

Foreign Affairs Committee

Oral evidence: The Foreign and Commonwealth Office's human rights work, HC 874

Tuesday 19 June 2018

Ordered by the House of Commons to be published on 19 June 2018.

[Watch the meeting](#)

Members present: Tom Tugendhat (Chair); Ian Austin; Chris Bryant; Ann Clwyd; Mike Gapes; Stephen Gethins; Ian Murray; Priti Patel; Andrew Rosindell; Mr Bob Seely; Royston Smith.

Questions 34-81

Witnesses

I: Ben Emmerson QC, former Special Rapporteur on Counterterrorism and Human Rights, Professor Rosa Freedman, Professor of Law, Conflict and Global Development, University of Reading, and Professor Javaid Rehman, Professor of Law, Brunel University.

II: Sir Roger Gale MP, Angela Smith MP, and Murray Hunt, Director, Bingham Centre for the Rule of Law.

Examination of witnesses

Witnesses: Ben Emmerson QC, Professor Rosa Freedman, and Professor Javaid Rehman.

Chair: Welcome to this afternoon's session of the Foreign Affairs Committee. Thank you Ben Emmerson, Professor Rosa Freedman and Professor Javaid Rehman. It is very kind of you all to come.

Q34 **Mike Gapes:** Welcome. It is generally thought that the UN human rights system, which was established 70 years ago, is under a lot of pressure and that global values are being challenged. Can you tell us what you feel about that? In what circumstances is the UN system most effective on human rights questions, and how does it fall short?

Ben Emmerson: It is obviously a very broad question, and impressions will vary widely. Of course, the system is under strain. It has been under strain since its inception, it always will be, and it always should be, because its job is to push Governments right to the limit of their authority, to challenge their sovereignty and to establish a basic universality of human rights protection—contrary, often, to the political objectives of states that are engaged. This is inevitable with an organisation such as the Human Rights Council, made up, as it is, of a rotating membership, some of whose country practices would not meet the standards that are generally expected in the pledge made by states in joining the council. In my most recent report, published last month, on Saudi Arabia, I questioned whether, indeed, it was a valuable thing for the Human Rights Council to have admitted Saudi Arabia as a member, when it so clearly falls short of the pledge it made.

You ask what are the most effective and the most challenged areas. The most significant challenge, as always in this area, is funds. The United Nations is made up of Governments, and Governments do not like human rights. It is a policy of successive Governments in every country—including this one—to underfund the human rights movement. That is the position when Governments come together in the United Nations, just as much as it is when they are seeking to resist the effective enforcement of human rights in their own courts. Just as we, for example, do not have adequate legal aid for the vindication of human rights in the United Kingdom and put caps on the level of damages, which are far lower than we would do for domestic causes of action, so too, at the United Nations level, the funding available is extremely restricted, and the Human Rights Council and the Office of the High Commissioner for Human Rights together comprise a tiny fraction of the overall United Nations budget. I am going to hesitate to say what that fraction is, but it is miniscule.

Given that the United Nations charter places the promotion of human rights on an equal footing with the maintenance of political and international peace and security, it is a shocking indictment of the UN's *acquis*—the collective agreement of the member states—that they have



HOUSE OF COMMONS

kept the human rights dimension of the United Nations starved of funding. As I say, that is what states do all over the world. That is its biggest challenge.

Professor Freedman: Picking up on that point about how states are underfunding but also challenging the system, we have seen over the past 10 or 15 years a growth or proliferation of parts of the UN human rights system that in some ways undermine or dilute the very strong parts. So we see more and more special rapporteurs on issues such as equitable and democratic order or on international solidarity, which takes funding away from those special rapporteurs and independent experts who need to be focusing on countering terrorism or on the human rights situation in Iran.

Another thing that we have seen in terms of the challenge by states that are less fond of human rights, perhaps, than this country is the way they use the Human Rights Council to promote agendas that are anti-human rights—to promote agendas on protecting the family or traditional values in order to use that as a cloak to then discriminate against, be violent towards or sometimes even torture and kill people who are sexual-orientation or gender-identity minorities. They use things like defamation of religion as a cloak for having blasphemy laws in their country. When we are thinking about what the pressures are on the system, we do have to talk about money and about engagement, but we also have to think about why states that are anti-human rights are able to undermine the system in this way.

Professor Rehman: There are a couple of points I would like to make, picking up on my colleagues' comments. One is that there is a tension between the human rights agenda and the agenda pursued on the basis of peace and security. Right now, if you look at the UN system, human rights takes a subsidiary position—it is a secondary issue, not a primary issue. That is evident from the Human Rights Council, for example—it is not one of the primary organs of the United Nations. When we discuss this further, one of the key recommendations I would like to make is for the United Kingdom to work towards making the Human Rights Council one of the principal organs of the United Nations. That would, in some way, relieve the financial and resource sanctions that we currently have—that the Human Rights Council faces.

The other important thing is that, again, there is a tension between state sovereignty on the one hand and human rights on the other. We have to set good examples. The United Kingdom must come good with its promises and pledges that it makes in the Human Rights Council—the human rights treaties and protocols that it has not ratified or incorporated in its own law. We have to show to the world that we are fully committed. That would be a good lead for human rights.

Q35 **Mike Gapes:** In terms of how to make the system more effective—leaving aside money—what could the UK be doing, perhaps building on what you just said? Are there any specific things our Government could do? Linked to that, given the problems there are with some countries at the moment, are there risks that if you go for a major reform, you might



actually weaken rather than strengthen the human rights agenda?

Professor Freedman: I think it is absolutely crucial that the UK takes a position that opening up reform discussions may well dilute, undermine or threaten existing systems. We are seeing this at the moment with the treaty body reform process. There is a lot of talk about states maybe combining their reports; instead of appearing in front of each committee regularly and submitting separate reports, they would only have to appear once every four years, six years or eight years in front of a number of the committees. Obviously that would dilute the system. It means that states would be talking about torture in the same report that they would be talking about the right to adequate housing. It also means that states will then have many years where they are not under any scrutiny whatsoever.

In terms of the reform debate and the Human Rights Council, what we have seen over recent weeks is that opening up that reform debate—which some countries, spearheaded by the US, would like to do—may well bring with it an opportunity for the states that do not like the Human Rights Council to undermine the work going on there by reopening discussions that were dealt with 12 years ago.

Ben Emmerson: I would echo that view, having worked within the council's framework for six or seven years. While, of course, there are many utopian reforms that could be advocated to make the UN more efficient—one could start with the membership of the Security Council P5—there are very serious risks involved in moving foundation stones of the institution, with unpredictable consequences.

As far as the United Kingdom is concerned, this country continues to exercise a disproportionate influence in the international legal order, not just because of its membership of the P5, but also because of the sheer quality and determination of its international diplomats. The degree to which the work of the Human Rights Council is assisted by the United Kingdom—at least as much as, if not more than, any other single state—is a remarkable feather in the UK's cap. I say that without any significant qualification, and the message for the UK is to redouble the efforts it is currently making to continue the good job that it has been doing, and to push on the agendas it has for promoting human rights within the Human Rights Council.

- Q36 **Mr Seely:** Can I just follow that up, because it is a critical point? I am going to play devil's advocate, if I may. Rather than just asking how important human rights are and how long a piece of string is, and you saying very, I want to try to make this slightly more challenging. We have really got to think about our narrow national interests after Brexit. We have to use power as effectively as possible, and we have to make sure that we trade, because it is critical to our wealth and wealth creation. Does it remain in our narrow national interest to be championing human rights if it makes us unpopular with some states and if, in the worst kind of image, we just look like we are wagging a slightly bony finger at people and saying, "We are better than you"? Can you put a significantly selfish, narrow national interest answer to that question?



Professor Freedman: The starting point is that, post Brexit, in terms of the UN, the UK's position and human rights, in some ways the UK will be more agile. It will be able to have more cross-regional initiatives. It will be able to join in with other negotiations, not being tied by the common position. I think that, in some ways, post Brexit gives the opportunity for the UK to create better relationships with other states by not being tied to the European bloc. That is potentially one of the silver linings of Brexit.

In terms of human rights, human rights, democracy, prosperity and resilience go hand in hand with one another. Championing human rights is championing better societies, stronger societies and the types of societies with which we would like to trade. Of course, there will be some pariah states that are anti-human rights, and with whom the UK may not then be able to create those trade relationships or wealth-creating relationships, but the vast majority of countries believe in human rights—they just don't want to be told how to do them in their own country. The vast majority of countries want human rights and prosperity. They believe that women ought to have rights and that children ought to have rights. They believe in all sorts of things, but they believe in it elsewhere. That is part of the package of how human rights works.

- Q37 **Mr Seely:** One question and an example. How can we really buy into that argument without irritating others? Let me take a case in point: Turkey. It is a really important Middle Eastern ally and a really important future ally. They are arresting and imprisoning a lot of people for basically being gay rights activists and the like. What are we going to do about states like Turkey? They are vital security allies, and yet their behaviour is pretty poor in some areas.

Professor Freedman: Part of it is the UK using the UN human rights system to deal with a country like Turkey—using the committees and the treaty bodies. It is not for the UK to turn around and pass judgment. Yes, there are discussions in the Human Rights Council as an intergovernmental forum, but there are also independent experts who work on human rights, and it is about instrumentalising those. Of course there is always an impact on relationships when one country criticises another, but if at the heart of our national interest is human rights for all—because we believe in the universal declaration, we believe in non-discrimination, and we believe that people have these rights no matter where they are and no matter their protected characteristics—then perhaps, if it is a balancing act, we need to think whether we care more about the rights of those people than about more wealth in our pockets.

Mr Seely: That is a problematic argument.

- Q38 **Chair:** That argument applies presumably even closer to home. I can't be alone in having heard the recordings of those children crying out on the Mexican border of the United States and asking some very serious questions of the country that, frankly, has been a beacon of human rights around the world for the best part of a hundred years, and in asking myself where the human rights of those children are.



HOUSE OF COMMONS

Professor Freedman: And you could say the same about Yarl's Wood detention facility in our own home country. All countries violate human rights to some extent. All countries can do better on human rights. Yes, we need to lead by example and think about the violations here and the violations in our allied states, as well as about the violations in the countries with whom we would like to be allies, but that is the human rights project—it is about always striving to do better. You are never going to reach the perfect situation.

Ben Emmerson: May I give a slightly different answer to Bob Seely's question? I don't disagree with anything that has been said, but I would approach it from a slightly different angle. National interests and trade post Brexit involve an understanding of the trade requirements of the countries with whom we do business. Mention has been made of the general concept of social resilience—in other words, ensuring the building, within the framework of states that we do business with, of an adequate rule of law and human rights protection, such as an independent judiciary, the right to a fair trial, the ability to adjudicate disputes without bribery or Government corruption and so forth. These are fundamentals to inward investment in any country. What we have learned over the last 10 or 15 years or so, through empirical research among the large multinational companies, is that it is precisely the absence of an effective rule of law and an independent judiciary, as well as consistent human rights violations, that are the greatest disincentive to inward investment. Inward investment, in turn, is the greatest method by which the developed world is able to encourage the growth of infrastructure, which itself protects national security.

Q39 **Mr Seely:** I totally agree—thank you, Chair, for letting me continue this point. In a perfect world, you are making a very articulate argument for why respect for human rights makes everyone wealthy. But we are under pressure to do away with sanctions against Russia so that we can pour more money into its oil industry. We are under a lot of pressure, but if we start lecturing the Turks too much, they will not help us with all the potential terrorist groups that are operating in Syria and may have an interest in attacking us. So there is a very naked balance here between human rights and a narrow national interest, but I think we are not yet coming to terms—

Ben Emmerson: I would resist the notion that it is a naked balance, or that there is a generalised answer to any of those questions. These questions have to be resolved on a case-by-case basis, examining the national security implications of a particular policy and balancing the human rights of all those concerned. For example, if the course of conduct that would involve pursuing a particular human rights agenda would have the effect of antagonising an ally to the extent that it put nationals of our own country at risk, that is very clearly a question that raises issues of national interest. But I just want to say that the main point here—

Q40 **Mr Seely:** That is a really important point, sir, because in a case like Turkey, where we need information about the flow of foreign fighters into northern Syria—some of whom have EU passports—we have to put the



HOUSE OF COMMONS

national interest of not winding up the Turks before giving them a lecture on human rights.

Ben Emmerson: I would prefer to put that as a human rights interest. The duty of the United Kingdom, and the first duty of any state, is to protect the human rights of its citizens, which include the human right to be protected against terrorist attack. So in protecting that human right—in discharging that human rights obligation—there will sometimes be balances to be struck. To what extent do we value the human rights of those whose freedom of expression is curtailed in Turkey, and how do we balance that against the particular infringement of the flow of information that would protect lives in the United Kingdom?

These are jobs for Government. That is exactly why we elect a Government—to make those kinds of judgments, although not, if I may say so, as a naked generalisation, but rather on specific, individualised and carefully calibrated case-by-case analysis. That is why you have to rely on a Government properly advised by their experts.

I have to say, and I reiterate it, that what marks the United Kingdom out in the international community from any other country is the sheer professionalism and principle—the commitment to legal principle—by which its international diplomacy is characterised. In other states, diplomacy is guided by politics; in the United Kingdom, regardless of the Government in power and regardless of their political agenda, the civil servants that make up the Foreign Office policy makers and those who deliver the policy on the ground have such a high degree of commitment and expertise, and such a high level of adherence to basic rule-of-law principles, that they are to some extent looked up to by diplomats from other states, it has to be said.

We have 12 people in the United Nations Human Rights Council mission; most states field two or three. The degree of commitment puts the United Kingdom as a world leader in international human rights diplomacy. Talking about narrow national interest, I think that it would be very significantly contrary to narrow national interest if the United Kingdom were in any way to relinquish the influence that it currently holds—it is a standard setter.

Q41 **Priti Patel:** That brings us neatly on to the Human Rights Council itself—the strengths and weaknesses of our presence and, in particular, the key achievements. Obviously, we are going through some change in terms of our membership. I would like to hear from the panel about what you think our key achievements are, and about any shortcomings as well, in terms of our current term on the Human Rights Council. I would also like you to consider our campaign commitments and pledges from when we went up for election to the council, such as on defending freedom of beliefs and promoting open societies. How do you think we score on that?

Professor Freedman: I will say something briefly, because I think others probably have more to say on this than me. Our key achievement, if I have to single out one, was the creation of the mandate on sexual-



HOUSE OF COMMONS

orientation and gender-identity minorities and on violence and discrimination against those minorities. The UK was absolutely instrumental in that. It had to champion it cross-regionally. The UK ambassador, Julian Braithwaite, was absolutely key to the negotiations, but also key in the room, as was the current ambassador to Uruguay, Ian Duddy, who was supporting him at that time, heading up the human rights part of the UK mission. The UK's absolute role in that has been widely accepted across the board.

More broadly, the UK plays very strong roles behind the scenes and at the forefront in lots of negotiations. Building on what Ben says, whether the UK is a member of the council or not, the UK is involved every step of the way; it is involved in UPRs, in the margins and in discussions.

In terms of what the UK should be thinking about in the next year, once you are into the last year of your membership, you are little bit like a lame duck. That being said, you can look to the UK mission to continue doing really excellent work out there and to continue being supported by the Foreign Office here—to echo everything that Ben said—but building on it.

The one thing I would like to see the UK do better is its engagement with special procedures with mandate holders, independent experts and special rapporteurs. The UK accepts all visit requests from these independent experts, which leads to the UK having a disproportionate number of visits, but in London and in the press in particular, some of those mandate holders have been dealt with badly. Raquel Rolnik came here a few years ago and criticised the Government about adequate housing and policy on the spare room tax, or whatever the official term was. The way she was treated was absolutely appalling. It was a complete discredit to our country and to our Government at the time. Other mandate holders have been treated equally badly, although she had extra attacks on her because she was a woman.

The UK really needs to think about how it engages and how it can engage better. These people are doing it part time—they are not being paid for it. They are people like the two colleagues who are sitting either side of me, and they truly are experts on human rights. To invite them and not to allow the violence against women rapporteur to have free and unfettered to Yarl's Wood, when China allows mandate holders to have free and unfettered access to anywhere they want to go, is not to our credit.

Professor Rehman: Following on from Rosa's comments, one of the key elements for the UK to shine would be to be a beacon of human rights, both in the Human Rights Council and, once its term finishes, for the re-election. If you look at the UPR recommendations, you have to closely monitor how the UK follows them.

Similarly, Rosa mentioned the other procedures, such as the special rapporteurs. Many are based in the United Kingdom, so a lot of work can be done through the Foreign Office. I know there is an advisory group. There used to be an advisory group on FORB—freedom of religion and belief—but I suspect that has been dismantled. That could be one of the



things that could be reinvigorated. We could do a lot more to highlight abuses of human rights through the special rapporteurs and through the advisory committee of the Human Rights Council. There are many procedures where the UK can still be involved and remain engaged, despite not having the current position.

- Q42 **Priti Patel:** On that very point, we are at a critical juncture—the clock is ticking on our presence in the council. Do you think we are still taken seriously, and are we at the forefront of pushing forward some of the key thematic areas on human rights, where we have the specialisms and expertise to drive forward change?

Ben Emmerson: I would answer that question undoubtedly in the affirmative. The degree of the United Kingdom's influence is not based upon its membership of the Human Rights Council. Once the United Kingdom is no longer a member of the Human Rights Council, unless there is a dramatic change of direction in the Foreign Office, I would expect it to continue to do the excellent job that its diplomats have been doing. The only difference is that when it comes to voting, the United Kingdom will not have a vote in council resolutions. But in the negotiation of the resolutions and in the UPRs, as has been mentioned, the United Kingdom, unlike many other countries, consistently asks informed questions at the universal periodic reviews of other countries. It gets information from its own diplomatic network that is relevant to the issues that are likely to arise, and it looks at the relationship between the human rights questions and its own aid programmes, and ensures that its policies are properly put into effect.

You asked about main achievements. I made some notes, because I knew this question would come. I would say that, for the period of time that the United Kingdom has been a member of the Human Rights Council, and in particular under the leadership in the legal department of Sir Iain Macleod, the Foreign Office legal adviser—I know he would hate me for singling him out—the coinage, if I can put it that way, of United Kingdom legal analysis has never been higher.

The work that is to the United Kingdom's credit can be divided into three groups, which I would call country-based, thematic-offensive and thematic-defensive. For country-based, I would emphasise the work that the United Kingdom has done on human rights in Syria, in Sri Lanka, in relation to Libya and South Sudan and, together with the work that it does through the European Union mission, in Iran. As a former power of occupation, it has also had a consistently special brief over the abuse of human rights in Burma/Myanmar over the years, particularly, most recently, during the persecution of, and commission of war crimes amounting to genocide against, the Rohingya. Country-wise, those would be the areas in which I would say British diplomats have made the most significant contributions.

For thematic-offensive priorities, by which I mean the issues that the United Kingdom has taken up and priority issues that it has pushed through in resolutions in the council, mention has already been made of



HOUSE OF COMMONS

the equality agenda on sexual orientation rights. On top of that, I would identify, as a priority in the United Kingdom's policy, religion and belief, freedom of expression in connection with both journalism and the use of the internet, sexual violence in conflict—we all remember when William Hague was Foreign Secretary; I will not say he galvanised the issue, but to some extent he made it a priority, and he raised the profile of an issue that then became a major policy issue for the United Nations across the board—the education of women and girls, and the high-level campaigns on sexual orientation and identity. Those would be the main priorities that I would see the United Kingdom as having pursued.

Defensively, unlike other states, the United Kingdom has an intellectually coherent view of human rights generally. You may agree or disagree with it, but it remains consistent policy across the board, and it is this: the United Kingdom regards human rights as legally enforceable rights in international law, rather than as aspirational political counters. As a result, to maintain the integrity of that system, it has always been the United Kingdom's policy to be cautious about the development of what are called third-generation rights, which are more socioeconomic rights, and to focus instead on the old hardcore political rights. You may agree or disagree with that position, but if you were being fair-minded, you would have to acknowledge that many states have used the agenda of pushing third-generation rights ultimately for the purpose of undermining human rights protection and its enforceability.

We have endless debates between the special rapporteurs and the United Kingdom Government about where human rights end and other concepts begin. For example, to what extent are businesses bound horizontally to apply human rights principles in their practices? To what extent can you call a terrorist organisation an organisation that violates human rights, given that it is not a state? These are all difficult questions in theory, but you will always find the United Kingdom adopting a consistent intellectual position—one that respects the notion that if we are going to recognise rights under these treaties, we mean what we say and we will give effect to them in law. For example, we do not take part in a soft way in resolutions that we do not genuinely believe we should be committed to.

One last sentence on the special rapporteurs. It is obviously true that there has been a sorry history of the treatment of special rapporteurs visiting this country in the tabloid media. It is not uncommon for there to have been extremely hostile comment, some of it highly personalised, and based on the ethnicity or the background of the person concerned, which is a shame—in a sense, I mean it is genuinely a shame on the United Kingdom. Those kinds of comments have not come from the Government, from Parliament or from those in positions of authority.

I have to say that, as a special rapporteur myself, there is no country in the world that I have visited that I have not come away from having been pilloried in graphic and extreme terms by sections of the media that are opposed to international scrutiny. I cannot begin to tell you some of the things that were said about me when I left Sri Lanka, and the media in

Saudi Arabia were pretty critical as well. It is part of the job of the special rapporteur to ruffle feathers.

- Q43 **Priti Patel:** I want to come on to our membership of the Council in a broader sense, because the three of you have listed a range of pretty outstanding achievements and influence that we have across our diplomatic network, with the Foreign Office as well internationally, and in terms of pushing forward some very significant human rights agendas. Do any of you have a view about where we got it wrong in terms of the election to the Human Rights Council, for a start, and about the prospects of our being re-elected at the next earliest opportunity, in the light of our track record?

Professor Rehman: We are in a critical position in the United Kingdom as to our own future, particularly in relation to Brexit. Human rights issues come up hugely in relation to Brexit—for example, in our relationship to the European convention on human rights. Although it is distinct from the European Union, there is still a very close connection. It is quite important for us to be firm on a commitment to the European human rights model—that is No. 1.

Secondly, there has been a lot of debate on the rights of EU citizens within the Human Rights Council and generally at an international level. There is quite a concern about human rights in general in this country post Brexit. There is tension. There were newspaper reports about Islamophobia from one of the Ministers in the Conservative party, for example. There are real issues of concern that raise some alarm within the Human Rights Council, and also—

- Q44 **Priti Patel:** Can I just interrupt you on that point? How does that compare with some of the very substantial agenda items, the thematics, where we have been pursuing human rights internationally—women, girls, areas of conflict, sexual equality? I totally appreciate your point about Brexit and the European Court, but that cannot diminish the overall contribution that we have made as a country internationally, particularly through our Foreign and Commonwealth Office.

Professor Rehman: No, it doesn't, but we have to be a beacon. As we say, we are pledging to be a leader on the human rights front, so if there are gaps in it, we must consider those. One of the key issues is about that growth of tension post Brexit in human rights concerns, which we really have to look at. We claim to be the leader of human rights, but if there are problems within our society, we have to address them to actually convince everybody that we are truly leaders of human rights. For example, on freedom of religion or belief, where we campaign for other societies, we must ensure that there is no discrimination based on religion or belief. That is the point that I was making.

- Q45 **Mr Seely:** Do you think there is discrimination?

Professor Rehman: There are concerns within the United—

Mr Seely: What are they? I am not asking in some vague way about



HOUSE OF COMMONS

whether there are concerns. I am saying, do you think there is discrimination? It's a yes or no answer.

Professor Rehman: I would say that there is no right answer to everything. If I said yes or no, you could challenge each of those points. I am saying that we have to make sure freedom of religion or belief is truly practised in this society and this country. People must not feel that they are being discriminated against based on their religion.

Q46 **Mr Seely:** But you are not willing to answer whether you think there is discrimination.

Professor Rehman: In law, no, but there are segments of society that feel that there are forms of discrimination based on their religion.

Professor Freedman: Can I come back to the question of the Human Rights Council? In terms of thematics and the country's many great achievements, what we do in this country and do not do outside it matters. I will give you one example. At the Human Rights Council, if and when the UK raises the human rights situation in Syria, there is always a push-back: people say, "But what about Yemen? Why are you silent on Yemen? Why have you done nothing on Yemen? Why are you in some ways helping the human rights violations in Yemen?" Those kind of things do impact on the UK's legitimacy and ability to promote human rights abroad, or even to promote some of these thematic agendas. In that way, whether it is about looking inwardly at violations in our society or other issues—arms trading or whatever else—it keeps us silent. Whether it is about Yemen or about whether we are silent about the migrant children crying in Trump's America, these things matter. They matter on the international stage and they matter in the Human Rights Council.

The second thing I will say is that it is not just our membership of the Human Rights Council that gives us influence. The UK plays a leading role in mainstreaming human rights into the Security Council, so whether we are a member of the Human Rights Council is almost irrelevant. This is one of the few countries where there is a link-up between the mission in Geneva and the mission in New York. They talk to and influence one another.

The second way the UK really influences the UN human rights system is through having independent experts elected to human rights committees and as special rapporteurs. They are often dual nationals, but they are sometimes not even UK nationals—they might be living here, they might have been educated here, or they might have all sorts of other ties with the UK. That influence and reach goes far beyond what a state can do on its own.

Q47 **Stephen Gethins:** Professor Freedman, you are talking about how the UK could have more influence. Obviously, this Committee's job is to scrutinise the work of the UK Government. I was interested that you mentioned Yemen. Can you tell us a bit more about what the UK Government can do with regard to Yemen? Are there other areas where



HOUSE OF COMMONS

the UK Government is not using its influence as fully as it possibly could?

Professor Freedman: There are two answers to that. One is about what the UK Government can do out in Yemen, in terms of not having ties with the countries that are currently causing the mass violations in Yemen. The second issue, which I can talk to better, is about the UN system. The UK raises issues of violations in many countries—it spearheads or sponsors resolutions on those issues, and makes sure they are tabled, not just at the Human Rights Council—so its silence on countries like Yemen is deafening.

Q48 **Chair:** Can I just challenge that? We do not speak for Her Majesty's Government—this is a Committee of Parliament—but the Minister responsible, Alistair Burt, has made the British Government's position on Yemen extremely clear. He has condemned human rights violations time and time again. He described the assault on Hodeidah as a potential mass human rights violation. I am struggling to understand how you think the British Government have been silent on this. I have heard nothing but this for the best part of three weeks.

Professor Freedman: For the best part of three years, I have heard nothing in Geneva but, "Why is the UK staying silent on Yemen?" It might be that in the last three weeks—

Chair: Okay. I can list further back. I can list Tobias Ellwood saying the same thing when he was Minister for the Middle East. I can go on for a while. As this Committee knows, I am no patsy, as far as the Foreign Office goes, but this is just bizarre.

Stephen Gethins: Chair, I would be quite keen to hear the answer. We have invited people to give evidence. Can I hear the end of Professor Freedman's answer?

Chair: The reason I intervened is that it is dealing with an important question—I recognise the importance of the question—on the basis that rumour is fact. Rumour isn't fact.

Professor Freedman: We are not talking about rumour as fact. I was asked a question about the UK's influence in the UN Human Rights Council, and I am giving you an answer that is well known. It is not a hidden answer; it is not whispers in corridors. The UK has been publicly challenged over a period of years, at UN human rights bodies and intergovernmental fora, on its silence about Yemen. Now, it is wonderful to hear that in the last three weeks the UK—

Q49 **Chair:** It is not the last three weeks; it is the last three years, but anyway, carry on.

Professor Freedman: I am talking not about pronouncements here in London, or in the UK; I am talking about what the UK has been doing in the UN systems, and what it has been doing on Yemen is nothing.

Ben Emmerson: Can I just throw a little bit of light on this? I think we are all agreed in this room—I think everybody in the international



HOUSE OF COMMONS

community is agreed—that Yemen is the most pressing humanitarian catastrophe facing the world today, dwarfing even some of the continuing mass humanitarian violations in Syria. It is a disaster facing the world, and the crisis on the ground is unimaginable, with cholera and diphtheria outbreaks on a huge scale. There is famine in prospect. The world will be faced with a cataclysmic disaster in Yemen and it is now inevitable.

Where does responsibility for that lie, and what can be done about it? Undoubtedly, there is conflict on the ground, for which all parties are responsible, and the use of disproportionate force on all sides has been well documented by all the relevant UN bodies in relation to those operating on the ground. That means human rights violations committed not just by Government forces or those of their allies, but also by those opposed to the Government, creating the crisis that exists at the moment.

The critical civilian casualty death toll is the responsibility of the Saudi Arabia-led coalition, and a great deal of effort has gone on at the international level to try to prise out of Saudi Arabia and its allies the true civilian death toll, because there have undoubtedly been some extraordinary incidents in which large numbers of civilians have been attacked in circumstances where it is impossible, frankly, from an objective point of view to identify either a legitimate military target or at least one to which that degree of civilian casualty could ever be said to have been proportionate.

So are war crimes being committed? On the face of it, it looks as though there is significant evidence that they are, by all sides, including the Saudi-led coalition. When I say war crimes, I mean failing to observe the principles of precaution and distinction that are required to ensure the minimisation of civilian casualties during warfare.

As special rapporteur, I visited Saudi Arabia twice last year, and I published a report two or three weeks ago, in which I highlighted the lack of transparency over civilian casualties in Yemen and the responsibility of Saudi Arabia to investigate all reports of civilian casualties through a mechanism which is independent of the chain of command that ordered those attacks, and to ensure that in any case where there are credible allegations even of civilian deaths or injuries, the findings of preliminary inquiries, with adequate independent supervision, are made public immediately.

That is a call I also made, for example, against the United Kingdom and the United States when they were jointly involved in using drones in Waziristan. It is a call that is made frequently to states that are engaged in aerial forms of warfare, where it is often difficult, in contested territory, to get an accurate picture of civilian casualties—but it is vital, if states are going to go to war using aerial platforms, that they carry with them a responsibility to conduct effective independent investigations into the extent to which they are complying with their international humanitarian law obligations. What is the responsibility of the United Kingdom—

Chair: I am sorry; I will have to stop you there. We have only a few

minutes.

- Q50 Stephen Gethins:** A very short answer will do. Could the UK be doing more?

Professor Rehman: Yes.

Ben Emmerson: I think the answer to that question goes back to Mr Seely's question. Could the UK be doing more? It could be, undoubtedly, making more in the international fora, but is that something which the United Kingdom is making carefully calibrated decisions about, concerning questions of national security about which neither this Committee nor anyone giving evidence to it is in a position to make an evaluation?

- Q51 Royston Smith:** Some of this has been answered already, but I want to ask about what the UK has done to engage the Security Council on human rights and what more it should do. To follow up on that, if human rights initiatives are being blocked by the Security Council, what alternatives can be explored?

Professor Rehman: As you know, the Security Council is quite politicised, and there are political issues—often, for example, on Syria or on Yemen or other places, the P5 would have a veto. However, looking at the significance of human rights, in terms of what the Security Council is now engaged with, obviously the Human Rights Council has a very prominent role. In that sense, the Security Council can highlight issues—it talks to the High Commissioner for Human Rights—and it can also engage more frequently with the special rapporteurs and the commissions of inquiry. A lot can be done by the Security Council despite that politicisation of its inherent nature.

Professor Freedman: I would say, building on that, that the Security Council is using an early warning system. It uses the Human Rights Council special sessions or commissions of inquiry—fact-finding missions—as a way of showing that human rights violations often lead into threats to international peace and security. It has been getting better at that.

The Security Council does a lot of work on human rights, but it just doesn't call it human rights. It calls it the protection of civilian mandates, preventing sexual violence in armed conflict or looking at children in armed conflicts. Those are all human rights issues. One reason they are not called human rights is that Russia, in particular, does not want human rights brought into the Security Council—it says that the Security Council is only about maintaining peace and security—so they have to be brought in in a careful way so as not to be blocked by other Security Council members who see the Security Council's mandate as more narrow and not including human rights. I think the UK is doing that in a careful way.

This mainstreaming of human rights into the Security Council has been going on for the last 15 years and has been incrementally making sure that human rights are part of all peacekeeping mandates and that human rights are front and centre of its work, even though they are not labelled as human rights.



Q52 Mr Seely: Just on that point, why do Russia and some other people not want human rights to be talked about at the Security Council?

Professor Freedman: Because the Security Council is seen, under the UN charter, as having a mandate to maintain peace and security, not on development or human rights, which have their own separate bodies. Russia sees it as having a narrower mandate and wants it to stick to the mandate it has been given.

Q53 Ian Murray: Can I look a little bit at personnel? How important is it that UK nationals, or people linked to the UK, are appointed to positions relating to human rights at the UN?

Professor Freedman: I think it is absolutely crucial in terms of the UK's influence, the intellectual way that the UK sees human rights and in terms of ensuring that human rights are not diluted and undermined, and that they are recognised as laws, rather than as aspirations. We have seen the critical role that people like Nigel Rodley played in the human rights committee or that people like Ben play in being a special rapporteur. Sometimes those are around elections—sometimes political elections, sometimes not.

It is absolutely crucial that we keep putting good people forward and that we do not shy away from putting people forward for, for example, the committee on eliminating discrimination against women, which the UK has not put anyone forward for because it feels it should be for the global south or for other members. I think that is wrong. We should put forward more good people. We have some of the most eminent international human rights lawyers in this country.

Professor Rehman: Can I just add to what Rosa said? I think it is critical. The special rapporteur on the situation in Iran, for example, can be influential in relieving many of the human rights problems that we currently have, such as the release of many of the prisoners who have been detained. When looking for special rapporteurs, the FCO and the Government need to look out for people who have expertise or any form of mandate—especially if they are British nationals or live in this country and have a lot of interest in promoting Britain overseas or, in this case, in Iran.

Ben Emmerson: Can I just make one comment on that? It is important not to let this question run away with you. Special rapporteurs and treaty body members are not appointed as representatives of their country—they are there as independent experts. They are specifically not there to represent the interests of their country. They are independent of their country, and they must be free to criticise their country's policies where necessary. There is no question of fielding a team for the United Kingdom.

Indeed, when it comes to the selection of persons for these roles, it is crucial, from the United Nations' point of view, that there is an appropriate geographical, gender and ethnic distribution across the body of special rapporteurs and treaty body members as a whole. Some treaty bodies are reserved for people from particular areas, such as the working group of experts on people of African descent. Others, such as the committee on



HOUSE OF COMMONS

the elimination of discrimination against women, are reserved women. Other than that, you will see that there is a very careful selection process, which is designed to ensure a globally representative mandate. The premise of the question—

Q54 **Ian Murray:** But it is an indicator of influence, is it not?

Ben Emmerson: It may be seen as an indicator of influence, but in reality, many of the special rapporteurs who are not British, in the sense that they do not have UK after their name, are based in the United Kingdom. We have a disproportionate influence, because of the principled approach that is taken, not because of the nationality of the people who are appointed to particular posts. If somebody is applying for a post as special rapporteur on a thematic mandate, Government support from the United Kingdom may or may not be of assistance. Sometimes it is not of assistance, but it is better that those individuals pursue it on their own merits.

Q55 **Ian Murray:** Is it getting more difficult for UK experts to be appointed in the current global environment?

Professor Freedman: There are many more people who are self-nominating or being nominated for these positions than there were 20 years ago. There used to be a sort of rotation of people who went from mandate to mandate, or people who stayed on human rights committees for a longer time. We have seen more NGO representatives come forward, rather than academics or practising lawyers, for these positions. Although I take Ben's point that sometimes it is better for the UK Government not to promote a person publicly, we have to be clear that even though these are independent experts, there is a lot of influence behind the scenes from the Government to make sure people get pushed on to the list in the first place. All Governments do that and the UK has to continue doing it.

Q56 **Ian Murray:** Can I briefly ask, because we are the Foreign Affairs Committee, whether there is anything that we can recommend to the Foreign and Commonwealth Office that it could be doing better or in terms of support, to encourage more people to come forward?

Professor Rehman: We need to know a bit more about this advisory group on human rights and what it does. It can highlight things and its recommendations can be quite useful. I think it can identify—although I take Ben's points and fully endorse Rosa's point—the right people, who can work in an independent capacity for various positions that are being considered by the UN. That could have a very important role for the United Kingdom.

Professor Freedman: The UK Foreign and Commonwealth Office currently has something around getting more women into senior leadership positions within multilateral institutions. There is a database. They have done brilliant work on this, in terms of identifying women and helping women to understand the process of how to apply for these positions and giving them a heads up when they are announced. There could be something similar to that in terms of human rights positions that



HOUSE OF COMMONS

are coming up—the Office of the UN High Commissioner for Human Rights website is absolutely impossible to navigate and I think that puts off a lot of people who are qualified from applying.

Ben Emmerson: I would just add one thing in relation to—

Chair: Sorry, we are really running out of time. I will move straight on, if I may.

Q57 **Ann Clwyd:** Is there a perception that human rights are a lower priority now for the Foreign Office than they used to be?

Professor Rehman: I take the position that there is a perception that human rights should be at a higher level than they are. I could go into details but—

Ann Clwyd: Perhaps, if there is not time today, we should have the details additionally.

Chair: Do you want to add something, Mr Emmerson? If you can be brief, we would be very grateful.

Ben Emmerson: I would. When you are out in the field, it is important to remember that what we talk about as human rights in this country is a very different thing to the animal we are dealing with in the international community. The term human rights has become, to some extent, a political football within the United Kingdom, because of the Labour Government's incorporation of the European convention into domestic law and the political arguments from left and right that have attended that. There are those who believe that the whole concept of human rights has been devalued—I am not one of them, but there are those who do. We have to accept that in the mainstream media and public opinion, human rights protection has been challenging.

There is a very real story to be told by the British Government about the work they do in human rights situations around the world, where no one could debate whether we are talking prisoners' voting rights or the right to have a cat living with you at home. There are really serious, gross and systematic human rights violations where the United Kingdom has shown itself to be a world leader. If I were to say one thing that the Foreign Office should be doing better, it would be raising public awareness of the work the United Kingdom does on the international stage.

Q58 **Ann Clwyd:** Professor Reham, you would have a different position.

Professor Rehman: I do have a slightly different position. As I have said before, I think there are issues in this country and society—a society where we debate whether we should continue to be members of the European convention on human rights. It does raise alarm that we are the beacon of human rights across the globe and are ourselves not so committed to the essentials of human rights. As I said, we have to come good with our treaty proclamations. Many of the optional protocols are still



HOUSE OF COMMONS

to be ratified and incorporated into our law. We have to demonstrate it through our action.

Professor Freedman: I think there is a difference between the public perception of this and the insider perception. So much of the work that the Foreign Office does on women, peace and security—the work that it does across the board really, in terms of multilateralism—incorporates human rights. So much is being done, even though Brexit has taken over large parts of capacity within all these institutions. But I would agree with Javaid that regarding the public perception of the UK and human rights there are very worrying signs in terms of how the Government, but also the civil service, are portraying human rights. They do need to be addressed.

- Q59 **Mr Seely:** Do you think that third-generation human rights and the debate around them has challenged our ability to deliver significant and fundamental human rights in areas where it is life and death and not about keeping cats in certain types of houses?

Professor Freedman: Third-generation rights are really thinking about whether there is a human right to development, to international solidarity, about whether there are these kinds of collective rights. Yes, having resources diverted to these types of rights in international forums means that there are not as many resources in terms of time, money, expertise or capacity to address civil and political rights. That goes without saying, but—

- Q60 **Mr Seely:** So the follow-up point to that, Professor, is that we, for the moral good of humanity and ourselves, should be focusing on those first-generation human rights and making sure that they are enforced rather than the more perhaps nebulous and politicised rights. Would you agree?

Professor Freedman: For my perspective, and like Javaid said you can argue it either way, third-generation rights are being instrumentalised by countries that do not want to have to address civil and political rights, but there are some countries in whose eyes the human rights system is not legitimate because they feel they were not represented when the universal declaration of human rights was created because they were under colonial rule. For some of them, they are not instrumentalising third-generation rights; they really do reflect their values and their ideologies of human rights. I think that the UK navigates this quite tricky path well within the UN system, but it needs to continue to do so.

Professor Rehman: There is also a growing change in perception on, for example, the environment—you can call it third generation—development and human rights, and rule of law. Those are all interrelated concepts. You cannot just isolate civil and political rights—first generation, second generation, third generation. There is a lot of work that has been done on the combination of the three generations, so you cannot say, “Okay, let’s focus on civil and political rights and forget about the environment, rule of law or democracy”.

- Q61 **Mr Seely:** No, but making sure that a river does not have lots of pollution in it is incredibly important but not as important as saving the lives of



thousands of people.

Professor Rehman: But it is so important, because the right to life depends on non-pollution. They are all interconnected concepts.

Q62 **Mr Seely:** But one is direct and one is very indirect.

Professor Rehman: You can say that, but the right to life is huge.

Chair: Okay. This is a philosophical argument. Forgive me, we have to leave it at that. I can see that we could go on for a while longer. Thank you very much indeed for coming.

Examination of witnesses

Witnesses: Sir Roger Gale MP, Angela Smith MP and Murray Hunt.

Chair: Thank you very much indeed for coming. Mr Hunt, thank you very much, but thank you particularly to our two colleagues for agreeing to appear. It is very good of you.

Q63 **Priti Patel:** We have just had an interesting panel talking about human rights and democratic values within institutions. I am going to start by opening the questioning asking for your views on whether or not the United Kingdom, the Government and the FCO promote enough the rule of law and democratic values globally, particularly when compared with other countries. Where do you think the UK sits in terms of its own comparative advantage in this area?

Sir Roger Gale: I guess the straightforward and quick answer to your question is no, we do not promote it enough. Angela Smith and I are here as representatives of the Parliamentary Assembly of the Council of Europe, as well as parliamentary colleagues, and we would agree that the Council of Europe is probably one of the best-kept secrets that we have.

We have 36 members of the delegation. We meet four times a year for a week at a time in Strasbourg. We meet for committee meetings in Paris and in various other European and overseas locations. We are regarded by the popular media as a wining and dining club for geriatrics, which we can live with, because we know it is not true.

As the leader of the delegation, I am in a position to say that the team works extremely hard on a wholly collegiate basis. Mr Trump would probably say that we bat for Britain. We do not bat on a party political basis, by and large. There are occasions when we have party political differences, but they are few and far between.

Fundamentally, I would say that the team I am lucky enough to lead punches way above its weight. If we do that, it is because we have the support first of all of the Minister of State for Europe, Sir Alan Duncan, with whom we meet regularly and with whom I discuss things on a very regular basis. We also have the superb support of Christopher Yvon and—sparing his blushes—that of his team. They are first-rate. He is our permanent rep in Strasbourg, and his folk around him are excellent. He and I talk on a very regular basis.



HOUSE OF COMMONS

To me and the rest of the team, it is a sadness—looking forward it will be a necessity—but we need to use the Council of Europe a great deal more and to promote it more. It is not for want of trying, and it is not for want of trying on the part of the Foreign and Commonwealth Office, but nobody is very interested.

- Q64 **Priti Patel:** Can I just come back on that point? You say nobody is very interested. What is the issue? What are the barriers stopping us from doing more in promoting the rule of law and democratic values?

Sir Roger Gale: I suspect that first of all, the fundamental problem is that it has the word “Europe” in it, and, that aside, it is conflated very frequently with the European Union. While I would not wish to pretend that there is not a crossover in some areas, they are two very different animals. Fundamentally, the Council of Europe was established by Winston Churchill and others post-war to ensure that there was never another Holocaust. It is fundamentally rooted in human rights. All its instruments—the Committee on Political Affairs and Democracy, the Committee on Legal Affairs and Human Rights, the Monitoring Committee, the Committee on Social Affairs, Health and Sustainable Development and even the Committee on Culture, Science, Education and Media—have their roots in human rights. It also has the European Court of Human Rights as an arm of its operation. It also has the Commissioner for Human Rights, who reports to us on a regular basis.

Angela Smith: I would like to add to what Sir Roger has said. Vernon Coaker, who is a member of our delegation, is always making the point that we do not do enough in Parliament and at home to promote the work we do in the Council of Europe. Indeed, we had a debate recently in Westminster Hall where it was suggested that there should be an annual debate here in Parliament on the work of the Council of Europe. It came from Cheryl Gillan, I believe, and Roger and I support that. We would like to see the Leader of the House accept the principle of having an annual debate. I think it will happen in the Lords. That would be a starting point for raising the profile of the work that we do.

Sir Roger is absolutely right. I can refer briefly to some of the work that is happening, sponsored by individual members of the delegation. Vernon Coaker has commissioned a report on modern slavery, which dovetails perfectly with one of the priorities of the Foreign Office. I have secured a report on post-Holocaust issues in relation to Jewish heritage. Doreen Massey in the Lords is leading on work in relation to children’s rights. We have got Liam Byrne doing work on counter-narratives to terrorism. Phil Wilson is doing work on the dangers of Daesh and its evil ideology. I am sure that Sir Roger could refer to the work being done by members of the Conservative side of the delegation. We don’t just go in there and participate in votes on the floor of the chamber. We engage in work in the committees and lead the way to some extent.

- Q65 **Priti Patel:** To build on your comments—perhaps, Mr Hunt, you might want to share some insights—we have just had a session where we have been speaking about human rights and the Human Rights Council, and



HOUSE OF COMMONS

the UK's work and the Foreign Office's work internationally and within the UN and multilateral institutions paving the way for radical changes and very pertinent and strong agendas on issues such as women and girls around the world and women in situations of conflict, where we have taken a leadership role. Admittedly, there has not been enough done to communicate that or emphasise that externally, but we are taking a leadership role. In terms of the Council of Europe, are we valued for our contribution? Should we be doing more or do we need to work differently in terms of presenting ourselves going forward?

Sir Roger Gale: The Council of Europe has had some significant issues in terms of internal corruption. It is the British, indubitably, that have led the way and blazed the trail to root that out by instigating a full judge-led inquiry and by then disciplining those—relatively few, I am happy to say—members of the international community who were found to have not behaved appropriately, shall we say. We are fortunate of course in having one of the two languages of the Council of Europe as our native language, and that helps. Nevertheless, I think it is accepted that we tend to lead in very many areas.

The point was made by your earlier witnesses, from what I heard, that human rights in the United Kingdom mean something very different from human rights in some other countries. We are taking a firm lead over human rights and other abuses instigated by the Russian Federation. We have taken a very firm stand over what has happened in Syria and what is happening as we speak in Turkey. In fact, on Thursday, we have four members of the delegation going out to the Turkish elections—one as a rapporteur, Nigel Evans, and the other three as election observers. Lord Blencathra and Cheryl Gillan are going. They will be reporting back. We take a very fierce interest in the plight of journalists who are operating in Turkey under conditions that no journalists in this country would even begin to appreciate. So I think we can claim legitimately that we do rather more than our bit.

Angela Smith: To build on that, I was an election observer in Azerbaijan at the presidential election in April, along with David Maclean, Lord Blencathra. We were the two British delegates on the Council of Europe contingent. There were attempts by the leadership of the Council of Europe delegation to agree a judgment on the election process itself that was inaccurate. In other words, the leadership of the delegation wanted to have the election declared as fair and free.

I have to say that the UK—Lord Blencathra and myself—were absolutely vociferous, and joined in with those members of the delegation that absolutely insisted that an accurate judgment of that election was passed by the Council of Europe, and that we behaved in a way that was consistent with the ODIHR's statistical, professional judgment of how that election had been conducted.

There are issues in the Council of Europe. There is corruption in the Council of Europe. I am proud of the fact that the British contingent on

that occasion remained firm, and worked really hard to make sure that corruption did not win the day.

Murray Hunt: May I pick up on a very specific aspect of your question: does the UK do enough to promote the rule of law specifically? My role is in relation to the Bingham Centre for the Rule of Law, so I am particularly focused on that part of your question. For me, the answer is quite clear: we do not do enough in relation to the rule of law. In relation to these fundamental values—human rights, democracy and the rule of law—the rule of law is very much the poor relation in the UK's foreign policy. It is clearly there—it is clearly present in many policies—and a great deal is done to advance the rule of law abroad in lots of different ways by lots of different Departments, including by DFID as well as the Foreign Office.

But when we look at the human rights and democracy report, it is interesting to see that the status of the rule of law, even on the front cover, is immediately less than that of human rights and democracy. That strikes me as very strange, given, to go to another part of your question, our comparative advantage in relation to the rule of law. We are the home of Magna Carta, and we do have universal recognition worldwide that Magna Carta is synonymous with the rule of law. Yet, for reasons I do not fully understand—I understand to some extent—we slightly hide our light under a bushel on this subject. We do not take advantage of our comparative experience in this respect.

One of the reasons why may well be a fear of appearing to be imperialist and those sorts of sensitivities about the rule of law, and not wanting to be appearing to preach and export national products in relation to values. But it puzzles me that we are so shy in relation to the rule of law. From the Bingham Centre's point of view, we would very much like to see an annual Foreign Office report on human rights, democracy and the rule of law and see that worked through in the way that human rights and democracy are worked through in this report, pulling together the many strands of things that are done, to give greater coherence to what is being done by the Government on the rule of law abroad.

Q66 **Ian Murray:** I must declare an interest: I sit on the Council of Europe and have attended a number of its plenary sessions. We had a big discussion with the previous panel about the priority given to trade and international trading as opposed to human rights, what influence one gives over the other, and whether we prioritise one at the expense of other issues. Can you give us an indication about how the Council of Europe deals with that, given its current issues with regards to Turkey, Russia and so on? How can we influence that structure to ensure that we are about human rights and not about compromising on those human rights for the sake of resources or trading influence?

Angela Smith: And the rule of international law as well. I speak to Russia. There is potentially a huge decision facing the Committee of Ministers of the Council of Europe next May, because Russia's voting rights in the Assembly have been suspended in relation to its annexation of eastern Ukraine and Crimea. As a consequence of that, Russia has



HOUSE OF COMMONS

withdrawn its payments to the Council of Europe, and if it fails to pay its dues next year as well, the rules dictate that Russia should be suspended altogether—not expelled but suspended—from the Council of Europe and from the Committee of Ministers as well.

This is the elephant in the room as far as the Council of Europe is concerned. There is a huge controversy around whether Russia needs to be in or out. As far as I am concerned, we can still have the dialogue with Russia, but total suspension has to be contemplated, because we cannot allow such a breach of international law and the attempt to blackmail the Council of Europe to be rewarded because member states believe they have got to have that budget back in place. That is unacceptable.

The other side to all of this is the argument we hear from the Secretary-General, made on the floor of the plenary at the last session. If we suspend Russia from the Council, the human rights of Russian citizens will be compromised, because they will no longer have access to the ECHR. We face that situation with Azerbaijan, and the Secretary-General has a much harder line on Azerbaijan. In any case, Russia will not allow for the supremacy of the European Court of Human Rights. It still reserves the right to pick and choose which judgments it wants to accept, and there are nearly 8,000 cases still pending in the European Court relating to Russian citizens.

It is a really good question, but for me the UK delegation is completely united in believing that the ethical position in relation to Russia has to be held, because the human rights of the Ukrainians have been severely compromised by Russia's annexation. I do not think we can allow the rights of Ukraine, a fellow member state, to be compromised in such a manner and for that to go unpunished. I know that is a very strong view, but I have to be very honest about it.

Q67 Andrew Rosindell: Just to clarify, is this about the budget or the human rights record, or both? Are you basing Russia's potential suspension on both those issues, or just the budget?

Sir Roger Gale: Fundamentally, the Russian Federation's voting rights were suspended as a result of the annexation of Crimea and the subsequent interference in the Donbass, and various other minor issues such as the shooting down of a civilian aircraft and the incarceration of a number of political prisoners. Fundamentally, that is about human rights. The Russian Federation has tried subsequently in effect to blackmail the Parliamentary Assembly, or the Council of Europe, into submission by saying, "We won't pay a significant sum of money that is due legally."

There are those who would like to roll over and put their paws in the air, for a variety of trade reasons, to take the point that Mr Murray made. There are countries that have an interest in gas supplies from Russia and wish to sell farm produce to Russia. I will not name them, but you can work out who they are. We have taken a hard line on this. We believe in the principle, we believe the principle is right and, at whatever cost, we



feel very strongly that we have to hold the line on this. The British do—the Foreign and Commonwealth Office does.

By the way, we are not mandated—we do not take instructions from London when we go and vote in the hemicycle. We are well briefed, by both the FCO and our man on the ground, Christopher Yvon, and we value that highly. We also have—I think you have the benefit of it yourself—the Overseas Office secretariat, who help us a great deal. But at the end of the day, we make up our own minds, and we have made up our minds. The interesting thing is that, on this issue, as indeed on most, we are as one as a British delegation. I do not think you could put a cigarette paper between us.

Murray Hunt: This is a very specific example—a very important one—of a general phenomenon that all international organisations are grappling with at the moment. The European Union is grappling with what to do in relation to the judicial reforms in Poland. Vice-President Timmermans has returned from meeting the Polish Prime Minister yesterday, and the big question there for the European Union is where it draws the line in the sand and says, “Here and no further,” in relation to something as fundamental as interference with judicial independence. The Commonwealth will have to decide on Zimbabwe’s application to become a member of the Commonwealth again, which was made last month. These things focus attention on the importance of agreed standards and shared values, and what they actually mean in practice.

That is where it is worth noting that, although the rule of law, human rights and democracy sound very abstract, a huge amount of work has been done for decades on particularising and granularising these ideas and vague values. We do now have a very detailed set of the precise standards and principles that make up the rule of law, for example, which we can apply and on which even bodies as diverse as the European Union and the Commonwealth can agree when making difficult decisions about membership.

Q68 Mike Gapes: Can I take you on to the FCO’s own published objectives for the promotion of democratic values and the rule of law? Do you think that they are sufficiently ambitious in their approach?

Sir Roger Gale: I would personally say that they are pragmatic and achievable. You can be as ambitious as you like, but if all that is motherhood and apple pie and blue-sky planning, you are not going to get anywhere. My experience of the FCO, for whom I have developed a high regard in the job that we have been doing, is that they are immensely practical, they know what is achievable in realistic terms and in diplomatic terms, and they are very good at trying to achieve it. We have probably learned a lot from them—not in terms of Spanish practices, but in terms of how things are and can be done to gain the best possible result.

At the end of the day, we are talking about the freedom of individuals. We are talking about a significant number of journalists locked up in Turkey. We are talking about political prisoners held in Azerbaijan. We are talking



HOUSE OF COMMONS

about political prisoners held in Russia. One of our own number—a Ukrainian citizen who was a member of the Parliamentary Assembly of the Council of Europe—was held in a Russian prison for a significant amount of time without trial. We got her released. It wasn't easy, but we did it. *[Interruption.]*

Chair: Order. I have to suspend the session for 15 minutes so we can vote.

Sitting suspended for a Division in the House.

On resuming—

Chair: We shall restart.

Q69 **Mike Gapes:** Sir Roger, you were halfway through answering my question, I think.

Sir Roger Gale: I was. What I was saying, if I can remember correctly, was that we should never forget that we are dealing with real people. It is easy in the abstract to talk about human rights, but when you are talking about real people locked up in real prisons in appalling circumstances, it behoves all of us to try to make a difference. That sounds terribly pompous, and probably is, but actually that is why we are there.

Angela Smith: My experience of the Foreign Office is as Sir Roger has outlined. I have a lot of regard for the Foreign Office. It briefs us really well. Its knowledge of the areas that we are working in is second to none. I am talking about the embassy in Strasbourg now, the Council of Europe embassy.

For example, we recently had a debate on Bosnia. The rapporteur—Sir Roger—presented a monitoring report on the situation in Bosnia and Herzegovina, and the Serbian contingent in the Federation tried to present amendments that softened the criticism of the Serbian activities in the Federation. The UK contingent, who voted in big numbers that day, were able to play a big part in defeating those amendments.

The Foreign Office's role in making sure that we are fully informed on these issues is really valuable, and it is really important that we remember that there isn't just Turkey, Russia and Azerbaijan; there is also Bosnia and Herzegovina and increasingly, I'm afraid, Hungary and Poland, as was outlined earlier. This is where the support of the Foreign Office is really important, because as events develop, we are going to need to be fully briefed at all times on how things are developing in those countries.

Murray Hunt: May I come in on whether the objectives are adequate? They are rather vaguely or ill defined, and of course there are good reasons for that, but of more concern to me is how selective they are. At the risk of sounding like a cracked record, I point out that there is no mention of the rule of law in the objectives, which is curious, given the content of the rest of the report.



HOUSE OF COMMONS

But if we look elsewhere, for example at the FCO single departmental plan from December of last year, the rule of law is mentioned, under “Project our global influence”, which includes promoting human rights, good governance and the rule of law. It is where it should be, under “Project our global influence”. As the first panel discussed, it is an important part of our global influence to take moral leadership on these issues, including the rule of law. It is also part of another objective—promoting business and promoting a rules-based international legal system. This is all part of creating the conditions for stability, security and prosperity.

Elsewhere on the FCO’s website, there is a separate publication that is more recent. It is headed “Human rights, democracy and rule of law: objectives 2017 to 2018”. Again, that mentions specifically in the body of the objectives human rights, democracy and the rule of law as the trinity of values, as it should be. It may be that this reflects more up-to-date thinking in the FCO, but I think it would benefit enormously from being in the objectives in the annual report, because the statement of objectives is very important. It gives coherence to the whole of the Government’s policy and enables scrutiny by Committees like this, so I think it’s very important that it should be there.

Q70 Mike Gapes: Thank you. Should they give more emphasis to reform of justice systems as well? Angela mentioned Poland, and there are clearly concerns about what is happening in legal and justice systems in a number of countries. Do you think the FCO should give greater influence to that area?

Murray Hunt: Personally, I do—very much so. Again, it’s an example of the rule of law being slightly the orphan in this report that there’s very little in there about judicial independence and the importance of legal reforms and the strength of justice systems. There is some mention of overseas justice and security work, but it’s very brief. But the UK does do a lot of work in relation to judicial independence.

The Bingham Centre itself has over the years done FCO-funded projects in relation to judicial independence in a number of countries, including in Palestine—in the occupied territories. It is a significant omission, and it tells a stronger story if it’s all brought together in this report. It helps also to identify where there may be gaps—where more could be done in relation to those aspects of the rule of law.

Angela Smith: It’s really interesting, though, Mike, because when it comes to the way in which the Foreign Office conducts its workload in relation to the Council of Europe and the Assembly, it becomes much more nuanced. As an example, we have seen the recent changes in Armenia: the appointment of the new Prime Minister and the new commitment to establishing true independence of the judiciary in Armenia.

It remains to be seen whether that is going to be delivered, but one likes to think that the role of the Council of Europe in all of this—its acceptance of Armenia as a member state, its monitoring of Armenia and its relationship with Armenia and the building of expectations in relation to



HOUSE OF COMMONS

that state—has played a role in creating the development of democracy, human rights and the rule of law.

As I say, one of the principal commitments with the new Armenian Government is independence of the judiciary. We would expect the Foreign Office to work with us in holding Armenia to account on that.

Sir Roger Gale: Can I add one other point that we must not overlook? We are talking as members of the Parliamentary Assembly of the Council of Europe. There is of course a whole other arm, which is the Committee of Ministers. I know that, very occasionally, a joint committee meets, which is representatives of the Committee of Ministers and the Parliamentary Assembly.

Either the Foreign Secretary or Sir Alan Duncan, as the Minister of State for Europe, or on a very regular basis our permanent representative in Strasbourg, Christopher Yvon, attends those Committee of Ministers meetings. I know Christopher is very heavily wedded to the concept of rules-based democracy and he fights that corner very hard indeed. I know that because we brief each other on the line we are trying to take and it is not terribly difficult because we happen to enjoy singing from the same songsheet.

Angela Smith: Along with the Foreign Office, we staged an exhibition at the last Assembly on the 20th anniversary of the Good Friday agreement. That is not to say that everything in relation to Northern Ireland is perfect, but it did secure significant achievements in terms of the rule of law and reform of policing in Northern Ireland and the Human Rights Commission and so on. We wanted to tell that story at Strasbourg.

We had the full co-operation of the Foreign Office in doing that. Sometimes it is about not just the way things are now, but looking at the progress made in relation to other key areas. Northern Ireland is obviously one of the key areas where progress needed to be made and still needs to be made, and I think we just need to remember sometimes that we have secured improvements and we have achieved things in relation to those three areas.

- Q71 **Ann Clwyd:** I was once a member of the Council of Europe myself, just for about two years. I always think that its value is underrated. I wonder how you promote what you are doing better. Do you want parliamentary time? What do you want? We did some really interesting human rights reports while I was there. We did them in more depth than I have ever had the opportunity to do them here in the House of Commons. There was a very good commissioner called Thomas Hammarberg—I don't know if he is still there. He used to present very good reports. There was a sub-committee on human rights work—I think it was legal and human rights—which usually met in Paris. Some of the best discussions I ever took part in took place on that committee. I think it is a great shame that people in this country don't really know what you are doing, and Members of Parliament don't really know what you are doing.



HOUSE OF COMMONS

Angela Smith: I think that is absolutely right. The monitoring reports in particular are superb. We received one recently on Italy—people forget sometimes that the human rights record there is not that fantastic—and in relation to Turkey, and to Bosnia. As you say, they are in-depth reports that give a really good snapshot of what is happening in a member state at any one particular point in time.

I think parliamentary time for debate about the work of the Council of Europe is a starting point but, if we are leaving the European Union, clearly Parliament is going to have to give better and further consideration to the role that we play in the Council of Europe, because it is all we have left.

Sir Roger Gale: If I may pick up on that, just to set the record straight: Tom Hammarberg, who you know, was an excellent human rights commissioner and was succeeded by Nils Muižnieks, who in turn has been succeeded by Dunja Mijatović, who is a Serbian national, as the commissioner for human rights. There is an annual report from them every year. They do an extraordinary amount of work with a very small team and they are very good. Angela's absolutely right. In fact, I am working quietly on a paper at the moment to demonstrate the cross-over between our Government Departments and the work of the Parliamentary Assembly of the Council of Europe. In fact, in virtually every field—save, possibly, for defence—there is a direct relationship between the work. They are not called the same things, but there is a very significant platform there upon which we can, will have to, and should anyway build.

Murray Hunt: I entirely agree that there is an unfortunate disconnect between the Parliamentary Assembly and our Parliament. In a former life I was legal adviser to the Joint Committee on Human Rights. We tried very hard to make sure that what was going on in one of the great Committees of the Parliamentary Assembly, the Committee on Legal Affairs and Human Rights, was being brought to the attention of parliamentarians here. We found it very difficult to find a Member who could be a member of both Committees at the same time. Parliamentarians are obviously very busy. There are all sorts of practical constraints on doing that. I wish there were an easy answer, but I entirely agree that we need to find a way of bringing that work more directly to the attention of this Parliament.

Angela Smith: Particularly given that the Assembly elects the judges to the European Court. That is a very important power.

Q72 **Ian Murray:** Mr Hunt, post-Brexit—we will assume for the purposes of this question that we leave the European Union—are you concerned that the UK's new trade agenda, in terms of having to find a new way in the world with Global Britain and those kinds of issues with trade, could compromise our support for human rights, or even our human rights agenda?

Murray Hunt: I'm not sure it will be a new problem. It is a problem that the Government face anyway, in having to reconcile this range of competing objectives. It may become a more acute problem, but it is one



HOUSE OF COMMONS

that the Government are very experienced in dealing with. If it does become more acute, that makes it all the more important that we articulate the values that we are trying to promote when we say we promote democracy, the rule of law and human rights. We have to get much more detailed about what that actually means in practice, and what the more detailed core concepts and principles are.

If you unpack the rule of law, for example, we have to articulate why legal certainty matters, why non-arbitrariness matters and why judicial independence matters. Those are all core ideas in the rule of law, and we need to be sure that we are articulating them properly, because they are values that, even at that more specific level, command international consensus. That is the joy of the more detailed accounts.

- Q73 Ian Murray:** Do you think there is a danger of a perception—particularly by the public; not necessarily by the human rights community or the political community—that it is about human rights, the rule of law and democracy when it suits? Is there a danger that the UK could fall into that category?

Murray Hunt: Of course, there is always the danger of selectivity and perceptions of inconsistency of treatment in narratives that are not very coherent. That is always a challenge for any Government. It will become more of a challenge, but my belief is that if you are, as I am, a constitutionalist and you believe that there is a lot of overlapping consensus about these shared values at quite a detailed level, if you take refuge in those more detailed accounts, that is where you can show that there is agreement, without pretending that there is false agreement. I am not pessimistic about this.

- Q74 Chair:** Let me push on that. We have heard quite a lot on trade, and other areas as well, and the balance between trade and human rights. I do not want to narrow this to the Council of Europe, but I want to include the Council of Europe as part of this. Clearly, this is something that the Foreign Office is constantly weighing up, and the Council of Europe is a part of that evaluation. Could you talk a little about how you discuss that in the Council of Europe? I am focusing on that because as we leave the European Union we will have two European parliamentary representations: NATO and the Council of Europe. Perhaps you can talk about how you see that?

Sir Roger Gale: You can add the OSCE to that.

Chair: That is true—forgive me. There are three.

Sir Roger Gale: The OSCE and the Council of Europe probably have a slightly closer relationship than the Council of Europe, the OSCE and NATO. But you are absolutely right—of course it is an issue and, as has been said by Mr Hunt, it always is. In this country, we have a thriving arms industry that creates vast numbers of jobs and generates significant advances in military and, by implication, domestic technology. That is very valuable; we have to square that circle. Over a number of years, we have been doing that the hard way—not always entirely successfully. I am quite



HOUSE OF COMMONS

sure, without naming any names or picking any particular countries, that under successive Administrations we have sold things to countries that we perhaps should not have sold to or have come to regret selling to further downstream.

Within the Council of Europe, however—and I have been looking at this very carefully because of the future importance of the Council of Europe as a platform—one of the areas that superficially we do not touch on but that is, in fact, very directly related to human rights is trade. With trade comes prosperity, and with prosperity come the rights and dignity, and the ability to live a decent life, that we are trying to propagate throughout the 47 member states of the Council of Europe.

On a slightly harder-nosed level, of course we meet people and make contacts. Although we may not be directly involved, I think we can regard ourselves, on behalf of the United Kingdom, as ambassadors, and we can seek to maximise the value of the contacts that we make in terms of our national interests, which are important, and the advancement of human rights through prosperity. There is an element of win-win there as well.

Angela Smith: My experience of the Council of Europe is not as extensive as Roger's. I find that in the formal debates in the hemicycle and in the committees, the issues of trade are absolutely kept out of the discussion for the most part—they are not foregrounded at all—but of course relationships are built over time.

That is not to say that individual delegates are coming to any member of the UK delegation and saying, "Can we talk trade?"—of course they are not—but friendship between delegations is very much a part of what we do, and should be. It should be about the European family, if we can possibly make it about that, which is a really important part of it. European unity is critical, which is interesting in relation to the Russian interventions, because I am not particularly convinced that Russia is interested in European unity, if I can I say that.

Q75 **Chair:** Can I come on to a slight variation on that? We have spoken a lot about human rights in terms of their implication for others, and a conversation is arising at the moment about whether the UK stays in the ECHR. It is something that comes up periodically. Can you talk a little, Mr Hunt, about what would actually change if the UK did not? The reason I ask is not just because there is a political implication, but because there is also a legal implication. My understanding is that many of the laws that we see as ECHR are, in fact, rather more expressions of British law than they are of other things. Could you touch on how UK law would change? Then I will ask our colleagues to talk about how perceptions of us would change.

Murray Hunt: UK law would change quite dramatically, because the rights that are enforceable through the Human Rights Act are the rights in the ECHR, as interpreted by the Strasbourg Court, and that whole body of law would be removed. Therefore those rights that have been enforceable in our own courts since 1998 would no longer be available. That would be a



HOUSE OF COMMONS

very retrograde step in terms of access to legal remedies in relation to those fundamentals, bearing in mind that those fundamentals, as you quite rightly say, Chair, are to a very large extent articulations of British values in the 1940s and 1950s as subsequently interpreted.

Chair: Can I press you on that? I understand what you are saying—that we would lose access to the body of law that had been formed by the judges, particularly since 1998. In reality our judges would presumably be asked to adjudicate on similar issues and come back in similar ways to similar answers to those of the Strasbourg judges.

Murray Hunt: I am not sure I would be as optimistic as you are, Chair. The genius of the Human Rights Act was that it managed to give legal remedies, enforceable legal remedies, to individuals in relation to those rights that were not available before the Act came into force in 2000. So that was quite a significant step forward. But at the same time it did so in a way that also recognised Parliament's very important role in interpreting those rights and then giving effect to them in legislation. The Human Rights Act is quite an unusual and unique model in the world in reconciling our parliamentary democracy tradition with that access to legal remedies. The devices of the declaration of incompatibility and the ministerial statement of compatibility, which gives Parliament a significant role in scrutinising the legislation, are a crucial part of that package. All that would be lost if the UK removed itself from the ECHR.

Q76 **Chair:** Would I be right in saying that, if you removed that, Parliament would become weaker versus the judiciary, ironically?

Murray Hunt: There may be a risk of that because Parliament has, I think, begun to take its role under the Human Rights Act much more seriously than perhaps at first it realised it had in 2000 when the Act came into force. So there is now very considerable scrutiny of the human rights compatibility of legislation against the ECHR, which gives Parliament a very important role in interpreting the rights and deciding whether a detailed procedural regime in the counter-terrorism context is compatible with fair trial rights. That often involves legislators themselves having to interpret difficult article 6 questions for the first time without any guidance from the Strasbourg court. So there is a really important role for legislators under the Human Rights Act that would not be there without ECHR membership or the Human Rights Act.

Q77 **Chair:** In which case you would find yourself with the UK Supreme Court acting as supreme to Parliament.

Murray Hunt: They, of course, would not have the remedial power of other constitutional supreme courts. They would not be able to invalidate legislation. But I think it would weaken Parliament because Parliament has acquired this role, which is still growing in relation to interpreting and applying human rights law to legislation as it goes through. Increasingly, the courts are in a sophisticated way responding to that by giving due deference where Parliament has done a good job of scrutinising the compatibility of legislation. The Strasbourg court applying the margin of appreciation in our own courts is being deferential where Parliament has



HOUSE OF COMMONS

clearly done that job well. That institutional relationship over the years since the Human Rights Act came into force has adjusted very well and is still evolving, and I think that would all be lost.

Chair: Interesting.

- Q78 **Sir Roger Gale:** It would be a sadness, to say the least, if we were to leave the ECHR. I am entirely supportive of extricating ourselves from being under the aegis of the European Court of Justice, but that is not the same thing. Given what I believe will be the growing importance of the Council of Europe, it is a sphere of influence within which we have been supremely effective. Sir Nicholas Bratza led the European Court of Human Rights with huge distinction over a period of time. He is now retired and was immediately wheeled out again to chair the tribunal that investigated corruption within the Council of Europe and did that extremely effectively as well. Again, I think it is probably fair to say that the British members of that judiciary punch above their weight. If we pull out from that, I am not sure that the consequences domestically will be particularly dire. I think we have got a sound judicial system, particularly given now that the Supreme Court can and will do the job.

The Secretary-General of the Council of Europe, Thorbjørn Jagland, while it was a running sore, never ceased to remind those of us on the British delegation that Britain had not honoured the undertakings dictated to us in relation to prisoners' voting rights. Frankly, the fact that half a dozen prisoners were going to be able to vote in a general election every now and again was neither here nor there. The solution was a typical bureaucratic fudge, but Mr Jagland used this as a stick to beat us with and said, "How can I go to Russia and say that their human rights record is not sound when you are not obeying the instructions of the European Court of Human Rights?" Well, I would be delighted if Mr Jagland, when he goes and meets Mr Putin and Mr Lavrov tomorrow, berates the Russians in the same way. I have a sneaking feeling he probably won't.

Angela Smith: I have the same sneaking feeling. May I just add that I think the reputational damage done to the UK if we were to withdraw would be beyond measure? The UK in the Council of Europe sometimes runs the risk of being seen as imperialist, because we go in there and are very often awkward, difficult and dig our heels in on various things. We stick to our principles, in my view. That sometimes gives us a reputation for being a little bit imperialist, if you want to see it that way. On the other hand, it also means that we are seen by many delegates as a force for good, because we push on key issues relating to human rights in Ukraine and the Russian annexation. We also push on Armenia, Turkey, Azerbaijan and so on. Russia at the moment will not recognise the supremacy of the European Court. If we withdraw, what message does that send out to countries such as the Russian Federation? That for me is the bottom line. That point I made about European unity is really significant here. We are a force for good. We are a soft power, and we have to use our soft power effectively. The Council of Europe will be one of the remaining places where we can deliver and make good use of that soft power.

- Q79 **Ann Clwyd:** I just want to ask you about the promotion of the rule of law



HOUSE OF COMMONS

and democracy. The UK gives a considerable amount of money to countries, some of which fail to make progress on human rights. For example, in Bahrain we spend millions on the promotion of the rule of law, yet I would say that the situation has got worse. Should we withhold that money? How should we react to situations like that?

Angela Smith: I am here representing the Labour side of the Council of Europe delegation, so if I may, I'll ask Murray to respond on that.

Murray Hunt: It is a version of the problem that the European Union is facing with Poland. We need to have agreed mechanisms in advance for scrutinising rule of law performance on the basis of agreed values that are spelled out in detail.

One other great achievement of the Council of Europe that has not been mentioned is the work of the Venice Commission on the rule of law. Over a long period, it has come up with a definition of the rule of law from a fairly unpromising start in 2007. It has now produced a definition and a detailed rule of law checklist. It articulates a conception of the rule of law that commands agreement across the 47 members of the Council of Europe. That is no small achievement given the various legal cultures represented in the Council of Europe membership. In that sort of work and in that rule of law checklist, there is the potential for devising practical tests or benchmarks—ways of scrutinising whether the conditions that can be attached to assistance have been met.

I do not think we should be scared to have that discussion. The EU is grappling with this at this very moment. If you can actually apply meaningful standards that command agreement to cohesion funds in the case of the EU, or to aid in the case of your question, we should explore that possibility. We should not be afraid of that. Sometimes it is necessary to say, "There is a line here in relation to this benefit."

Q80 **Ann Clwyd:** Can you see that being done?

Murray Hunt: I suppose there is some progress towards it. The European Union is now having this debate about the conditionality of cohesion funds and applying other budgetary penalties for rule of law violations. It is a very complicated question, because withdrawing that sort of assistance is punishing people on the ground who bear no responsibility for the rule of law problems in their country. It is a difficult question. At the institutional level, I think there is now serious discussion going on about how to devise more sophisticated rule of law-based tests and mechanisms to be able to apply those sorts of judgments. I do not think we should be afraid of doing so.

Angela Smith: If we have moved on slightly from Bahrain to the Venice Commission, I think the Venice Commission plays a really valuable role. It joined the United Nations Human Rights Committee in expressing serious concerns about the process by which the amendments to the Azerbaijani constitution were agreed; a process and set of amendments that effectively allowed Aliyev to appoint his wife as vice-president.



HOUSE OF COMMONS

The Venice Commission plays a very important role in informing the work of the Council of Europe. It helps to inform key decisions about whether, for instance, we participate in a member state's election as international observers. Sometimes, it's a judgment about whether we should even be allowing ourselves to be associated with an election process if it is completely discredited. In relation to Turkey, the view was—and Roger is the chair of the relevant committee—that we ought to provide observers to that election. The risk, if you get it wrong, is that you're legitimising a process that is completely illegitimate, so the work of the Commission is really important in that.

Q81 Ann Clwyd: Do you think there should be more co-ordination between the FCO and the Council of Europe on issues like this?

Sir Roger Gale: I think there is co-ordination; I think there is co-operation. We look to the FCO, who brief us on a regular basis. We have a briefing at the start of every plenary session of the Parliamentary Assembly of the Council of Europe. The ambassador—the permanent representative—and his team provide an extremely good background brief on all the subjects that are going to be debated that week.

Over and above that, when we go where angels fear to tread into countries where the regime may not be as democratic as you or I would wish, we again get a very good up-front briefing from our man in wherever. It is always very sound. I don't think there is anything lacking there. If I wanted information, I would go to Alan Duncan and I would get it, either directly from him or from his desk officers on whatever country we were talking about. I think that process is fine.

We shouldn't underestimate, either, the quality of the briefing that we get in terms of election observation. Angela is absolutely right: we didn't go into Russia. There wasn't much point; we all knew the result before a vote was cast. There is a point in going into Turkey, and that is why we're there. The fact that Angela and her colleagues were able and determined to do such a robust job in Azerbaijan is admirable. They went and did the job that they were sent there to do, and they came back with an honest result, not a rubber-stamping job.

I am quite certain that the team that we have, or will have, out in Turkey this weekend will help to deliver a similarly fair, objective, sound, unbiased and unvarnished judgment, and that is what we should be doing. We have a huge amount of support from the FCO under those sorts of circumstances, and we value it.

Angela Smith: Absolutely. As a recent example of co-ordination and the support that we get, there's a new committee in the Council of Europe called the Ad Hoc Committee, which is revising the rules that govern the way in which the Assembly works and the principles underpinning the Assembly in the Council of Europe. The elephant in the room, once again, is Russia. It's the Russian situation that's driven that process, and there is a real fear that the spirit of appeasement will lead to a jaundiced and unhelpful outcome to that process, if I can put it that way.



HOUSE OF COMMONS

This is going to dominate the work of the Council for some time, but the Foreign Office in Strasbourg has been really helpful in helping us with key information when we need it; for instance, the founding constitution of the Council of Europe and that kind of really important, concrete, factual briefing material. They have it at their fingertips. They are really, really good.

Sir Roger Gale: I would like to add to that, because I believe that you and your Committee, Mr Tugendhat, suffer from the same difficulty that we suffer from: a slight inhibition of the work that we seek to do, because of Government circumstances. Next week, the Ad Hoc Committee will discuss a report that will play to the Russian Federation gallery, and there is a very real danger that the United Kingdom will not be there—not represented around that table. Ian Liddell-Grainger and I have been fighting that battle very hard indeed. It is a serious situation; it is your problem, and it is ours, but it is one that we are going to have to address.

Chair: Sir Roger, literally only an hour or so ago, I got a text from the Whip, saying that we have been refused permission for a trip that we were planning next week. We had anticipated that, so we had called it off anyway, but you will have enormous support from this Committee, and we have already started talking to the Whips about this. Your work does not finish at the gates of Westminster, and nor does ours as a Committee. We are very conscious of that, and we should talk further about it.

However, for this afternoon, may I thank you all very much indeed? I feel that we should do some more work on the Council of Europe, and indeed the OSCE and the NATO Parliamentary Assembly, as those are the three bodies that will maintain, in many ways, our parliamentary involvement in continental Europe. Thank you very much indeed.