditing —end use— in respect of the different type of open licences is adequate and effective?

Ian J Stewart: The compliance audits right now in the UK are conducted only for open licences and not for standard individual licences, and in general the compliance process for open licences is very good. The compliance officers will sit down with the companies on usually a six-month basis, and check the books. One of the challenges that this throws up, though, is reporting—and maybe we will come on to this later—but the gathering of information on export of controlled goods is much less clear for open licences than it is for standard individual licences. So actually while we know that companies who use open licences tend to be compliant, because we have people who go in and check the books, we kind of have much less visibility as to what trade is actually going on, which raises a different type of compliance challenge, which is we don't actually know where these goods are going in other countries as well as if we had standard individual licences.

Q194 **Stephen Twigg:** Anna, in your evidence you say that CAEC could usefully explore the impact of political direction on the bureaucratic licensing process. Can you say a bit more about that and, in particular, what role you think political direction should play in setting the policy, but also deciding on particular cases?

Dr Stavrianakis: Of course. I think political direction is happening at the moment both at the level of policy and at the level of individual licensing decisions and I think it is a problem because it pushes implementation of policy away from prevention—away from prevention of IHL violations, away from the prevention of human rights abuses, all while remaining technically within the bounds of what is legally and politically permissible. So UK policy says the Government will protect international humanitarian law before it takes into account economic and diplomatic considerations; and we know that there is a lot of process. There are a lot of civil servants. There is a lot of oversight.

There is a lot of process; but we have a series of perverse outcomes. We have the speeding up of licensing with regard to exports to Saudi Arabia with the onset of the war in Yemen; we have the massive increase in the value of export licences to Saudi Arabia, with the start of the war in Yemen, of weapons directly used in air strikes, with no licenses refused; and freedom of information request responses to me tell me that none were even discussed at the weekly refusals meeting. This is at a time when we have ongoing repeat credible allegations of IHL violations happening in Yemen. To my mind that means that any common-sense understanding of risk should kick in. You would expect to see licences taking longer to be assessed. You would expect to see dissent within the process. You would expect to see some refusals. None of those things are happening. The opposite is happening; so we have a problem. There is lots of process but perverse outcomes. So the problem can't be that they haven't done the process properly. We know there is lots of process. The problem is the process is allowing the problematic transfers.

To my mind that is where political direction comes in, and it comes in in two ways. I wrote about this in my evidence, where there is evidence that came up during the judicial review of the head of the Export Control Organisation being very clear to permanent secretaries that "if you accept that the threshold for 'clear risk'…has not been breached then it is permissible to take wider factors—such as diplomatic and economic relations—into account. If you do not accept this then it's not permissible to do so." To my mind that is bureaucrat-speak for "These are your obligations you might want to think about," where it is not explicit, but that's how bureaucracies operate—right? To my mind that is the direction of policy at the policy level. Then at the level of individual licences we know that the Foreign Office are referring individual licence decisions to the Foreign Secretary. These are decisions being made at the highest level.

Q195 **Chair:** I would have thought that all important decisions were taken or at least seen by, or informed to, the Secretary of State for Trade. Sorry, Catherine, did you want to come in?

Catherine West: I couldn't hear what you said.

Chair: I just think that all the important decisions—you are asking me my opinion—the Secretary of State should be mindful of them, and they should be sent. I would have thought that that would have been automatic.

Q196 **Faisal Rashid:** My question is to all of you, really. Under the current licensing regime, how far do the consolidated criteria actually constitute a check on the Government? Anybody can start.

Dr Béraud-Sudreau: If you want, I can start on non-UK perspectives on other criteria in other countries.

Q197 **Chair:** Does Andrew want to take this?

Andrew Feinstein: Yes. First, the criteria don't canvas the corruption issue, which is of great concern to me. I think we will deal with that perhaps a little later on, so I won't touch on it now. It is certainly obviously better than having no criteria at all, but I think that, if one looks at the evidence of specific arms transactions, be it in relation to the conflict in Yemen or the prosecution of corrupt activities in other countries involving British companies, one would have to say that it is having only a very limited impact as a check on Government in terms of the way it is currently constructed and, more importantly, the way it is being enforced.

Dr Stavrianakis: If I could add to that, one thing it would be really useful for the Committees to explore with the Government is the way that they actually operationalise the consolidated criteria. There is a strong argument to say, with the exception of the absence of a corruption criterion, that the criteria themselves are pretty good. It is about how they are implemented, which remains the black box—it is what we don't know. How is it that you can have a policy that says that we will not sell weapons where there is a clear risk that they might be used in serious violations of international humanitarian law and also have ongoing increased arms sales to Saudi Arabia, in the context of the war in Yemen? I don't know.

Chair: That did go to judicial review in November, and it will come back up again in the courts with the success of the appeal.

Q198 **Emma Little Pengelly:** My question is to Dr Stavrianakis. You suggest that licences should not be granted unless it can be adequately demonstrated that there is no clear risk of misuse, so there is a presumption of denial. In your view, how can the non-existence of a risk be conclusively demonstrated? As you have indicated, it is a process-driven system. In terms of that presumption, how can that work in real life?

Dr Stavrianakis: You cannot conclusively demonstrate the absence of risk. That is not what risk assessment does. Risk is about managing and pre-empting possible future harms, not eliminating them; there is no need for a crystal ball here. It acknowledges that we live in a complex, fast-changing world in which we don't have perfect information. It is about exercising judgment.

A risk-based framework doesn't require that you conclusively demonstrate that there is no risk. The problem is that the Government seem to demand absolute future certainty that weapons will deliberately be misused before they will even consider not issuing licences. The war in Yemen shows that, even when that is the case, there is still an unwillingness to consider refusing licences. That is why I think it would be really useful if the Committee could probe the Government on how they implement it.

A presumption of denial is a different starting point; it is not primarily a risk-based approach. It starts from the other end of the spectrum to the one we currently start at. At the moment, licensing is basically a service to industry. It is a means of managing their reputation of facilitating trade. The other end of the spectrum is preventive, which means that licensing policy is designed to prevent human rights abuses and violations of international humanitarian law. It says that, if you are operating on a presumption of denial, a good place to start would be something like the Foreign Office's list of countries of concern, because that would illustrate joined-up government.

The Foreign Office could say: "We have concerns about these sorts of countries, and we will therefore not sell weapons to them until we can be persuaded that it is a good idea." Rather than the current system, which is "We'll sell weapons until and even unless it can be pretty clearly demonstrated that there is a clear risk", presumption of denial starts you at the other end, from a preventive rationale—preventing IHL violations and human rights abuses.

Q199 **Chris Law:** This has been really interesting—the information given. You have also suggested for each licence "analysis of the effects in recipient country" should be compiled along with a record of where the items supplied are used. Will you tell us how that would work, what additional resources would be entailed, and obviously what purpose it would serve?

Dr Stavrianakis: The purpose of that would be to put more flesh on the bones of licensing decisions. At the moment, when we look at the quarterly statistics, we can see the value of licences and in some cases a little bit of detail about who the end user was. The proposal to have a discussion of the effect in the recipient country and where it uses them would be to add a narrative, case-by-case discussion of what actually happened. You can either do that prospectively, or it can be done retrospectively in response to questions from the CAEC.

What it would do is demonstrate what work the Government are doing to assess the effects of their arms exports—it would reassure and inform people, it would allow for greater transparency and it would allow for greater accountability to explain how it is that the Government came to these decisions. The Government would be able to demonstrate that they are aware of the allegations being made, that these are the steps that they have taken to address them and that these are the mitigating measures—the things that Government are supposed to be doing, but we just have no idea whether and how they are doing them.

In terms of resources, obviously, optimistically, I said that we should do that for all export licences. A more realistic starting point in terms of resources might be for countries on the Foreign Office's list of countries of concern, for example—to make it a bit narrower. The Government should have all that information already if they are doing the risk assessment properly. That would require civil service time, and there would need to be a template for reporting it—it could be a narrative case study approach—but the Government should have all that information if they are doing proper risk assessment.

Q200 **Chris Law:** Do you feel that the Government are doing any of that at the moment?

Dr Stavrianakis: I do not feel confident in the Government's processes if they are doing that. What the judicial review of arms exports to Saudi Arabia showed us is that there is a lot of process, but it is not at all clear to me how they got to the decisions that they did on the basis of the evidence that is publicly available. I think that they turn to secret information. A really key issue in all of these questions is transparency and accountability. It is not good enough for the Government to say, "We've got secret information. We can't share it with you, but don't worry, it's okay." That is just not good enough when we have publicly sourced information that is demonstrating the levels of civilian harm in places like Yemen. So transparency—

Q201 **Chair:** You may have an argument about the Government, but this went before the judges in the courts and they took the same view as the Government having seen that information. They are clearly not the Government—the judiciary are separate from the Government.

Dr Stavrianakis: They are separate, but the judiciary were very quick to accept at face value the claims that the Government made. I put that in my evidence. I think the Committees would do well to be sceptical about a lot of the claims that the Government make, especially about arms exports to Saudi Arabia. And I don't think that the judicial review precludes parliamentary scrutiny either.

Q202 **Gavin Robinson:** Mr Stewart, you mentioned Project Alpha earlier. I wonder whether you could unpack your findings into divergence and proliferation, particularly the effect of the application of criterion 7.

Ian J Stewart: To give a slightly longer introduction, we created this thing called Project Alpha at King's College London back in 2010 or 2011. At that point, I had previously been the person in the MOD conducting dual-use licensing assessments for all dual-use export licences. The idea was to take someone with that background and place them into an academic organisation to conduct academic research into proliferation risks. That is what we have been doing for the last seven years.

In terms of criterion 7, which is the criterion that relates to diversion, within the consolidated criteria there is actually quite a low bar to refusing licences under criterion 7. The test is a risk of diversion. It is not like criterion 2, which is a clear risk of diversion. That means that you do not need quite as specific information as you might for criterion 2 to refuse things based on the risk of diversion. To speak to the risk of diversion, this is still one of the criteria that is used most often in the UK system. Particularly for dual-use goods, which is what I focus on more than arms, we see a relatively substantial number of licences being refused on the basis of diversion.

I would like to take a second to dig into that a little bit. A lot of those licences in the past would relate to countries such as Iran, where we would have legitimate trade and there would be a risk that those goods could be used in, say, the nuclear programme. I had thought for a while that Iran might creep back up in the statistics, given that we had the nuclear agreement and are trading with Iran again. After yesterday, I am not quite so sure what direction that is going to go in.

The more important country that I would like to mention, though, is China. There is a very large volume of export licences to China, in particular for standard individual export licences. One of the reasons for that is that people like me, when I was in Government, would be hesitant about having open licences for goods to China because of the inherent risk of diversion with those goods. I would always want to see individual export licences.

We see a high volume of licences being issued, and a relatively high number of licences being refused. That points, in my mind, to a growing security challenge coming from China, in terms of setting up a system of procuring strategic technologies from around the world. I fear we will have a national security challenge when China stops selling those goods back to us.

They are indigenising those capabilities. They are getting ahead of us in terms of science and technology. They are enacting export controls as we speak, so at some point they will not sell those technologies back to, say, Europe. Hopefully that answers your question a bit. I would be happy to talk more about specific countries if that would be useful.

Q203 **Gavin Robinson:** Just on China, is it diversion to potential criminal or terrorist organisations, or is it for fear of reverse-engineering that export licences were refused?

Ian J Stewart: The term "diversion", as used in the criteria, is interpreted—or I always interpret it—very broadly. Basically, my interpretation of diversion meant that it would not be used in the way that was stated on the end-use application. If, for example, the end use was inherently civil, but there was a concern that it would be used by the military industrial complex in China, in my mind that would count as a risk of diversion, if you see what I mean.

Q204 **Gavin Robinson:** Just as a supplementary to that, you mentioned the number of countries and the league table—up and down with Iran, and so on. Can you quantify in tabular form the number of refusals? Also, to give us some clarity on the effectiveness of the application of this, do you have a view on the effective application of criterion 7, or does Project Alpha simply say, "Here is where it has happened, and these are the reasons why."

Ian J Stewart: I could perhaps answer that in correspondence. I do not know if I can correspond to answer that.

Chair: That would be very helpful.

Q205 **Mike Gapes:** Mr Feinstein, your organisation, Corruption Watch UK, has called for a new stand-alone criterion that focuses specifically on corruption. Why do you think the existing eight criteria do not cover that already?

Andrew Feinstein: Thank you very much for the question. First, there is no explicit mention of corruption in the criteria. It is actively considered, according to the Government, only in relation to criterion 7. That is the risk of diversion. Even here, application of that is piecemeal.

An example of that is a recent case that we reference in our evidence of a British company called CAS-Global, which was basically at the fulcrum of a deal where the Norwegian navy sold second-hand vessels to a known Nigerian warlord who was threatening to restart conflict if his candidate did not win the election at the time. A very senior official in Norway was convicted in 2017 of accepting a bribe from CAS-Global, the British company involved in the transaction, but in terms of the criteria, the transaction from the British side went ahead.

That was an example of where, while it does exist, often on occasions it is not applied. In fact, when one looks at the export control unit's deliberations about this particular case, it showed that there was no specific examination of the issue of corruption, despite multiple red flags being very easily available publicly, so much so that my organisation could easily pick up on them.

The second reason is that we must accept that we are dealing with an industry here that for better or for worse experiences an extremely high level of corruption. There have been a number of studies undertaken by a number of institutions, including Government institutions around the world, perhaps the best known of which is a study undertaken by someone called Joe Roeber while he was at Transparency International. His study concluded that around 40% of all corruption in global trade occurs in or in some ways indirectly linked to the trade in weapons, so I think that is the second point that we should take into account.

Thirdly, I would suggest the international arms trade treaty, of which we are a signatory, requires states to assess the potential that arms might "commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party." Given that corruption and money laundering are recognised by the UN convention against transnational organised crime as acts of transnational organised crime, this makes a consolidated criterion on corruption necessary. It is probably for that reason that the EU Parliament last year recommended an explicit separate corruption criterion for the EU common position.

Q206 **Mike Gapes:** Can I ask the others on the panel your reaction to this suggestion that there should be an additional criterion list?

Dr Béraud-Sudreau: I am not an expert on corruption as Mr Feinstein is, but I can tell you how it is taken into account in the French system, if that is of interest. There is no specific criterion on corruption in France, either. This is taken into account within the export credit financing controls. When the Ministry for the Economy, alongside the equivalent of the UK Export Finance agency—Bpifrance in France—assess contracts that require public credit guarantees in the assessments, they will take into account corruption and all sorts of other compliance issues such as sanctions and so on.

Dr Stavrianakis: I agree with Andrew's proposal. A stand-alone criterion on corruption makes it easier to target specifically as something the UK wants to not only eradicate but also be seen to be eradicating. I think the issue, as with all the other criteria, is implementation. There are problems around institutional set-up, parliamentary scrutiny and accountability and so on that I think are generic, but in principle I absolutely support Andrew's suggestion.

Ian J Stewart: I guess I would say no objection in principle. Thinking back to when I was actually doing export licence assessments, my question would be how practically I would judge whether there was a risk of corruption. That is a little less clear to me. That needs some detailed thought.

Andrew Feinstein: May I comment on that?

Mike Gapes: Just briefly because I think the Chairman wants us to move on.

Andrew Feinstein: On the criteria, if we look at UK Export Finance and what they have built in as a process to try and minimise corruption in the export finance regime, we have a model for how it could be effectively applied to the arms export control criteria. In terms of application, it is not as difficult as it might seem. I want to make one final point, which is that absolutely crucial to an understanding of why we should have explicit consolidated criteria is because it affects our national security. The strategic defence and security review, as noted in the anti-corruption strategy that is currently still in force, explicitly recognises that corruption causes instability and conflict, hollowing out state institutions, which in effect increases terrorism and instability in a lot of the countries with whom we are engaged with arms exports.

Q207 **Priti Patel:** I would like to put this question to Mr Stewart and Mr Feinstein. ADS Group advocates the introduction of an open general export licence to cover non-contentious cryptographic goods. What are your views on the idea of applying the category of non-contentious goods in this context?

Andrew Feinstein: I must say up front that I am no expert on cryptography. I do not want in any way to comment on the validity with respect to those particular products. In general terms, I am very concerned about and wary of general open licences. Because of the nature of dual use and, in my opinion, the way in which technology has taken dual use into a completely different dimension from even eight or 12 years ago, we have to be extremely cautious.

Ian J Stewart: Generally, I am very supportive of this idea, when I look at other countries such as the US, which has something similar. Part of the reason for that is when I think back to licences that I used to see, they were for things like computer servers. That is just a waste of time, if you see what I mean. The question is how you draw the line. We do not want to see computer servers; we might want to see radios that could be used for military purposes that are controlled only because they have encryption built in to them. That would be my kind of test of such an approach.

Q208 **Priti Patel:** On that basis, do you think the criteria should become really specific, to try to identify or even put a little framework around what the use would be, where the cryptographic component might be and how that could be used?

Ian J Stewart: If we look at other forms of open licence, that is exactly what we have. It will say it is okay to go to these countries for this type of use. That is quite routine for open licences to define it in that way. I see no good reason why we have not done that, to be honest. One of the reasons we control these things is so that we have some visibility of what type of equipment is going where. You can do that through a notification or reporting system, rather than a licensing system. I see no cons, provided that you define it in a very narrow way.

Q209 **Leo Docherty:** Mr Stewart, Control Arms UK refers to a poverty of reporting with respect to open licences. Industry representatives say they provide an evidence trail, but the Government do not make public that information. What is your understanding of the situation? What should be done about it?

Ian J Stewart: I think there is a challenge here that relates specifically to open licences, which I referred to earlier. The UK Government attempted to introduce reporting for open licences over a year ago. I understand that the quality of the data that was being received—not for any malicious purpose, but physically how that type of data was reported—was not very high. My sense of what is happening now is that there is a hope that the new licensing system will help to capture the data in a better way, but as of today there is a kind of reporting gap, or at least a communications gap, in terms of open licences. Hopefully, there is an active effort to address that.

Q210 **Lloyd Russell-Moyle:** Anna, some NGOs advocate a presumption of denial for licences relating to countries that either have not signed the arms trade treaty or, more specifically, countries that are on the human rights list. You have touched on the presumption of denial in your evidence. Are the human rights list and the arms trade treaty the right threshold if there was some sort of presumption? Are they independent enough or strong enough?

Dr Stavrianakis: To treat them separately, the use of the Foreign Office's own list of countries of concern would be a decent baseline because it is the Government's own work. You would use it in consideration with other Departments for better joined-up governmental working. There is a level of trust and pragmatism around using our own standard. At the moment, there is an element of the left hand and the right hand not knowing what the other is doing, where there are seemingly contradictory practices going on. In that sense, if we could get more restrictive policies in relation to that list of countries, that would be a good thing.

Q211 **Lloyd Russell-Moyle:** Is the list reactive enough? In Egypt, the big massacre happened in 2014, but it was not until late in 2015 that it was included. The Philippines now, which has a referral to the ICC, is still not on the list, because the 2017 list has not yet been published by the Government. You have to wait a year and a half or two years. Is that too late? Do we need a more reactive list?

Dr Stavrianakis: Absolutely. One option would be to move the Foreign Office reporting to half-yearly, so you speed it up that way. But also the presumption of denial is a baseline. It is not a blanket refusal; it is a starting point. On this question of over what time period, people get very nervous about, "How far back and how far forward into the future do we have to look?" The thing to think about—this is a question that could usefully be put to Government—is what sources the Government are using when they make these assessments. The Arab spring took a lot of people by surprise, but the idea that middle eastern states would use weaponry against their own citizens should not really have been a surprise. In that sense there is a need for a little more political realism about what it is that states will be using weapons for. It is partly a question of, "How can we know? How far back do we have to look and how far forward?" But we also just need to be a bit realistic about what a likely framework is, on a spectrum from likely to possible. That is what risk allows you to do: it allows you to think about a spectrum of possibilities. The idea that weapons might be misused by Israel against the Palestinians is not a ridiculous possibility. That should be somewhere on the spectrum of risk. Similarly, there will be countries that are deemed safer and countries that are deemed more risky. Having that sort of presumption of denial as a preventive orientation could only be a good thing.

Q212 **Catherine West:** Mr Stewart, last year you co-hosted a workshop on the implications of Brexit for strategic trade controls. What were the main issues identified and how much progress has been made in resolving them over the last 12 months?

Ian J Stewart: Thank you for the question. To be brief, we identified two main sets of issues. First, the practical question of how trade in strategic and specifically dual-use goods from the UK to Europe and vice versa will work after Brexit. Secondly, how the UK and the European Union will co-operate after Brexit. On the first, as of the beginning of this year, I do not believe it had been resolved, in terms of what type of specific licensing arrangement might be in place. I think the working assumption is that there will be an open licence—I know that my colleague does not like open licences—from the UK to Europe. There is some hope that as part of the recast of the European regulation that they might be able to amend EU001, the general authorisation, to have a similar open licence or general licence for exports back to the UK. There are some logistical challenges that need to be figured out. Primarily, the recast of the EU regulation might not be done in time for Brexit. Short of that, the EU does not have delegated authority to create such an open licence for the UK. There is a real logistical challenge that needs to be overcome in terms of timing. Someone needs to be thinking about that. The second set of issues, namely how the UK and the EU will co-operate on export controls after Brexit, is wrapped up in the broader framework, agreement, deal and so on. The only thing I could usefully add to this is to say that a country such as Norway, which currently implements the EU export control arrangements, does not sit in the EU's dual-use working party on export controls. They do not sit in the room and that does create some friction in terms of implementation. On both sets of issues—the licensing and co-ordination—there is a need for vigilance and for someone to be physically following up on this. It is not clear to me that the negotiations are yet at this level of detail. I am looking in from the outside, so I am not sure about that, but I am just not sure that the discussions have progressed this far.

Q213 **Stephen Twigg:** I have a question for Andrew. During the inquiry we have had some confusion about the distinction between agents, advisers and brokers. Can you explain to us your understanding of the differences? What are the regulatory challenges posed by these intermediaries?

Andrew Feinstein: I would be happy, given the constraints of time, to provide the Committee with written definitions of each of them.

Stephen Twigg: Super.

Andrew Feinstein: But very quickly and simplistically, brokers are defined as individuals, or companies, that transfer arms from one party to another, with the arms and end users often in third countries outside the country of the broker. Agents are individuals, or companies, employed by a company to act on their behalf, to assist in winning a contract. They usually have a degree of discretion to act on the company's behalf. Advisers do the same thing, but without that discretion. However, I should warn you that those three terms are used differently by different people and in different jurisdictions, so I would be happy to give you a more comprehensive response that will make it a bit easier for you.

In terms of the regulatory challenge, I would say that there are two factors that most patently contribute to problems with arms exports. The first is the use of brokers or agents. In fact, it was found in an OECD study conducted in 2014 that, in a review of foreign bribery between 1999 and 2014, in 75% of the cases that it examined the bribery was carried out by an agent or intermediary. So an enormous amount of the corrupt activity takes place through all these categories, which I refer to broadly as intermediaries.

The other area of very real concern is offsets, but I won't even get into that.

I should also say, in making this point, that we do occasionally find agents or intermediaries running into trouble with various pieces of legislation in various parts of the world. In this country, the Bribery Act is a legislative tool to prosecute bribery once it has occurred. We again come back, full circle, to the reason for a consolidated criterion on corruption, because it is not covered, in terms of preventing corruption, by the Bribery Act, especially as it pertains to the use of intermediation in these contracts.

Q214 **Lloyd Russell-Moyle:** Andrew, BAE Systems and Leonardo say that they have implemented in full the recommendations of, respectively, the Woolf Committee and the Flick Committee in regard to safeguards in their business ethics against corruption. Are you reassured by their warm words?

Andrew Feinstein: To put it very concisely, no. I will make two points very quickly. With respect to Leonardo, which is a very current case, the Norwegian Council on Ethics, which advises on ethical investment by the world's largest sovereign wealth fund—the Norwegian pension fund, it is inappropriately called—in a report on Leonardo found, the Flick Committee report notwithstanding, that there was an unacceptable risk of future corruption and recommended divestment from the company. To come back to honourable Member Twigg's question, they specifically identified the company's extensive reliance on roughly 200 agents. So I am really concerned that these exercises are an extremely good PR exercise, but we never actually get to monitor in a meaningful way the sort of change that happens.

Q215 **Lloyd Russell-Moyle:** In terms of monitoring—I guess this is not just for corruption, but maybe also for the other kind of criteria, although in your terms, corruption—do we need some sort of post-transactional monitoring, in terms of whether corruption has taken place, whether the company is clamping down on it and so on? Is there need for either a Government or an independent commission or something else to do that monitoring to ensure that these things are then implemented?

Andrew Feinstein: I think that's a very interesting idea, because if we quickly go back to the case of Leonardo, there was the case of a particular intermediary who happened to be a former Minister in the Korean Government whom they actually renewed a contract with six months after they had adopted the Flick report. Here was somebody who clearly transgressed what the Flick report had proposed, so the question becomes: what do we do post fact? And here I think that we could perhaps look at the creation of some sort of independent body that reports—obviously, this is a sensitive issue, given that it is about arms exports—to some arm of Government and/or to Parliament. Perhaps we could look for some sort of indication of the approach to the Independent Commission for Aid Impact—ICAI—which provides independent evaluation and scrutiny of the impact of and value for overseas development aid and then reports to the International Development Committee, as you well know.

Such a commission of independent experts could, in my opinion, quite easily examine the actual practices within these companies in relation to the use of agents, offsets and other corruption red flags. I would also argue that with the right expertise—this is something we manage to do in a very small organisation—they would be fairly well placed to look into the ultimate destination and use of weapons to ensure that they conform to the stipulated licence conditions.

Lloyd Russell-Moyle: That is very interesting. Thank you.

Q216 **Ann Clwyd:** In 2012, the Government gave an unqualified confirmation that corruption in arms deals would be dealt with under the Bribery Act 2010. How convinced are you of the adequacy of the Bribery Act? Do you think there is unfinished business in connection with allegations of corruption relating to the al-Yamamah arms agreement?

Andrew Feinstein: Thank you very much. The first point to make is that the Bribery Act is generally very good and a very important piece of legislation. As I mentioned earlier, however, it is a legislative tool to prosecute bribery once it has occurred. In the case of arms deals, because everything that takes place in these transactions is quite appropriately covered by a veil of national security-required secrecy, it takes many, many years for any sort of evidence or allegations of bribery to emerge, and even more years to investigate them. I think that is why, while the Bribery Act is important and a good piece of legislation, allegations of corruption in the arms export trade have been of such an extent and number. For instance, during 2016—the year under review by the Committee—a number of Britain's largest companies, which have contracted for massive amounts of business with the British Government, were named in corruption scandals.

There are constantly new details of corruption emerging in relation to al-Yamamah. There was a programme on Dutch television just late last year about a payment of over €400 million that nobody I am aware of had known about up to that point. This is a deal in which over £6 billion of commissions have been paid, so we are talking about stratospheric numbers, but it is perhaps even more important that we look at some of the red flags from that transaction. I do not think those have appropriately and sufficiently been taken into consideration by either the Government or the major weapons exporters and makers in this country.

Chair: Thank you very much. That brings us to a tidy conclusion. I apologise to everyone, including the Committee—although it is our fault, so I apologise particularly to the panel—that we have been cut short by at least 30 minutes because of voting. Of course we will have another inquiry next year, and I am sure that Members will want to hear from you again.