

## Written evidence submitted by Professor Anna Stavrianakis

Anna Stavrianakis is Professor of International Relations at the University of Sussex. She researches UK arms export policy and practice; national, EU and international arms transfer control policy, including the Arms Trade Treaty; and civil society activism in relation to the arms trade. She has worked on these issues since 2003; an overview of her research profile can be found at:

<https://profiles.sussex.ac.uk/p200527-anna-stavrianakis/about>

### Executive summary

This submission covers three main issues in relation to UK arms exports in 2019: transparency of the Annual Report and annual licensing data; areas of policy concern; enforcement and compliance.

### Transparency

#### Delayed publication

The Annual Report 2019 was published on 30 November 2020, seven months later than the regular annual publication date. The impact of the Covid pandemic notwithstanding, this is a long delay given the acknowledged parliamentary, media and public interest in the issue of arms transfer controls. In the absence of a functioning Committees on Arms Export Controls until now since the disbanding of the last Committees, there has been a major gap in scrutiny of arms export policy, to which transparency is crucial.

#### Ministerial evidence

In the Foreword, the Secretaries of State repeat the UK's "continued commitment to transparency and accountability." I look forward to the Government providing Ministers to appear before the Committees for questioning. This has long been a significant gap in transparency and accountability.

#### Format of the Annual Report

The format of the Annual Report allows for the repetition of much *pro forma* material with occasional updates to account for the year's developments. For example, Section 1 (6 pages) is mostly standard information; much of Sections 5, 6, and 7 contain generic information with a small amount of updated material as to developments during the year; the purpose of Section 9 (case studies, two pages) is unclear, as is the rationale for choosing these cases; and the Annex (4 pages) reproduces the Consolidated Criteria. While some of this is general information that a newcomer would find helpful as context, the fact that up to half of the report is extremely general diminishes the contribution to meaningful transparency, in which expert and non-expert observers would be equipped to engage in effective scrutiny of government policy and hold government to account for its policy.

#### Mismatch in government information and data

There are instances of mismatch between the information provided in the Annual Report compared to the annual licensing data found in the "Annual Reports" section of the Strategic

Export Controls website<sup>1</sup> – the “[Strategic Export Controls: Country Pivot Report](#)” for all countries for 2019. For example, the Annual Report (p6) states that 17,092 SIEL applications and 459 OIEL applications were received in 2019. The annual licensing data, meanwhile, reports that 12,322 SIEL applications and 309 OIEL applications (p12) were received. There are other differences in the data regarding licences issued (see pp 9-13 of the Annual Report and p12 of the annual licensing data). These are significant differences in the most basic of figures; to assist the CAEC in conducting effective parliamentary scrutiny, the government should clarify the differences between the two sets of data.

### Increased transparency

More meaningful transparency would encompass: a) the provision of statistical information on e.g. the financial value of actual deliveries, items exported and end-user (not just licences granted), the financial value, end-user and type of equipment transferred under open licences (not just the number of transactions undertaken under open licences); and b) more detailed and meaningful explanations of how policy decisions were arrived at, especially where they have been controversial. The willingness of Ministers to appear before the Committees to give evidence would enhance transparency and accountability significantly.

### Case study: use of “mirror” licences

An example of poor transparency, where more detailed and meaningful narrative explanation and more consistent and accurate presentation of information would assist the CAEC in conducting parliamentary scrutiny, is the government’s use of so-called mirror licences in response to the 2019 Court of Appeal ruling on transfers to Saudi Arabia. On p17 the Annual Report notes the locking of OGELs in response to the ruling, to prevent new exporters registering to use them, and the creation of mirror licences that exclude the Saudi-led coalition. This was a response to the Court’s requirement not to issue any new licences. However, what is not stated in the report is that whilst companies newly registering for the mirror OGELs would not be able to transfer weapons to the Saudi-led coalition, the older, locked OGELs **remained open** for those companies **already registered** on them. These companies were able to **keep delivering weapons and military equipment to the Saudi-led coalition**.

The omission of this contextual information is significant as it undermines meaningful transparency about the scope and effects of the measure. The measure is presented in the report as being “in consequence of a court undertaking and commitment to Parliament” – so it is clearly being presented as a restrictive measure. But without the knowledge that companies already registered were able to keep delivering, the presentation of the issue only gives half the picture. The wording of the Court of Appeal ruling did not require the government to suspend extant licences; it only required that they not issue new ones. However, the Court’s judgment was that all the existing licences were unlawful and there is a strong argument that all licences ought therefore to have been suspended. If the government were to be fully transparent about this issue, it ought to set out clearly all the steps it took in response the ruling and why it made the decisions it did. The current presentation of information indicates that the government wants to simultaneously claim to be in compliance with the ruling whilst also facilitating supplies to the coalition. The report therefore fulfils the

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<sup>1</sup> <https://www.gov.uk/government/collections/strategic-export-controls-licensing-data#annual-reports>

performance of transparency rather than meaningful transparency that can generate accountability.

There are also mismatches between the information presented in the Annual Report compared to information available on the government web pages about OGELs for the Collaborative Project Typhoon.<sup>2</sup> On p18 of the Annual Report, the government sets out how many OGELs were changed as a result of the Court of Appeal ruling. It states that in July 2019, new versions of 6 OGELs that exclude Saudi Arabia and its coalition partners as permitted destinations were published. In December 2019, the government “reissued” some OGELs with changes to permitted destinations, locked some existing OGELs, and created mirror versions of some: more than six licences are listed here. It remains unclear how the 6 new OGELs published in July relate to the new/locked/mirror ones published in December. In particular, the OGEL for “military goods: collaborative Project Typhoon” has an uncertain status in this information: in July a new version of this OGEL was published that excludes Saudi Arabia and its coalition partners as permitted destinations; but it is not included in the list of reissued/locked/mirror OGELs published in December 2019. The logic of the government’s process insofar as I can ascertain it is that this OGEL should have been locked to prevent new companies registering, as per the Court of Appeal ruling.

The web pages detailing changes to OGELs seems to indicate that this OGEL may indeed have been locked: [this version](#) of the OGEL, dated December 2020, states that “This licence is no longer available for registration but remains available for users who registered before 20 June 2019”. The [new version](#) of the OGEL, published December 2020, does not include Saudi Arabia as a permitted destination. From these sources, it appears that this particular OGEL may have been treated in accordance with the Court of Appeal ruling. However, for the purposes of transparency, this mismatch between the government web pages and the Annual Report is concerning as it indicates an inability to generate consistent data. And the policy itself is concerning as the locked OGEL allows existing users to export goods to Saudi Arabia for the maintenance of Typhoon – and these are specifically the type of exports that raise concerns about the government’s policy with regard to the war in Yemen.

### **Areas of concern in export policy in 2019**

#### a) Effectiveness of government risk assessment

The implementation of the Court of Appeal prohibition on new licences to the Saudi-led coalition involved in the war in Yemen raises concerns about the effectiveness of government risk assessment processes. These concerns are in addition to the “inadvertent breaches” mentioned on p25 in the Annual Report. Between June and December 2019 – the first six months of the prohibition – the government issued [1 OIEL and 19 SIELs for military goods to Saudi Arabia](#). The OIEL covers components and equipment for military training aircraft, the SIELs mostly body armour but also technology for military training aircraft, military aircraft ground equipment, SALW and ammunition. Without more contextual information to demonstrate how such licences are in line with the prohibition and the UK’s commitments, there seem to be two potential problems with how these licences might be explained as lawful or legitimate.

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<sup>2</sup> <https://www.gov.uk/government/publications/open-general-export-licence-military-goods-collaborative-project-typhoon>

First, it is plausible that the Government could claim that these licences were not "for possible use in the conflict in Yemen". However, this would be an extremely narrow and literal application of the suspension and what "for possible use in the conflict in Yemen" meant, effectively undermining the spirit of a Court ruling that found arms sales to be unlawful. Second, even if the weapons were not for direct use in the war, the UK government is obliged by the UN Arms Trade Treaty to consider *facilitation* in its decision-making. Article 7 of the ATT states that national risk assessments must consider whether the proposed transfer could be used to "commit or facilitate" a serious violation of international humanitarian or human rights law. Under standard international law drafting rules, facilitation is not just another way of saying use or a subset thereof, it is *additional* to use. It would be helpful for the government to clarify (and ideally consult on) what difference this new obligation makes.

#### b) Effectiveness of implementation measures

The Annual Report sets out on p25 what measure were taken in response to the breaches of the court order. In particular, "Licence applications for Saudi Arabia and its Coalition partners are referred to a new weekly meeting of senior officials from DIT, FCO and MOD" and "All recommendations to grant licences for the export of items to Saudi Arabia and its Coalition partners are referred to Ministers." In order to understand the impact and effectiveness of this response, it would be helpful for CAEC to take evidence from senior officials and ministers about the practical changes that resulted from these measures and the difference it made to policy implementation. This is especially important in light of the revelation that in 2016, when Boris Johnson was Foreign Secretary, he indicated he "[was content](#)" to advise that the licensing of Paveway bombs to Saudi Arabia should go ahead, days after an air strike on a factory in Yemen killed 14 people. The involvement of ministers and Secretaries of State is important for accountability purposes but it remains unclear what measures are in place to make sure the right questions are asked and all available and relevant sources of information are considered so that senior decision-makers can make correct decisions.

These two examples are about exports to the Saudi-led coalition but they are more generally applicable: Saudi Arabia is one the UK's largest arms recipients to whom exports have become increasingly controversial, so it is a good test case of the robustness of the licensing regime in general.

#### c) UK support for the UN Arms Trade Treaty

The UK government emphasises its support for the Arms Trade Treaty in the Annual Report, stating that it "continued to play a pivotal role to support the effective implementation of the Arms Trade Treaty" (p1) and that "Government experts presented the United Kingdom's national approach to export control risk assessment in two side events at CSP5" (p31). However, this support is aimed at encouraging other states and industry to engage with the Treaty, rather than bringing the UK's own implementation into line with the Treaty, and at tackling issues such as diversion of weapons from their intended end-use or end-user, rather than tackling the misuse of weapons by the intended recipients, which is a more significant issue for UK practice. This public display of support for the Treaty is thus better understood as a legitimisation mechanism to enhance or protect the UK's reputation rather than rigorous implementation of its legal and policy obligations.

### **Enforcement and compliance**

The Government puts a lot of emphasis on pre-export licensing rather than post-export checks as a measure of the robustness of the licensing regime. Using the Annual Report data, it seems that 0.15% of SIEL/SITCL licence applications were refused or revoked on C2 grounds in 2019. (27 were refused/revoked, out of 17,092 SIEL and 251 SITCL applications.) Without more contextual information, this proportion seems rather small and it is difficult to know how effective pre-export licensing is as a method of preventing breaches of the UK commitments, especially given the controversy around UK arms exports in relation to C2 and the war in Yemen. Considering these concerns in relation to the questions asked by the CAEC about enforcement and compliance in both this and the previous inquiry, and it is apparent that more information is needed from Government to assuage concerns.

In terms of the resourcing for compliance, it has been reported that DIT has [8 members of staff](#) for compliance visits with regard to OIELs and OGELs; and that [four](#) of the arms factories at the heart of the Yemen war (including warplane factories run by BAE Systems at Warton and Samlesbury in Lancashire, northwest England, which manufacture the Tornado) have not been inspected within the last three years, in breach of the government's own rules.

Overseas post-shipment audits – a topic of interest to the CAEC in its Initial Review inquiry – have some uses that could be potentially valuable in relation to tackling diversion but nonetheless raise diplomatic concerns around which countries are targeted for such audits. And post-shipment audits are less useful in terms of enforcing compliance with C2. The judicial review of exports to Saudi Arabia begs this very question: what information is the government getting via intelligence, media and non-governmental organization reports to verify the use of UK-supplied equipment? My view is that the government is actively attempting *not* to be seen to know about potential IHL violations in the war in Yemen, and in this context there is no reason to think that post-shipment audits would be of positive use in ensuring UK arms exports do not contribute to violations of international law.

*4 March 2021*