

Committees on Arms Export Controls

Oral evidence: 2017 arms export Annual Report, HC 1809

Wednesday 6 February 2019

Ordered by the House of Commons to be published on 6 February 2019.

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Members present: Graham P. Jones (Chair); Dr Julian Lewis; Mark Menzies; Faisal Rashid; Lloyd Russell-Moyle; Henry Smith; Stephen Twigg; Catherine West.

Questions 1-50

Witnesses

I: Martin Butcher, Policy Adviser, Arms Campaign, Oxfam, Roy Isbister, Arms Unit, Saferworld, Mike Lewis, Head of Regional Operations in the Sahel, Conflict Armament Research, and Edin Omanovic, Lead – State Surveillance Programme, Privacy International.

Examination of witnesses

Witnesses: Martin Butcher, Roy Isbister, Mike Lewis, and Edin Omanovic.

Q1 **Chair:** Thank you for coming. We have approximately an hour, for several constraining reasons. We have 13 questions, so we are going to try to take one of you to each question, as opposed to all four. Before I start, I want to ask Roy: you have just had two individuals—two of your staff—kidnapped in Yemen. Are they all right?

Roy Isbister: I don't know a huge amount of detail about the situation that they are facing at the moment. Information is a bit thin on the ground.

Q2 **Chair:** Do you know where they are being held in captivity?

Roy Isbister: We know some things about how they were taken into custody, but then it gets quite hard to keep track of exactly what has happened. There is not really much I can say about it other than that we are obviously very concerned and there are other people at Saferworld who are working on that.

Q3 **Chair:** You have the Committee's thoughts. I hope it all works out and that they are safe.

Roy Isbister: I appreciate that.

- Q4 **Chair:** I don't know which of you would like to take the question but the Government's most recent annual report covers arms exports in 2017. What improvements were made in 2017 and since then, in terms of the control of arms exports, what were the negatives?

Roy Isbister: I'm happy to kick off on that, if you like. Overall, it seems to be pretty much a consistent pattern with what we have seen before, so not a huge amount of change. In some respects, we see the practice as very positive but in others we have significant concerns.

It seems to depend sometimes just on the scale of the business and the context around it. For example, in sub-Saharan Africa, as in previous years, we see what we describe as very responsible behaviour: very few exports and very few exports of concern.

But if you turn, for example, to the Middle East, which is very large market, in that case, as we have said in previous years, we have huge concerns, especially in the context of the Yemen conflict and exports to a number of the coalition members. We don't see much change.

Overall, it is a case of following the money. As the money goes up, the Government seem to struggle more and more to follow the criteria scrupulously, especially once you start adding on top of that perceived strategic and foreign policy priorities; then the wheels do seem to come off a bit.

- Q5 **Stephen Twigg:** Roy, I would like to follow up with you but others might want to come in. Can you comment on the use of open licences and greater transparency? What consultation, if any, has there been from the Government about that, in the light of changes to IT systems?

Roy Isbister: We haven't seen very much from the Government on that at all. We continue to argue that—we are not quite sure whether the balance between standard licences, open individual and open general licences is appropriate, because the level of transparency on open licences is so limited. It becomes very hard to know if they are hitting the lines right. That is where we would like to see an awful lot more transparency regarding open licences.

- Q6 **Stephen Twigg:** What do you see as the key elements of that greater transparency? What sort of thing would it be useful to know more about? You mentioned Yemen. Concern has obviously been raised about the Paveway bombs used by the Saudi-led coalition in Yemen, to illustrate with that example.

Roy Isbister: Let's look at Saudi as the most obvious example. A lot of licences are granted to Saudi. How much is sent under the open licences, we just don't know. The only information we have is how many times deliveries are made under open licences, and that is on an annualised basis.



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That is running at about 6,000 deliveries per year. Are those deliveries of a nut and a bolt? Are those deliveries of container loads of important, crucial components? We have no idea. That seems to be a fundamental weakness in the context of transparency.

The Government itself in 2012 went through a consultation process and arrived at a conclusion that industry largely supported: that reporting on deliveries would include information on a description of goods or the rating, the quantities and the destination. Obviously, that did not happen. We would argue that it desperately needs to happen.

Q7 Stephen Twigg: So, if that 2012 commitment was fulfilled that would make a significant difference.

Roy Isbister: We would have a much better picture of what is actually going on.

Q8 Stephen Twigg: This is a specific question for Edin. Last April, the Government published a new open general export licence, covering the export of certain information security items. What is your assessment at this stage of that new licence?

Edin Omanovic: To be clear, we are concerned about very specific controlled items of surveillance technology that are used to intercept your mobile phone calls or read your internet activity. These are cyber-tools that could be used for security purposes, but they are very different to the broad field of cyber-security. Cyber-security would be things that protect networks, communications or your devices from things like intrusions and breaches, and these systems rely very heavily on secure levels of cryptography, which is what these licences were aimed at. Two of them were introduced in April 2018: one that basically helps exporters export controlled items, and one that helps them work on the development of those items—so, things like academics conducting research with one another through emails.

This is actually really important for people's privacy, and also for UK industry. The UK cyber-security industry now consists of some 800 companies. The UK published its cyber-security export strategy last year, in which it guessed that the industry is going to be worth over £2.5 billion in two years' time, so it is really important to make sure that this industry is supported in an important emerging market.

My understanding is that these two licences have fallen short in terms of supporting industry. Essentially, what has gone on is that they need to make a balancing act between national security interests—spooks who want to know what encryption is being exported from the UK so they can then have access to it—and on the other side, everyone else's interests, privacy and industry. This licence does not fulfil industry's interests, because it is harder to apply for than the single licence; it still does not contain some key markets; and the fact that you have to hand over some technical specifications, which are very sensitive, means that exporters are not using it. Unfortunately, it falls short.

Q9 Faisal Rashid: If we put aside for a moment how the consolidated criteria are applied, do you think the drafting of the existing criteria is fit for purpose?

Martin Butcher: We have looked again at these, and we do have some persistent concerns about particular areas of drafting. One I would highlight is where, in the consolidated criteria after the eight criteria, it says that the Government would “give full weight to the UK’s national interest, including...the potential effect on the UK’s economic, financial and commercial interests”. Our concern is that although it does specifically say that no risk assessed under an individual criterion will be overruled because of that, we cannot see a reason to have that language in the consolidated criteria except to weaken the application of the eight criteria when assessing risk of exports.

Q10 Chair: Just to be helpful, when you are talking about the consolidated criteria, would you say which ones they are for the members of the public at the back who are listening and for the Committee? Criteria 1 and 4 are obviously mandatory, and 5 and 8 are optional, so if you would just—

Martin Butcher: That is underneath the eight criteria as a general application. In criterion 2, we would like to see the language on international humanitarian law mirrored for international human rights law as well, which is something that might improve the correlation of the criteria with the Arms Trade Treaty.

It is not specifically about the wording of that criterion, but we have some concerns about risk assessment of gender-based violence. At the moment, for example, a UK Government representative said in an ATT meeting in Geneva last week that problems with gender-based violence would not be sufficient on their own to refuse a licence application. Obviously, we believe they should be. That is not necessarily a language problem, but it is a problem of application: gender-based violence should come in both on its own, and under international humanitarian law and human rights law violations.

Under criterion 6, the language on organised crime and terrorism could be improved, again to match up better with the Arms Trade Treaty. At the moment, where it says, “The Government will take into account, inter alia, the record of the buyer country with regard to...its support for or encouragement of terrorism and international organised crime”, we could add the bit about the Government assessing whether items could be used “to commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism...or...to transnational organized crime”, just to broaden that out a bit.

Q11 Faisal Rashid: Okay—that’s fine. Thank you. In your view are there any other information sources that should be used that are not at the moment?

Martin Butcher: It is a little hard to know. The opacity of the process means that we are not sure what information sources are used in particular cases. The EU user guide is quite clear on what information



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sources can be used. There are other sources—the International Committee of the Red Cross, for example, has published a comprehensive list of information sources that could be used—so there are plenty of ideas for the Government about what they can be using. We are just not very sure what they do use in each individual case, or even in batches of cases.

Roy Isbister: Just a couple of other things on the criteria. Criterion 7 very clearly should be shifted. Chair, you mentioned criteria 1 to 4, versus criteria 5 to 8. Criterion 7, on the risk of diversion, very clearly should become a “thou shalt not export” where there is a clear risk of diversion.

Criterion 8 is very narrowly drafted, which the war in Yemen has exposed as bizarre. The transfers that I would argue have had the largest negative impact on sustainable development since the Export Control Act was passed are the transfers to coalition members that are then being used in Yemen. Yet those cannot be looked at under the sustainable development criterion, because they do not deal with the use of equipment, only with the budgetary fiscal impact upon the transfer, and they cannot apply to a situation outside of the named recipient country. So a transfer to Saudi Arabia cannot be considered under criterion 8 in terms of when it is used in another country—Yemen, for example.

- Q12 **Chair:** Just to pick up on that point, the counter-argument came with the story that there was an objection about mine clearance equipment that was not even categorised as military goods. In that story I think a lot of arguments were put forward about how on earth those coalition forces—take the United Arab Emirates buying from the French, for example—manage local tribes and Government-backed forces going north, without providing them with the necessary safety and security. In other words, without arming them. That could be protective vehicles. I am not talking about weapons that kill, although obviously that is part of it but, for instance, even at the very minimum, vehicles that would protect them from incoming fire.

Roy Isbister: In most contexts there are going to be circumstances where there will be equipment that you would say is a legitimate transfer, but that is not what has been used to obliterate Yemeni infrastructure. It is those transfers where criterion 8 should be allowed to apply. That seems straightforward.

- Q13 **Lloyd Russell-Moyle:** In her evidence, Dr Anna Stavrianakis, who I think is here in the Gallery, described the Government’s application of the criteria as “reckless” rather than robust. Following on from the discussions we were just having there, what is your reaction to that kind of condemnation? Her evidence talks about reform of the way that Ministers are involved. Would you consider reforms of how Ministers are involved in this process?

Roy Isbister: I have read Anna’s evidence, and I agree with the thrust of that evidence. It is worth remembering that that is not how the Government performs in all circumstances: there are plenty of occasions on which the Government is not reckless and in which the Government



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applies a robust process in an appropriate way. However, in the context of the war in Yemen, I certainly support everything that Anna says in that sense.

As for the role of Ministers, I think the extent of their involvement is fine; the issue is what they do once they get involved and what decisions they make. It is about applying the policy and the criteria that the Government itself has developed and is obliged to follow.

- Q14 **Lloyd Russell-Moyle:** Are there particular aspects of the threshold that should be changed for certain countries? You mentioned Yemen; are there countries for which you would change the threshold, or is it right to have a standard threshold for everyone?

Roy Isbister: At a formal level, in theory, there is a standard threshold, but I think that does not quite play out in reality. It would be very surprising to see the same level of assessment for certain types of equipment going to Sweden as for very different types of equipment going to Rwanda, for example. However, I think there could be a place for making more formal distinctions—for example, that a presumption of denial should be applied to exports of military equipment to the human rights priority countries identified in the Foreign Office report. That is not an embargo; it is about saying, as a first cut, “We have identified this country as problematic, so if there is potential for an export, let’s have a look at what’s behind the application. Do we assess that it will make a positive contribution to the security situation? Will it be used to support the application of human rights standards or humanitarian law standards?” If it passed that first cut, you would then move down to the application of the criteria across the board, just as you would for any other country.

- Q15 **Lloyd Russell-Moyle:** I do not want to go into detail about the presumptions, because we did that at a previous hearing before the Committees. However, my understanding is that there are three elements. First, no open licences should be given to countries on the human rights watch list, but they could still get single licences. Secondly, the burden of proof should be reversed when issuing the single licences so that there is a presumption of denial and it has to be demonstrated that no harm can be done—that is the threshold that you talked about. The third element, which you also mentioned, is a higher burden of proof for productive capacity transfers, where we sell the ability to make bombs and so on. That burden should be very high for those who have not signed international agreements like the ATT. Do you still stand by those three distinctions in the burden of proof?

Roy Isbister: Yes, but the point about the use of open licences refers to open general licences. It is then up to the Government to decide if it is an open individual or standard individual export licence.

I was not here last year, but I was watching on TV. The discussion about the higher standard for production capacity went round in circles, and it felt quite tangled. What we are talking about, for countries that are not ATT signatories, is applying a higher standard or a presumption of denial—

whatever language you like—for the transfer of production capacity, not for the transfer of military equipment.

Q16 Chair: Would that include the United States?

Roy Isbister: No, the United States is a signatory. Again, it is a presumption of denial, not an embargo, but you have to pass the first hurdle. The Government used an example to show why that approach did not make sense, but the example itself did not make sense. It said that you would be able to export to the Central African Republic but not to Canada. No, you would be able to export to Canada—it is a presumption of denial, not an embargo. You would be able to refuse exports to the Central African Republic, and when you applied the criteria I suspect you probably would. It is slightly more subtle than it may first appear, I think.

Q17 Faisal Rashid: Do you think more DfID involvement will simply result in more applications being referred to Ministers for a final decision, rather than different decisions being produced at the end of the process?

Martin Butcher: We don't think that would necessarily be the case. Our understanding is that the majority of licence denials are due to mistakes in the application process and that the appeal against a refusal constitutes often just correcting the mistakes in the original application. That is something you might want to ask industry more about. We don't see that having DfID staff involvement and bringing their expertise more into the process would necessarily result in bringing Ministers more into the process. It would essentially be different civil servants maybe weighing a little bit more evidence in some cases than they do at the moment.

There are excellent reasons to bring DfID staff into the process more. For example, we talked a little bit earlier about gender-based violence and violence against women and girls. A lot of the Government's expertise on those issues sits in DfID. DfID staff are very often in conflict zones or in zones where there is a lot of armed violence in a much greater preponderance than staff from any other Department. Because of their contacts with humanitarian agencies and other people in those areas, they have a much broader picture of what is going on in conflict zones sometimes than other agencies do—it would vary from country to country. The expertise that they can bring can be wider.

Q18 Chair: Yemen, of course, is ranked 149 out of 149 for gender abuse and gender violence. It is bottom of the list and it has fallen off the bottom of the list, just incidentally. Sorry to interrupt—carry on.

Martin Butcher: Not at all. I was scrolling down my list to get to my other reasons. To pick up on that point, the position that we as a coalition and Oxfam as an organisation have taken on Yemen is that arms should not be transferred to combatant parties for use in that country, where there is a clear risk that they would be used for IHL abuses.

Chair: I was saying was that, prior to that, the situation was terrible. The situation has not been created because of the war; the situation was terrible before the war.

Martin Butcher: Yes, absolutely, and we are talking about many different cases across conflict zones in many different areas.

- Q19 **Catherine West:** The Government previously rejected the idea of creating an additional licensing criteria relating to corruption. What is your reaction to that, and to their suggestion that the Bribery Act 2010 is adequate for addressing corruption in arms exports?

Roy Isbister: It's just not adequate. It is a retrospective process, which requires a criminal level of responsibility. The whole arms export control system doesn't work on that basis. It works on assessing risks looking into the future. That is the standard that should be applied to corruption. There are a few examples that we can go into, where it was very clear at the time that surely there were corrupt practices involved in this deal, which have never resulted in a criminal conviction. It is a completely different way of working.

- Q20 **Catherine West:** In publishing details of convictions, the Government would only be telling us what we already know, because that is already in the public domain. Is that correct?

Roy Isbister: If there is a conviction for export control-related offences, it is very useful to publish that, and as widely as possible, because of the deterrent effect that it can have. We had arguments about this with the Government years ago, when they were using disruption techniques to prevent deals from happening, rather than pursuing convictions. That served a purpose, yes, but nobody knew about that and so there was no deterrent effect. So the more effectively that kind of information is put into the public domain, the better.

- Q21 **Lloyd Russell-Moyle:** Edin, you say in your evidence that "the current Consolidated Criteria for assessing surveillance technology licences are inadequate". You mentioned a bit about that earlier on as well. What are the current strengths and weaknesses of the criteria in relation to such technology? Does criterion 2 not already cover internal repression, spying on your population and all of that kind of stuff?

Edin Omanovic: Yes, criterion 2 does exist, but for it to work you would have to see applications that should be rejected actually rejected, and unfortunately that is not the case. At the moment, it seems to be just acting as a rubber stamp. Since 2015, we have seen close to 300 licence applications, and only nine were rejected because of the risk of internal repression. The technology we are talking about here is extremely powerful stuff: it could be used to track journalists, strangle opposition or hunt down dissidents. This equipment is so sensitive that UK law enforcement does not even admit it exists. They neither confirm nor deny its existence. It has not been officially avowed—it is that sensitive—yet it is being exported to countries where the rule of law itself is lacking.

What you would want to see, in order to make sure that these exports do not lead to internal repression and severe human rights abuses, is a test of the legal framework within the end user countries. At the moment that



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does not exist, and to be honest, a lot of the countries that we are concerned about do not have a sufficient legal framework in line with international human rights standards. That is a test that you would need to do to make sure that that export does not lead to human rights abuses or internal repression.

- Q22 **Lloyd Russell-Moyle:** You mentioned that there are a number of licences that you think have been granted to people of a very controversial nature. These are weapons or items, if I am right, that even in Britain would be highly controversial if they were used publicly. Are there particular countries that you are concerned about, such as Egypt—with the 60,000 people who have been rounded up there—or Turkey? Are there areas that you are particularly concerned about that we have exported to?

Edin Omanovic: Egypt, certainly. With the elections in Bangladesh last year, for example, we wrote a report about how the security and law enforcement services were using surveillance technology to clamp down on student, opposition and pro-democracy protesters. They had tenders out for telecommunications interception equipment, and they said they were going to use it to identify people who were posting stuff on Facebook and using mobile devices. Those were public reports, yet we granted a licence to Bangladesh in December, for example. Something very wrong seems to be happening.

- Q23 **Lloyd Russell-Moyle:** Do you believe that criterion 2 is just poorly applied here? Is it that the Government do not have the information on these countries that all the rest of us have, or is it that they just ignore it? Why do you think criteria 2 does not stop this? Is it poorly written, or is it just non-appliance?

Edin Omanovic: The fundamental problem is that it was originally designed for, and applied to, items on the military list. You can make that risk assessment for military items, but it does not work as well for dual-use goods, and it specifically does not work as well for surveillance items. As well as updating the criteria themselves, you would also want some guidance on how you should make that risk assessment and assess the legal framework within the end user country.

- Q24 **Lloyd Russell-Moyle:** My understanding is that the US are thinking about downgrading the compliance controls for dual-use items. Do you think that that is a positive way for us to go? You seem to be saying the opposite.

Edin Omanovic: What is happening in the US is that they are taking a look at what items they currently subject to control, to figure out if it is the right balance. For example, they are looking at new technologies—emergent ones such as artificial intelligence techniques, quantum computing and robotics—to decide whether or not they should be subjected to control. In order to figure that out, they are conducting a public consultation in which they are asking civil society and industry for their thoughts. If the UK were to do something like that, you would expect



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that the UK Government would also do a public consultation before, because there is a real risk.

- Q25 **Lloyd Russell-Moyle:** So a public consultation would be useful. I know we are going to come on to Brexit later, but so far, a lot of these things are prescribed or listed by the EU. Will leaving the EU mean that it is harder for us to keep pace with that changing technology, or will we have to make our own assessments? How will that process work? I am happy for others to come in as well, but you are the expert on this.

Edin Omanovic: Specifically on the surveillance items, dating back to the Arab spring, what you had was loads of evidence that essentially the intelligence and security agencies throughout those countries were reliant upon western surveillance technologies to hunt people down and to facilitate torture and so on. So the EU Parliament and some member states have been keen since then to reform the EU dual-use regulation, which underpins the UK's own dual-use system. Come May, after the European elections, it is likely that there will be some EU reforms on this specific area. My understanding is that the UK Government expects to fully transpose whatever the dual-use system is in the EU into UK law.

- Q26 **Chair:** Can I stop you there? Yes, it is an issue I have been dealing with and the changes have been brought up in Committee in private. We are going to follow up on the valuable points that you make. We will send a letter to the Minister. I accept the points that you make. It is something we have discussed and are well aware of. We might align, but then there are other issues that go beyond alignment.

Edin Omanovic: Exactly, so the two systems will diverge. Either the UK copies the EU without having control over what the system does, or it doesn't and the UK will have a different system. It can decide to be weaker and be a safe haven for arms dealers and surveillance companies—

- Q27 **Chair:** I think there is more than that. I think the older system had information transfer in it. We need to make sure that, as you have seen with some other Brexit issues, there is information transfer on who is granted or refused licences, for example.

Edin Omanovic: Yes—information sharing.

Chair: There is information transfer as well as the issues that you raise that, as Chair, I am well aware of and we are taking them up.

- Q28 **Mark Menzies:** This question relates specifically to Oxfam and Safer World. The Government has rejected a presumption of denial in assessing exports to countries that have not signed the Arms Trade Treaty or are included in the FCO's list of human rights priority countries. What is your response to the Government's argument that a presumption of denial would stop arms exports to Canada, but not to the Central African Republic, which has signed the treaty but is subject to a UN arms embargo? So it's really building on that point you touched on earlier.



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Roy Isbister: To come in with what I said before, it wouldn't. It would be an initial cut, to look at that presumption of denial level. Then if Canada passed that, you move on to the next stage. The Central African Republic, ironically, is under a UN arms embargo at the moment, so it does not apply. There are exceptions to it, but it is not a great example for the Government to use. There would be no presumption of denial, but you would expect those to be caught at the next stage in the process. The example is frustrating because I am curious to know who is after Canada. Canada is likely to become a state party in the next six months. Once Canada goes, what country will the Government suggest is the problem at that point?

- Q29 **Mark Menzies:** Having said, that, are you satisfied with the UK's implementation of the Arms Trade Treaty at home? What more could the Government do to promote the treaty?

Martin Butcher: The answer is no, we are not. To pick one example, which I think we discussed at length last year, and just briefly mention, there is still no mechanism for reporting on imports into the country, and that is a breach of the treaty. There are also some issues with reporting on transfers out of the country. Although not a breach of the treaty, best practice would see the Government reporting on deliveries as well as licences. That is an example. What we are seeing is the Government encouraging countries—sometimes countries that are much less well resourced, with much less capacity to implement the treaty—to do so in a way that is much more robust than the UK seems to be willing to do itself. That is really not very satisfactory. It is beginning to have an impact in ATT forums on the reputation of the UK.

- Q30 **Mark Menzies:** That segues beautifully into the final part of the question. What has been the reaction of the other treaty signatories to the UK Government's inability to collect and report data on imports, as required under the treaty? I think that is article 13, paragraph 3 or something.

Martin Butcher: After a period in which the meetings of the treaty parties were all about process and establishing it, we are beginning to see it move to substantive issues. It is fair to say that the general opinion is that the UK should be living up to all its legal obligations under the treaty.

Roy Isbister: There is a more fundamental issue here. Imports are certainly one of them. The UK has a history in the ATT of being in the lead, and in other areas, too—we will probably come back to the EU if we talk about Brexit. That has gone.

Coming back to Yemen, at one point if you raised that issue with other states in an ATT context, they would say, "Well, it's national discretion. They have made their decisions," and so on and so forth. Diplomats do not bother doing that any more. They just shrug their shoulders and almost roll their eyes at the UK's performance and attitudes towards reporting. People are very frustrated by it. States that are looking at becoming state parties, or are new to the game and have a lot to do, say to me informally—no one says anything in the plenary—"Why should I listen to



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anything the UK says? Look at what the UK is doing." In just a few years, you have seen a huge turnaround in the way that the UK is regarded in a treaty context.

Martin Butcher: It comes back to the presumption of denial thing. We have argued that the Government—any Government; the UK—should be using membership of the Arms Trade Treaty as something that is rewarded and encouraged by British licensing policy. At the moment, that is not the case.

Q31 **Henry Smith:** Continuing on the theme of Brexit, both Oxfam and Saferworld have expressed concerns about a lack of detail available on arms export controls in the context of a no-deal Brexit. Have recent Government statutory instruments and the open general export licence allayed those concerns? If not, why?

Roy Isbister: That is starting to deal with certain aspects of the problem. We are just starting to have a look at them now, so I am not quite in a position to be able to give a full song-and-dance answer to that. That is clearly a move in the right direction, so that is good to see. However, some of the more fundamental issues about Brexit are not being addressed, such as the issues around divergence and information sharing, which we started to touch on a few minutes ago.

We are speaking to the relevant officials from the member states about what is happening with, for example, the denial notification and consultation mechanism—the information exchange mechanisms. What is the proposal? How is it going to work? I am told that the UK has been asked that on a number of occasions by its counterparts in COARM—the conventional arms working group in the EU—and those UK officials do not have an answer to that. The assumption elsewhere is that those instructions have not come yet. It is probably too late now to get something sorted if 29 March is the date, so the UK will simply drop out of that. That is bad for the UK, but it is also bad for the rest of the EU. The EU gets a disproportionate amount of information from the UK, because the UK is such a significant exporter, so that is extremely unfortunate.

The EU common position review is under way at the moment. There will be changes to the common position—that is agreed. We do not know how extensive they will be. That is not going to complete until after 29 March, and that means that you will immediately have the potential for divergence. It might not be that great to start with, but you can see the direction of travel. When I have asked what the role of the EU has been in the review process, the answer from other states has been, "They haven't played a role. They have been largely invisible. If they did, we would ignore them."

Again, I come back to the fact that the UK has shifted. The common position exists because of the UK, but it has now become largely irrelevant to the way the EU is moving things forward.



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Martin Butcher: I generally agree, and there is another issue that touches on that. You mentioned the open general licensing, which obviously deals with the licensing issue; it does not deal with customs issues when a licence is approved at the moment. Businesses will have no idea about the system under which they will be sending stuff out of the UK and into Europe on 30 March. That is a problem and needs to be sorted out.

- Q32 **Dr Lewis:** In their response to our 2016 annual report, the Government sought to reassure us on the issue of potential divergence after Brexit, which Lloyd initially raised. They said: "Most of the items subject to control are set by international export control regimes, which the UK will continue to be a member of in its own right. As stated previously, the Government's intention remains to negotiate with the EU to maintain as much continuity as possible for the UK's export licensing system following EU exit, and to maintain close cooperation with the EU in this area."

Control Arms UK has expressed concern that there could be divergence and that the Government have not yet stated that they are prepared to adopt future amendments that might be made to the EU's common position criteria, presumably because they do not know what those amendments will be until they happen. How worried are you about the potential for such divergence between the UK and the EU after Brexit?

Roy Isbister: Like I said, it looks like there is likely to be some divergence very quickly. I do not think it will be significant—not to begin with. How will the UK respond to that? It is encouraging for the future if the UK decides that it will make a similar change to reflect what happens in the EU; it is kind of disturbing if the UK does not. I have been doing this a long time. In ten years' time, where will we be?

- Q33 **Dr Lewis:** You might guess which side of the Brexit debate I am on from the following question. Couldn't Brexit actually work to the advantage of the regime? Say you were talking—as you did earlier—about the need for a corruption criteria. Might it not be the case that Britain could lead the way in adopting this first, and that might have an effect on persuading others to follow? It is a double-sided coin.

Roy Isbister: I take your point, but the history of how export controls have developed in western Europe is that when the UK has decided something, it has pretty much happened across the EU. Going all the way back to when the code of conduct was first agreed, it was a UK initiative. Once they had the French on side, it was "job done". You had 15, and now have 28, states following the same rules. This is turning into an argument about whether Brexit is a good idea, but I think it is much easier to get the EU states to go along with what the UK is doing if it is a member.

- Q34 **Dr Lewis:** Surely it means that if you come up with a bright idea for the way these criteria can be improved in the future, and you can persuade the British Government, they will take a lead. Hopefully their influence will bring the EU along with them not too long afterwards. If it were a choice between getting something new at the cost of a bit of temporary



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divergence, or going more slowly in order to keep a common position, which would be preferable?

Roy Isbister: I am not sure that is a real choice, for the reason I said. The UK has driven a lot of the change that has happened in the EU, and it has been successful within the EU.

Q35 **Dr Lewis:** And it could continue to do so from outside, couldn't it?

Roy Isbister: It could, but the EU does not take its lead from any other state outside the EU.

Q36 **Dr Lewis:** Look at the history of Britain's great influence. Is that suddenly going to disappear just because we are no longer members?

Roy Isbister: In my conversations with officials, it is already disappearing.

Q37 **Dr Lewis:** That is because they are feeling in a bad mood at the moment. It will pass.

Roy Isbister: Time will tell, but this is turning into a Brexit debate.

Chair: The DExEU Committee is meeting at another time.

Q38 **Mark Menzies:** This question is really to Conflict Armament Research. In your experience, how effectively do states make use of the information that you have collected for controlling arms exports?

Mike Lewis: As you know, my organisation is tasked by the European Union, as it happens, to provide information about a very specific set of circumstances, which is the illicit diversion of weapons into unauthorised hands, so we are really only producing information that is relevant to criterion 7 in that respect.

States are generally not able to inform us when export licences are denied based specifically on our information, but we do know that we have users from over 30 states' export licensing authorities. We know of member states that have blacklisted brokers that we have recently identified, for example, as having been involved in the diversion of material to embargoed states like South Sudan. We have also seen the information being used by other, non-EU member states—licensing officials in other parts of Europe and South-East Asia using the statistics produced by our system. And we know that at least two member states have told the External Action Service that, when deciding to suspend export licences to Saudi Arabia, they did so in part based on evidence that we had generated about unauthorised retransfers of small arms and their ammunition in our reporting on the acquisition of weapons by the Islamic State.

So we think the information is being used quite widely. It is part of the EU user's guide now. But obviously we are open to suggestions about how the information could be made more useful.

Q39 **Mark Menzies:** I have two further questions, but I am going to ask them as one and open it out to the Committee. First, what would it take for the



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UK brokering controls to be rigorously enforced in all cases where UK nationals are operating overseas and supplying arms to embargoed destinations? The second part is: why are UK-registered companies useful to non-UK arms brokers, and what can be done to stop their use in illicit arms sales?

Mike Lewis: Maybe I can take those two things together, because certainly in our research, our investigations, we come across instances of both—UK natural persons operating overseas and UK-registered companies without very much real UK nexus being used to broker arms deals. I'm thinking particularly of our recent work on South Sudan, Libya and other places.

In both cases, there are three issues. One is about detection. Obviously, if officials in the UK are not interacting with these companies or these individuals, they are not on their radar to begin with, whether they need to be asked to apply for licences or whether they are going to be prosecuted for violating UK export control laws. We do find that sometimes these individuals are known to UK officials in other contexts—to diplomatic or consular officials in countries where they are based. We have seen examples where UK companies have been involved in brokering weapons deals to embargoed destinations, for example, and the UK has received that information when those deals have come to the UN Security Council for exemptions.

We recently saw an example where a request for an exemption from the Security Council was denied, based on the UK's objection that there was a UK company involved that did not have a licence, yet that UK company is still active and trading on the UK registry today, so there is some disconnect between those kinds of information sources and enforcement.

The second thing is that obviously there is a real problem—we have discussed this particularly with enforcement officials at HMRC—with access overseas for criminal investigations. Even when mutual legal assistance arrangements are in place, sometimes these things are not as easy as they might be. But that is obviously true of the extraterritorial dimensions of any UK criminal investigations, whether we are talking about UK nationals involved in organised crime on the Costa del Sol or arms brokers operating out of Dubai—that is not to pick out either Spain or the UAE, of course. It is a question of resources and sometimes of political back-up as well.

Q40 **Lloyd Russell-Moyle:** Would recording serial numbers help with that? I know you do that in Somalia. The British Government have said it is not possible, but you have shown it is possible. Would it help with brokerage?

Mike Lewis: That is really about the monitoring of UK exports after they are exported, which we can certainly speak to as well; we certainly have some thoughts there. But just to finish off the question about brokering, obviously there are some cases, particularly with UK brass-plate or shell companies, where there is no UK nexus at all; no UK individual or UK assets that might be got hold of in a criminal prosecution. The key there is



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to be able to disrupt unlawful activity in situations where criminal prosecution of a natural person might not be possible.

Since 2010, I think, this Committee has been proposing a clear mechanism through which that might be done, which is the Insolvency Act powers. Those are used quite widely when there are boiler-room scams or those kinds of things, but to my knowledge they have not been used to wind up companies clearly involved in illegal arms brokering. I would not underplay this issue: we do see UK shell companies in play in illicit arms deals in a number of cases. It is not a small problem, and it would be good to discuss it.

I don't want to take up more time, Chair, but there are four brief reasons why UK companies might be particularly useful in this respect. One is that they look legit: when foreign arms dealers come to do a deal using a UK vehicle, it looks like it is legitimate and well regulated. We have seen instances in our South Sudan research where a UK shell company was used to try to broker a large weapons deal to South Sudan, an embargoed destination, and they produced an FCO apostille verifying their company documents—not, of course, that the FCO had any knowledge of their activities, but just to show that they have the trappings of legitimacy from the UK.

The second is that sometimes, they get access to the EU banking system through having a UK company, and that is sometimes useful, although it might become less useful in the future. It is enormously cheap to register a UK-registered company: I cannot find any other company registry where you can register a company online for £12 from anywhere in the world. I spent some time in Iraq in 2017, for example, on the frontlines in Mosul in the fight against Islamic State. We were under bombardment from Islamic State drones. Now, one of Islamic State's senior drone designers—this was revealed recently in a US court case—when they were present in Raqqa, actually set up a UK front company to procure drone technologies from different countries.

Q41 Chair: Is this the drone development facility at Ramadi?

Mike Lewis: I think he was in Raqqa at that time. I don't think he was in Ramadi.

Chair: No, where they were being developed was in Ramadi.

Mike Lewis: Well, they were developed in a number of different places, but yes, there were workshops in Ramadi—

Chair: That was the centre of it.

Mike Lewis: And also in Fallujah, Mosul, and a number of other places. When you have a situation in which somebody can log on from Raqqa and set up a company with fake directors and shareholders, you clearly have an enforcement or checks problem. We are not just talking about egregious arms transfers that are used in the sorts of instances where you



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might expect organisations of that kind to be concerned: you also have terrorist organisation exploiting these loopholes.

- Q42 **Stephen Twigg:** Can I develop the extraterritoriality point a little further? When we took evidence from Ministers from the Department for International Trade last year, they said that there is no auditing done overseas, simply remote checks. Does that not mean that we are not really properly enforcing extraterritoriality, and are there lessons from other countries that you have worked in that maybe do this better?

Mike Lewis: When we wrote about Islamic State weapons acquisitions, we wrote that the era of fire and forget export controls is really coming to an end, as this Committee has discussed. I know you have seen Germany doing end-use monitoring, Austria has just announced that it has started, and the Czech Republic is doing some.

There is sometimes a perception that it is not possible to do end-use monitoring in conflict zones, and that it is a completely unpermissive environment. My organisation is very proud to work on a DfID-funded project, actually, in which we do end-use monitoring in collaboration with the federal Government of Somalia. We work with our Somali counterparts and go to places where the federal Government find it difficult to go.

- Q43 **Stephen Twigg:** So DfID is funding you to do something that is not the usual practice of—

Mike Lewis: No, I am not saying it is something that—

Stephen Twigg: It is good that you are doing it, but—

Mike Lewis: I think it is an excellent programme, and it highlights the fact that parts of the UK Government are really leading the way on the ways in which weapons accountability might be done, so that is a positive story.

- Q44 **Stephen Twigg:** No, I meant it as a positive story. The contrast I was drawing was that when we have taken evidence from DIT, there is this view that it is not possible to do that kind of thing, and yet DfID is funding you to do it.

Mike Lewis: I would not underestimate the challenges of operating in these environments, and the diplomatic challenges involved. These are by no means straightforward activities and programmes. I know that from personal experience.

- Q45 **Stephen Twigg:** But you are saying that the direction of travel is towards this kind of approach.

Mike Lewis: Certainly, when we are looking at weapons diversion to terrorist groups and insurgent groups, post-export monitoring is absolutely critical. As Governments begin to fund, for example, PSSM programming—physical security and stockpile management programmes—in a number of places, that is an opportunity to engage with recipients of weapons on



their accountability. Bringing monitoring closer to these kinds of assistance programmes is an interesting way forward.

Roy Isbister: There are potentially a couple of different issues here. One is the post-export monitoring of equipment that has come from the UK, but there was also the issue last year of monitoring the activity of British-registered operations that are operating overseas, and that kind of thing. That is perhaps slightly different.

It may well depend on the jurisdiction, but you can imagine you are going to have to get some level of co-operation from the jurisdiction in which they are operating, and that may not always be straightforward. It might be that you do not do it as a matter of routine, but that you might want to do it where you have cause for concern.

You might contact the Government in that other country to say, "We have an anxiety here. We would like to potentially work with you just to check what is going on here." If you do not get co-operation from that country, and you have a clear, legitimate case to make, maybe you need to think about what that means in terms of the export licence relation with that country—if they are not proving to be co-operative when these kind of issues pop up.

Q46 **Chair:** We had before the Committee a few weeks ago BAFA, and a Swiss representative. This came up. We had a lengthy session that was very interesting, only for there to be, subsequent to that, a report in the paper. Funnily enough, the Germans were at the initial period of end-use auditing, and they were auditing rifles, only for rifles to turn up in the wrong place—I cannot think where—after they said that they were bringing in end-use auditing, and they were auditing rifles. I think they were numbering them and doing the kind of work that you suggested, Roy. Clearly the system had failed.

In Switzerland—this was in the very same article—grenades had turned up somewhere. I think it was Syria, but I could be wrong—I could be misquoting. It was somewhere in the Middle East. Swiss grenades turned up after the Swiss had told us that they were doing end-use monitoring.

To be fair to both of them, they did highlight some of the problems that you have just presented. It is very difficult, and it is something that we are keen to explore. We recognise what you have said: if 5 million bullets get distributed, how do you bring them back in to audit them?

Roy Isbister: This comes back again to a conversation that has been had with the Committee in previous years—the notion of post-export controls. From speaking to the Germans, I think they have just done their fourth and fifth inspections.

Q47 **Chair:** Yes, they have.

Roy Isbister: I think they have been doing this for two or three years, so it is not like this happens all the time. Switzerland is the same—just a small number. They are assessing how that is going, and from the conversations that I have had, they seem to think it is going quite well.



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Clearly, it is unlikely to catch every circumstance, but you can use every circumstance that comes to light to refine your system.

These examples are really useful to present back to the Government, because it is very frustrating to suggest this as a way of working for the UK Government, to be told, "We issue 14,000 licences a year," or whatever it is, "so there is no way we can monitor the end-use of all the equipment that we are exporting."

Nobody has ever asked the UK Government to monitor 14,000 licences. It is a case of risk profiles and identifying where you think there might be a problem, and then following on from that. Some of the examples that are coming out of other European countries now can hopefully push the argument forward in the UK.

Q48 Chair: As I said, this Committee had those two countries before us, but I wanted to move on to a third country. I know you mentioned Czechoslovakia and Austria, but they are just starting—we are less interested. The Americans have had a system of end-use auditing for a considerable amount of time—the Blue Lantern scheme—which we are interested in. We do not really know a lot about it, to be fair, although the Americans have said that they would like to help and support this Committee to look at that system. Do you have any views on the Blue Lantern system before we approach the Americans for a more thoughtful discussion?

Mike Lewis: I have seen Blue Lantern-type monitoring in place in various contexts. It is pretty well-resourced by comparison with what some other countries can reasonably resource. As I said previously, one of the reasons why those programmes are successful is because they are embedded in security systems programming, where there are personnel who can keep track of US-supplied equipment, or they are part of some of these kinds of assistance and accountability system-building programmes, where you are helping recipients of material to build the systems that are necessary to keep track of, for example, their ammunition.

There are two lessons from that programme. The first is that you can do it. Secondly, you need not have a whole-of-Government approach, but sometimes you need to be able to leverage assistance programming in order to break diplomatic barriers or to make the accountability work.

Roy Isbister: One other thing that I would add is that my understanding is that the Blue Lantern system is not just about post-licence controls. There are a lot of pre-licence controls that go in there as well. It is about going into the country. If there is an address for the importing company, it is about just turning up to see if that address really exists as it is described—or is it a butcher's shop, an empty lot or whatever? Some quite simple exercises can turn up some very interesting results.

Chair: This Committee is going to investigate the Blue Lantern scheme and work with BAFA, as they have implemented theirs.

Q49 Lloyd Russell-Moyle: I just wanted to ask about end-use monitoring,



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which is what we are talking about now. Is that possible with modern surveillance—spyware and cryptography stuff—or is that something that we are yet to explore? With spyware, it seems to me that we are trying to do the reverse of what we do with arms: we are trying to keep it in military hands and not let it be used in civilian hands. With other dual-use areas, you are trying to keep something in civilian hands and not let it get into military hands. Is that end-use monitoring possible with spyware and cryptography?

Edin Omanovic: The 2017 BBC reports about BAE exporting mass internet monitoring systems that are capable of intercepting nationwide internet comms to countries around the world and to the Gulf—it would be possible to do some monitoring on those kinds of systems, because they require maintenance and training. Perhaps some engineers might be out there. I think it is certainly something that could be looked at.

Q50 **Lloyd Russell-Moyle:** You could empower our technicians to go out to do some of that for us.

Edin Omanovic: I could certainly help to advise.

Chair: We have lost a member and are not quorate. The reason I said at the beginning that we are constrained by time is that we have got some horrible standing orders for this Committee, which make it very hard for us to function. You have just experienced that, as the Committee members know. We have come to a timely end.

Thank you for coming today, and I apologise that we could not go on any longer. If you have anything further to say, we would welcome it in writing—the Committee is always interested. On this issue of end-use auditing, I think we have set ourselves a little task this year to understand better what is being done elsewhere. If you have any information that you think would be helpful to the Committee, please do advise.