



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [Human Rights Protections in International Agreements](#), HC 1833

Wednesday 23 January 2019

Written evidence from witnesses:

- James Harrison, Reader and Associate Professor, School of Law, [University of Warwick](#)
- [Foreign and Commonwealth Office](#)

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Karen Buck; Joanna Cherry; Jeremy Lefroy; Baroness Hamwee; Baroness Lawrence; Baroness Nicholson; Baroness Prosser; Lord Trimble; Lord Woolf

Questions 1–18

Witness[es]: **Dr Lorand Bartels**, Reader in International Law and Fellow, Faculty of Law, University of Cambridge; **Dr Sam Fowles**, Barrister, Cornerstone Barristers; **Dr James Harrison**, Reader and Associate Professor, School of Law, University of Warwick. gave evidence.

Examination of Witnesses

Dr Lorand Bartels, Dr Sam Fowles and Dr James Harrison.

Q1 **Chair:** Welcome and thank you for joining us this afternoon. I apologise for the delay in starting, which is because we have had a vote in the Commons. We all know that there is a lot of negotiation and discussion about international trade agreements in the anticipation of Brexit. What does that mean for human rights? Is it a great opportunity for our high-level human rights standards to be agreed, monitored and enforced in a muscular way, or will we be so desperate that we will sign up to anything? Is there not enough capacity to do it in the Foreign Office or the Department for International Trade anyway, because we have relied on the EU doing it and there is nobody there?

Those are just thrown-out thoughts. Could you give a Twitter-length response to them, and introduce yourself when you speak?

Dr Lorand Bartels: I teach at Cambridge, mainly trade. I have been working on trade and human rights since my PhD, so for about 20 years, specifically on EU human rights clauses.

I would answer your question in 280 characters by distinguishing between an offensive aspect and a defensive aspect, to use trade terminology. Offensively, you can ask whether this is an opportunity to promote human rights compliance in other countries. In other words, are you going to use the benefits of trade agreements, investment agreements or other agreements, preferences or whatever it happens to be to encourage other countries to comply with human rights when they might not be doing this already? That is one question. It is a more difficult policy question.

Chair: Sorry to butt in, but could you try to answer the question rather than pose it? I do not mean to be mean. I know it is an academic way of thinking, but we are asking for the answers now.

Dr Lorand Bartels: That depends on the Foreign Office's capacity, and I do not know what the Foreign Office's capacity is. It is a policy that would need to be adopted. Defensively, it is much easier. It means making sure that whatever agreements you have do not make the situation worse. That needs to be there as a basic standard.

Chair: Do you think it is there as a basic standard, defensively?

Dr Lorand Bartels: Yes, I do. You can choose different levels of basic standard depending on who you are talking to. It is much easier to operate that sort of policy than the first, which is using what you have to encourage others to comply. That strikes me as a more difficult decision. I am sorry I cannot answer the question exactly, but it is a policy decision. The second strikes me as much more legal, which I am more confident about.

Dr James Harrison: I am from the University of Warwick. I work on trade, investment, human rights, sustainable development, labour rights and standards.

If we are looking at what the UK might do post Brexit in signing international treaties, particularly trade and investment treaties, which is where my primary expertise is, the sad truth is that the bar is not very high. The existing protection provided by the EU and countries around the world in relation to the human rights clauses they have signed is, in lots of ways, either absent or deficient. There is a gap between politicians' rhetoric—i.e. what they might say these clauses are there for—and what they achieve in reality.

Generally, we find that when countries are creating a new trade or investment policy they look for precedents from other countries. The natural one for the UK looks like the EU's. The danger is that we might not replicate some of those provisions as effectively as the EU. The bar the EU has created in relation to human rights provisions and the

fundamental labour standards provisions contained in those trade agreements is not very high, and it is probably lower when it comes to investment agreements.

Chair: Should it be an opportunity, then, for raising them?

Dr James Harrison: Yes. There is an opportunity there. As Lorand says, it is a question of political will as to whether that will happen. There are all kinds of opportunities. There are opportunities to impose human rights obligations on investors through investment agreements. There are opportunities to single out goods, such as conflict diamonds and arms, and do things there. There are opportunities, with regard to countries that have problematic human rights records, to put in trade agreements human rights obligations that go further than the EU. There are opportunities to tie the UK in to human rights commitments through trade agreements. Take the European Convention on Human Rights. Instead of a unilateral promise that we will stay within that system, you could create a bilateral commitment to do it.

To complicate it further, we might be worried that the treaties we sign could themselves have human rights implications. Extradition treaties are the obvious ones. Even when it comes to trade agreements and the Trade Bill going through Parliament at the moment, concerns have been raised by a number of civil society actors about the amendment of EU law that is being retained and the powers which the Trade Bill creates to do that, which could affect the Equality Act or the Modern Slavery Act. There are opportunities and concerns about what signing up to a range of these agreements might do to the UK in the future.

Dr Sam Fowles: I am a barrister practising in public law and public international law, and a fellow at the Foreign Policy Centre. In both capacities, I deal with trade to an extent, various other international agreements and human rights.

The answer to the question about whether it will make it better or worse is “both”. That depends on the decisions that you make. International trade agreements, which are my area of interest, are a very important area to think about here, because the EU is party to between 600 and 800 international trade agreements that we will no longer be party to after Brexit, so trade is going to be a very significant area to focus on. Trade agreements give us a toolbox that can, and at the moment in many instances does, impact very negatively on human rights. On the other hand, trade and investment agreements include some of the most effective means of protecting certain interests.

Chair: Do you want to give us an example of the first and the second?

Dr Sam Fowles: Absolutely. The example is going to be the same. The system I am talking about is the investment protection chapters in international trade and investment agreements. At the moment, these are designed to protect only the rights of international investors. They in effect have evolved to the point at which they can be used to penalise states that take action that impinges on the interests of international

investors. I will give you an example of where that has been used in a case called Ethyl Corporation v Canada.

The Canadian Government adopted a policy that limited the transport of certain fuel additives. This policy was adopted because they had scientific evidence to suggest that these additives became unstable when transported. They were sued under the North American Free Trade Agreement, which we refer to as NAFTA, by Ethyl, which made money from transporting these additives. Even though there was a very clear public interest in the prohibition used by the Canadian Government, the Canadian Government were losing that case.

In order to avoid a much more significant loss, they paid around 19 million Canadian dollars in compensation, revoked the policy and issued a public apology. That is an example of investor-protection provisions being very effective in protecting the interests of investors but also having a very negative effect on human rights, because when fuel additives explode it is not great for the right to health, a clean and healthy environment or the right to life.

However, that could present us with a great opportunity, because were trade and investment agreements to include an equally effective means of protecting human rights interests they could represent a potentially unprecedented step forward in the way we protect human rights.

Q2 **Joanna Cherry:** You are talking basically about legal action that was taken in an investor-state dispute settlement tribunal. Is that right?

Dr Sam Fowles: Yes, correct.

Joanna Cherry: What informed a lot of the public opposition to the CETA deal was the fear that there would be similar arrangements and that attempts at for example nationalisation in the United Kingdom could be challenged in such a tribunal.

Dr Sam Fowles: Yes, quite right.

Joanna Cherry: What I do not quite understand is whether this is something to do with the fact that the litigation can only go before a tribunal. If it went before the mainstream courts, would the mainstream courts not have been able to look at broader considerations in relation to human rights? Maybe what we should be tackling is the existence of these tribunals. Do you see what I am getting at?

Dr Sam Fowles: I do. It is both. The tribunals as they stand are incredibly problematic in terms of the rule of law. I am sure my colleagues will give many examples of that. In response to opposition to CETA, the EU has introduced the investment court system, the ICS, which is slightly better but not much better.

However, simply transplanting the Ethyl case into a public law court, if we made a judicial review for example, would not necessarily solve all the problems, because what you are basing it on, your cause of action, is the

treaty, the prohibition on expropriation and the body of law that goes behind that.

Joanna Cherry: Would the best way to protect human rights be to look both at what is in the treaty and at the fora in which the treaty is litigated?

Dr Sam Fowles: Absolutely.

Joanna Cherry: You would want to beef up the treaty but also make sure that it was litigated in mainstream courts of law rather than the tribunals.

Dr Lorand Bartels: The whole point of ISDS is that you ignore a lot of the courts and go alongside local courts. If you are going to have ISDS, you do not have courts. That is basically the point. You do not need ISDS; you could run it through courts, but you do not really have the option of second-guessing an ISDS case by going to a court. The whole point is to sidestep national jurisdictions.

Dr James Harrison: The economic analysis for having investor-state dispute settlement is not compelling. There is no compelling reason to show that investors invest more because of the presence of these treaties. You would want compelling evidence before you signed up to them, because they give powerful rights to corporations to sue, as Sam was saying. I recently wrote a book with 12 other academics arguing that we should abolish ISDS.

The danger of putting human rights into the picture here is that often you end up with explicit human rights clauses in these treaties that legitimate these processes. They say something very soft about corporations adhering to international human rights principles. There is one in the Dutch model bilateral investment treaty, for instance, and a few others. The worry is that it might legitimate the construct of ISDS rather than people saying, "Hang on a sec, should we do something very different when we think about investment treaties?" There are very different models; Brazil, South Africa, other countries around the world are adopting very different models of how to protect investment.

Joanna Cherry: Can you give us an example of a very different model from the model you have described?

Dr James Harrison: First, you exhaust domestic remedies, so you go through domestic courts. That is the South African approach. The Brazilian approach is radically different; there you are talking about much more co-operative activity, not focusing on the process of adjudication or arbitration at all.

We are now at a period where the whole system of investor protection is under scrutiny. There are reform efforts going on around the world. There are different ideas about what should happen. The UK should pause very carefully before deciding what it does. We already have 105 of these agreements signed, but we have a moment now where we could be signing a lot more, and they may well come in as part of trade

agreements. Investment protection chapters may come into trade agreements.

Joanna Cherry: Would I be right in taking from what you are saying that you need to look very carefully at the wording of the human rights protection clauses themselves and at the method by which the protections are to be enforced?

Dr James Harrison: Yes. You want to look very carefully at this: do we want international arbitration panels making decisions on these issues? Why in a country such as the UK, where we have very good judicial systems, would we want cases potentially decided outside our legal system?

Joanna Cherry: What in a nutshell are the rule-of-law concerns about these international arbitration panels or the investor-state dispute settlement tribunals?

Dr James Harrison: There are lots of different concerns. One of them is that these tribunals are ad hoc, so there is no system of appellate review, so you get divergent opinions about key legal principles. There are coherence arguments. Then you have more fundamental questions about whether investors should have the right to sue for very large amounts of money through these international processes and whether their rights should be privileged. Why can they not take out insurance to insure themselves against the political risk of operating in risky countries? Why, in essence, does it come out of the public purse rather than the private purse of the companies that are operating there?

The worry about the human rights provisions you might see in there that say, "Companies are also under a duty to respect human rights", is that they act as ballast. They say, "We are doing something to make sure that companies have responsibilities". But when it comes to how those human rights obligations are enforced there are often no enforcement processes at all, so communities that want to take the company to task for its human rights performance have no actual ability to get remedies for those issues through the agreements.

Q3 **Baroness Prosser:** I was going to ask you whether the UK should require standard clauses in international agreements, but you have been saying that those agreements vary significantly between countries. Am I right in understanding you to say that?

Dr James Harrison: There is still a value to having some basic human rights clauses in some international treaties. There is a particular issue with the investment treaties we are talking about. The processes for them deserve more scrutiny.

With trade agreements more generally, there is value in having some standard nature of human rights clauses, partly because when you are negotiating with a new trade partner you can say, "We have done this in all our previous agreements". It gives you that credibility to say, "We need to do this again here". That is really important. You want the ability

to vary to a degree on certain issues. It gets complex, and I do not want to go into the detail. You want to tailor it to the particular issues you find in that trade relationship.

For instance, with agreements on accession countries coming into the EU—Lorand probably knows a lot more about this than I do—there is much more specificity about observing the European Convention on Human Rights than for countries that are far away from the EU and not part of that system. You want to tailor it to circumstances, but there is an advantage to having certain clauses that you can replicate so that you can convince your trade partner that they should sign up to them and they are not being singled out for special treatment.

Baroness Prosser: Do I take from the nodding heads that there is general agreement about that among the three of you?

Dr Sam Fowles: Yes. I completely agree with James that the clauses, in the way they are put in at the moment, are generally not particularly enforceable and are of limited use. However, that does not mean they cannot be enforceable. A properly drafted clause could be enforceable. That is why I do not go as far as James and Lorand in condemning the idea of independent tribunals.

Dr Lorand Bartels: Hang on. I did not say that.

Dr Sam Fowles: Sorry, I do not go as far as James, then, although I agree with his objections to them. The value they add is that they depoliticise the enforcement of rights of all types under treaties. Governments have many, many different foreign policy things they have to think about. The victim of a human rights abuse has only one. If there is an avenue for individuals, groups or whatever you like to enforce their human rights under treaties, it is likely that human rights will be respected much more widely and be much more effective under those treaties than they currently are.

Dr Lorand Bartels: I am afraid that I have to disagree on the enforceability of human rights clauses. They are completely enforceable, unilaterally and without reference to dispute settlement in most cases. They are actually quite remarkable clauses. They have also been enforced in numerous cases, so they are real.

I should also make the other argument, while remaining neutral myself. There are also strong arguments for ISDS, in the sense that you might want your businesses to be protected in countries where this is not a respectable system of rule of law. The argument is that you are extending your high judicial standards to other countries. There is a strong argument that going on about ISDS is missing the point; that it is attacking the messenger.

The real question is this: what are the underlying standards that a tribunal is enforcing? You can always get dodgy court decisions. You try to minimise those by having good standards and a few other flanking measures, such as making sure the tribunal members are competent and

well serviced by a secretariat. I would focus much more on the substance than on what I see as the messenger.

Q4 Baroness Lawrence of Clarendon: My question is about the different approaches for different agreements. Should Parliament scrutinise international agreements on human rights compliance depending on the type of agreements, say trade, extradition, data sharing?

Also, James talked about strengthening. What do we need to put in place to make sure that our human rights are strengthened across the board compared with what we have from the EU at the moment?

Dr James Harrison: On the point about strengthening, I have read this Committee's previous reports. There are a number of different ways. There are two particular aspects of EU trade agreements that we should differentiate between. There are trade and sustainable development chapters of EU trade agreements, which focus on core labour rights. You might think that things such as forced labour, slavery and the worst forms of discrimination against children in the workplace are contained within that chapter. Then you have what we call essential elements clauses underpinning the agreements, which are about broader sets of human rights that countries agree to when they sign up to the agreement. They say, "This underpins our whole-to-part relationship". We should see those two things separately. They have sometimes been confused in the past. Although Lorand is right that these essential element clauses have been enforced in the past, my perception is that the EU has been stronger to enforce them against weaker trade partners—African, Caribbean and Pacific countries. To a certain degree this is about economic leverage as much as it is about the actual strength of the provisions themselves. One of the dangers for the UK is that we go from being part of a market of 500 million to 60 million. The question is whether we will use that economic leverage to promote these kinds of human rights issues. In our trading relationship, we are going to be in a less powerful dynamic compared to other countries now. There is a worry that things might get harder to enforce rather than easier. When it comes to the trade and sustainable development chapters concerning labour rights issues, there has largely been dialogue and co-operation between the EU and other countries, albeit that there is a soft enforcement mechanism sitting behind it. The deficiencies of that have been well documented. There is a range of issues, but it relies on civil society coming together and talking about issues. They have generally been underfunded. They have generally not had the resources to undertake their role properly. As a result, not a lot of progress has been made on those issues. There are a number of reforms I can go into in more detail, but resources and a

range of other issues are important to make those kinds of structures work better.

Baroness Lawrence of Clarendon: As the UK leaves Europe, how can we scrutinise that a bit more? While we are in Europe, we allow those things to happen because we have a partnership. As we leave, how do we strengthen that?

Dr James Harrison: By “strengthening”, do you mean trying to work on other countries’ human rights performance?

Baroness Lawrence of Clarendon: Yes.

Dr James Harrison: We need to be very targeted and tailored in our approach. We need to work out which human rights issues matter most in relationships with other countries. If we try to be too broad, the danger is that we will do very little. The EU is now moving towards having targeted road maps, plans of action, and we need to develop those, because taking action on a broad range of human rights issues will be very difficult with the constrained resources and power that we have.

Q5 **Ms Karen Buck:** I want to ask a question in the same general area, but with particular reference to aspects of the EU regulations such as the torture regulations and arms export controls. What is your feeling about how those rules would carry forward post Brexit and what we need to ensure that we are monitoring?

Dr James Harrison: I am less of an expert in this area, but from the reports I have read on it there seems to be a need to stay committed to the EU system. The danger is that you create incoherence if you do not adhere to the regulations on arms.

Ms Karen Buck: Are they generally effective as they are?

Dr James Harrison: They are necessary but not sufficient. They perform an important role. The danger is not just that we will not keep following them; when we leave, will we keep following any improvements that are made to them in the future? It is not just about the regulations now; it is about how they develop the future.

I am reading the parliamentary reports that have been produced on this, and it seems that the processes of scrutiny that occur through those are not sufficient when you look at the arms trade with Saudi Arabia and the situation in Yemen. Looking at the increases in arms exports that have happened over the last year and the trade relationships that we seem likely to get into in the future, arms could well be a key element of the trade that takes place between the UK and those countries. There is now a case to look very carefully at those arrangements.

A report from the arms committee in Parliament made a series of recommendations, such as including DfID people in the process. Institutions are really important here. If you just have trade officials making decisions, they tend to make trade-based decisions. There should be a presumption against trading on sensitive arms with the countries on

the human rights list at the Foreign Office. There are a series of things you can do to strengthen this further.

Ms Karen Buck: Does either of the other witnesses have a view?

Dr Sam Fowles: When we are thinking about continuing the existing EU protections as regards the arms trade, we need to bear in mind the clear limitations of those protections as they stand. James mentioned Yemen. There are eight principles by which we decide whether to give arms export licences. One is that we will not export arms where they will be used in human rights abuses.

A case was brought on this point in 2017 called *R (Campaign Against Arms Trade) v Secretary of State for International Trade*. The Campaign Against Arms Trade said, "We have this principle that we will not sell arms if they are going to be used in human rights abuses. Human rights abuses are happening in Yemen. We should not be selling arms to Yemen". The Campaign Against Arms Trade lost that case. I cannot tell you why because it was based on closed material evidence, so we cannot see it. There is clearly a weakness. Despite having that principle, we can legally sell arms that are used, or likely to be used, in human rights abuses. I cannot tell you what that weakness is, but I suggest it is addressed.

Chair: Perhaps the Intelligence and Security Committee ought to look into that, because it can look at classified material.

Q6 **Fiona Bruce:** I want to probe a little further into Parliament's role to scrutinise and whether we should be looking more at contracts before they are negotiated rather than after they have been negotiated, as currently. What, in particular, should the role of this Committee be in looking at such issues? Dr Fowles, do you have a view on that?

Dr Sam Fowles: I do. This is something I have been very interested in for a while. I would start by saying that the way treaties are scrutinised currently by Parliament is outdated. It is based on the Ponsonby convention, which came about at a time when foreign policy was very different from how it is now and could be conducted by the Executive with relatively little scrutiny.

That is not so now. We are in a much more interconnected world, so Parliament as a democratic body should play a much more active role in scrutiny. One idea that has been floated is that Parliament should have a vote on ratifying treaties. That is not sufficient, because it enables the Executive to present a completed treaty to Parliament as a sort of fait accompli, which limits any real scrutiny.

I would propose Parliament being involved at three stages, as a scrutiny body, not writing any treaties. Parliament should scrutinise and be able to amend the negotiating mandate before we begin negotiations, should receive updates during negotiations, and should have a final vote before ratification of the treaty.

Currently, none of those things is necessary. Under Section 20 of the Constitutional Reform and Governance Act, which we often call CRAGA, we can ratify a treaty without a vote in Parliament because it can be put to what is effectively the negative procedure. Obviously, Parliament should also vote on any measures to implement the treaty.

That would require legislative change, but it would not be anything new, because at the moment under the EU, as the EU negotiates its treaties it follows a very similar procedure. The negotiating mandate is scrutinised; democratic scrutiny bodies receive updates. In the EU's case, there is a double level of scrutiny before ratification, because in some cases it is not just the EU Parliament that must vote to ratify a treaty but all the member state parliaments. By leaving the EU, we are currently losing levels of democratic scrutiny that should be replaced in Parliament.

Fiona Bruce: Could I put it to you that there ought perhaps to be a fourth level where there is scrutiny of a breach and potential enforcement needs to occur. Does Parliament have a role there too in holding government to account?

Dr Sam Fowles: Certainly. Can I clarify, though? Are you talking about this happening during negotiations or after the treaty has been ratified?

Fiona Bruce: I will give you an example before I move on. Many human rights were enshrined in the Sino-British agreement when Hong Kong was handed over, which as a country we undertook to monitor. They included freedom of speech, press, assembly. We now see these things being increasingly being ignored or undermined in Hong Kong. To what extent should Parliament here be challenging our Executive to hold them to account?

Dr Sam Fowles: It absolutely should.

Fiona Bruce: Would that not also apply then to other agreements of a similar nature, trade or otherwise?

Dr Sam Fowles: Yes, absolutely. That brings us to the second part of your question: what role can this Committee play? I see the Committee as essentially playing a dual role. The first is looking at treaties as they come in at the start, and perhaps giving a view on what level of scrutiny Parliament needs to subject them to from a human rights perspective. If we are negotiating 600 treaties, we will not be able to scrutinise them all in the same way.

The second is as a continuous scrutiny body that can subject treaties, and compliance with treaties, to continuous and much more detailed scrutiny than the full House of Commons is able to do as an institution, and then to make recommendations and perhaps pass them on to the House of Commons. In that way, you have both the advantages of very detailed scrutiny and a relatively efficient system.

Dr James Harrison: I agree with everything that has been said and the extra fourth point that you made.

I have two additional points. Generally, reviews that happen after agreements come into force tend to be a lot weaker than ones that

happen beforehand, because you are trying to justify signing up to the treaty, so you put a lot more effort and time into those review processes, and generally, where reviews happen five years later, the impetus for taking them seriously has gone. The EU processes for trade agreements often look very superficial. There is a commitment to assess the sustainability impact of trade agreements including human rights issues, and they really do no more than skim the surface. There is definitely a role.

Secondly, you can set up all the processes you want. Within the EU, there are human rights and sustainability impact assessment processes, which feed into trade negotiations. Human rights are in there. The problem is that those processes are governed by trade institutions. DG Trade sets those agendas, commissions independent experts to produce the reports, and responds to those reports. As a result, human rights within those processes are very marginalised. You need a human rights institution to put pressure on to make sure that human rights forms of assessments that should be taking place are actually taking place. Institutions matter as much as processes in ensuring that human rights are taken seriously. There, the Committee has a big role.

Fiona Bruce: That is where Parliament would have a role, because Parliament's main focus if it is looking at human rights would be the human rights rather than getting the deal done.

Dr James Harrison: Yes, absolutely.

Fiona Bruce: Similarly, the penalties for non-compliance would perhaps be scrutinised and considered in a little more detail, both before and after. Their effectiveness as an example for future agreements would be taken into account, which at the moment, as I understand it from what you are saying, they are not.

Dr James Harrison: Yes, absolutely. Reviewing what has happened in the past gives you much better lessons than trying to predict what is going to happen in the future. It is a process that gives you a lot more certainty, so you want to put a lot more time and effort into the reviews that are going to give you concrete evidence about what has and has not been done.

Fiona Bruce: I have two very quick questions. You are saying that human rights impact assessments happen in Europe. This was going to be our question: would there be an improvement on the process, and how would it work?

Dr James Harrison: They need to be massively improved. There is another human rights report in process in relation to the Canada-Colombia trade agreement, which has similar problems. The dynamics of both are very much that these are commissioned or undertaken by trade officials without the detailed expertise and interest in the human rights issues to drive them forward. That is absolutely vital. It has been missing from these debates. You need to think about institutions with human

rights expertise to commission, undertake and review the assessment processes.

Fiona Bruce: Lastly, for anyone who wants to comment, government Explanatory Memoranda are currently being prepared under the Constitutional Reform and Governance Act that are supposed to provide Parliament with sufficient information for us to scrutinise the human rights implications of such agreements. Do they work in practice? Are they adequate?

Dr James Harrison: They certainly would not be adequate for a trade deal, for something that complex. You need a totally different process. These are documents with hundreds if not thousands of words, with detailed commitments in all kinds of areas that affect massive swathes of public policy in this country. You need a much more detailed process for undertaking that kind of assessment.

Fiona Bruce: For the record, you are nodding, Dr Fowles.

Dr Sam Fowles: I am nodding enthusiastically.

Q7 **Chair:** You made a very interesting point about the EU scrutiny that we would no longer be part of post Brexit. You also made a point earlier when we were talking about standard human rights clauses. Do any of you have a suggestion as to which clause, or set of clauses, would provide the right standard with enough clarity, which you would point to and say, "This is really what we should be adopting"?

Dr Lorand Bartels: I have written a book on it. Yes, and it would not be exactly the same as what the EU has at the moment. Again, the critical point here is which human rights we are talking about. Are we talking about human rights in other countries or human rights domestically? If we are talking about human rights domestically, you do not need a human rights clause; you need a general exceptions clause, which you find in trade agreements, and for that matter in CETA, applicable to most of the investment chapter, which was one of the outcomes of the public kafuffle that attended the negotiations of that agreement.

These clauses enable you to regulate to protect public morals. Given that human rights are without any question part of a country's public morals, you have it there. You do not need anything else. That is basically standard in existing agreements and is now being pushed out to investment agreements as well. You might want to extend those to other types of agreements, but it seems to me that, in a defensive role, that is already there.

In talking about getting other countries to sign up to your human rights standards, there is a little more to say. You need to decide, for instance, whether you want them to be bound by their existing human rights obligations under international law, whatever they may be. That may vary according to what you have signed up to with them. The UK has not signed up to everything. You may want to use the opportunity to raise

standards a little. There is variation there. Then you have enforcement. Do you want a unilaterally enforceable mechanism? Do you want it to cover trade sanctions or financial sanctions? Do you want to have it subject to dispute settlement?

Is there an ideal clause? No, but there are options depending on what you want.

Chair: Is there an argument for simplification of any of these processes?

Dr Lorand Bartels: They are simple.

Chair: Is enforcement inhibited by the fact that you have a multiplicity of trade organisations with zillions of negotiators and lawyers dealing with things at multiple levels, and that you end up with a chronic lack of transparency, disempowering people from being able to understand their rights, which is a precondition of being able to enforce them?

Dr Lorand Bartels: I do not think so.

Chair: Is there an argument that the UK, in the post-Brexit world it is going out into to negotiate and conclude new agreements, should go for a simpler, clearer approach that is understandable for normal people who do not spend their entire lives in the depths and weeds of these processes as they exist at the moment, such as people like me?

Dr Lorand Bartels: No, I think they are pretty simple. They are not that difficult, for the most part, and you can administer them in a simple way. I do not think that is the issue at all.

Dr James Harrison: I might have a slightly different take on that. There are certain provisions, such as general exception clauses, which Lorand mentioned, that have the potential to protect these human rights, but there is a degree of uncertainty about how they might be interpreted in any given case. They seem quite opaque to the ordinary person who is thinking, "Are human rights protected alongside these other obligations?" Modern trade agreements have massive regulatory effects. They are not just about reduction of tariffs. They have effects on sanitary standards. We have talked about ISDS processes and intellectual property. There are ways in which we need to be clearer in demarcating the scope of these agreements and putting in protections that will be clear to a broader public as well as specialist trade lawyers.

Q8 **Chair:** Thank you very much. We have the Minister coming in now. What is the one really key question you would like to hear him answering to us, at the point we are at now?

Dr Lorand Bartels: Do you think that the UK's trade, investment and other international policies should be subject to a floor, which is human rights commitments, and are you prepared to enforce other countries' compliance with those commitments?

Chair: That is a very good question.

Dr James Harrison: I would want to get specifics about what protection the UK envisages. We have heard things of this sort: "We are going to put

a clause into investment agreements that will encourage companies to respect human rights". That is a very broad statement of intent, but you need some specifics to understand whether it is going to be meaningful. I would want to know more about the specifics of the protections that the UK envisages, rather than just general pronouncements about areas that might be covered by future agreements.

Chair: Is the negotiating mandate implicated in that respect?

Dr James Harrison: Yes, exactly. What commitments are going to be made on transparency?

Dr Sam Fowles: I would echo that, because the greatest danger we always face is not the challenge we had yesterday; it is the challenge we do not know about yet. The way to make sure we are preserving human rights in the face of the challenges we do not know about yet is to ensure transparency throughout the entire process. I would ask him for concrete guarantees on how he will ensure the processes of new international agreements, whether trade, intellectual property or something completely different, are entirely transparent.

Chair: With those very good questions echoing in our minds, we now have the opportunity to thank you for that very helpful session, for the work you do with the Committee in the meantime and the written work you have done, which we have been able to draw on. We are now going to embark on asking those points to the Minister himself. Thank you very, very much indeed. You have been very helpful.

Examination of Witnesses

Lord Ahmad of Wimbledon and Richard Jones.

Q9 **Chair:** Thank you very much indeed for joining us. As you know, we are the Joint Committee on Human Rights: half from your House, Lord Ahmad, and half from the House of Commons. We are looking at the question of human rights in the context of the international agreements that are being sought by the Government for the UK to enter into, post Brexit. My first question is a general one: as the Trade Secretary goes around the world—and we have just heard that today he is speaking with Colombia, Israel, Malaysia, Peru, Egypt, South Korea and Canada—should he have a human rights floor below which he should not allow our insistence on compliance to drop, in relation to all these agreements? Is that his approach, and should that be his approach, as we embark on these new agreements?

Lord Ahmad of Wimbledon: First, thank you for inviting me here, Madam Chair. As the previous witness was leaving, I noticed he left with a suitcase, so I was a bit perplexed as to his state of preparation and

whether I was perhaps coming somewhat lightweight. I felt like a passenger checking in with hand luggage only.

You ask a very pertinent question. We have heard the Trade Secretary today reiterate the importance of having trade agreements in place. From my perspective, as the Minister for Human Rights, when we look at not just trade agreements, but broader relationships with countries around the world on a bilateral basis, the standard of our human rights engagement is important. It is not necessary, in my view, although at times it may be the case, to have suspensive clauses, as we do currently with the European Union in treaties we have across the world. That is one approach. But the Government's view is that there is a broader approach, which Brexit allows us to take, in which we can underline the importance of human rights in our bilateral relationships.

I believe very strongly in upholding human rights. The Government have demonstrated recently, certainly in my 18 months at the Foreign Office, how they have raised the bar on human rights in terms of engagement, quite publicly, where human rights standards are not meeting the international norm, for example in our engagement through the Human Rights Council. More recently, both in your House and in the House of Lords we went through the Sanctions and Anti-Money Laundering Bill, and it was a positive outcome that we saw the Magnitsky clauses included within that piece of legislation.

To answer your question quite directly, it is really a matter of dealing with countries on a bilateral basis, by our own standards of how we perceive what those human rights are, not necessarily by clauses alone but also by the standards we set through our international agreements, be that through the Human Rights Council or, indeed, through legislation that already exists here in the UK.

Chair: As the Minister responsible for human rights across government, when you think about Brexit and all these agreements, do you think, "That is great; it is such an opportunity for us to really be pushing forward on human rights. We have a fresh start. We do not have to be bogged down with what has always been done in Europe. This is a real opportunity for us to advance human rights across the world"? Or do you think, "Oh dear, are we going to slip back?" Is it going to become more difficult on our own to sustain that? Because we are so desperate to sign up to any agreement, will all our standards slip?

Lord Ahmad of Wimbledon: In any negotiation, if you go in with an attitude of desperation, you are going to end up second best. That is certainly not the case. There is an important opportunity for us to restate our objectives in all the agreements we sign, not just in the area of trade but beyond, underlining the importance of our human rights standards. If I may give you a practical example, we have led on issues such as Burma, together with European partners, not separate from European partners. We have seen that the United Kingdom has led, for example, on the issue of the sanctions that have been taken against the individual

perpetrators of crimes and ethnic cleansing that has taken place in Burma. There are now about 14 sanctioned individuals. The United Kingdom has not just been at the heart and centre of that; we have led it. The opportunity that is provided by Brexit is just that: it allows us to restate our objectives and to reaffirm the fact that we stand up for human rights internationally. The proof is in the pudding in terms of what we are currently doing, both at the Human Rights Council and elsewhere.

Chair: Has the Department for International Trade, which is doing these negotiations with these many countries—I think 40 in the first tranche—shown you, personally, the clauses that will be put into these agreements to provide that floor under human rights, which will, country by country, protect the standards that we have? Has the department actually shown them to you?

Lord Ahmad of Wimbledon: To give the short answer, I have not seen any specific clauses because there is no perceived floor, as I have already said; it is a restatement of human rights objectives. There are various approaches we can take. There have been suspensive clauses within EU trade agreements. I am also mindful of the fact that—I asked the question and I have been reassured—there has not been a single occasion when a suspensive clause has resulted in that free trade agreement being terminated. I believe there is scope for us to work very closely with the Department for International Trade.

Partly to give reassurance, the FCO also leads on many of the trade agreements that are taking place. The FCO has an integral part to play. This is work in progress. In terms of me personally being involved directly with those trade negotiations, in every single clause, in every single negotiation, the short answer is no. That is not within my job description. My job description is to ensure that the issues of human rights prevail among the considerations we have in any bilateral trade agreement, or otherwise, that we sign.

Our approach to a country such as Canada would be different from other countries, because with Canada there are norms we share; there is a value system we share. We align ourselves strongly on issues of human rights. Brexit allows us that opportunity to look at agreements with different countries in light of the relationship we have and, indeed, the prevailing human rights in those countries.

Q10 **Lord Trimble:** I am just wondering about the processes for ensuring that human rights considerations are embedded in any negotiations that are taking place internationally. What processes are there for doing this?

Lord Ahmad of Wimbledon: I will ask Richard, who is our deputy director of human rights, to come in as well. As I said earlier, there is a process whereby we are working very closely with colleagues in the two departments, the FCO and the DIT, on trade agreements. In strengthening the conditionality of human rights within any trade

agreement, all options are being considered. As to which one will prevail, I do not think there will be a single one for each single agreement, as I said in answer to the previous question, but there is a process whereby the two teams within the Foreign Office and the DIT are working in lockstep on issues of trade and signing trade agreements.

Richard Jones: I do not have very much to add to that. In general terms, the process, as the Minister said, will depend upon the agreement in question. It will be a sort of ad hoc approach. The one thing you can say across the board, though, is that officials, and lawyers in particular, will always look at the text of agreements to make sure that our human rights obligations are mirrored there.

Lord Trimble: That happens in every negotiation that takes place: you have some lawyers, some staff, looking at those on a regular basis.

Richard Jones: It would depend on the quality of the agreement. You can divide agreements into roughly three categories: a full-dress human rights convention, an agreement that has implications for our human rights obligations and then any other sort of agreement that might, tangentially, apply to human rights. In all those circumstances, there are lawyers in the government system who check that our obligations are being mirrored.

Lord Trimble: Are you thinking of having an arrangement whereby after, say, five years one looks at what has happened under the agreement to see that people have complied with it? Do you do that on a more regular basis?

Lord Ahmad of Wimbledon: First, in a more general sense, we look at the universal periodic review of the Human Rights Council by country. That happens on a regular basis. In direct answer to your question, it is both processes. We will set up a system whereby we and the lawyers will look to ensure the current obligations we have under the three categories Richard talked about are upheld. At the same time, we will use mechanisms such as the Human Rights Council to ensure that those commitments are being upheld, and where they are not we will call them out.

Q11 **Baroness Hamwee:** Lawyers could produce either standard-form clauses saying, "Everyone will observe human rights", to which the answer might be, "Yes, yes, of course", or something much more detailed. We are interested in how much policy direction there is, as well as the mechanics of translating of the policy on to the written page.

Lord Ahmad of Wimbledon: On that, as Richard just said, the three categories and the way we approach human rights policy is something that the lawyers look at very closely. In terms of the policy direction, I certainly reiterate the importance, through all mechanisms we have, of ensuring that, in any agreement we sign, not just in the sense of trade, we look at the issue of human rights policy. That should be inherent in the

discussions we are having. The lawyers are part and parcel of that process.

We have committed to a very inclusive and transparent trade policy. In this particular case, back in July, we launched a consultation looking at how we could improve transparency in this case. This is why I make the point about transparency. As the Minister for Human Rights, I can say we have made a general commitment to increased transparency. "Well, he would say that, because he is the Minister for Human Rights". But the direction that the lawyers within the Government have been given is to ensure that, as we said in answer to Lord Trimble, our treaty obligations on human rights are upheld in all our negotiations. Where countries fall short of that, we will look at every part, every process and, indeed, every tool that is available to us, to take it up bilaterally, to look at it in international fora such as the Human Rights Council and, where action is required, to work with like-minded partners, as we do at the UN and with European partners, to impose sanctions.

Baroness Hamwee: We are interested in enforcement, which is what you have just been referring to, but also the creation of the clauses and how detailed they are.

Q12 **Lord Woolf:** If we had a standard practice adopted by the Foreign Office in relation to treaties, would that help? It should be the announced government policy that, for treaties that they are going to enter into in regard to trade, there should be a standard practice of insisting on clauses that will see both parties to the treaty comply with satisfactory human rights standards.

Lord Ahmad of Wimbledon: If I understand correctly, that is currently the process with the European Union, where there are suspensive clauses within these treaties. However, and I am being very open with you, as I would be in this respect, while looking at those suspensive clauses, it is also important to see how they have been applied, if at all. It is my understanding that they have not been used to stop or change a particular treaty or, again, suspend a treaty. It is one of the tools that we are considering as part of our overall discussions on trade policy with different countries. As we look at different countries and different partners, we will look at where each partner is in the overall context of human rights. That is entirely appropriate, because our relationships with certain countries in terms of human rights obligations will be markedly different from other countries.

Lord Woolf: It is very important to have common standards in your dealings, is it not, with other countries? If not, it will be said that you are discriminating in the way you are enforcing these provisions.

Lord Ahmad of Wimbledon: I bow to your legal expertise in this. In terms of practical application, it is right that we look at upholding human rights in its broader sense. There will be occasions when, if there is a suspensive clause in a treaty and someone is abusing human rights, they

will not be reflecting on the importance of that particular clause. That there would be a standard clause in every single trade treaty—that is the suspensive clause concept, which the EU uses—is one of the options we could consider. As to that being the only option we would consider, that is not the case.

Lord Woolf: For my education, is having a Minister with your specific responsibilities a new requirement, or did your predecessors perform the same role that you perform now expressly?

Lord Ahmad of Wimbledon: My overall portfolio, compared to my predecessor, Baroness Anelay, has changed. There are certain things that she used to do as part of her portfolio that I do not. On the issue of human rights, she was previously the Human Rights Minister, and I continue in that role.

Lord Woolf: On this matter, do you see a role for this Committee to chivvy up the person performing your role?

Lord Ahmad of Wimbledon: First and foremost, those—

Chair: There is only one answer to that, and it is not no.

Lord Ahmad of Wimbledon: I was merely trying to put it in, perhaps, more Lords-like terms. The short answer is that I believe very strongly in working across Parliament in every element of my brief, and human rights is no different. I will give you a practical example. On issues of the Commonwealth, I work very closely, not with a committee per se but with the All-Party Parliamentary Group for International Freedom of Religion or Belief.

The short answer, which I hope will please Madam Chair, is that there are distinct roles. The Executive should retain—and this is convention; it is our history and it is the strength of our democracy—in signing up to new treaties, the amendable nature of those treaties or the possibility of withdrawal. However, when it comes to looking at elements of human rights, committees such as the JCHR have an important role in scrutiny. In terms of how we work going forward, I am open to suggestions for how we can strengthen referrals that may need to be made on treaties to ensure human rights obligations are being upheld. I am very cognisant of the experience within the Committee on this important issue.

Lord Woolf: I do not know whether there is any history of this Committee, which is already a very busy Committee, periodically making it a practice to give a report to draw the attention of the Foreign Office to those who are good boys and those who are bad boys.

Lord Ahmad of Wimbledon: Historically, I think the last treaty per se that was referred to this Committee was the Arms Trade Treaty in 2014. In terms of what happens in the future, from the FCO perspective we are very open to recommendations and suggestions for how we can strengthen the input we receive on treaties going forward and the mechanism that exists. Richard, I am sure, will add to this, but there is a convention and process whereby any treaty goes to the Foreign Affairs Committee. What has not happened as consistently as perhaps it should

have is those particular treaties, where there is a human rights element to them, being referred to this Committee. From my perspective, that should happen, because it seems inherently sensible.

Richard Jones: I do not have very much to add. From our point of view as a department, we would be very interested in knowing what the Committee would like from us. As the Minister said, we are very open to working together. We are all on the same side on this agenda, and having a dialogue and a good, constructive relationship with the Committee would help us as well.

Chair: Experts who came to give evidence to us before you did were talking about higher levels of scrutiny in advance, information being given, negotiating mandates being scrutinised, votes to ratify before agreements are concluded, so perhaps we can take you up on that offer and build on that if we are no longer party to the European Union processes. We will need our own scrutiny and to move on from the perhaps less than satisfactory place we are in at the moment in terms of our having scrutinised, or not, human rights implications in treaties that have already been entered into.

Q13 **Baroness Lawrence of Clarendon:** Lord Ahmad, I wanted to take you back to when you first started giving your submission. You talked about sanctions and how you are leading the way. I am not sure if you mentioned Burma, but we know what has been happening in that country. Are you able to enforce the sanctions that you want to put in place in countries like that?

Lord Ahmad of Wimbledon: Yes, the short answer is that we are. The sanctions work at two levels. There are the sanctions internationally that we co-operate with in the context of the United Nations. I am also Minister for the UN, so I will co-ordinate that. There will be occasions on which sanctions are taken that currently operate with our EU partners. How that will operate post Brexit is being discussed, but I believe very strongly, coming to your specific question of enforcement, that sanctions can only be enforced as effectively as the next person is enforcing them, such as our like-minded partners within the UN. In the context of us leaving the European Union and post Brexit, I believe the relationship we will have with the European Union will be positive and constructive when it comes to the imposition of sanctions, because it is important for both parties.

That is not just on Burma. Russia is another example where the UK led the way on the sanctions that were imposed and restrictions in the area of financial services. By having a universal consensus across many like-minded partners, restrictions on movement and financing can be applied to organisations and people, and, yes, they prove effective.

Q14 **Jeremy Lefroy:** Given that the state of human rights around the world is not great at the moment, and is possibly going backwards in several countries, given that we will be negotiating on our own

as opposed to as part of a bloc of almost 600 million people and 28 countries, and given that until now we have been taking these decisions in concert, how much of the time of the Foreign Office and the Department for International Trade is going to be taken up with dealing with potential sanctions in relation to the several dozen, if not hundred-plus, bilateral treaties we are going to have, as opposed to doing them through the European Union?

Lord Ahmad of Wimbledon: There are two answers to that. First, you set the context of violations of human rights. I answered a question today on the issue of the persecution of Christians around the world. An Open Doors report recently showed that there are violations in 50 countries; in 40 out of those 50 countries, Christians are directly targeted, and we are talking about 245 million people who are subject, in some shape or form, to the most severe persecution, including torture and death, in these different countries. The challenge is immense.

If you are working as a group of 28 countries, and then you are working as a single country, it will mean that there is greater work to be done in creating these bilateral relationships and deals. The Department for International Trade has made very clear, through the Secretary of State and other Ministers, the importance of seeking rollovers of treaties and ensuring that we continue on the mandates. Another area of my responsibility is the Caribbean. We have sought to continue to honour the spirit of the EPAs that have been signed.

However, coming back to the first question I was asked about the opportunity, there is an opportunity to restate the importance—we often talk about our value system—of upholding our value system. The respect for human rights I believe is inherent in that. It gives us an opportunity to do just that, and we are not wasting an opportunity. As Minister for the Commonwealth, for example, the whole values agenda and the importance of human rights is something we are reiterating and taking up bilaterally with many Commonwealth countries where, unfortunately, the standards fall well below.

As a final point, I believe there will be collaboration, as we have seen through the UN and through the EU, on whatever follows after Brexit in terms of how we apply and uphold human rights, be it internationally or, as I said in answer to Baroness Lawrence, in applying sanctions. A close working relationship with our European partners in that respect will be important.

Jeremy Lefroy: To follow up, you would not envisage us going it alone on sanctions in respect of various countries because we had a specific trade agreement that maybe had slightly higher standards than our European neighbours. Otherwise we might find ourselves doing a lot of solo sanctions. You are looking at doing things much more in concert, in the cases where it becomes necessary, with a large number of other like-minded nations, rather than doing it on a solo basis.

Lord Ahmad of Wimbledon: I would never rule out that there may be an occasion on which we feel very strongly about ensuring, if we do not get the support of others, that we stand up for what is right and what we believe in. The opportunity Brexit provides will allow us to do that. However, taking the specific issue of sanctions, in my view, which I think would be shared by anyone who has seen a sanctions regime being effective, its application is only effective when there are more people adhering and applying those sanctions. That then has the net effect of restricting the individual or organisation on whom that sanction is applied. There may be occasions on which the United Kingdom feels very strongly and we continue to apply those sanctions because we believe it is right, and I personally believe that would be the right thing to do. Within the context of our European partners, as I indicated through the two most recent examples of Russia and Burma, and the process we saw, for example, on the OPCW, we have seen countries acting together and coming together against a state actor. That demonstrates the strength the United Kingdom has in influencing not just our European partners but other global partners.

I take an optimistic view of the United Kingdom. I have had the opportunity over the last 18 months to travel both in the context of the United Nations and, particularly, in my role as Minister of State for the Commonwealth. I have demonstrably seen, as a Minister of Her Majesty's Government, the reception the United Kingdom receives and the real desire to work with us on issues of justice, on issues of governance and, yes, on strengthening the values-based system around human rights. Therein is an opportunity. Does that mean more work for us? Yes, it does, but we do not shy away from that.

Q15 **Chair:** You are probably in advance of us on this, but we have just been looking at iPads here, and it looks like the first agreement has been entered into in principle, ready for after 29 March, between the UK and Israel. That has just been announced from Davos. Can you tell us whether, in that agreement, the human rights standards in relation to Israel are the same as what obtains in relation to the EU? Are they lower standards or higher standards? How are we seeing our new human rights approach in the world in respect of this agreement? Does it have anything about the human rights of Palestinians in it? Does it have standard, off-the-shelf clauses? What is in that agreement about human rights?

Lord Ahmad of Wimbledon: The world of iPads is a wonderful innovation. For completeness, because I have not seen the final agreement, it may be appropriate that we come back to you in writing on that question. I have not seen the final agreement, so it would be inappropriate for me to give a detailed response to your question.

Chair: Are you expecting it to be the same as what is in the EU, or are you expecting it to be a bespoke agreement that deals with the issue of human rights, as the UK Government see it, in relation to Israel?

Lord Ahmad of Wimbledon: As I said, I have not seen the final agreement. As a more general response, I believe there will be different countries on which we will have different perspectives, but in any dealing we will look to see that our standard of human rights is sustained. In terms of the detailed assessment of what that trade agreement is, once I have analysed it and our team has looked at it, we will respond to your particular question.

Q16 **Baroness Hamwee:** This is rather linked, I suppose. Going back to the role of this Committee, you have obviously given a lot of thought to the Executive's responsibility and Parliament's responsibility. Do you have ideas as to how a Committee such as this can contribute to the finished product, rather than looking at it at a point when it is almost impossible for the Executive to make any changes?

Lord Ahmad of Wimbledon: I want to emphasise the point Richard raised. It would be more helpful if I could turn the question round and say this. The offer is what would help my cause and that of officials in the areas that need to be looked at. I am only going on what has happened historically, and I believe that has not been as effective as it could have been in terms of the role that this Committee plays on scrutiny.

Baroness Hamwee: I am simply thinking that our requests are likely to be at one end of the spectrum, and one might expect a rather defensive Executive—I am not applying that to you—in theory, to be at the other end. I wondered whether you had moved a little in your own thinking.

Lord Ahmad of Wimbledon: On a personal level, I have always regarded myself as a bit of a bridge, so perhaps I will take that and note your comments.

Chair: Can I just go back to Mr Jones? Have you seen the draft of the human rights clauses in the agreement between this country and Israel? Are they standard EU? Are we literally reading them across, or have we made a bespoke agreement that reflects UK policy specifically towards Israel?

Richard Jones: I can be very brief. I have not seen the agreement, so I cannot answer the question. I would repeat what the Minister said: that we need to go away and look at it and come back to you.

Ms Karen Buck: It would be interesting to know whether you as a department have had any discussions about the principles of the human rights elements of all these trade negotiations, which were supposedly under construction for 29 March. Has that discussion taken place? Was there an in-principle agreement that there would be a read-across from at least the existing body of EU law in this regard?

Richard Jones: A discussion has been going for some time, both interdepartmentally and within the Foreign Office, to feed into that discussion as a government department.

Ms Karen Buck: Has there been any agreement?

Richard Jones: In terms of a global approach, no. I think that discussion is still continuing.

Chair: We will be all looking at this agreement at the same time, then, to see what it tells us about how the UK is going to promote our human rights perspective around the world in the new situation.

Q17 **Fiona Bruce:** I want to thank you, Lord Ahmad, because I know that you genuinely engage with a number of groups in Parliament on issues such as this. I thank you for your offer to engage with this Committee in the same way, which I believe you will. I will come back to you with one or two questions. Mr Jones, regarding these Explanatory Memoranda that are provided to Parliament, do you think that that system is working? Do you think the information is sufficient within them for adequate scrutiny? How many of those Explanatory Memoranda have been communicated to this Committee in the recent past, say during this and the last Parliament?

Richard Jones: I can really only speak as far as human rights is concerned; that is my bit of the Foreign Office. It is important to add another point, which is that there is a discussion going on between the Executive and Parliament when it comes to scrutiny in general. Ministers are giving evidence next week to the Lords Committee on that general issue. I cannot really comment on that. The only comment I can really make is to reiterate what the Minister said: according to our research the last time we submitted a treaty to you was the arms treaty, which was a little time ago. One message that is coming from this conversation is that we need to have a discussion about what you want and how we can best meet the desire of this Committee when it comes to issuing Explanatory Memoranda relating to the human rights implications of international agreements.

Fiona Bruce: Am I right, then, that no such memoranda on human rights have been submitted to this Committee for some time?

Richard Jones: As far as our research goes, no, not since the arms treaty.

Fiona Bruce: That is the only one submitted to Parliament for some years.

Richard Jones: On human rights, yes.

Fiona Bruce: That is very interesting. Lord Ahmad, I have a few questions. You said that it is important, wherever we can, to reaffirm that we stand up for human rights internationally. A lot of parliamentarians are concerned about the way that the guarantee in the Sino-British joint declaration on the handing over of Hong Kong in 1987 appears to be

being increasingly flouted or ignored in Hong Kong itself, with breaches of human rights, issues relating to freedom of speech and association, academic freedom, the press. Within that joint declaration, we had an obligation to monitor and hold to account. I wonder whether you think that that has been adequately undertaken and what more could be done.

Lord Ahmad of Wimbledon: First, you are quite right. We have been watching with some concern the recent issues that have arisen in China. This is not just bilateral, but I know the Prime Minister, when she last met the Chinese Premier, and the Foreign Secretary, in one of the first engagements he had with his Chinese counterpart, raised in their discussions issues of human rights and the obligations that they have to agreements that have been signed. Most recently, the United Kingdom led the way, which resulted in the issue of, particularly, the Christian communities and named communities such as the Uighurs being brought to the fore at the Human Rights Council in Geneva. That is an approach we will continue to take.

Most recently, we have had representatives from the British embassy in Beijing visiting some of the areas of concern. What they have reported back on is quite disturbing in terms of the situation within China itself. I assure you we will take opportunities, as we do bilaterally. There is a balance, and when it comes to human rights, as I have found myself, there are times when you can push things through much more effectively in a private discussion. But there are occasions, I believe very strongly, on which you need to call things out for what they are. I have taken the view that the Human Rights Council is exactly the body where we do this, because you also build international support and consensus for your view.

Fiona Bruce: That is very helpful. Thank you. You talked about conditionality regarding trade agreements and, if I am right, perhaps invited the Committee to give you some suggestions on these matters. Could I ask for your response to the suggestion that perhaps in any future trade agreements with the Hong Kong Special Administrative Region these human rights guarantees, these statements that were made in that joint declaration, should be restated?

Lord Ahmad of Wimbledon: I will certainly take that back. I will both take it up with officials and seek the views of other Ministers on that. I take the more general view, if I may answer in that way, that where obligations have been signed up to it is, of course, incumbent upon us, as it would be for any Government who subscribe to human rights, to ensure those obligations are upheld. I will take back your constructive suggestion, and I will write to you on this.

Lord Woolf: Perhaps you should bear in mind the fact that we still have the situation in Hong Kong that the final court of appeal always has an overseas member when it sits to adjudicate; usually, from this country, it has been a very senior judge. If any treaty that we have with Hong Kong contains a provision of that sort, when you have a country that has a

court system that complies with the rule of law, it gives it an extra hook for them to refer to.

Lord Ahmad of Wimbledon: Generally, that sort of dual process has worked well up to now. There are always issues that can be taken up, but I would underline that it is the strength of the bilateral dialogue and discussions we have with China that allows us not only to uphold the obligations within the context of Hong Kong but, in a constructive way, to take up the issues elsewhere in China.

Fiona Bruce: May I press on? We have talked about trade agreements. Many international agreements that the UK Government make are regarding aid. Indeed, many of these are in monetary terms highly valuable. We are often aiming, in the aid we provide, to address the results of human rights breaches. I know concerns have been expressed recently by colleagues about, for example, the blasphemy laws in Pakistan, a country that we provide something over £300,000 a day in aid to. Is perhaps now the moment for us to reconsider whether conditionality in aid agreements is such a dreadful thing, as some of us have always felt and had the impression, over many years of being involved in international development work, that this is what Government think?

Lord Ahmad of Wimbledon: You, again, raise a very valid point. I have taken this up with colleagues and Ministers within DfID. First, I am proud of the fact that successive Governments of whatever colour have committed us to development projects internationally, with the priority of education: educating children, but particularly girls, in different parts of the world. That is a proud legacy that we in the United Kingdom hold dear to our hearts. However, and there is an important “however”, we need to look at where we are going. Some of the challenges we see are, as you mentioned, the blasphemy laws, the continuing rise of extremism, the targeting of minorities and persecution of different groups, gender inequality. I am not for any time going to subscribe to the view that we should suspend aid. What we can do is qualify how we go about supporting countries.

For example, in Pakistan, when you look at the support DfID provides, it is great that we provide £300 million or £400 million, or close to, in educational support for different schools. The Pakistani Government, as well as society, value that. However, we need to drill down into who is doing the teaching and what is being taught, because it is all very well saying, “Here is a nice book in English”. Recently we met with the Member of Parliament for Mitcham and Morden, Siobhain McDonagh. She brought to our attention that books are being introduced that, when presented to us as an international supporter, in the English language, may be different from what is ultimately being taught within schools. It is important we investigate this, and there needs to be greater robustness behind the support we provide through development projects. I do not, and will never, suggest that in Pakistan we should withdraw because I

have seen the incredible benefits. When someone like Malala Yousafzai, who is an exemplar of so many things, including girls' education, cannot return to her own country, even as a Nobel prize winner, to promote girls' education, it shows how much work there is to be done.

Q18 Baroness Hamwee: Can I mention retained EU law? Some of the EU rules will continue, for instance prohibition of arms exports and torture equipment. Are those rules going to remain in place? What will the processes be if there is a proposal to amend the rules? That is a fairly specific question, so I do not know whether you are able to help on that.

Lord Ahmad of Wimbledon: Again, if I may, I will write to you on the specifics. As a general rule, there will be lots within existing agreements, including on arms, that will continue to be applied. We have taken a view, as we have on trade, that where possible—the question was raised about Israel, and I will not get into the specifics—as a general rule, there will be a rollover. We will try to transpose the strength of many of the agreements that are in place. The same would apply in the particular case that you have raised.

In terms of specific mechanisms, et cetera, I will write to you. I am not for a moment entertaining that we are doing away with everything and anything we signed up to as members of the European Union. We have achieved much together, and there is much that the United Kingdom has led on. The issue of human rights is a particular area in which we have given a steer—I mentioned the sanctions policy and issues of security, where we have continued to lead within the EU. Those are important things that we led on, and it would be somewhat ironic if we did not then have those transposed. On the specifics of the question you asked, we will come back to you.

Baroness Hamwee: Life is full of little ironies. When you write and deal with the mechanisms, could you address whether there will be primary legislation or secondary legislation, and how any changes might be rolled through?

Lord Ahmad of Wimbledon: That is a question that I know, in the House of Lords, is always discussed quite extensively. I will not go into my view about Henry VIII powers; I notice Lord Judge is not a member of this particular Committee. It is an important question and, because it is an important area, I will write to you on the specifics. There are mechanisms in place to replicate what we currently have. On the specific processes, I will provide appropriate details.

Chair: Thank you very much indeed, Lord Ahmad and Mr Jones. We are very grateful to you for coming to give evidence at this particular point. Given what lies ahead of us, as we move out of the customary scrutiny and accountability that has been provided through our membership of the European Union, the question of the systems of accountability to Parliament, to the different committees in Parliament, both on the general

policy and on the specific treaties and agreements with different countries, is something we will need to work together on to make sure that we have very robust systems and that we get them as soon as possible. In the meantime, we will all be looking closely at the UK–Israeli agreement as the first, and asking ourselves how that should be scrutinised here, bearing in mind that in the EU system it would have been scrutinised in advance. We do not have that. The question is how we should reform it. We are very grateful to you for the ongoing work that you do with us behind the scenes all the time. Thank you very much indeed.