

Submission to the Committees on Arms Export Controls Call for Evidence on the UK Arms Exports in 2019

March 2021

Recommendations for the CAEC on the UK Arms Exports in 2019

1. The most effective enforcement and compliance measure are for halting arms trade supplies to Saudi Arabia despite completing interests.
2. To comply with the assessment criteria, evidence considerations must be broadened to ensure more extensive or more in-depth auditing of the end-use of UK arms exports.
3. The increased number of digitised evidence for pattern violations as well as “particular” incidents against human rights makes this more critical than ever. The only way to address emerging reports of human rights violations in arms conflicts where UK arms are involved is for legislators to take a comprehensive approach and grounded measures that faithfully implement the UK standards and IHL provisions.
4. The UK should support key allies to help lead a committed and credible change from political military to political diplomatic engagement to send a compelling message of ending armed conflicts across the globe.
5. CAEC should examine legislative provisions to identify significant gaps in practical arms control methods.

SECTION A: Introduction

Response to the Committees on Arms Export Controls call for evidence submitted by: Rana Osman, SOAS, University of London (in a personal capacity); and Ruwadzano Makumbe, Human Rights Center at Ghent University (in a personal capacity).

In submitting this evidence, we would like to bring to the Committee’s attention the:

- UK government’s inadequate consideration of humanitarian factors in the provision of arms exports and support, thus enabling conflict, leading to significant civilian harm.
- Need to strengthen arms control regimes through evidence systems to audit the end-use of UK arms exports.

SECTION B: The scale and adequacy of enforcement and compliance sanctions available; and the scope for more extensive or more in-depth auditing of the end-use of UK arms exports and lessons from the experiences of other countries systems

6. When the UK Government resumed licensing arms sales to Saudi Arabia, it did so against its humanitarian standards expressed by the Government to introduce a “[sanctions regime](#) that will target people who have committed the gravest human rights violations.”
7. On 1 March 2021, the UK Government has [reduced](#) humanitarian aid while maintaining arms exports to countries, many of which are on the FCDO [list](#) of human rights concerns or are not democracies—placing the UK in an affirmative position to any crimes against humanities that these countries commit.

8. While the general premise of the UK government is to seek an end to deadly conflicts and be a “problem-solving, [conflict-resolving](#) and conflict-management country,” in effect, however, the continuation of arms sales amid inadequate compliance measures poses deliberate harm to innocent civilians. Even worse, on the international stage, the UK is viewed to be doubling down on dictators—a betrayal to yet another UK government standard.
9. In complex conflict zones, civilians suffer the most. In armed conflicts with gross [collective famine](#), the UK must lead international efforts towards practical arms control using substantive methods.
10. The Committees on Arms Export Control (CAEC) plays an essential role in actively acquiring the mechanical application of control by reflecting on the dynamic and politicisation of arms control efforts to be able to demarcate between the old mechanisms and the [revised methodology](#) that the Government declared at the announcement of resuming the sales of arms in July 2020.
11. CAEC should take this opportunity to build on the Foreign Office’s call for a “thorough, credible and transparent [investigation](#)” to hold those responsible to account and scrutinise its arms sales relationship through arms trade sanctions with the Saudi Arabian Government second-largest arms exporter.
12. Global Britain must forefront human rights and humanitarian action. It must start with its efforts and halt the transfer of arms to non-democratic regimes and countries with a record of civilian harm. It must use practical measures to certify the steps taken by such governments to comply with UK standards and IHL provisions.
13. On 4th February 2021, President Biden [blocked](#) all pending US arms sales and “offensive operations in the war in Yemen, including relevant arms sales,” as well as stopping maintenance and logistic support, to add pressure on parties in conflict to resort to negotiation talks.
14. In a similar position, on 11th February 2021, the European Parliament [adopted](#) a resolution that welcomed the US actions and reiterated its call “for an EU-wide ban on the export, sale, update and maintenance of any form of security equipment to members of the coalition, including Saudi Arabia and the UAE, given the serious breaches of international humanitarian and human rights law committed in Yemen.”
15. On 29th January 2021, the Italian Government permanently revoked their bomb export licenses “missiles and aerial bombs to Saudi Arabia and the UAE, thereby cancelling the shipment of more than 12,700 bombs.”
16. Following the Italian Government’s revocation, on 24th February 2021, a preliminary investigations Judge in Rome ordered a [criminal investigation](#) on Italy’s National Authority for the Export of Armament (UAMA) “for their role in a deadly Saudi/United Arab Emirates-led military coalition airstrike in Deir al-Hajari in northwest Yemen.” This criminal complaint was co-field by [Mwatana](#) for Human Rights, a Yemen-based organisation that substantially documents the carnage on the ground.
17. The UK should support key allies to help lead a committed and credible change from political military to political diplomatic engagement to send a compelling message of ending armed conflicts across the globe.
18. CAEC should examine legislative provisions to identify significant gaps in practical arms control methods. The increased number of digitised evidence for pattern violations as well as “particular” incidents against human rights makes this more critical than ever. The only way to address emerging reports of human rights violations in arms conflicts where UK arms are involved is for legislators to take a comprehensive approach and grounded measures that faithfully implement the UK standards and IHL provisions.

SECTION C: Trends in the use of enforcement and compliance measures, and the use of particular enforcement tools available — compliance warning letters, seizures, compound penalties, prosecutions, etc

Implications of UK arms exports under International Human Rights Law and International Humanitarian Law

19. The [impact of arms transfers](#) on human rights includes the violation of the rights to life, freedom of torture and other forms of cruel, inhuman or degrading treatment.
20. The UK government's decision-making process regarding the requirement for the Government to assess Saudi Arabia's attitude towards relevant principles of international law has been [found](#) by the High Court to be irrational and therefore unlawful concerning Criterion 2c of the Consolidated EU and National Arms Export Licensing Criteria. There have to be substantial changes in the assessment criterion, and this submission finds that the UK government has not done so.
21. The UK government has [confirmed](#) that it provides munitions to the Royal Saudi Air Force (RSAF) and technical support. The lack of adequate safeguarding measures so far to ensure that the arms transferred are not used in human rights violations indicates a lack of political will to hold the Saudi-led coalitions accountable for alleged violations in Yemen. Evidence s made available by civil society organisations and United Nations agencies, illustrated that the UK's export of cluster munitions violates the Convention on Cluster Munitions, which the UK ratified in 2008.
22. More so, the current shortfall of the UK government to ensure a rigorous and robust assessment system through the Consolidated EU and National Arms Export Licensing Criteria violates the Arms Trade Treaty. The Treaty's effects on human rights through the regularisation of arms transfers. Article 1 promotes member states' need to contribute to global and regional peace, security and stability, reducing human suffering and promoting collaboration, transparency, and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties. Article 3 further requires that a national control system to regulate the export of ammunition/munitions fired, launched or delivered be put in place. The claim that the UK government has now developed a revised methodology regarding all allegations it has assessed is miscalculated and still fails to sufficiently account for the IHL violations being perpetrated in Yemen.
23. [Human Rights Watch](#) has documented incidents where UK-manufactured munitions were found at the sites of apparent unlawful attacks. These incidents show perpetration of violations including reckless or indiscriminate attacks on civilians; reckless or indiscriminate attacks on civilian objects; the use of indiscriminate weapons, including cluster munitions in or near populated areas; and the failure of both the coalition and member states to adequately investigate and hold responsible parties accountable. This situation has become prolonged requiring an urgent response. The effective response is for the UK government to stop supplying arms to the Saudi-led coalition based on the human cost of the conflict in Yemen.
24. With information on the alleged gross human rights violations that the Saudi-led coalition is alleged to have perpetrated, the Government has [stated](#) that it 'regularly raises the importance of compliance with International Humanitarian Law with the Saudi Government and other members of the military coalition and the Houthis.' This enforcement tool is insufficient to the extent that the crisis in Yemen has prolonged without sufficient indication from the Saudi-led coalition that UK-manufactured weapons will not be used in Yemen. Given the amount of evidence documented showing the crimes committed in Yemen and the role that the Saudi-led coalition is playing, there should be efforts by the UK government to stop supplying weapons to Saudi

Arabia. The UK government also has the opportunity to promote the Arms Trade Treaty and push for compounded penalties and prosecutions for crimes that have been committed in Yemen both in the present and the past.

Evidence considerations are Critical in Scoping for more extensive or deeper auditing of the end-use of UK arms exports

25. The UK government has stated that it considers allegations from a wide range of sources, including UN agencies and officials, European Parliament and reports of NGOs, as it conducts its assessments by reference to the criteria in conducting assessments in terms of the criteria. Its conclusion has been that there has not been [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. Such a conclusion defies the evidence that the UK Government says it has considered, including for instance Human Rights Watch's observation that, "neither the law nor the facts support a conclusion that Saudi war crimes in Yemen are "isolated." This brings into question the character of the consideration which the UK government has given to these sources of evidence it says it has considered.
26. If the aim is to strengthen arms control regimes, it is important for an extensive and deep audit of the end-use of UK arms exports to be performed. In turn this audit must carefully examine evidence that illustrate the situation on the ground. This includes citizen evidence and open-source intelligence (OSINT) in the form of videos or photographs posted on social media, which are able to indicate the location, cause, perpetrator or effects of an attack. OSINT technologies have also contributed to the development of evidence systems that provide information on the components of weaponry [used](#) including UK-manufactured cluster munitions.
27. Global Legal Action Network (GLAN) and its partners have [developed](#) methodologies which through OSINT investigations, identifies and verifies a significant number of videos that assist in the analysis of alleged breaches of international law. This information provides a possible further assessment opportunity for assessment in terms of the Criterion 2c of the Consolidated EU and National Arms Export Licensing Criteria.
28. Collective intelligence approaches to evidence have been used and tested by [academics and civil society](#) to highlight international humanitarian law violations and display humanity in armed conflict. This evidence shows that the weapons that have been used to commit crimes in Yemen have been supplied to Saudi Arabia by the UK. Despite the High Court in 2017 finding that the 'open-source material is only part of the picture,' it is sufficient proof of the complicity of those who continue to supply weapons to the coalition.
29. The [announcement](#) on 7th July 2020 by the Government that it intends to resume approving weapons sales by British companies to Saudi Arabia is inconsistent with the realities on the ground. The submission that the Government has 'developed a revised methodology in respect of all allegations which it has assessed and has come to the conclusion that the incidents which have been assessed to be possible violations of international humanitarian law occurred at different times in indifferent circumstances and for different reasons thus the incidents are isolated' is flawed. The determination that there is not a clear risk that the export of arms and military equipment to Saudi Arabia might be used in the commission of serious violations of international humanitarian law also fails to take into account the information coming out of Yemen showing Saudi-led coalition aircraft [hitting](#) Yemeni civilians.
30. Collective intelligence approaches to evidence, citizen evidence and [urgent appeals](#) by Yemenis for the need for accountability and justice cannot be ignored. It is no longer a glimpse that we have of the crisis in Yemen but a clear indication of the gravity of the crisis. The lived realities of Yemenis on the ground makes it clear that they are going through the gravest humanitarian crisis and part of the solution is for the UK government to stop supplying weapons to Saudi Arabia.

Would physical overseas post-shipment on-site checks and verification lead to improved application of the Consolidated Criteria?

31. The assessment process of export licence applications on a case-by-case basis against the Consolidated EU and National Arms Export Licensing Criteria by the Export Control Joint Unit (ECJU) must be revised to be more rigorous.
32. Physical post-shipment on-site checks support the need for a multi-layered assessment system improving application of the criteria. However, for as long as this additional layer is an internal procedure conducted by the Government, there is risk of distortion of facts.
33. External assessments by independent experts in terms of the criteria provide a possible avenue for improving the application of the criteria.

SECTION E: Recommendations

34. The most effective enforcement and compliance measure are for halting arms trade supplies to Saudi Arabia despite competing interests.
35. To comply with the assessment criteria, evidence considerations must be broadened to ensure more extensive or more in-depth auditing of the end-use of UK arms exports.
36. The increased number of digitised evidence for pattern violations as well as “particular” incidents against human rights makes this more critical than ever. The only way to address emerging reports of human rights violations in arms conflicts where UK arms are involved is for legislators to take a comprehensive approach and grounded measures that faithfully implement the UK standards and IHL provisions.
37. The UK should support key allies to help lead a committed and credible change from political military to political diplomatic engagement to send a compelling message of ending armed conflicts across the globe.
38. CAEC should examine legislative provisions to identify significant gaps in practical arms control methods.