

## Written evidence submitted by the Campaign Against Arms Trade

1. The Campaign Against Arms Trade (CAAT) in the UK is working to end the international arms trade. This trade has a devastating impact on human rights and security, and damages economic development. CAAT believes that large scale military procurement and arms exports only reinforce a militaristic approach to international problems. In February 2021 CAAT was honoured to receive a joint nomination for the Nobel Peace Prize with our Yemeni partners, Mwatana for Human Rights.<sup>1</sup> The nomination is intended to draw attention to the suffering of the Yemeni people and to CAAT's Judicial Review which challenges the UK Government's decision to resume arms sales to the Saudi-led coalition bombing Yemen.
2. This submission looks at arms sales to Saudi Arabia; Turkey and Hong Kong; Open Licences; Compliance and Enforcement; and makes a number of recommendations.
3. It is very disappointing that the Terms of Reference for this inquiry did not specifically mention the Court of Appeal Judgement on Military Exports to Saudi Arabia, given the significance of this development to arms export controls in the UK, and the fact that this issue is the subject of Section 4 of the 2019 Annual Report.<sup>2</sup> However, given that the TOR are inclusive of 'UK arms exports in 2019', and 'Areas of improvement and areas of concern or omission from the 2019 Report' we have seen fit to address this issue and that of Open Licences in our submission.
4. It is not possible to accurately investigate enforcement and compliance matters, as the Committees wish to, outside of a context where UK manufactured arms have been used in repeated violations of International Humanitarian Law in Yemen. Before the Committees focus on exports not in compliance with licensing regulations, there is a need to address the fact that the Government is issuing licenses that run contrary to international and UK law.

### Saudi Arabia

5. In March 2015, a Saudi Arabian-led coalition commenced a military campaign in Yemen. It supported the internationally recognised, though internally disputed, President of Yemen, Abdrabbuh Mansur Hadi, and targeted Houthis and allied rebel groups backing the former President, Ali Abdullah Saleh. The latter was killed in December 2017 as he tried to switch his allegiance to Hadi. Six years into an increasingly complex conflict, with multiple warring parties, there has been no significant progress towards an inclusive political settlement.
6. Over 130,000 people have been killed as a direct result of the violence since the Saudi-led intervention began in March 2015.<sup>3</sup> This includes over 13,000 civilians killed in targeted attacks, the majority in air strikes by the Saudi-led coalition. Many more have died of hunger and disease as a result of the devastating humanitarian crisis caused by the war and the Coalition's air and naval blockade of Yemen. Last month, in February 2021, United Nations Under-Secretary and Emergency Relief Coordinator, Mark Lowcock stated: "Yemen is speeding towards the worst

<sup>1</sup><https://mwatana.org/en/>

<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/940273/uk-strategic-export-controls-annual-report-2019-web-accessible-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940273/uk-strategic-export-controls-annual-report-2019-web-accessible-version.pdf)

<sup>3</sup><https://acleddata.com/2021/02/02/ten-conflicts-to-worry-about-in-2021/#1612195863357-e72e2a76-7c35>

famine the world has seen in decades.”<sup>4</sup> 16 million people are going hungry, with 5 million one step away from famine.<sup>5</sup>

7. The UK is one of Saudi Arabia’s leading arms suppliers, along with the US. It is also a major supplier of arms to the United Arab Emirates, another country in the coalition that is bombing Yemen. The UK-made equipment used in the war includes Typhoon and Tornado aircraft, Paveway bombs and Brimstone and Stormshadow missiles. The use of this equipment has been confirmed by the UK Government. CAAT estimates that the UK has provided more than £18.9 billion worth of weapons to Saudi Arabia since the start of the conflict.<sup>6</sup>
8. In September 2016, the House of Commons Business, Innovation and Skills and International Development Committees concluded that: “Given the evidence we have heard and the volume of UK-manufactured arms exported to Saudi Arabia, it seems inevitable that any violations of international humanitarian and human rights law by the coalition have involved arms supplied from the UK.”<sup>7</sup> Researchers on the ground have discovered weapons fragments that demonstrate the use of UK-made weapons in attacks on civilian targets.<sup>8</sup>
9. In 2016, CAAT was granted permission for a Judicial Review of the UK Government’s decision to continue to license the export of military equipment to Saudi Arabia. CAAT’s case focused on Criterion 2c of the Consolidated EU and National Arms Export Licensing Criteria which says that licences should not be granted if there is a clear risk that the equipment to be exported might be used in a serious violation of IHL.
10. In June 2019 the Court of Appeal found that it was ‘irrational and therefore unlawful’ for the Secretary of State for International Trade (SSIT) to have granted licences for the export of arms to Saudi Arabia for use in Yemen without making any assessment as to whether violations of International Humanitarian Law had taken place. The Government was ordered to retake all decisions to export arms to Saudi Arabia in accordance with the law and to stop issuing new arms export licences to Saudi Arabia for use in Yemen. The Government applied the same restrictions to licences to its coalition partners, UAE, Bahrain, Jordan, Kuwait and Egypt.
11. In July 2020, the Secretary of State for International Trade Liz Truss issued a written statement to Parliament, announcing that the Government had completed the review ordered by the Court of Appeal.<sup>9</sup> It said that the incidents it had assessed to be possible violations of International

<sup>4</sup><https://news.un.org/en/story/2021/02/1085162>

<sup>5</sup>Speaking on 7 March 2021 with reference to the UK’s decision to halve humanitarian aid to Yemen, Lowcock, former permanent secretary at DfID stated that Ministers have decided to “balance the books on the backs of the starving people of Yemen” <https://www.theguardian.com/world/2021/mar/07/uk-balancing-books-on-backs-of-yemens-starving-people-says-un-diplomat>

<sup>6</sup>The estimate is based on £15 billion revenue from the KSA Ministry of Defence and Aviation received by BAE Systems between 2015-19 (reported in their Annual Reports) and 3.9 billion ML4 licences issued since the beginning of the Saudi intervention, the great majority of which is likely to come from companies other than BAE Systems. This does not include sales by other companies for equipment outside the ML4 category.

<sup>7</sup><https://www.parliament.uk/external/committees/commons-select/business-innovation-and-skills/news/2016/uk-arms-yemen-report-published-16-17/>

<sup>8</sup><https://mwatana.org/en/uk-must-stop-selling-arms/>

<sup>9</sup><https://questions-statements.parliament.uk/written-statements/detail/2020-07-07/HCWS339>

Humanitarian Law (IHL) committed by the Saudi coalition were ‘isolated incidents’ and had determined “there is not a clear risk that the export of arms and military equipment to Saudi Arabia might be used in the commission of a serious violation of IHL”. The Government would therefore resume issuing new licences for arms sales for use in Yemen: “clearing the backlog of licence applications for Saudi Arabia and its coalition partners.”

12. The UK Government has provided very little information on the details of its July 2020 review. It has refused to say how many incidents it considered to be ‘possible’ violations of IHL or how it decided there was no “pattern” of violations, despite the fact that hundreds of attacks on residential areas, schools, hospitals, civilian gatherings, and agricultural land and facilities have been documented.<sup>10</sup>
13. There is no requirement for there to be a “pattern” of violations in order for there to be a clear risk of future violations. Even a single incident could constitute a serious violation of IHL, with a clear risk of further “isolated” incidents. The MOD holds a database of “incidents of potential concern” known as the Tracker, with 318 incidents entered as of November 2017<sup>11</sup>, and 528 incidents as of 30 April 2020.
14. Answers to Parliamentary questions posed by the Rt. Hon. Emily Thornberry MP, Shadow Secretary of State for Industry and Trade, given on 30 Oct. 2020, revealed that the Tracker omits a substantial number of alleged incidents of air strikes that caused civilian fatalities. Of 24 incidents enquired about by Ms. Thornberry, 10 were in the Tracker as of April 30, and 14 were not, of which one was subsequently added. Of the 13 not included at all, 12 were recorded in the database of the Yemen Data Project, which carefully verifies all recorded incidents from multiple sources. Since November 2020 that Government has refused to answer Parliamentary Questions about the MOD Tracker “due to ongoing legal proceedings”. CAAT believes this may be a misapplication of the sub judice rule, and raises concerns around parliamentary scrutiny.
15. On 26 October 2020 CAAT filed a new Judicial Review application challenging the UK Government’s decision to renew arms sales. Overall, the SSIT’s approach in assessing alleged violations of IHL by the Saudi Coalition appears to be less an open and honest evidence-based assessment, so much as an attempt to shoehorn the evidence into an interpretation that allows arms sales to continue. The subject of the assessment is not a matter of abstract legal niceties, but acts of explosive violence that have destroyed civilian lives and civilian infrastructure. It is for this reason that CAAT is bringing this issue back to the courts, to ensure that the Government’s decision-making process is subjected to proper scrutiny.
16. Despite Saudi Arabia’s appalling human rights record, including execution for crimes committed by children, the detention of women human rights defenders, and the case of journalist Jamal Khashoggi, murdered in the Saudi consulate in Istanbul, the UK appears to continue to place great faith in Saudi assurances regarding air strikes and allegations of IHL violations.

<sup>10</sup><https://mwatana.org/en/2020-press-briefing/>

<sup>11</sup><https://hansard.parliament.uk/Commons/2017-11-30/debates/1C24E14B-85C7-4C5C-9013-091AC89936F1/Yemen>

17. The UK Government's perceptions of its 'strategic relationship' and other interests appear to have a significant impact on its application of its export control responsibilities with regard to arms transfers to Saudi Arabia. In recent evidence sessions the Committees have asked witnesses whether there might be a "lower hurdle" to pass for these countries where there is a strategic relationship.<sup>12</sup> However the Consolidated Criteria are clear that while other factors related to the 'UK's national interest' may be considered they "will not affect the application of the criteria in the common position." Similarly, the impact on the UK's defence and security interests "cannot affect consideration of the criteria on respect of human rights."<sup>13</sup>
18. The intractable dedication of the UK Government to its 'strategic relationship' with Saudi Arabia not only runs counter to Criterion 2c, but is increasingly to the detriment of the UK's relationship with its closest allies. The announcement by the new US Administration that they will end support for "offensive" operations by Saudi Arabia and the UAE in Yemen, including a suspension of arms sales and possible cancellation of some, offers real hope for efforts to finally bring the war in Yemen to an end.<sup>14</sup> Therefore, the announcement by the UK Government that arms sales to Yemen will continue as before is deeply disappointing, and once again calls into question the value of a strategic relationship with Saudi Arabia if it can only sustain war and not peace.

## Turkey

19. CAAT welcomes the suspension of licences announced by the Foreign Secretary in October 2019, referred to in the Annual Report, but notes that no new information or statement has been provided since then as to the outcome of the review, or of the impact of the ongoing situation in northern Syria, and the presence of Turkish troops there, on licensing decisions. We note that after a gap of about three months when no new licences were issued, export licensing to Turkey resumed in January 2020, although the rate at which OIELs have been granted appears to be lower than before. However, the Government has given no indication of any new policy towards arms sales to Turkey, which greatly limits the usefulness and transparency of the statement by the Foreign Secretary noted in the Annual Report.
20. As was the case with Saudi Arabia, the brief suspension of new licensing did not include any revocation or suspension of existing licences, including numerous long-lasting open licences. Such half-measures greatly limit the impact of decisions taken by the UK Government in response to major international crises such as Turkey's invasion of northern Syria. A further critical issue, in the light of the Court of Appeal verdict on Saudi Arabia, is what assessment, if any, the SSIT has made of alleged violations of IHL by Turkish forces in Syria, of which there have been many,<sup>15</sup> and whether this might lead to a "clear risk" of further such violations.

## Hong Kong

21. CAAT likewise welcomes the announcement by the Foreign Secretary in June 2019 that no new export licences would be issued for crowd control equipment to Hong Kong "unless we were

<sup>12</sup>Q206, <https://committees.parliament.uk/oralevidence/1638/default/>

<sup>13</sup><https://publications.parliament.uk/pa/cm201314/cmhansrd/cm140325/wmstext/140325m0001.htm>

<sup>14</sup><https://www.bbc.com/news/world-middle-east-55941588>

<sup>15</sup><https://www.amnesty.org/en/latest/news/2019/10/syria-damning-evidence-of-war-crimes-and-other-violations-by-turkish-forces-and-their-allies/>

satisfied that concerns raised about human rights and fundamental freedoms have been thoroughly addressed”. While, as with Turkey, there has been no follow-up to this announcement in terms of a statement of new policy, CAAT further welcomes the fact that, since this announcement, the only Military List export licences issued to Hong Kong have been for civilian/commercial/academic purposes, for explosive detection and removal, for humanitarian purposes, and/or for ceremonial equipment.

22. However, the repressive nature and actions of the Hong Kong security forces in response to pro-democracy protests, including the use of UK-supplied tear gas, was already clearly apparent from the crackdown on the ‘Umbrella’ movement in 2014. Yet, the Government chose to take no action at the time, and continued to issue licences for anti-protest equipment as recently as 2018, including anti-riot/ballistic shields, tear gas/irritant ammunition, and body armour, for use by law enforcement agencies.<sup>16</sup> This is another illustration of the extremely high threshold the Government appears to apply before it acknowledges a ‘clear risk’ of abuse, in this case internal repression, evidence of which was apparent from at least 2014.

### **Open Licences**

23. The UK Government claims to operate a ‘rigorous and robust’ arms export licensing system, and to be a leader in transparency. While a considerable amount of information is available on export licences in its quarterly statistics on arms export licences, there are many gaps in this information. There is no information on the precise equipment that is exported, or the companies to which the licences are issued.
24. One of the biggest gaps is the open licensing system (including Open Individual Export Licences (OIELs) and Open General Export Licences (OGELs), and in particular the fact that open licences do not have any financial value, or quantities attached. Basic information, such as the total value of arms sold by the UK each year, cannot be calculated from the data provided. A large proportion of UK arms exports are made using the open licensing system,<sup>17</sup> which allows for potentially unlimited transfers of the equipment authorised, without companies being required to report the value of the transfers.
25. During the brief period when new arms export licences to Saudi Arabia were halted as a result of the Court of Appeal ruling in CAAT’s favour in June 2019, OGELs covering Saudi Arabia and its coalition partners were suspended to new company registrations – but companies already registered were able to continue to use these licences. Thus, a large proportion of UK arms sales to Saudi Arabia, in particular the supply of spares and maintenance support for the Saudi Air Force carried out by BAE as part of UK-Saudi agreements, was able to continue uninterrupted. In addition, numerous OIELs remained in force, for example an OIEL from 18 September 2017 (as disclosed in an FOI response) under which 2,323 Tornado spares were transferred in 2019 (AR p30, Table 6.3).

<sup>16</sup>These licences were not revoked with the announcement of the suspension of new licences.

<sup>17</sup>This is apparent from the huge gap between arms export contract figures reported by the DIT’s UK Defence & Security Exports (formerly DSO), which amounted to £86 billion between 2010-19 and the value of Single Individual Export Licences issued over the same period (£42 billion). While some of this difference might be explained by the gap between the agreement of a sale and the issuing of a licence (which can work both ways), it is clear that a very large volume of exports is not being captured by the SIEL figures.

26. In summary, open licences: obscure the true level of UK arms exports, in total and to different countries, creating a serious gap in transparency; make arms exports considerably easier, including to highly repressive regimes and countries in conflict; and make it easier for the Government to create an illusion of restraint by halting new licences, while allowing previous long-lasting open licences to remain in place.

### **Compliance and Enforcement**

27. A key issue with Section 8 of the 2019 report 'Compliance and Enforcement' is that the data on compliance levels (pg 37, Table 8.1) makes no reference to specific companies or countries. It is not possible to discern how these trends relate to particular companies over time, or if there are greater compliance issues with respect to some end-users more than others. Three hypothetical reasons for a non-compliant assessment are given, but no actual examples as taken by the ECJU Compliance Officer.
28. 14% of revisits for non-compliant assessments remained non-compliant in 2019, up from 9% in 2018. This suggests that those with the poorest compliance are continuing to make the most serious errors.
29. The scale and adequacy of enforcement and compliance sanctions available could be determined by the rate of recidivism of exporters, however this data is not included in the report. For example the Compliance Team issued 97 warning letters to Company Directors during 2019, where breaches of licence conditions were identified, however the outcome of this measure on compliance rates is not included, and therefore its effectiveness is difficult to assess.
30. There were no prosecutions finalised in the courts in 2019. Although the report notes that in September 2019 there were 15 live investigations, the outcome of these investigations were not included at the time of publishing in November 2020.
31. The report notes that in deciding to conduct a criminal investigation HMRC will consider the seriousness of the offence among other factors. It is unclear why this Section of the report makes no reference to the Consolidated Criteria despite its emphasis on non-compliance - which ultimately cannot be divorced from the procedures for assessing licence applications in the first place.
32. The lack of significant consequences for companies that are repeatedly non-compliant with export control regulations does little to deter future non-compliance by these and other companies. This increases the likelihood that exports take place that are not approved and that would not be approved by the Government, potentially to undesirable actors and/or with negative consequences for conflict, human rights violations, and proliferation.

### **Recommendations**

In light of the analysis and concerns raised above, CAAT has developed a set of recommendations with reference to UK arms exports. We urge the Ministry of Defence, Department for International Trade, and the Foreign, Commonwealth and Development Office to:

- Immediately end the supply of military equipment to Saudi Arabia, in line with Criteria 2c of the Consolidated Criteria and in light of the overwhelming evidence of violations of International Humanitarian Law in Yemen.
- End the promotion of, and support for, arms exports and develop industrial strategy which uses the skills locked up in the arms industry to the advantage of other sectors and the economy and security of the UK as a whole.
- Introduce a "presumption of denial" that export licences will not be issued where the equipment to go to an area of conflict or human rights violating governments.
- Make updates on the respective reviews of supply of military equipment to Turkey and Hong Kong, and provide transparency as to how decisions to suspend and/or revoke licences - including applicable thresholds - are taken.
- Instate a requirement for companies operating both Single and Open Licences to provide data on the financial values and quantities of actual transfers made under these licences, and to make this information available on the Government database.
- Include long-lasting open licences, such as OIELs and OGELs, in the revocation or suspension of existing licences, particularly where the revocation or suspension relate to Criterion Two of the Consolidated Criteria.<sup>18</sup>
- Ensure significant consequences for companies that are repeatedly non-compliant with regards to export control regulations.
- Provide data on the rates of recidivism for those companies who have been subject to enforcement measures by ECJU Compliance Officers, the Border Force, and the Crown Prosecution Service, and quantitative and/or qualitative data on the relationship between the Consolidated Criteria and breaches of compliance.

*9 March 2021*

<sup>18</sup>'The respect for human rights and fundamental freedoms in the country of final destination as well as respect by that country for international humanitarian law.'

