



House of Commons

Business, Innovation and Skills
and International Development
Committees

The use of UK-manufactured arms in Yemen

**First Joint Report of the
Business, Innovation and Skills
and International Development
Committees of Session 2016–17**

*Fifth Report of the Business, Innovation and
Skills Committee of Session 2016–17*

*Third Report of the International Development
Committee of Session 2016–17*

*Report, together with formal minutes
relating to the report*

*Ordered by the House of Commons
to be printed 14 September 2016*

HC 679

Published on 15 September 2016
by authority of the House of Commons

Business, Innovation and Skills Committee

The Business, Innovation and Skills Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Business, Innovation and Skills.

Current membership

[Mr Iain Wright MP](#) (*Labour, Hartlepool*) (Chair)

[Paul Blomfield MP](#) (*Labour, Sheffield Central*)

[Richard Fuller MP](#) (*Conservative, Bedford*)

[Peter Kyle MP](#) (*Labour, Hove*)

[Amanda Milling MP](#) (*Conservative, Cannock Chase*)

[Jonathan Reynolds MP](#) (*Labour (Co-op), Stalybridge and Hyde*)

[Amanda Solloway MP](#) (*Conservative, Derby North*)

[Michelle Thomson MP](#) (*Independent, Edinburgh West*)

[Kelly Tolhurst MP](#) (*Conservative, Rochester and Strood*)

[Craig Tracey MP](#) (*Conservative, North Warwickshire*)

[Chris White MP](#) (*Conservative, Warwick and Leamington*)

International Development Committee

The International Development Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for International Development and its associated public bodies.

Current membership

[Stephen Twigg MP](#) (*Labour (Co-op), Liverpool, West Derby*) (Chair)

[Fiona Bruce MP](#) (*Conservative, Congleton*)

[Dr Lisa Cameron MP](#) (*Scottish National Party, East Kilbride, Strathaven and Lesmahagow*)

[Stephen Doughty MP](#) (*Labour (Co-op), Cardiff South and Penarth*)

[Mr Nigel Evans MP](#) (*Conservative, Ribble Valley*)

[Mrs Helen Grant MP](#) (*Conservative, Maidstone and The Weald*)

[Pauline Latham OBE MP](#) (*Conservative, Mid Derbyshire*)

[Jeremy Lefroy MP](#) (*Conservative, Stafford*)

[Wendy Morton MP](#) (*Conservative, Aldridge-Brownhills*)

[Albert Owen MP](#) (*Labour, Ynys Môn*)

[Mr Virendra Sharma MP](#) (*Labour, Ealing Southall*)

Powers

The Committees are departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No. 152. These are available on the Internet via www.parliament.uk.

Publication

Reports from the Committees are published on their websites at www.parliament.uk/bis and www.parliament.uk/indcom and in print by Order of the House.

Evidence relating to this Report is published on the [inquiry publications page](#).

Business, Innovation and Skills Committee staff

The current staff of the Committee are Chris Shaw (Clerk), Martin Adams (Second Clerk), Josephine Willows (Senior Committee Specialist), Duma Langton (Committee Specialist), James McQuade (Senior Committee Assistant), Jonathan Olivier Wright (Committee Assistant) and George Perry (Media Officer).

International Development Committee staff

The current staff of the Committee are Sarah Hartwell-Naguib (Clerk), Daniel Whitford (Second Clerk), Steven Ayres and Rachael Cox (Committee Specialists), Kingsley Boateng and Claire Cozens (Inquiry Managers), Zac Mead (Senior Committee Assistant), Rowena Macdonald (Committee Assistant), Paul Hampson (Committee Support Assistant), and Estelle Currie (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Business, Innovation and Skills Committee/International Development Committee, House of Commons, London SW1A 0AA. The telephone numbers for general enquiries are 020 7219 5777/1223; the Committees' email addresses are biscom@parliament.uk/indcom@parliament.uk.

Contents

Summary	3
1 Introduction	4
Our inquiry	4
Background	5
UK arms exports to Saudi Arabia	5
Allegations of serious violations of International Humanitarian Law	5
Compliance with arms trade law	6
2 The crisis in Yemen	7
A humanitarian emergency	7
The Saudi-led coalition's intervention	8
The conduct of the conflict	9
Cluster munitions	13
Investigations into reports of violations of International Humanitarian Law	15
3 UK interests in the Gulf	22
Instability in the Gulf	22
Defence industry	24
UK support for Saudi Arabia and the coalition in Yemen	27
Recent arms sales to Saudi Arabia	28
Defence engagement	29
4 The UK's legal obligations	32
A global leader in the rule of law	32
A robust licensing regime	33
Assessing risk	34
A chain of responsibility	35
A lack of transparency	36
Suspending licences	37
A role for development	40

Conclusions and recommendations	43
Appendix 1: Chris White MP to Rt Hon Boris Johnson MP	49
Appendix 2: Reply from Tobias Ellwood MP with attached Written Ministerial Statement on Yemen	51
Formal Minutes	55
Witnesses	61
Published written evidence	62

Summary

The conflict in Yemen has had tragic and disastrous effects on the civilian population and on the economic development of the country. The intervention of the Saudi Arabia-led coalition in support of former president Abd Rabbuh Mansur Hadi was supported by the United Nations Security Council and we recognise it as a legitimate operation under the aegis of international law. Saudi Arabia and other members of the coalition are key allies and partners of the United Kingdom in the region, relationships which are of long standing, and defence exports to these countries underpin these relationships.

There have been serious allegations of violations of international humanitarian and human rights law by the Saudi-led coalition in Yemen, including the targeting of civilian areas and medical facilities, and the use of cluster munitions. HM Government appears to have relied on assurances from the Saudi government that the coalition is operating within the boundaries of international law, despite the fact we heard evidence from credible sources to the contrary. Whilst we welcome the progress made by the coalition to establish the mechanisms to conduct investigations, further progress is needed to ensure that investigations are transparent, credible, and published in a timely manner. We recommend that the UK Government offer its support to the coalition where appropriate so that it can meet these ends. The Saudi government has taken too long to report to the UN Human Rights Council the results of its internal investigations into the alleged violations. We believe that an independent, United Nations-led investigation of alleged violations by all parties to the conflict is necessary to supplement the internal investigations of the Saudi-led coalition.

Given that the UK has a long history of defence exports to Saudi Arabia and its coalition partners, and considering the evidence we have heard, it seems inevitable that any violations of international humanitarian and human rights law by the coalition have involved arms supplied from the UK. HM Government has obligations under the Arms Trade Treaty, as well as European and domestic law, to ensure there is no risk that arms it has licensed might be used in contravention of international humanitarian law. We therefore recommend that HM Government suspend sales of arms which could be used in Yemen to Saudi Arabia until the independent, UN-led investigation has come to its conclusions and then review the situation again.

We are grateful for the former Foreign and Business Secretaries' respective offers for CAEC members to have regular meetings with ministers and to visit the Arms Export Policy Department in the FCO and the Export Control Organisation in BIS. However, the Government's arms export licensing regime is relatively opaque to the public, to whom it appears that the Government too often relies on assertion rather than positive evidence. We have made a number of recommendations for measures which could be introduced to make the system of licensing considerably more transparent than is currently the case. This would be a significant step forward in terms of our international obligations, not least under the Arms Trade Treaty, in the creation of which the UK was a leading player.

Finally, we call for the Government to respond in a timely fashion to this Report. This is a pressing issue. We will be seeking an early opportunity to debate our conclusions and recommendations on the floor of the House.

1 Introduction

Our inquiry

1. The Committees on Arms Export Controls are a concurrent meeting of four select committees of the House of Commons—Business, Innovation and Skills; Defence; Foreign Affairs; and International Development—working together to examine the Government’s expenditure, administration and policy on strategic exports, that is, the licensing of arms exports and other controlled goods. The four committees have been cooperating since 1999 as each has an interest in defence exports.

2. Following our re-formation in February 2016, we decided to conduct an inquiry into the use of UK-manufactured arms by the Saudi Arabian-led coalition in the conflict in Yemen. This was in response to public concern that such arms were being used in contravention of international law and the UK’s international, European and domestic obligations. We called for written evidence, looking at the following issues:

- What are the UK’s strategic interests in the Arabian Peninsula and in the wider Gulf region? To what extent and how are those strategic interests being advanced?
- What significance does the region play in terms of the UK defence and security industry?
- Are UK-manufactured arms being used by the Royal Saudi Armed Forces in the conflict in Yemen?
- Have there been any infringements of the UK Government’s criteria for the granting of arms export licences with regard to the use of UK-manufactured arms in Yemen? If so, what should be done as a consequence?
- Should DFID’s formal involvement in granting arms export licences be extended to consider the impact on the sustainable development of both the recipient country and countries where British arms may ultimately be used?

3. We heard evidence from Human Rights Watch, Amnesty International, Saferworld and Oxfam on the crisis in Yemen and the evidence of violations of IHL; from Professor Philippe Sands QC on the findings of his and others’ legal opinion on the lawfulness of UK arms exports to Saudi Arabia in the context of the conflict in Yemen; from ADS, the leading trade body for the aerospace, defence and security industries; from leading experts on our relationship with the Gulf and our arms export policies; and from Ministers from the Foreign and Commonwealth Office, the former Department for Business, Innovation and Skills, the Ministry of Defence and the Department for International Development. We are grateful to all of those who gave oral and written evidence. This Report has been agreed jointly by the Business, Innovation and Skills Committee and the International Development Committee but not the Foreign Affairs Committee nor the Defence Committee.

Background

4. After the Arab Spring protests in Yemen in 2011, the Gulf Cooperation Council (GCC) agreed a transition agreement to transfer power from President Ali Abdullah Saleh, who had been in power since 1978, to his deputy Abd Rabbuh Mansur Hadi. The change in government did not translate into a change in governance and many economic and social problems persisted. As Saferworld reported, “deals made in the post-Saleh transition ultimately entrenched the same kleptocratic elite whose behaviour was driving Yemen into the ground—and Saleh was allowed to remain in Yemen with impunity to wreck further havoc.”¹ The transition unravelled in the autumn of 2014 when the Houthi armed group, with the support of forces loyal to former president Saleh, seized the capital Sana’a and then moved south towards Aden in March 2015, forcing President Hadi into exile in Saudi Arabia. Responding to a request from Hadi, Saudi Arabia formed a 10-member coalition, including Jordan, Egypt, Kuwait, the UAE, Qatar, and Bahrain, amongst other countries, to intervene in Yemen to halt the advance of the Houthis and reinstate the legitimate government. Since 26 March 2015, Saudi Arabia has led the military coalition in an armed conflict in Yemen.

UK arms exports to Saudi Arabia

5. The UK is a major supplier of defence equipment to Saudi Arabia and other countries in the Gulf. Saudi Arabia, the UAE, and Kuwait have been identified as “priority markets” for defence exports with the UK Trade and Investment’s Defence and Security Organisation (UKTI DSO) and in 2015 over 30 per cent of all UK defence exports were licensed to Saudi Arabia. From April to December 2015, these licences included exports exceeding the value of £1.7 billion for combat aircraft and over £1 billion for air-delivered bombs. The Aerospace Industry in the UK is the second largest in the world and the largest in Europe. It employs nearly a quarter of a million skilled and technical workers across the UK with very significant numbers in the North and Midlands. During that period, Saudi Arabia was conducting an aerial campaign over Yemen. The then Foreign Secretary confirmed at the very start of the conflict that the Saudi Royal Air Force were using UK-manufactured arms in Yemen.²

Allegations of serious violations of International Humanitarian Law

6. Civilians have borne the brunt of the conflict in Yemen. Since March 2015, the UN High Commissioner for Human Rights has documented 3,539 civilians killed and 6,268 injured.³ All sides of the conflict are accused of serious violations of International Humanitarian Law (IHL) by the United Nations, other international organisations and non-governmental organisations. These organisations have documented a high number of potential breaches of IHL by the Saudi-led coalition and the Houthis. The Saudi-led coalition has established a Joint Incidents Assessment Team (JIAT), and are investigating allegations of violations of International Humanitarian Law. As of 4 August 2016, the JIAT had reported on nine incidents.

1 Saferworld, [A new war on terror or a new search for peace? Learning the lessons of Afghanistan, Somalia and Yemen](#) (January 2016), p 5

2 “UK ‘will support Saudi-led assault on Yemeni rebels - but not engaging in combat’” The Telegraph, 27 March 2015

3 UN Office of the High Commissioner for Human Rights, [Press briefing note on Yemen](#), 10 June 2016

Compliance with arms trade law

7. UK arms exports are bound by the obligations within the Arms Trade Treaty (ATT), the EU Common Position on Arms Exports and the Consolidated EU and UK arms licensing criteria. Articles 6(3) and 7 of the Arms Trade Treaty, Criteria 2 and 6 of the EU Common Position and Criterion 2(c) all refer to respect of the recipient country for international law and require that export licences are not granted where there is a clear risk that the items might be used in the commission of a serious violation of IHL.

2 The crisis in Yemen

A humanitarian emergency

8. Years of poverty, poor governance and insecurity had left Yemen the poorest country in the Middle East prior to the current crisis. However, the last 16 months of conflict and import restrictions have exacted a heavy toll on the civilian population and development in Yemen. On 1 July 2015, the UN declared Yemen a level 3 crisis, a category reserved for the most severe and large-scale humanitarian crises. It is estimated that some one fifth of people in need around the world as a result of conflict are in Yemen.⁴ The International Development Committee described the situation in Yemen as “one of the worst humanitarian crises in the world, with 82% of the population in need of assistance.”⁵

9. Since 26 March 2015, the UN High Commissioner for Human Rights has documented a total of 3,704 civilians killed and 6,566 injured.⁶ This is equal to thirteen civilian casualties a day.⁷ Amongst those casualties, UNICEF has verified that 1,121 children have been killed and another 1,650 injured.⁸ The UN has confirmed that grave violations against children have increased dramatically as a result of the escalating conflict.⁹ Nearly half of all school-aged children are out of school.¹⁰ 2.8 million people are internally displaced.¹¹ Attacks on health facilities and staff, coupled with a lack of fuel and medicines, have left the health system on the brink of collapse.¹² Over half the population are living in ‘emergency’ or ‘crisis’ levels of food insecurity, with some governorates seeing as much as 70 per cent of their population struggling to feed themselves, which the UN has said shows the “the huge magnitude of the humanitarian crisis in Yemen.”¹³ The crisis has also left the economy “on the verge of total collapse.”¹⁴ A joint report by the World Bank, United Nations, Islamic Development Bank and European Union, published in August 2016, has found that the cost of damage to infrastructure and economic losses has reached \$14 billion.¹⁵ The UN Humanitarian Coordinator for Yemen, Jamie McGoldrick, said that “the scale and intensity of the humanitarian situation here is bleak—and by many measures it’s continuing to get worse.”¹⁶ The level of need is simply staggering.

10. A cessation of hostilities was declared on 10 April 2016, accompanying peace talks in Kuwait, which provided some relief for civilians and improved humanitarian access across the country, although civilian casualties continued to mount during that period: the UN

4 HC Deb, 24 May 2016, [col 404](#) [Mr Dunne]

5 International Development Committee, Fourth Report of Session 2015–16, [Crisis in Yemen HC532](#), Summary

6 UN Office of the High Commissioner for Human Rights, [Press briefing note on Yemen](#), 10 June 2016

7 UN Office of the High Commissioner for Human Rights, [Thirteen civilian casualties a day in Yemen conflict](#), 25 August 2016

8 [Children paying “heaviest price” of Yemen conflict- UNICEF warns amid reports of escalating violence](#), UN News Centre, 9 August 2016

9 UN General Assembly Security Council, [Children and Armed Conflict](#) (20 April 2016), para 164

10 UNICEF ([YEM 0015](#))

11 [“Some 13 million Yemenis need immediate help amid bleak conditions – senior UN relief official”](#) UN News Centre, 16 June 2016

12 UN Office for the Coordination of Humanitarian Affairs, [Humanitarian Needs Overview 2016- Yemen](#) (November 2015), p 20

13 [“More than half of Yemen’s population now food insecure- UN”](#), UN News Centre, 21 June 2016

14 [“Some 13 million Yemenis need immediate help amid bleak conditions – senior UN relief official”](#) UN News Centre, 16 June 2016

15 [“Civil war costs Yemen \\$14 in damage and economic losses- report”](#), Reuters, 17 August 2016

16 [“Some 13 million Yemenis need immediate help amid bleak conditions – senior UN relief official”](#) UN News Centre, 16 June 2016

High Commissioner for Human Rights documented 815 civilian casualties, including 272 deaths and 543 injured, between 11 April and 11 August 2016.¹⁷ Peace talks broke down in early August 2016, at which point hostilities resumed in earnest. Attacks with deadly consequences for civilians have been recorded by both sides to the conflict. The impact of the conflict on basic services, infrastructure and the economy is still being felt and the humanitarian crisis shows little sign of abating; in fact, it continues to get worse.¹⁸ DFID has committed £85 million to the humanitarian response.

The Saudi-led coalition's intervention

11. The escalation in hostilities and in humanitarian need in Yemen can be traced back to the Houthis' armed seizure of the capital Sana'a in September 2014. The UN Panel of Experts on Yemen stated that "The Houthis, acting in consort with their affiliated political organization, Ansar Allah, have gradually assumed control of State institutions and brought about the current crisis."¹⁹ The intervention began in response to the request of Yemeni President Hadi to halt the advance of the Houthi armed group which had forced the legitimate government into exile in Saudi Arabia, and was supported by the UN Security Council. As explained by the Foreign and Commonwealth Office in its evidence to us:

The legal basis for the intervention in Yemen by the Saudi Arabian-led Coalition is host nation consent. President Hadi wrote to the UN Security Council (UNSC) on 24 March 2015 requesting a Chapter VII Resolution "inviting all countries that wish to help Yemen to provide immediate support for the legitimate authority by all means and measures to protect Yemen and deter the Houthi aggression". In that letter, he also informed the Security Council that he had requested assistance from the Arab League and the Gulf Co-operation Council to provide "all means necessary, including military intervention, to protect Yemen and its people from continuing Houthi aggression". In its Resolution 2216, the UNSC noted President Hadi's requests for assistance and also reaffirmed its support for "the legitimacy of the President of Yemen, Abdo Rabbo Mansour Hadi". President Hadi has therefore requested and consented to Saudi assistance in Yemen in broad terms. As such, that consent provides a legal basis for the Saudi military intervention.²⁰

12. We heard that the situation in Yemen would have been much worse than the current humanitarian emergency without the Saudi-led military intervention. As Foreign Office Minister, Tobias Ellwood MP, told us:

However, had the Saudi-led coalition not been formed, the scale of violations of humanitarian law that would have taken place in Yemen would have been 10 times worse. The Houthis would have managed to get all the way down to

17 UN Office of the High Commissioner for Human Rights, [Press briefing note on Yemen](#), 12 August 2016

18 "[Some 13 million Yemenis need immediate help amid bleak conditions – senior UN relief official](#)" UN News Centre, 16 June 2016

19 [Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 \(2014\)](#)

20 Foreign and Commonwealth Office ([UKY 0013](#)) para 28

the port of Aden and we would have had a completely failed state, far worse than the humanitarian catastrophe that is currently taking place, and despite the civil war that is actually there.²¹

Sir Simon Mayall, a former Middle East adviser to the MoD, further outlined the consequences of non-intervention:

If the Saudis had not intervened in Yemen, a combination of Iranian-backed Houthis, AQAP [al-Qa'eda in the Arabian Peninsula] and ISIS would have led to another awful bleeding sore, as we have seen in Syria. As William Hague said yesterday, yes, there is a price for intervention, but there is a price to be paid for non-intervention. The fact that we are going to thwart, I hope, Iranian ambition in Yemen and we have pushed AQAP out of Mukalla is only as a result of Saudi Arabian intervention [...] It is a matter of national importance to the Saudi Arabians to intervene in Yemen. We should be grateful, otherwise we would end up with another Iranian satrapy on the Bab el Mandeb.²²

13. The International Committee of the Red Cross has noted that the obligation to have respect for and ensure compliance with IHL is “binding upon States involved in multinational operations, as well as on the International Organisations under whose auspices multinational operations are undertaken”.²³

14. We agree that there is a legal basis for the Saudi-led intervention in Yemen and the legitimate need to quell the armed uprising of the Houthi rebels. We also agree that the UK has an interest in preventing the further deterioration of the humanitarian situation in Yemen that would accompany Houthi expansion in the country. There is also a security interest in denying extremist militant groups such as AQAP further space to operate in Yemen. However, the fact that the UN Security Council has conferred legitimacy on the military intervention does not automatically endorse the conduct of the coalition, as we explore below.

The conduct of the conflict

15. The UN has described a “particularly worrisome escalation of conflict”²⁴ which has been seen in Yemen. The intensity of the bombing campaign has attracted particular attention. As the UK Working Group on Arms wrote in its evidence to us:

Of notable concern is the pattern of harm resulting from the use of explosive weapons in populated areas, including aircraft bombs, rockets and mortars. This practice puts the civilian population at considerable risk of death and injury and has a serious negative impact on communities. A report produced by Action on Armed Violence (AOAV) and UN OCHA analysing violence in Yemen between 1 January and 31 July 2015 showed that explosive weapons

21 Q204

22 Q134

23 International Committee of the Red Cross, [International humanitarian law and the challenges of contemporary armed conflicts](#) (October 2015), p 25

24 United National General Assembly Security Council, [Children and Armed Conflict: Report of the Secretary-General](#) (20 April 2016), para 6

killed and injured 4,493 civilians in that time period. When aerial bombing took place in populated areas civilians made up 93 per cent of resulting deaths and injuries.²⁵

16. The AOAV report also recorded in 2015 more civilian deaths and injuries reported from explosive weapons in Yemen than in any other country in the world.²⁶ Aerial bombing by the Saudi-led coalition was responsible for 60 per cent of civilian deaths and injuries from explosive weapons in Yemen.²⁷ In its written evidence to us, Article 36 adds that “in recent airstrikes on crowded market places in Sana’a and Hajja governorates in February and March, at least 145 civilians were killed, including 33 children. The UN High Commissioner for Human Rights condemned the attacks and noted that the distinction between legitimate military targets and civilian ones by coalition forces is at best woefully inadequate and that these incidents may constitute international crimes.”²⁸

17. International Humanitarian Law (IHL) is based on the principles of distinction, proportionality and precaution. The principle of distinction obliges parties to a conflict to target only military objectives and not the civilian population or individual civilians or civilian objects (e.g. homes, schools and hospitals). The principle of proportionality limits and protects potential harm to civilians by demanding that the least amount of harm be caused to civilians and, when harm to civilians must occur, it must be proportional to the military objective. Moreover, each party to the conflict must take all feasible precautions to protect the civilian population and civilian objects under its control against the effects of attacks.²⁹ Therefore, evidence of civilian casualties cannot be equated with evidence of violations of IHL. There is compelling evidence of systematic violations of IHL committed by both sides to the conflict. However, as the UK does not supply arms to the Houthis or other armed opposition groups, this Report will focus on the Saudi-led coalition airstrikes in Yemen.

18. On 2 June 2016, the United Nations published its annual report on Children and Armed Conflict, in which it highlighted the worrying situation in Yemen as well as the Saudi-led coalition’s role:

The United Nations verified a sixfold increase in the number of children killed and maimed compared with 2014, totalling 1,953 child casualties (785 children killed and 1,168 injured). More than 70 per cent were boys. Of the casualties, 60 per cent (510 deaths and 667 injuries) were attributed to the Saudi Arabia-led coalition and 20 per cent (142 deaths and 247 injuries) to the Houthis [...] The United Nations verified 101 incidents of attacks on schools and hospitals, which is double the number verified in 2014. Of the attacks, 90 per cent caused the partial or complete destruction of schools or health facilities, while the remaining 10 per cent involved attacks on protected personnel, including students. Of the attacks on schools and hospitals, 48 per cent were attributed to the coalition, 29 per cent to the Houthis and 20 per cent to unidentified perpetrators.³⁰

25 The UK Working Group on Arms (UKY 0012) para 17

26 Action on Armed Violence and UN OCHA, [State of Crisis: Explosive Weapons in Yemen](#) (September 2015), p 3

27 Action on Armed Violence and UN OCHA, [State of Crisis: Explosive Weapons in Yemen](#) (September 2015), p 7

28 Article 36 (UKY 0010) para 9

29 UN Security Council, [Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 \(2014\)](#) (26 January 2016), para 123

30 UN Security Council, [Children and armed conflict: Report of the Secretary-General](#) (20 April 2016), paras 167-169

The same report also found a “fivefold increase in cases of recruitment and use of children by armed groups [...] Of the 762 verified cases of recruitment of children (all boys), the majority were attributed to the Houthis (72 per cent).³¹

19. In a report prepared for the UN Security Council by the Panel of Experts on Yemen in January 2016, 119 coalition air sorties relating to potential violations of IHL were identified:

The Panel documented that the coalition had conducted air strikes targeting civilians and civilian objects, in violation of international humanitarian law, including camps for internally displaced persons and refugees; civilian gatherings, including weddings; civilian vehicles, including buses; civilian residential areas; medical facilities; schools; mosques; markets, factories and food storage warehouses; and other essential civilian infrastructure, such as the airport in Sana’a, the port in Hudaydah and domestic transit routes.³²

20. The Panel further noted the coalition’s designation of the entire city of Sa’dah and region of Maran as military targets, confirming that “entire cities or governorates cannot be considered military targets, even with attempts to provide advance warning.”³³ The UK Government’s response to the UN Panel of Experts report has been to underline that the experts did not enter Yemen but relied on satellite imagery,³⁴ a criticism Tobias Ellwood MP repeated in his evidence to our inquiry.³⁵ However, much evidence of IHL violations have been documented by organisations on the ground in Yemen. David Mepham, UK Director of Human Rights Watch, told us about the evidence they had documented:

We have been to the 36 sites; we have looked at the evidence and talked to eyewitnesses; we have talked to bystanders and looked at photographic evidence, where it has been available; and we have looked at the satellite imagery. Lawyers have pored all over it, and we are very confident that in the 36 cases we have documented—there may be a considerable number of further cases—violations of IHL have taken place.³⁶

21. Amnesty International told us about the similar process they had gone through in documenting a further 30 examples of IHL abuses, in which “the laws of war have been violated, in particular the key principles of proportionality and distinction and the steps taken to minimise civilian casualties.” We heard about one example between May and July 2015 in the Sa’dah region, where a series of strikes resulted in the deaths of 100 civilians, 55 children and 22 women. Therefore, the majority of deaths in those particular strikes were women and children.³⁷

31 As above, para 165.

32 UN Security Council, [Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 \(2014\)](#) (26 January 2016), para 137

33 UN Security Council, [Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 \(2014\)](#) (26 January 2016), para 129

34 HC Deb, 28 Jan 2016, [col 428](#) [Mr Ellwood]; HC Deb, 22 Mar 2016, [col 517WH](#) [Mr Ellwood]

35 Q191

36 Q3

37 Q8

22. Together, Human Rights Watch and Amnesty International documented a case in September 2015 in which the remnants of a British-supplied cruise missile had been identified from a strike on a ceramics factory. Evidence of all of the above airstrikes have been shared with the British and Saudi authorities, as David Mepham told us:

I was at a meeting with [the Foreign Secretary] several months ago when I gave him copies of our report and said, “These are the GPS coordinates; these are the strikes; these are the markets and schools that were hit.” Therefore, he has that evidence. The Foreign Office has had that evidence for months. It is extraordinary that the line comes back that they do not have evidence, when that evidence has been shared with them for a considerable period of time.³⁸

23. It has been noted by a number of sources that the UK Government frequently cites Human Rights Watch and Amnesty International evidence in other conflicts, such as Syria, but in Yemen the Government appears to be relying on assurances from the Saudi authorities.³⁹ In her written evidence to us, Dr Anna Stavrianakis of the University of Sussex states:

The UK government is thus currently both refusing to respond to published, documented evidence provided by independent experts; and relying on secret claims provided by the Saudi military. This creates an information black hole that makes it impossible for CAEC or other independent observers to properly assess UK government policy and hold it to account.⁴⁰

24. As we heard from Professor Philippe Sands QC, in his opinion the Government should be cautious about relying on assurances from the Saudis:

The essence of our position is this. In the face of the overwhelming evidence of what is happening on the ground as a consequence of coalition attacks, as well as attacks from the other side—from the Houthi forces—it appears clear that the coalition forces are engaged in violations of international humanitarian law. In those circumstances, an assurance such as that at paragraph 6.28,⁴¹ given by the Saudis, does not appear to be worth the paper it is printed on. If I were a Minister, I would be extremely anxious and worried about relying on such an assurance in the face of a report by a Security Council group of experts that makes it clear that the assurance is not accurate.⁴²

Ministers’ assurances were subsequently undermined by the corrections made by the FCO on 21 July 2016 to statements and written answers given by Ministers over the previous seven months to clarify that the Government does not in fact assess whether breaches of IHL have taken place (as discussed in paragraph 40).

38 Q4

39 “[Dead Civilians, Uneasy Alliances, and the Fog of Yemen’s War](#)”, Vice News, 11 March 2016; oral evidence taken before the International Development Committee on 27 January 2016, HC (2015–16) 532, Q9 (Mr Isbister); UK Working Group on Arms ([UKY 0012](#)) para 7

40 Dr Anna Stavrianakis ([UKY 0003](#)) para 8

41 Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ni Ghralaigh, [Legal Opinion: the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen](#), 11 December 2015, para 6.28

42 Q82

25. We have heard evidence of serious breaches of IHL by both sides of the conflict. The warring parties have potentially not adequately distinguished between civilian and military targets, which has caused enormous suffering; civilians account for half of those killed, and nearly three million people have fled their homes.⁴³ The UK Government has not responded to allegations of IHL breaches by the Saudi-led coalition in any meaningful way and we are concerned that our support for the coalition, principally through arms sales, is having the effect of conferring legitimacy on its actions. *We recommend that the Government press all parties to the conflict to comply with IHL to minimise harm to civilians and protect civilian infrastructure and continue to monitor the situation closely, with an on-going review of evidence provided by a range of sources.*

Cluster munitions

26. Human Rights Watch reported on 14 February 2015 that the Saudi-led coalition were using cluster munitions supplied by the United States in Yemen. It was noted in the UN Panel of Experts report that the military spokesman of Saudi Arabia, Brigadier General Ahmed Asiri, had indicated that Saudi Arabia had used cluster munitions on or against armoured vehicles in Yemen.⁴⁴ The UN High Commissioner for Human Rights has also verified reports of cluster munitions dropped by coalition forces and resulting in civilian casualties.⁴⁵ We were told that the UK has not supplied cluster munitions to Saudi Arabia “for many decades”.⁴⁶ The UK has not supplied, maintained or supported these weapons since signing the Convention on Cluster Munitions in 2008. Even though neither the US, Saudi Arabia, nor Yemen are signatories to the convention, the coalition’s alleged use of these weapons might contravene IHL and is significant for the UK Government which, as a signatory, is obliged to do all they can to prevent the use of cluster munitions in armed conflict. As Oliver Sprague from Amnesty International explained:

It is important in two ways. First, as a general view on the conduct of the hostilities, the UK is clearly saying that cluster munitions are a prohibited weapon and they can never have a legitimate use in conflict because of their disproportionate effect on civilians. Therefore, if an armed force is deploying those weapons, it should ring very clear alarm bells about the conduct of that armed force in relation to that conflict.

The second point is the legal position of the UK on the provision of cluster munitions. If you look at the cluster munitions treaty, it is very clear in its obligations. It is not just about whether the UK is being used to deploy them or selling them; it is about whether the UK is facilitating their use. That is not just whether it is on aircraft; it is UK personnel. My earlier point was that that is a question for the Government. The Government need to be very clear about what steps they have taken in this conflict to ensure that they are fulfilling their obligations under the cluster munitions treaty. Secondly, by using these weapons, Saudi Arabia and its allies are demonstrating a casual disregard for

43 [“Some 13 million Yemenis need immediate help amid bleak conditions – senior UN relief official”](#) UN News Centre, 16 June 2016

44 UN Security Council, [Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 \(2014\)](#) (26 January 2016), para 130

45 Report of the UN High Commission for Human Rights “Situation of human rights in Yemen” (4 August 2016), paras 33-36

46 Q187 [Mr Dunne]

the rules of war, which should be a very important and significant factor in the UK's decision whether or not to supply weaponry to them, given the examples of how they are being used.⁴⁷

27. From a legal perspective, Professor Philippe Sands QC agreed that the reports on the coalition's use of cluster munitions needed to be considered further by the UK Government:

It is certainly a factor that could be taken into account. I do not think that it is likely to be a dispositive factor as such. However, if a country uses weaponry of a particular kind, in particular circumstances, when it ought not to be doing so, one would form the impression that it is more likely to be doing other things that it ought not to be doing. That would push HMG to look with greater care at whether it is appropriate in all the circumstances to be contributing, where that is happening.

It is an interesting question. I would put it this way. You cannot say that it is irrelevant and you cannot say that it is dispositive, but it is certainly a factor I would want to know more about.⁴⁸

28. On 23 May 2016, Amnesty International reported that they had identified and documented a UK-supplied BL-755 cluster munition used by the coalition on farmland in a village in northern Yemen.⁴⁹ In response to the Amnesty International report, the then Foreign Secretary told the House of Commons that the Government had had assurances from Saudi Arabia that cluster munitions had not been used in the conflict in Yemen, but that the MoD would be urgently investigating the allegations.⁵⁰ However, the MoD confirmed they were not conducting any investigation,⁵¹ beyond calling for assurances from the Saudis. As the then Minister for Defence Procurement, Philip Dunne MP, responded to an Urgent Question in the House:

Based on all the information available to us, including sensitive coalition operational reporting, we assess that no UK-supplied cluster weapons have been used, and that no UK-supplied aircraft have been involved in the use of UK cluster weapons, in the current conflict in Yemen [...] The Saudis have previously denied using UK cluster munitions during the conflict in Yemen, but we are seeking fresh assurances in the light of this serious new allegation.⁵²

29. Tobias Ellwood raised cluster munitions (CM) in a letter to us on 18 May 2016, in which he confirmed that "the UK did provide CM to Saudi Arabia in the 1990s, but we understand that none of these CM have been used in Yemen and no UK-supplied aircraft have been used to deploy CM in Yemen."⁵³ The evidence published by Amnesty International, five days after this letter was sent, raises serious questions about the Government's understanding both in terms of the use of cluster munitions by the coalition in Yemen and the use of UK-supplied aircraft in deploying them.

47 Q37

48 Q77

49 "[Saudi Arabia-led coalition has used UK-manufactured cluster bombs in Yemen: new evidence](#)", Amnesty International UK, 23 May 2016

50 HC Deb, 24 May 2016, [col 395](#) [Mr Hammond]

51 HC Deb, 8 June 2016, [cols 126-7WH](#)

52 HC Deb, 24 May 2016, [col 401](#)

53 FCO supplementary evidence ([UKI 0018](#))

30. Both Amnesty International and Human Rights Watch have documented evidence of the Saudi-led coalition's use of cluster munitions in populated, civilian areas in Yemen. Cluster munitions are banned under the Convention on Cluster Munitions, to which the UK is a signatory, although Saudi Arabia is not. That notwithstanding, Saudi Arabia's reported use of cluster munitions in populated areas in Yemen would contravene IHL and calls into question the coalition's wider respect for the rules of war. Evidence of a UK-supplied cluster munition dropped by the coalition in Yemen means this is a matter which the UK Government must address.

31. *We do not believe that the UK Government can meet its obligations under the Convention on Cluster Munitions by relying on assurances from the Saudis. We recommend that the MoD carry out its own investigation into the purported use by the coalition forces of a UK-supplied cluster bomb, further to evidence found in Yemen. We also recommend that the Government, as a signatory to the Convention on Cluster Munitions, set out the steps it has taken not only to make sure UK-supplied aircraft and UK personnel are not in any way implicated in the use or deployment of these weapons, which is prohibited under the Convention, but also the steps it has taken to stop Saudi Arabia from using cluster munitions.*

Investigations into reports of violations of International Humanitarian Law

32. It was noted by the International Development Committee that a proposal for an international independent mechanism for investigating violations of IHL in Yemen was tabled by the Netherlands at the UN Human Rights Council meeting in September 2015, but was not adopted in favour of a Saudi text which did not include any reference to an independent inquiry.⁵⁴ The UK supported the Saudi proposals that they investigate violations of IHL attributed to them in the first instance. As Tobias Ellwood told us:

What Britain did, along with other nations, was to make sure that the text provided was eventually agreed unanimously, and that meant the onus was on the Saudis initially to do the investigation. I make it very clear that this is nothing new. When other countries, including ourselves, are in operations overseas and mistakes—collateral damage—take place, the country that is responsible conducts its own independent inquiry and presents the results.⁵⁵

Members of the Saudi-led coalition including Saudi Arabia, the United Arab Emirates, Kuwait, Bahrain, Qatar, and Yemen, formed the Joint Incidents Assessment Team (JIAT) to investigate allegations of breaches of international humanitarian law in Yemen. Witnesses to the inquiry have questioned the efficacy and transparency of the JIAT, and have raised concerns about the time it has taken for the JIAT to publish its work.⁵⁶

⁵⁴ International Development Committee, Fourth Report of Session 2015–16, [Crisis in Yemen](#), HC 532, para 51

⁵⁵ Q170

⁵⁶ Q3, and UN Office of the High Commissioner for Human Rights, Zeid condemns repeated killing of civilians in Yemen airstrikes, 18 March 2016

33. The Saudi authorities announced on 31 January 2016 the results of an investigation into the October 2015 airstrike on a Médecins Sans Frontières (MSF) facility in Sa'ada. Tobias Ellwood wrote to us about the steps taken by the Saudis following this investigation⁵⁷, as follows:

- Inviting MSF to Riyadh to discuss the incident and agree on new measures, including a hot line to MSF and greater protection for hospitals;
- Setting up a new investigation team outside Coalition Command to review all existing procedures and suggest improvements;
- Improving Saudi procedures on rules of engagement and targeting;
- Ensuring that people on the ground who are providing intelligence to Coalition forces are aware of all protected sites on the no strike list and have better means of communicating information to pilots; and
- Providing additional IHL training for Saudi officers and pilots, including courses supported by the US and UK.

On 4 August 2016 the Joint Incidents Assessment Team (JIAT), comprising 14 members from coalition states, reported its conclusions to eight further incidents they had investigated. The JIAT found that the coalition had abided by military rules of engagement in six out of the eight incidents and in only one of the instances in which errors were made were there civilian casualties and therefore reparations required. The JIAT reported that “Coalition forces are committed to observing the rules laid down in international conventions on humanitarian law and in particular not directly targeting civilians during military operations and take all measures to preserve their safety and lives.” The JIAT’s legal adviser said that the work of the JIAT in assessing the incidents “depends on ensuring the legal aspects of target operations that are compatible with the international law, and on using the American and British mechanism to assess accidents in addition to the law of armed conflict.”⁵⁸ On the same date, the UN High Commissioner for Human Rights (OHCHR) completed his report on the human rights situation in Yemen. Despite the cooperation between the OHCHR and the Yemeni national commission and Saudi investigations, there are a number of inconsistencies between the High Commissioner’s findings and those of the JIAT. For example, both the OHCHR and the JIAT reported on an airstrike which hit a wedding party in Dhamar Governorate on 7 October 2015. Witnesses told the UN that military aircraft dropped two missiles resulting in the complete destruction of a two-story house, at the precise time in which invitees had lined up to welcome the three grooms and their brother to the ceremony. This resulted in the killing of 47 civilians, including 21 women and 15 children, and 58 wounded, including 18 women and 16 children.⁵⁹ The JIAT found no evidence of any airstrikes on 7 October; instead they reported that there had been an air raid on the road connecting Dhamar-Rida’a to Al Bayda’a which had targeted a camp of armed vehicles and no civilian centres. Mr Ellwood admitted:

57 FCO supplementary evidence ([UKY 0018](#))

58 [Saudi Arabian Embassy media statement](#), 5 August 2016

59 Report of the UN High Commission for Human Rights “Situation of human rights in Yemen” (4 August 2016), Annex 1C

I share the Committee's frustration that that information has been slow to come forward. This is a nation that is not used to sharing information in this manner and to having to expose internationally the details of what it does. This is the first time it has had to do sustained warfare. It must look up and answer to the international standards that we expect. We will make it very clear if we feel that it does not meet those standards, but we require time, and Saudi Arabia will require time, to provide the analysis that needs to be done in all these cases.⁶⁰

34. The Yemeni National Commission of Inquiry was due to report on their investigations to the UN Human Rights Council in March 2015; instead, they agreed to provide an update later in the year. Mr Ellwood told the House on 4 July 2016 that they would now report back to the next session of the Human Rights Council in September⁶¹—12 months since the commission of inquiry was set up and six months after the original deadline. Mr Ellwood also told us about an Independent Committee with foreign advisors to investigate Saudi Arabian military activity in Yemen which was announced on 29 February 2016 and which the Minister expected would shortly begin work when he wrote to us on 18 May 2016.⁶² As a report on the Yemen crisis for VICE News in the US explained:

Mike Newton, a former US soldier and military lawyer and one of the leading American authorities on international humanitarian law, quibbles with the way groups like Amnesty International and Human Rights Watch interpret humanitarian law. For human rights organizations, establishing what appears to be a widespread pattern of indiscriminate attacks that cause large numbers of civilian casualties is enough to prove the law has been broken. But under the complex legal framework involved in such cases, Newton says, rights organizations would have to have highly precise details from the ground and from inside the coalition operations center, which they almost certainly do not.⁶³

This process was clarified to us by Mr Ellwood, who said:

With any information that is provided to us via NGOs on the ground or, indeed, a UN expert panel, we must make sure that the Saudi independent investigations committee has the opportunity to investigate and make a report. Yes, it has been slow—far too slow—and they must improve. They have not had experience of this. They will report back and we will then make a judgment.⁶⁴

35. However, by repeatedly insisting that all UK extant arms licences to Saudi Arabia are compliant with the UK's legal obligations, the UK Government is making a judgement: that there is no risk that arms sold to Saudi Arabia will be used to violate IHL in Yemen. The then Minister for Defence Procurement, Philip Dunne, told us how the UK Government was able to make that judgement:

When an incident is brought to our attention, whether by the Saudis or by NGOs, we seek access to the operational reports which, as I have explained, the

60 Q204

61 [PQ 41351](#) [on Yemen: armed conflict], 4 July 2016

62 Letter from Tobias Ellwood, dated 18 May 2016

63 VICE News, '[Dead Civilians, Uneasy Alliances, and the Fog of Yemen's War](#)', 11 March 2016

64 Q194

Saudis are willing to provide to us. We look at our own sources of information to see whether there is any information to which we have access from our own sources that might provide more or corroborating information in relation to the incident. Then we analyse that to see whether or not the incident appears to have involved a strike from the air and whether or not that strike might have been caused by weapons that we have supplied. We form an analysis in that regard, in relation to potential incidents, and encourage the Saudi armed forces to do their own investigation, to see whether they think that incident is or is not compliant with IHL.⁶⁵

36. In its evidence to this inquiry, the Foreign and Commonwealth Office explained the basis for their judgement that arms export licences to Saudi Arabia are compliant with the UK's export licensing criteria:

In particular we note that: (1) the Saudi-led Coalition is not targeting civilians; (2) Saudi Arabian processes and procedures have been put in place to ensure respect for the principles of IHL; (3) Saudi Arabia is investigating incidents of concern, including those involving civilian casualties; (4) Saudi Arabia has throughout engaged in constructive dialogue with the UK about both its processes and incidents of concern; (5) Saudi Arabia has been and remains genuinely committed to IHL compliance. The Government is currently satisfied that extant licences for Saudi Arabia are compliant with the UK's export licensing criteria.⁶⁶

Human Rights Watch wrote to the then Foreign Secretary to contest each of the above five points.⁶⁷ When asked about the first point, Professor Philippe Sands QC told us that it depended on the meaning of "They are not targeting civilians". He argued that while it was unlikely that the Saudi authorities were identifying groups of civilians and targeting them, they were bombing entire towns or entire areas and that that is on its face a violation of international humanitarian law.⁶⁸

37. David Mepham of Human Rights Watch described the claim that Saudi Arabia has been and remains genuinely committed to IHL compliance as "remarkable"⁶⁹ given the scale of civilian casualties from airstrikes in Yemen. He told us that, even under increased international scrutiny, Saudi conduct in Yemen had not changed:

The pattern of indiscriminate attacks we have described has continued. There was discussion the other day with the Saudis suggesting they may be trying to scale back their military offensive, but the bombs continue to fall. A press release put out by the UN High Commissioner for Human Rights talked about a strike that took place last week that killed 106 civilians in a crowded village market in north-western Yemen [...] So I do not think there has been a change in the pattern of their conduct in this conflict.⁷⁰

65 Q165

66 Foreign and Commonwealth Office ([UKY 0013](#)), para 45

67 Human Rights Watch, [HRW letter to British Foreign Secretary Philip Hammond](#), 4 May 2016

68 Q66

69 Human Rights Watch, [HRW letter to British Foreign Secretary Philip Hammond](#), 4 May 2016

70 Q44

A continuation of Saudi conduct was evident following the collapse of peace talks in early August 2016, when there was a swift escalation of hostilities and the resumption of reports of civilian deaths. In particular, on 15 August 2015, at least 19 people were reported killed and 24 injured in an airstrike by the Saudi-led coalition on a hospital in Hajjah governorate supported by Médecins Sans Frontières.⁷¹ This followed airstrikes the previous week on a school in northern Yemen that killed 10 children and wounded 28 others, and on a potato-crisp factory which killed 14, mostly women.⁷²

38. In response to the Hajjah airstrike, the fourth on an MSF facility in Yemen, MSF announced that it was evacuating its staff from the six hospitals it supports in Northern Yemen. MSF explained:

Given the intensity of the current offensive and our loss of confidence in the Coalition's ability to avoid such fatal attacks, MSF considers that the hospitals in Saada and Hajjah governorates are unsafe for both patients and staff. The decision to evacuate the staff, which include obstetricians, pediatricians, surgeons and emergency room specialists, from a project is never taken lightly, but in the absence of credible assurances that parties to a conflict will respect the protected status of medical facilities, medical workers, and patients, there may be no other options. This is the case in Hajjah and in Saada governorate based on recent events.⁷³

They repeated the need for an independent investigation, adding that previous coalition investigations related to MSF facilities have not been shared with MSF.

39. It is challenging for us effectively to scrutinise claims that extant licences for Saudi Arabia remain compliant with the UK's export licensing criteria as the Government has provided very little evidence in response to reports of IHL violations and is relying on information and reports from the Saudis to which independent observers are not privy. As we heard from Dr Anna Stavrianakis, "The Government's response thus far has been to say, "We have a policy. It's okay," or, "We've been reassured by the Saudis. It's okay," but there is a whole series of credible allegations the Government have simply not responded to."⁷⁴ She questioned why the Government had not responded to these criticisms and why it had not provided any evidence to refute them. Statements and assurances from the Government that there is no evidence of breaches of IHL by the Saudi-led coalition, and that UK arms licences to Saudi Arabia remain compliant with the UK's obligations, were brought into question when the Foreign and Commonwealth Office released a written statement on 21 July 2016 to correct statements and written answers made by three Ministers in the Department, including the Foreign Secretary, between January and June 2016. The corrections suggest that the assessments the Government told us it conducts into evidence of breaches of IHL, set out in detail by Philip Dunne in paragraph 35, have not in fact taken place. Statements made by the Foreign Secretary have been changed from "we have assessed that there has not been a breach of IHL by the coalition" and "our judgement is that there is no evidence that IHL has been breached", to "we have not assessed" and "we have been unable to assess" that there has been a breach of IHL by the coalition.

71 <http://www.msf.org.uk/article/yemen-msf-withdraws-its-teams-from-six-hospitals-in-north-yemen>

72 <https://www.theguardian.com/world/2016/aug/15/saudi-led-air-strike-yemen-hospital-kills-at-least-seven>

73 <http://www.msf.org.uk/article/yemen-msf-withdraws-its-teams-from-six-hospitals-in-north-yemen>

74 Q151

40. A statement made by the then Foreign Office Minister, the Rt Hon David Lidington MP, was corrected to remove any reference to an MOD assessment of whether the coalition is acting in breach of IHL. A statement by Tobias Ellwood MP was amended along similar lines changing “we are doing our own assessments to understand whether the equipment we sell has any participation in that and indeed whether the breaches are by the Houthis or the Saudi Arabians”, to “We encourage the Saudis to conduct their own investigations to understand whether the equipment we sell has any participation in that and indeed whether the breaches are by the Houthis or the Saudi Arabians.”⁷⁵ These are significant changes to the evidence the Government has given to us and the House regarding their assessment of IHL compliance in Yemen. In his response to an Urgent Question in the House on this issue on 5 September, the Minister, Tobias Ellwood, did not provide further clarity to that given in his original Written Statement and accompanying letter to the Committee Chair.⁷⁶ These corrections not only damage confidence in cross-Whitehall co-ordination and competence but, more importantly, undermine the Government’s view that there is no clear risk that UK arms licensed to Saudi Arabia will be used in violations of IHL in Yemen.

41. We were told that an international independent investigation into reports of violations of IHL is the most appropriate means for verifying incident information in a transparent and credible way. David Mepham of Human Rights Watch stressed to us the importance of an international and independent investigation in order to establish the facts. He pointed out that the UK Government had championed such an investigation in Sri Lanka at the same Human Rights Council meeting at which the Dutch proposal for an inquiry in Yemen was blocked.⁷⁷

42. The reports of potential violations of IHL in Yemen since September 2014 have been widespread, with both parties to the conflict being accused of failing to take the necessary and proportionate precautions to protect civilians. We are not convinced that Saudi Arabia is best placed to investigate reports of IHL breaches and their lack of progress in reporting findings only confirms our concerns that they are obstructing the process. Since September 2015, the Saudis have announced the results of nine investigations, despite having received evidence of at least 185 incidents from the UN, Human Rights Watch and Amnesty International. Moreover, a number of the Saudi investigations reported results which contradict evidence documented by the UN. This raises concerns about the credibility of the process. Following the FCO corrections to written answers and statements made by Ministers on the conflict in Yemen, it is unclear what analysis the Government has undertaken to assess the risk that UK arms transfers to Saudi Arabia might be used in breach of IHL. Without credible investigations, neither the Saudi-led coalition nor the Houthis are being held accountable for their actions and it is Yemeni civilians who bear the consequences.

43. We welcome the progress that has been made to date by the Saudi-led coalition establishing the mechanisms to investigate allegations of violations of International Humanitarian Law. However, further progress is needed to ensure that JIAT is transparent, credible, and publishes its investigations in a timely manner. We recommend that the UK Government offer its support to the JIAT where appropriate so that it can meet these ends. We also believe that an independent, United Nations-led investigation

75 HCWS125

76 HC Deb, 5 September 2016, cols 25-37; Appendix 2

77 Q53

of alleged violations by all parties to the conflict is necessary to supplement the internal investigations of the Saudi-led coalition. We recommend that the UK Government support calls for the establishment of such an investigation as a matter of urgency.

3 UK interests in the Gulf

44. As the National Security Strategy and Strategic Defence and Security Review 2015 (SDSR) outlines, “strong alliances and partnerships worldwide are more important than ever. In almost every aspect of our national security and prosperity, we must work with others, not because we cannot work alone, but because the threats and opportunities are global.”⁷⁸ The Defence Secretary set out the UK’s interests in the Middle East in evidence to the Defence Committee:

The Middle East, and North Africa to some extent, are fundamental to this country’s security, stability and prosperity. We rely on a series of partnerships in the region to help us manage threats from the region—crime, terrorism and now the challenge of migration—but we also need to ensure that the energy supplies that we rely on are secure and that our trade routes are secure, and that is why we maintain a credible and persistent defence presence in the region. This is a region that is extremely important to both our security and our economy.⁷⁹

The then Minister for Defence Procurement, Philip Dunne, detailed further the importance of the region from a defence perspective:

In relation to Ministry of Defence support for military activities, we have some of our closest relationships with Gulf nations, in terms of training, exercising and now operations. The Kingdom of Saudi Arabia, specifically, is an important member of the coalition against Daesh in which we have been participating over Iraq and, more recently, over Syria. It is very important to us that the stability of the region is maintained by encouraging military stability there.⁸⁰

Instability in the Gulf

45. The region is going through a period of instability. As Sir Simon Mayall wrote in his evidence to our inquiry:

After the chaos of Iraq, the continuing reverberations of the ‘Arab Spring’, the Syrian civil war, the rise of Da’esh, and the related terror and refugee crises in Europe, I remain amazed that there are still people that believe that pursuing policies and actions that unsettle and undermine the confidence and stability of our Gulf allies is a sound course of action.⁸¹

Sir Simon described the Gulf as “a region that, more than ever, needs help to combat internal threats, and to deter external challenges.” He argued that the UK, while not being a simply “uncritical onlooker”, had to present itself as a “reliable and understanding friend” to allies concerned about their own security.⁸² Michael Stephens, Research Fellow at RUSI, reiterated the point that the UK should reassure and support Gulf allies, in which military assistance and arms sales have a part to play:

78 National Security Strategy and Strategic Defence and Security Review 2015, [cm 9161](#), November 2015, para 5.18

79 Oral evidence taken before the Defence Committee on 26 May 2016, [UK military operations in Syria and Iraq](#), HC (2016–17) 106, Q382 [Mr Fallon]

80 Q153

81 Lieutenant General (Retd) Sir Simon Mayall KBE CB ([UKY 0015](#)) para 8

82 Lieutenant General (Retd) Sir Simon Mayall KBE CB ([UKY 0015](#)) paras 1 and 6

The Gulf states as a bloc require a certain amount of reassurance, in the form of security guarantees and continued high-level access from members of the British Government, to feel that they are valued partners in a geostrategic relationship in which they have some severe security concerns that they feel have not been addressed sufficiently by either the United States or the United Kingdom. [...]. At times when the Gulf states feel more secure, especially because of our reassurances to them, there is a financial response. It can come in the form of defence sales, increased guarantees of investment in the United Kingdom and preferential viewing of our industry and our expatriate community above that of some of our competitors.⁸³

46. Transparency International, on the other hand, wrote that the instability of the Gulf states should be a red flag for arms exports. It argued that governments with weak control over their security sectors are highly unreliable partners for the UK, and that such regimes were, in fact, the sources of likely future security crises, as we have seen happen in Syria and Libya.⁸⁴

47. In order to mitigate the risks of arms sales to territories viewed as unstable, criterion 5 of the consolidated EU and UK arms licensing criteria states explicitly that the defence and strategic interests of the UK or its allies “cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability.”⁸⁵

48. The Gulf is a region where the UK’s security and prosperity agendas overlap. It is in the UK’s strategic interests to support a secure, prosperous and politically stable Gulf and we recognise that military support and arms sales play a key role in that. However, our relationships in the region, particularly in terms of arms sales can counterpose our interests—understood as security, stability, jobs and prosperity—against our values of respect for international law. There are also pragmatic judgements to be made about how to advance our values in a region where revolutionary or imposed changes of government have usually had catastrophic practical consequences and seriously reversed progress towards our values.

49. The influence afforded to the UK from our close relationship with Gulf states was set out by Sir Simon Mayall, who told us:

When you commit to the security and reassurance of these countries, it pays back not simply in defence sales but in your capacity to influence them diplomatically on a whole range of things on which we want to engage. We are a values-based society. They are a values-based society. It is a different set of values, but they are increasingly globalised. Our capacity to influence is much better than that of Russia, China, Turkey or whoever else filled the vacuum that would be left by the British if we failed to demonstrate a degree of understanding and confidence in their long-term stability.⁸⁶

50. Saudi Arabia is a long-standing ally of the United Kingdom and has often proved a valuable partner in geostrategic events; for example, it was a key partner in the coalition assembled to oppose the Iraqi invasion of Kuwait in 1990. The Government has long

83 Q131

84 Transparency International ([UKY 0004](#)) para 2.14

85 HC Deb, 25 March 2014, [col 12WS](#)

86 Q142

made the argument, at least as far back as the beginning of the al-Yamamah arrangement in September 1985, that defence exports to Saudi Arabia underpin our close strategic alliance. Dr Robert Dover and Professor Mark Phythian from the University of Leicester suggested that the complexities in the relationship result in a lower bar being set for arms sales to Saudi Arabia. They describe:

A strategically important liaison relationship that provides hard and soft intelligence to the UK, and in providing the UK with the retention of some influence and so diplomatic advantage in the Middle East. These are important factors to the UK government because of the dangers it sees to the region and the oil markets of a political vacuum in Saudi Arabia. The special factors present with the Saudi case mean that the UK government facilitates a trade in military equipment that it would be unlikely to repeat for other governments with the same human rights or political risk profile.⁸⁷

51. The then Minister for Small Business, Industry and Enterprise, Anna Soubry told us:

For what it is worth, I think that the relationship with Saudi Arabia is extremely complex. If only it were as simple as people sometimes wish it were, but it is complex and there are some very difficult balances to be struck. You might expect me to say this, but I think at the moment we have definitely got the balance right.⁸⁸

52. **The UK's relationship with Saudi Arabia is characterised by compromise. We agree with Ministers that there are balances to be struck, but we are not on the whole as confident that we have that balance right. The UK Government needs to explain its claims that defence exports to Saudi Arabia give us a close and influential relationship with the Kingdom and allow us to play an important role in the Middle East, and show where this has been the case. We recommend it uses this influence, firstly to put pressure on the Saudis to allow independent international investigation of claims of IHL violations, and secondly to persuade them to conduct coalition operations in Yemen in accordance with international standards.**

Defence industry

53. The defence industry has been a success story for the UK, in terms of exports the UK is competing in the top three globally with the US and France. As the then Business Minister, Anna Soubry, told us:

The industry is a huge and various part of what we do in Britain. We do it very well. It has considerable benefit to our nation—to all the people who work in defence, in any event—and plays a huge part in what we do in the world. It is incredibly important for our exports and an important feature of them. There is huge potential for future growth—rightly so. Like most exports, defence exports are good for Britain and good for the people of Britain, as well as those nations that receive them.⁸⁹

87 University of Leicester ([UKY 0001](#)) Executive Summary

88 Q 228

89 Q155

54. In their evidence to this inquiry, Dr Robert Dover and Professor Mark Phythian from the University of Leicester described the UK's defence industrial base as "a valuable source of employment and technology driven enterprise for both the military and civilian sectors. The economic footprint of the defence industrial base runs across many industries, including forming an important part of the research and enterprise lives of the UK Higher Education sector."⁹⁰ ADS, the trade association for the UK's aerospace, defence, security and space industries, confirmed that, in 2014, the UK's defence and security industries generated a turnover of over £30 billion and secured an export business worth £12 billion. The industries sustain around 230,000 jobs including 6,500 apprenticeships and trainees.⁹¹ We heard from Paul Everitt, Chief Executive of ADS, that the importance of defence exports went beyond their economic value; they also underpin international relationships and allow interoperability with key allies. In addition, strong exports sustain domestic capability, reducing cost to the UK taxpayer. He maintained that the licensing regime was implemented and uniformly applied.⁹²

55. The UK's defence industries are in a vulnerable position as defence budgets have contracted, placing a greater emphasis on export trade. ADS explained that "even as domestic budgets have been cut over the past decade, UK defence and security companies have achieved growth in exports. Exports also help reduce the cost of UK programmes by increasing production runs, and reducing unit costs through economies of scale. They help the industry by levelling out peaks and troughs of domestic demand. Crucially, they sustain key industrial capabilities that might otherwise be lost."⁹³

56. As Sir Simon Mayall told us, defence sales are part of a wider strategy of engagement and essential for building long-term alliances in the Gulf:

The thing on which I have always supported British defence sales is that if you buy a platform—Typhoon and, before that, Tornado—you initiate a 25-year relationship. People do not change platforms. When you have a relationship for 25 years, through Eurofighter [Typhoon], Tornado or a ship, the training aspect of that comes with it. People come to Sandhurst and Dartmouth. I happen to believe that British military training is some of the finest—if not the finest—in the world. I like to think that, by bringing people to this country, you imbue them with some of the values that we hold dear, which they take back with them, and that, to an extent, they take into their own armed forces the ethos that they pick up in the British armed forces.⁹⁴

57. The Gulf, and in particular Saudi Arabia, is a vital market for the British defence export industry. The Foreign and Commonwealth Office confirmed that Middle East countries accounted for 66 per cent of the UK's total defence exports in 2014.⁹⁵ It is estimated that Saudi Arabia will become the world's fifth-largest military spender by 2020, as it seeks to increase its defence budget by 27 per cent over the next five years. This is a regional trend which has seen states in the Gulf Cooperation Council increase their arms imports by 71 per cent in the last decade (2004–2014).⁹⁶

90 University of Leicester ([UKY 0001](#)) para 2

91 ADS ([UKY 0016](#)) para 7

92 Q104

93 ADS ([UKY 0016](#)) paras 11 and 12

94 Q142

95 Foreign and Commonwealth Office ([UKY 0013](#)) para 17

96 Transparency International ([UKY 0004](#)) para 2.10

58. This is not a new trend for Saudi Arabia, which has been described as the “mainstay of the UK’s arms trade”⁹⁷ since the initiation of the Al Yamamah deals. The Government provides a great deal of support to maintain the arms export trade with Saudi Arabia. This is done through government-to-government contracts, in which the Ministry of Defence sign agreements for major defence sales with the Saudi Arabian Government, then places contracts with UK prime contractors (such as BAE Systems) to fulfil the UK’s obligations. There are two main bodies at the Ministry of Defence who oversee the main contracts: the Ministry of Defence Saudi Armed Forces Project (MODSAP) and Saudi Arabia National Guard Communications Project (SANGCOM). These bodies monitor the progress and performance of the contracts and provide training and assistance to Saudi Arabia. In addition, the UK Government dedicates significant resources to promoting the defence trade in the Gulf. The former Department for Business, Innovation and Skills designated Saudi Arabia as a priority market for UK arms exports through UKTI DSO, which aims to help UK defence and security companies to build and maintain relationships with overseas customers and to export their products.⁹⁸

59. The importance of arms exports for our security and prosperity has been recognised in the SDSR, in terms of directly sustaining tens of thousands of jobs across the UK, generating economies of scale that reduce the cost of defence equipment to the Government and the taxpayer, and for underpinning long-term relationships with our international partners and helping us deliver wider foreign policy objectives.⁹⁹ The SDSR also identifies support for defence and security exports as a new core task for the MoD, with responsibility for managing all strategic defence export campaigns.¹⁰⁰ Paul Everitt from ADS detailed the wider remit of the MoD as being “greater willingness to engage with potential customers to provide insight, experience and guidance on the use UK military forces put that equipment to, how it is managed, how it is supported in theatre and what kind of procurement processes they go through.”¹⁰¹

60. The SDSR also proposes strengthening our defence relationships in the Gulf. Describing the region as a “significant source of both threat and opportunity”,¹⁰² the Review refers to a new Gulf Strategy which would include the building a permanent and more substantial UK military presence and establishing a new British Defence Staff in the Middle East.¹⁰³

61. The UK defence industry is hugely successful and an important part of our export portfolio. Globally the UK is one of the top three exporters of defence equipment with the US and France. While domestic budgets have faced reductions, exports have been essential in sustaining the industry in the UK, its manufacturing expertise and maintaining economies of scale to ensure value for money for our own armed forces and the taxpayer. It is an industry which has a value beyond the purely economic: defence exports build international relationships and ensure interoperability of equipment with our allies, and they underpin long-term alliances which help deliver our wider foreign policy objectives. They are vital both for our security and our prosperity.

97 Campaign Against Arms Trade, [The Arabian Connection: The UK Arms Trade to Saudi Arabia](#), Introduction

98 Foreign Affairs Committee, Fifth Report of Session 2013–14, [The UK’s relations with Saudi Arabia and Bahrain](#), HC 88, paras 64–5

99 National Security Strategy and Strategic Defence and Security Review 2015, [cm 9161](#), November 2015, para 6.61

100 National Security Strategy and Strategic Defence and Security Review 2015, [cm 9161](#), November 2015, para 6.62
101 Q115

102 National Security Strategy and Strategic Defence and Security Review 2015, [cm 9161](#), November 2015, para 5.55

103 National Security Strategy and Strategic Defence and Security Review 2015, [cm 9161](#), November 2015, para 5.57

62. **The Gulf is a crucial market for defence exports, in particular Saudi Arabia to which over 30 per cent of all UK arms export licences in 2015 were approved.¹⁰⁴ As we move towards expanding our military presence and relationships in the Gulf, we would expect defence exports to that region to have a key role to play. However, this cannot be without conditions or without regard for the UK's international obligations.**

UK support for Saudi Arabia and the coalition in Yemen

63. Yemen's geographical position gives its strategic importance, sharing a land border with Saudi Arabia to the north and with the vital shipping route of the Gulf of Aden to the South. The country is also home to al-Qa'eda in the Arabian Peninsula, which has grown in strength and territory over the course of the conflict.¹⁰⁵ Sir Simon Mayall wrote to us about the strategic importance of the Yemen conflict both to Saudi Arabia and the UK:

In my mind, the motives for the Saudi-led campaign in Yemen are quite clear. The operations themselves are critical to halting Houthi aggression, thereby setting the conditions for a political settlement, for restricting the operation of AQAP, for limiting the rise of IS-affiliated groups in Yemen and the wider region, and for hampering Iranian ambition close to the vital Bab al Mandab Straits. Saudi Arabia is defending its territory and interests in the same way any nation under similar threat would and, given the range of threats facing them, it is in the UK's strategic interests to support them.¹⁰⁶

64. At the start of the Saudi-led coalition's military intervention in Yemen, the then Foreign Secretary, Philip Hammond, confirmed that the Saudis were flying UK-manufactured aircraft in Yemen and set out the extent of UK support for Saudi Arabia:

We have a significant infrastructure supporting the Saudi air force generally and if we are requested to provide them with enhanced support—spare parts, maintenance, technical advice, resupply—we will seek to do so. We'll support the Saudis in every practical way short of engaging in combat.¹⁰⁷

This support was detailed to us by the Foreign and Commonwealth Office, which told us that the Saudi Government had requested additional UK support after the escalation of the conflict in Yemen in March 2015. It explained that, as a result of this request, the Government, bearing in mind the UK's domestic and legal obligations, had accelerated the delivery of Paveway laser-guided bombs; increased training in targeting and weapon use; provided liaison officers in Saudi headquarters in order to observe the processes, increase the UK's insight into the air campaign and help to improve maritime access to Yemeni ports by identifying vessels that may be breaching the arms embargo; and assessed and fulfilled Saudi training needs to help strengthen defences at the Saudi southern border which has suffered repeated cross border raids.¹⁰⁸

104 See the values of military, dual-use and open licences in the Department for Business, Innovation and Skills [Strategic Export Controls: licensing statistics](#) 1st January 2015 to 31st December 2015

105 "How Saudi Arabia's war in Yemen has made al Qaeda stronger and richer", Reuters, 8 April 2016

106 Lieutenant General (Retd) Sir Simon Mayall KBE CB ([UKY 0015](#)) para 13

107 "UK 'will support Saudi-led assault on Yemeni rebels - but not engaging in combat'", The Telegraph, 27 March 2015

108 Foreign and Commonwealth Office ([UKY 0013](#)) para 29

Recent arms sales to Saudi Arabia

65. Department for Business, Innovation and Skills documents reported over £3.3 billion in arms sales to Saudi Arabia in the first twelve months of the conflict in Yemen from April 2015 to March 2016—a 30 fold increase on the preceding twelve-month period.¹⁰⁹ This included £1 billion of category ML4 weapons, which comprise bombs, rockets and missiles, for the 3-month period from July to September last year, up from £9 million for the preceding 3-month period for the same category of arms. In its evidence to the inquiry, the UK Working Group on Arms wrote that:

Since airstrikes began in Yemen in March 2015, HMG has licensed for export to Saudi Arabia equipment and components from nearly every category from the UK Military List (UKML). However, it is the scale of some of these licensed exports that is truly astounding. According to official UK reports, between 1 April and 31 September 2015, the UK issued Standard Individual Export Licences (SIELs) authorising £1.8 billion of combat aircraft and their spare parts and more than £1 billion of bombs and missiles for use by the Saudi Air Force. To put this latter figure in context, the value of munitions licensed for export to Saudi Arabia under UKML4 (bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, specially designed for military use, and specially designed components thereof) in the three month period from July to September 2015 is equivalent to the total that was licensed for export to the whole world (including Saudi Arabia) in the four-and-a-half years from January 2011 to June 2015 inclusive.¹¹⁰

66. The largest export licence was for £1.7 billion of fighter jets, granted in May 2015.¹¹¹ In July 2015 the UK approved the export of £990 million of air-to-air missiles.¹¹² In September 2015, it licensed the sale of £62 million of bombs and in February 2016, it licenced £522 million of military aircraft to the country.¹¹³ All four sales took place after the Saudi-led coalition began airstrikes in Yemen in March 2015.

67. In its evidence to this inquiry, the Foreign and Commonwealth Office set out the number and value of Standard Individual Export Licences (SIELs) granted in 2013, 2014 and 2015, with the following caveats.¹¹⁴

- The figures relate to licences granted in the specified period, not necessarily the value of sales or good shipped in that period;
- In 2013, one licence for combat aircraft was granted for approximately £1.5 billion, however because the goods had not been shipped by the time the licence expired, a further licence of a similar value was granted in Q2 2015. Therefore, the value of that one licence is counted in the totals for both 2013 and 2015;

¹⁰⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536943/16-342-strategic-export-controls-country-pivot-report-2016-qtr-1.pdf

¹¹⁰ The UK Working Group on Arms (UKY 0012) para 11

¹¹¹ Campaign Against Arms Trade [UK Arms Export Licences to Saudi Arabia](#), May 2015

¹¹² Campaign Against Arms Trade [UK Arms Export Licences to Saudi Arabia](#), July 2015

¹¹³ Campaign Against Arms Trade [UK Arms Licences to Saudi Arabia](#), September 2015

¹¹⁴ Foreign and Commonwealth Office ([UKY 0013](#)) para 34

- One licence in Q3 2015 for almost £1 billion of air-to-air missiles relates to a long-term contract for the delivery of a new munitions capability over a number of years made independent of the current operations in Yemen;
- The vast majority of dual-use items in the table below are for 2 categories of equipment: (i) corrosive resistant manufacturing equipment (eg. pumps, valves) for use in industries such as oil, gas and petrochemicals; and (ii) equipment and software employing encryption for information security, which accounted for 87% of all dual-use licences granted.

Year	Military Items		Dual-Use Items	
	No. of SIELs	Value (£)	No. of SIELs	Value (£)
2013	128	1.6 billion	175	22 million
2014	129	80 million	181	55 million
2015	171	2.7 billion	115	103 million

68. Despite the body of evidence of violations of IHL by the Saudi-led coalition, no export licence application to Saudi Arabia has been refused due to non-compliance with the UK's arms export licensing criterion 2 since March 2015.¹¹⁵ We were told by Dr Robert Dover and Professor Mark Phythian from the University of Leicester that it was difficult to assess whether the UK Government was “agnostic” about the real end-use of defence equipment exported to Saudi Arabia. They argued that it seemed that strategic relations with the Kingdom had led to “pragmatic interpretations of arms transfer licensing [...] What we can note is that there is a growing tension between an increasing accepted moral and ethical framework and some of these arms sales, and their end uses.”¹¹⁶

69. We also heard concerns that if the UK were to stop selling arms to Saudi Arabia, the Kingdom could buy their weapons from other exporters and as such there would be little if any impact on the coalition's aerial campaign in Yemen. It was therefore suggested that the UK is being asked to “take action specifically against British industry, British workers and British communities.”¹¹⁷ Sir Simon Mayall told us that it is better for all involved that the coalition use UK-manufactured weapons:

From a practical point of view, given the level of Saudi commitment to this operation, I would rather see them use UK-manufactured, precision-guided missiles, and the latest targeting techniques (trained and advised by UK and US military), than to be using less accurate munitions and less restrictive rules of engagement.¹¹⁸

Defence engagement

70. A report for VICE News in the US found that US and UK military advisers have helped the Saudi-led coalition to plan its airstrikes by participating in a Joint Combined Planning Cell command centre (JCPC). The report explained that the JCPC had been established at the beginning of the conflict in an effort to ensure that the conduct of the

115 [PQ 33665](#) [on Arms Trade: Saudi Arabia], 18 April 2016

116 University of Leicester ([UKY 0001](#)) para 8

117 Q75 [John Spellar MP]

118 Lieutenant General (Retd) Sir Simon Mayall KBE CB ([UKY 0015](#)) para 11

coalition campaign in Yemen met international standards. The Saudi Foreign Minister, Adel al-Jubeir, told journalists that UK and US personnel in the JCPC knew the Saudi targeting lists and what the coalition was and was not doing.¹¹⁹

71. However, not all airstrikes are conducted by the JCPC. VICE researchers reported that there are two types of airstrikes; the first are pre-planned, based on satellite imagery, reconnaissance from drones and aircraft and human intelligence on the grounds. These take into account whether the target was militarily important and what collateral damage is likely. The second sort of strike is contingent or “dynamic”, based on real-time intelligence. The decision to launch such strikes is taken within minutes rather than hours or days and the intelligence basis can be much thinner. The JCPC is focused entirely on pre-planned strikes, while dynamic strikes make up the vast majority—around 80 per cent—of coalition airstrikes.

72. Tobias Ellwood wrote to us to explain that the JCPC is a US body that works with Saudi Arabia to coordinate US military and intelligence support. In terms of the involvement of UK liaison officers in the JCPC, Mr Ellwood wrote:

Some JCPC liaison officers work in a regional HQ that helps to improve maritime access to Yemeni ports, by identifying vessels that may be breaching the arms embargo. Others work in the main JCPC HQ, helping to monitor the current situation in Yemen and facilitate communication with the GCC. Additionally, we have other liaison officers who sit within the Saudi Air Operations Centre, to improve our understanding of the air campaign. These are not part of the JCPC.¹²⁰

73. Explaining that no UK personnel are involved in targeting decisions, Mr Dunne told us that UK liaison officers in the air operations centre were not involved in targeting decisions, but instead conducted training on doctrine for using UK-supplied weapons systems and provided advice on targeting processes.

74. Mr Dunne contended that the UK’s relationship with Saudi Arabia placed us in a “privileged position” in terms of the advice we give to the Saudi Arabian armed forces and access we have to information from within Saudi operations allowing us to conduct post-incident analysis of strikes.¹²¹ We heard from Dr Anna Stavrianakis that the UK Government seems to want it both ways, questioning the level of the UK’s involvement and knowledge of the Saudi processes and strikes. She said that the Government claimed to have knowledge and oversight of Saudi operations and had satisfied themselves that the conduct of these conformed to IHR. At the same time, she argued, the Government claimed not to be directly involved.¹²²

75. The UK’s support for Saudi Arabia’s military intervention in Yemen has been extensive while remaining short of engaging in the actual combat. Professor Sands QC argued that the UK is in effect involved in the conflict; as “we characterise the nature, extent or depth of that involvement, it is impossible, on the basis of the evidence that is before us, to claim plausibly that the United Kingdom is not involved”.¹²³ Our

119 VICE News, ‘[Dead Civilians, Uneasy Alliances, and the Fog of Yemen’s War](#)’, 11 March 2016

120 Letter from Tobias Ellwood, dated 18 May 2016

121 Q228

122 Q136

123 Q81

involvement extends from providing the planes and bombs for airstrikes to UK personnel in the Joint Combined Planning Cell and Saudi Air Operations Centre. This level of involvement without being a party to a conflict is unprecedented¹²⁴ and is a result of the “privileged” relationship the UK has with Saudi Arabia and its armed forces. There is again a difficult balance to be struck. We are not convinced that the Government has enough oversight of coalition procedures and operations.

76. We were told that UK personnel are not part of the intelligence planning cells,¹²⁵ but that they are in the Joint Combined Planning Cell HQ¹²⁶. We also heard that UK personnel are in Saudi Arabia to train, educate and teach best practice, which includes understanding IHL¹²⁷ and training air crews and planners how to go about assessing targets for the future,¹²⁸ but that our liaison officers “do not provide training, they do not provide advice on IHL compliance, and they have no role in the Saudi targeting chain.”¹²⁹ This is an area in which there is much confusion and greater clarity is needed.

77. *We recommend that the UK Government provide more detail with regards to the role of UK personnel in Saudi Arabia, in particular answering the following questions:*

- *How many UK personnel are assisting the Saudi Arabian armed forces and in what roles, including BAE Systems employees;*
- *What is the extent of the involvement of each group of UK personnel with the Saudis’ operations in Yemen; and*
- *How are UK personnel advising the Saudi Arabian armed forces on IHL and what level of understanding do they have of the coalition’s regard for IHL in its operations in Yemen.*

124 Q228 [Mr Dunne]

125 Q162 [Mr Ellwood]

126 Letter from Tobias Ellwood, dated 18 May 2016

127 Q162 [Mr Ellwood]

128 Q158 [Mr Dunne]

129 Letter from Tobias Ellwood, dated 18 May 2016

4 The UK's legal obligations

A global leader in the rule of law

78. As a key element of the UK's global influence to protect and promote our interests and values, supporting our security and prosperity, the SDSR sets out that we “will work with our allies and partners to strengthen, adapt and extend the rules-based international order and its institutions.”¹³⁰

79. We heard, however, that the UK's continued authorisation of arms transfers to Saudi Arabia in the face of compelling evidence that they breach the UK's international obligations like the Arms Trade Treaty (ATT), raises serious questions as to the UK's commitment to a rules-based international order, and damages the UK's standing within the international community.¹³¹ The UK Working Group on Arms argued that the UK, by appearing to be ready to breach its international obligations, sent a message to other states that they could do the same.¹³²

80. Professor Philippe Sands QC told us about the importance of the leadership position the UK holds internationally with regards the rule of law:

If I were a legal adviser to this Government, I would be saying, “It is time to start asking yourselves the right questions as to what your responsibilities and obligations are. Why, Minister? Because the United Kingdom is a global leader on the rule of law” [...] I think that what the United Kingdom does really matters, because the United Kingdom plays a leadership role on a lot of these issues. When the United Kingdom takes a lead in a certain area, many others will often follow.¹³³

The UK Government has been at the forefront of work to establish systems of rules to regulate arms exports, our own national system of rules in the EU and, importantly, the ATT. Work to secure this was described as “at risk of unravelling by the current policies towards Saudi Arabia and the supporting coalition”.¹³⁴

81. Dr Anna Stavrianakis told us that the conflict in Yemen has put the UK Government in a very difficult position regards its international obligations and its leadership in the rule of law:

The UK Government put themselves in a position of moral leadership by pressing for the arms trade treaty during the negotiating phases. Now that it has entered into force, there is a whole series of reputational politics associated with it, in being seen to lead and to uphold it in terms of implementation[...] The current situation in Yemen is quite unfortunate for the UK Government, because it has put them into a trap. They are caught in a trap that sets large swathes of domestic public opinion, and their legal obligations, against their relationship with Saudi Arabia, so they are now in quite a tricky position.¹³⁵

130 National Security Strategy and Strategic Defence and Security Review 2015, [cm 9161](#), November 2015, para 5.2

131 The UK Working Group on Arms ([UKY 0012](#)) para 3

132 The UK Working Group on Arms ([UKY 0012](#)) para 9

133 Q79

134 Q1 [Mr Sprague]

135 Q136

82. The argument that the UK Government is trapped was also made to us by Dr Robert Dover and Professor Mark Phythian, who contended that “the UK Government has placed itself in an invidious position of fighting a proxy war in Yemen alongside the Saudis, and thus has tied its own hands: it has virtually no choice but to supply military equipment into that theatre at ongoing reputation cost.”¹³⁶

83. The UK’s support for the Saudi-led coalition in Yemen, primarily through arms sales in the face of evidence of IHL violations, is inconsistent with the UK’s global leadership role in the rule of law and international rules-based systems. The very rules the UK championed—represented by the Arms Trade Treaty—are at risk of unravelling. As an instigating member of the ATT, the UK should not set the example to other signatories that it is not bound by its obligations. This puts the UK’s own international reputation at risk and we are concerned that the UK’s voice will ring hollow in advocating for compliance with IHL on global platforms.

A robust licensing regime

84. In response to questions on arms transfers to Saudi Arabia, the Government has repeatedly insisted that the UK operates one of the most robust arms export control regimes in the world¹³⁷. Paul Everitt, Chief Executive of ADS, argued that the UK’s licensing regime was held up as a benchmark for international best practice, and stressed the importance of the public availability of information.¹³⁸ Mr Everitt explained that arms exports are a regulated sector—once a company decides to sell overseas and applies for a licence, it is then up to Government to make the judgements and decisions about whether that licence would comply with our legal obligations. Accordingly, once the licence has been applied for, the individual company has “crossed a line where responsibility has to sit with the Government and those who are making the key decisions.”¹³⁹

85. The Government assesses licence applications for compliance with arms trade law which, Professor Philippe Sands QC explained to us, operates in three distinct levels: the Arms Trade Treaty at the international law level; the EU common position at the European Union law level; and the consolidated EU and UK arms export licensing criteria at the domestic, UK law level.¹⁴⁰ Although Professor Sands and his colleagues from Matrix Chambers looked at all three levels when producing the legal opinion on *the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen*,¹⁴¹ Professor Sands confirmed that the three levels do overlap:

Having concluded that both article 6 and article 7 [of the ATT] are not being complied with, you can effectively piggyback your way on to violations of the EU common position and the UK criteria, because both require, among other

¹³⁶ University of Leicester ([UKY 0001](#)) executive summary

¹³⁷ For example: PQ 36869 [on Saudi Arabia: Arms Trade], 11 May 2016; PQ 33214 [on Saudi Arabia: Arms Trade], 14 April 2016; PQ 28765 [on Arms Trade: Saudi Arabia], 2 March 2016; HC Deb, 27 January 2016, [col 262](#) [The Prime Minister]

¹³⁸ Q98

¹³⁹ Q121 [Mr Everitt]

¹⁴⁰ Q57

¹⁴¹ Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ni Ghraígh, [Legal Opinion: the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen](#), 11 December 2015

things, a commitment to meet your international standards. If you are failing to meet your international standards, it follows that you are failing to meet your EU standards and failing to meet your domestic standards.¹⁴²

86. We have received much evidence concerned with the UK Government's compliance with articles 6.3 and 7 of the Arms Trade Treaty, articles 2 and 6 of the EU common position, and criterion 2c of the UK's arms export licensing criteria, all of which refer to the respect of the recipient country for international law and require that the Government not grant a licence where there is a clear risk that the items might be used in the commission of a serious violation of IHL.¹⁴³ This evidence has questioned the robustness of the licensing regime.

Assessing risk

87. In judging whether an export of defence equipment is compliant with the obligations above, the Government is required to carry out a risk-based assessment, looking at all available evidence. Oliver Sprague, of Amnesty International, told us that there was evidence of unlawful strikes by the Saudi-led coalition "in spades" in Yemen, where we know UK-supplied equipment is being used and could be used in future combat¹⁴⁴. Dr Stavrianakis argued that the UK Government, by ignoring evidence of breaches of IHL and failing to conduct its own investigations, was setting "the bar for the risk assessment impossibly and inappropriately high".¹⁴⁵

88. The concerns we heard about how the UK Government is investigating violations of IHL were widespread. Many witnesses argued that there is a considerable body of reliable evidence of such violations by the Saudi-led coalition, which indicated that there is an appreciable risk of defence equipment supplied by UK manufacturers being used in contravention of international law and the UK's international obligations.

89. The UK Government operates a risk-based arms export licensing regime, requiring Government to assess the risk that arms exports might be used in violation of IHL. In the face of widespread allegations of violations of IHL in Yemen, it is difficult for the public to understand how a reliable licence assessment process would not have concluded that there is a clear risk of misuse of at least some arms exports to Saudi Arabia. At present, the Government's export licensing policy towards Saudi Arabia could be interpreted as not living up to the UK's robust and transparent regulations, nor upholding the UK's international obligations.

90. *The credibility of the Government's policy and practice of its arm export licensing regime has been called into question. In response, we recommend it issue a public explanation of its risk assessment process and what level of risk would trigger the refusal of a licence.*

142 Q63

143 The UK Working Group on Arms ([UKY 0012](#)) para 26; Mwatana Organization for Human Rights ([UKY 0011](#)), para 23; Dr Anna Stavrianakis ([UKY 0003](#)) para 5; Q23 [Mr Sprague]; Q57 and Q63 [Professor Sands]

144 Q27

145 Dr Anna Stavrianakis ([UKY 0003](#)) para 10

A chain of responsibility

91. We heard concerns regarding the Government’s understanding of the end-use of the equipment we supply to Saudi Arabia. Our attention was drawn to a parliamentary response by the Defence Secretary that “the use of equipment and weapons supplied to the Saudis is an operational matter for the Saudi military authorities. The Saudis have assured us that British-supplied munitions will be used in compliance with international humanitarian law and we continue to engage with them on these assurances.”¹⁴⁶

92. Professor Philippe Sands QC raised this reliance on assurances from the Saudis as particularly problematic. He said that between June and October 2015, the Foreign and Commonwealth Office made a number of statements which had in common that they relied on assurances given to us by the Saudi authorities. He advised that governments could not simply rely on the reassurances of others, but that article 6 of the ATT imposed an explicit obligation on signatories to form a view.¹⁴⁷

93. Dr Stavrianakis described this as a chain of responsibility, which “links the responsibility of the exporter to the behaviour of the importer, because it is incumbent on the exporter to assess the risk of how that equipment might be used—not will be used but might be used.”¹⁴⁸ Oliver Sprague from Amnesty International further clarified:

In order to establish a risk-based analysis of a licence, they [MoD] have to have an indication about how that weaponry is used to discharge that function. If they are genuinely saying that how Britain’s weapons are going to be used is not a matter for them, it is impossible for a decision to be made to authorise those weapons lawfully on the basis of the relevant articles in the Arms Trade Treaty. They have to have some assessment of the prior knowledge on the uses to which the weaponry would be put. It is absolutely fundamental.¹⁴⁹

The FCO written statement on 21 July 2016, however, corrects statements made by Ministers from the FCO, including the Foreign Secretary, to clarify that the Government has not made assessments of any breaches of IHL by the Saudi-led coalition in Yemen. This raises serious concerns regarding the Government’s assessment of the risk that arms sold to Saudi Arabia might be used in the commission of a violation of IHL.

94. According to Professor Philippe Sands QC, the chain of responsibility could be extended to individual ministers:

If I were a legal adviser to a Minister, I would say, “Minister, there is a reason, beyond this, why you need to look at this matter, which is that beyond international humanitarian law and international human rights law, there is now also international criminal law. International criminal law imposes responsibilities not on states but on individuals. If it turns out that the United Kingdom is supplying weapons in a conflict that is giving rise to systematic violations of international humanitarian law, I cannot exclude the possibility that, on some day in the future, you, as the person who supplied the weapons,

¹⁴⁶ [PQ 7824](#) [on Yemen: Military Intervention], 27 July 2015

¹⁴⁷ Q60

¹⁴⁸ Q150

¹⁴⁹ Q32

could be hauled before some foreign national court, some domestic UK court or some international court.” If I were a Minister, I would want my legal adviser to say that.¹⁵⁰

A lack of transparency

95. The Government publishes the licensing statistics for UK arms exports on a quarterly basis.¹⁵¹ We heard from Roy Isbister of Saferworld that the UK Government deserves credit for the timeliness of the information made available which allows observers to investigate what has been licensed for transfer up to the start of the previous quarter. He also raised the UK parliamentary oversight system as a model other countries might like to follow.¹⁵² That said, there are limits to the information which can be extracted from the licensing statistics.

96. There is no public discussion about what happens within Government during the assessment of licence applications. For Dr Stavrianakis, the challenges this creates in examining arms exports has been further exacerbated since the start of the conflict in Yemen by the shortening of the processing time for licences to Saudi Arabia as follows:

- Q2, 1st April–30th June 2015: the median processing time for SIELs was 25 days, with 35% completed in twenty working days and 98% in sixty days. SIELs worth £1,736,807,764 were granted. The largest category was ML10 (aircraft, UAVs, and related good and components): £1,714,184,642.¹⁵³
- Q3, 1st July–30th September 2015: the median processing time for SIELs was 14 days, with 78% completed in twenty working days and 100% completed in sixty days. SIELs worth £1,108,300,139 were issued. ML4 (bombs, torpedoes, rockets, missiles) was the biggest category: £1,066,216,510.¹⁵⁴
- Q4, 1 October–31 December 2015: Median processing time: 12 days; 91% completed in 20 working days; 98% in 60 working days. SIELs worth £19,739,194 were issued. ML4 was again far and away the largest category by value (£3,705,539) followed by ML1 (firearms) (£1,005,560).¹⁵⁵

97. At a time when the body of evidence to consider in assessing licence applications to Saudi Arabia and in measuring risk against licensing criteria was growing, the processing time for applications was in fact reducing. As Dr Stavrianakis told us:

If you look at the most recent licensing statistics, the median processing time has come down and the proportion of export applications completed within 20 working days has gone up. I am sure the Government would say, “See,

150 Q79

151 Department for Business, Innovation and Skills and the Export Control Organisation, [Strategic Export Controls: licensing data](#)

152 Q39

153 Department for Business, Innovation and Skills, [Strategic Export Controls: Country Pivot Report 1st April 2015 - 30 June 2015](#), 20 October 2015, pp 262 - 265

154 Department for Business, Innovation and Skills, [Strategic Export Controls: Country Pivot Report 1st July 2015 - 30 September 2015](#), 19 January 2016, pp 249 - 254

155 Department for Business, Innovation and Skills, [Strategic Export Controls: Country Pivot Report 1st October 2015 - 31 December 2015](#), 19 April 2016, pp 265 - 270

everything is working fine,” but now I have even less idea of what is happening within that process. If the Government are so sure that what they are doing is fine, why have they not responded to any of the criticisms.¹⁵⁶

98. **The Government points to its robust licensing regime as evidence that its arms export practices are responsible. However, by failing to provide persuasive evidence to support this statement or to respond to reports of IHL breaches, the Government is preventing scrutiny of its practices. It is problematic that, at the very time the Government was in receipt of reports documenting violations of IHL by the Saudi-led coalition the processing times for those licence applications were speeded up. The Government should provide a detailed explanation for those licensing decisions rather than a simple assertion that we have a rigorous licensing regime.**

99. We are grateful for the former Foreign and Business Secretaries’ respective offers for CAEC members to have regular meetings with ministers and to visit the Arms Export Policy Department in the FCO and the Export Control Organisation in BIS. However, *we recommend that the Government implement greater transparency in the policy and practice of its arms exports. As a first step towards this, it should provide further details on the following:*

- *the changes in information, assessment methods and political direction which have occurred since the war in Yemen began;*
- *how differences in opinion between the departments involved in licensing are resolved; and*
- *how often decisions are being referred up the chain of political responsibility, and how far up these decisions go.*

Suspending licences

100. In coming to the conclusion that arms export licences to Saudi Arabia are compliant with the UK’s commitments, Professor Philippe Sands QC suggested the Government had been “misdirecting” themselves:

The essential problem that we have identified is that the United Kingdom has not made the inquiries that it should have been making. If it makes those inquiries properly, fairly and independently, we think that it is likely that it will come up with a particular conclusion, but we cannot say that for certain. We have to assume that those inquiries will be made in good faith, on the basis of the facts that are available. The essence of the problem is a failure of the Government to direct themselves to the right questions. Having asked the wrong questions, they have reached answers that are implausible.¹⁵⁷

101. For example, we have heard from the Government that the Saudi-led coalition are not targeting civilians and as such, the Government is currently satisfied that extant licences for Saudi Arabia are compliant with the UK’s export licensing criteria.¹⁵⁸ As we set out in paragraph 36, it is unlikely the coalition are identifying civilians as targets, however;

156 Q151

157 Q76

158 Foreign and Commonwealth Office ([UKY 0013](#)) para 45

coalition airstrikes have resulted in a very high number of civilian casualties, whether intentional or not. The UN has attributed 60 per cent of civilian casualties to Saudi-led coalition airstrikes.¹⁵⁹ That, Professor Sands told us, becomes an issue of intent:

Are they intending to target civilians? We do not have any evidence that, in their terms of engagement—rules of engagement—that is what they are doing, but it is what they are doing inevitably, as a consequence of the kinds of activities they are engaging in. It is not appropriate to look to the issue of intent in terms of the obligation. The authority for that is a judgment of the International Court of Justice—[The Bosnia v. Serbia case] [...] it makes it very clear that the question of what you intend to do is not dispositive in avoiding a wrongdoing by that particular state.¹⁶⁰

102. The then Business Minister, Anna Soubry, clarified that the Government must consider each licence, for each type of weapon, on its own merit and “if it is found that there has been a breach of those criteria with an export licence, the answer is a very clear yes. We will revoke licences. We will suspend licences, if there is evidence.”¹⁶¹

103. Professor Sands and his colleagues at Matrix Chambers in their legal opinion argued that, in light of the evidence of violations of IHL by the Saudi-led coalition and in the absence of any credible investigations into those violations by Saudi Arabia, “it is reasonable to conclude that in such circumstances future transfers by the UK of weapons or items capable of being deployed against civilians or civilian objects would be used in a manner that is internationally unlawful.” They further concluded that “the UK has - or should be recognised as having - knowledge that weapons or related items exported to Saudi Arabia would be used in future attacks directed against civilian objects or civilians protected as such, or in the commission of war crimes in Yemen.”¹⁶² On the basis of the evidence available, they added that the UK Government would have had knowledge that transfers of arms to Saudi Arabia would have constituted a breach of its obligations as early as May 2015.¹⁶³ As such, any arms exported to Saudi Arabia which could be used in the conflict in Yemen and for which their end-use is not restricted, they concluded, would constitute a breach of the UK’s legal obligations under domestic, European and international law.¹⁶⁴ In order to bring the UK into compliance with its legal obligations, they recommended that the UK:

should halt with immediate effect all authorisations and transfers of relevant weapons and items to Saudi Arabia, capable of being used in the conflict in

159 UN Security Council, [Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 \(2014\)](#) (26 January 2016), para 125

160 Qq91-2

161 Q187

162 Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ni Ghraílaigh, [Legal Opinion: the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen](#), 11 December 2015, para 11

163 Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ni Ghraílaigh, [Legal Opinion: the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen](#), 11 December 2015, para 13

164 Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ni Ghraílaigh, [Legal Opinion: the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia’s military intervention in Yemen](#), 11 December 2015, para 18

Yemen, pending proper and credible enquiries into the allegations of violations of IHL and IHRL [International Human Rights Law] that have arisen and that could arise in the future.¹⁶⁵

104. Professor Sands is joined by the European Parliament, which passed a resolution to this effect, Human Rights Watch, Amnesty International, Saferworld and Save the Children, among others, who have called for a suspension of arms exports to Saudi Arabia. The Netherlands and Germany halted arms sales to Saudi Arabia in early 2016.

105. Foreign Office Minister Tobias Ellwood pointed out that the UK has revoked or suspended licences, for example to Russia, Egypt and Yemen, where other aspects of the bilateral relationship continues, including a human rights dialogue.¹⁶⁶ Philip Dunne reminded us of the wider consequences of suspending licences:

We routinely assess—not constantly, but routinely—that certain applications for new arms exports do not meet the clear criteria that have been set. The criteria have different levels. As a result of those refusals, from time to time we lose defence business with a whole host of countries, including some of our closest allies.¹⁶⁷

106. Saudi Arabia is one of our closest allies. However, the weight of evidence of violations of IHL by the Saudi-led coalition in Yemen is now so great that it is very difficult to continue to support Saudi Arabia while maintaining the credibility of our arms licensing regime. The failure of the Government to support the establishment of an independent international investigation to provide conclusive evidence on IHL violations in Yemen, on which to base arms export licensing decisions, has allowed for the transfer of items to Saudi Arabia very possibly in contravention of the UK's legal obligations. We believe it is in the interests of all those involved in arms exports that arms transfers are seen as responsible. While such doubt and uncertainty about IHL compliance in Yemen exists, the default position of the UK Government should not be to continue to sell weapons but to pause until it is satisfied that allegations have been properly investigated.

107. In the case of Yemen, it is clear to us that the arms export licensing regime has not worked. We recommend that the UK suspend licences for arms exports to Saudi Arabia, capable of being used in Yemen, pending the results of an independent, United Nations-led inquiry into reports of violations of IHL, and issue no further licences. In addition, the UK Government should investigate whether any licences so far issued have led to the transfer of weapons which have been used in breach of IHL. This suspension must remain in place until such time as the UN-led inquiry can provide evidence that the risk that such exports might be used in the commission of serious violations of IHL has subsided.

165 Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ni Ghraígh, [Legal Opinion: the lawfulness of the authorisation by the United Kingdom of weapons and related items for export to Saudi Arabia in the context of Saudi Arabia's military intervention in Yemen](#), 11 December 2015, para 19

166 Q187

167 Q187

A role for development

108. There are undeniable costs of conflict on a country's development. The UK Working Group on Arms explained that these costs were both direct and indirect, including dealing with refugees and IDPs, as well as loss of development and economic decline. They continued, "Oxfam has calculated that armed conflict cost African countries as a whole an average of \$18bn each year between 1990 and 2005."¹⁶⁸

109. Yemen faced a range of deep-seated development challenges prior to the current crisis including rapid population growth, gender inequality, poor provision of basic services, a weak economy, corruption and youth unemployment. As a result of a cycle of conflicts and political crises, both poverty and inequality had increased over the last 15 years, making Yemen the poorest country in the Middle East. DFID has had a long-standing presence and commitment to tackling poverty in Yemen, which included £247.8 million in aid to the country between 2011 and 2014.¹⁶⁹ However, the current conflict forced the Department to withdraw its staff from Yemen and suspend its longer-term development programmes¹⁷⁰, seriously threatening any progress that had been made.

110. The use of UK arms transfers to Saudi Arabia in Yemen has exposed a weakness in the laws which regulate the arms trade, in that the impact on development is only considered in the context of the recipient country. Criterion 8 of the consolidated EU and UK arms export licensing criteria states that:

The Government will take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, IMF and Organisation for Economic Co-operation and Development reports, whether the proposed transfer would seriously undermine the economy or seriously hamper the sustainable development of the recipient country.

111. When licence applications are considered by the Government, the Export Control Organisation circulates the applications to the FCO and the MoD, and where there are development concerns, DFID is consulted solely in relation to criterion 8. As Roy Isbister from Saferworld told the International Development Committee:

To my mind, the exports to Saudi, which might be used in Yemen, of all UK arms exports are those that are having the most impact on development, and yet DFID has no formal role. It is excluded from any formal role in giving an opinion on those arms exports, because the arms exports are to Saudi, which is a non-ODA-eligible country, so DFID has no say [...] To me, that is a fundamental problem. It is easy enough to address, but it is something that should be looked at.⁴⁵

112. We heard from Tim Holmes from Oxfam that the situation in Yemen presents a strong case for expanding the scope of criterion 8:

In this particular case, there is a very strong justification for looking not just at the recipient country but where those arms would be used and the impact it

¹⁶⁸ The UK Working Group on Arms ([UKY 0012](#)) para 32

¹⁶⁹ Department for International Development ([YEM 0011](#)) para 8

¹⁷⁰ Department for International Development ([YEM 0011](#)) paras 9 and 24

would have on its development. As we all know, the right to development is a well-known right and is agreed across the UN, and it is very important to consider that. It is also important in terms of coherence across the UK Government. A risk assessment that would involve formal consultation with DFID would prevent undermining UK development policy, or the contradiction between development policy and wider security and foreign policy. Therefore, formal involvement is vital and should be seen as an equal voice, not a subsidiary one to other conversations.¹⁷¹

113. We were told by the then DFID Minister Desmond (now Sir Desmond) Swayne that his Department was only required to consider whether the recipient country can afford the arms export and whether purchasing the arms would seriously undermine their development effort. He advised that any involvement of DFID in considering the end-use of weapons would intrude on criterion 4 (“Preservation of regional peace, security and stability”) which is the preserve of the FCO.¹⁷²

114. Concerns were raised with us that the arms transfers to Saudi Arabia were undermining DFID’s response to the humanitarian crisis in Yemen. The UK Working Group on Arms made this link clear by contending that “as more arms have been transferred to the conflicting parties in Yemen, the worse the humanitarian situation has become.”¹⁷³ Tim Holmes from Oxfam talked of a “multi-paradox” created by a “push for peace, humanitarian assistance and the provision of licences for arms.”¹⁷⁴ As Roy Isbister told us, the situation in Yemen has not been helped by different government departments working at cross-purposes:

It would be good if all the different policies of the Government could be facing in the same direction, and that is where there is a lack of coherence between feeding the fire on the one hand and saying that we need to put out the fire.¹⁷⁵

115. Our predecessor Committees welcomed the Government’s commitment to consider periodically whether DFID should be involved formally in arms export licence assessments in addition to those under Criterion 8, for example those under Criterion 3 (“Internal situation in the country of final destination”) and Criterion 4 (“Preservation of regional peace, security and stability”). It also welcomed the Government’s policy decision to strengthen the application of Criterion 8 by excluding countries considered particularly low risk from the analysis to allow DFID to focus on the higher risk licences in greater detail.¹⁷⁶

116. The transfer of arms to Saudi Arabia for use in Yemen has highlighted the limited role of DFID in arms licensing decisions which can ultimately have a significant impact on development and the work of the Department. It is clear that the humanitarian crisis which DFID is working to address in Yemen has been exacerbated by the flow

171 Q50

172 Qq 225 and 227

173 The UK Working Group on Arms ([UKY 0012](#)) para 2

174 Q50

175 Q53

176 Committees on Arms Export Controls, Second Joint Report of the Business Innovation and Skills, Defence, Foreign Affairs and International Development Committees of Session 2014–15, [Scrutiny of Arms Exports and Arms Controls \(2015\): Scrutiny of the Government’s Strategic Export Controls Annual Report 2013, the Government’s Quarterly Reports from October 2013 to June 2014, and the Government’s policies on arms exports and international arms control issues](#), HC 608, paras 47 and 48

of arms to Saudi Arabia which other government departments have licensed. This has created an incoherence between the Government's development policy and its wider security and foreign policy.

117. We do not support the exclusion of DFID from licence decisions beyond those for ODA-eligible countries, and from considering the end-use of weapons, as a result of which DFID has had no formal role in assessing arms export licences to Saudi Arabia for use in Yemen. We recommend that the Government reassess whether DFID should be involved formally in arms export licence assessments in addition to those under Criterion 8, for example those under Criterion 3 ("Internal situation in the country of final destination") and Criterion 4 ("Preservation of regional peace, security and stability") giving regard to the use of UK-manufactured arms in Yemen. We also recommend that Criterion 8 be expanded to consider whether the proposed transfer would seriously undermine the economy or seriously hamper the sustainable development of the recipient country, and the country or countries where the proposed transfer might ultimately be used.

Conclusions and recommendations

The Saudi-led coalition's intervention

1. We agree that there is a legal basis for the Saudi-led intervention in Yemen and the legitimate need to quell the armed uprising of the Houthi rebels. We also agree that the UK has an interest in preventing the further deterioration of the humanitarian situation in Yemen that would accompany Houthi expansion in the country. There is also a security interest in denying extremist militant groups such as AQAP further space to operate in Yemen. However, the fact that the UN Security Council has conferred legitimacy on the military intervention does not automatically endorse the conduct of the coalition, as we explore below. (Paragraph 14)

The conduct of the conflict

2. We have heard evidence of serious breaches of IHL by both sides of the conflict. The warring parties have potentially not adequately distinguished between civilian and military targets, which has caused enormous suffering; civilians account for half of those killed, and nearly three million people have fled their homes. The UK Government has not responded to allegations of IHL breaches by the Saudi-led coalition in any meaningful way and we are concerned that our support for the coalition, principally through arms sales, is having the effect of conferring legitimacy on its actions. *We recommend that the Government press all parties to the conflict to comply with IHL to minimise harm to civilians and protect civilian infrastructure and continue to monitor the situation closely, with an on-going review of evidence provided by a range of sources.* (Paragraph 25)

Cluster munitions

3. Both Amnesty International and Human Rights Watch have documented evidence of the Saudi-led coalition's use of cluster munitions in populated, civilian areas in Yemen. Cluster munitions are banned under the Convention on Cluster Munitions, to which the UK is a signatory, although Saudi Arabia is not. That notwithstanding, Saudi Arabia's reported use of cluster munitions in populated areas in Yemen would contravene IHL and calls into question the coalition's wider respect for the rules of war. Evidence of a UK-supplied cluster munition dropped by the coalition in Yemen means this is a matter which the UK Government must address. (Paragraph 30)
4. *We do not believe that the UK Government can meet its obligations under the Convention on Cluster Munitions by relying on assurances from the Saudis. We recommend that the MoD carry out its own investigation into the purported use by the coalition forces of a UK-supplied cluster bomb, further to evidence found in Yemen. We also recommend that the Government, as a signatory to the Convention on Cluster Munitions, set out the steps it has taken not only to make sure UK-supplied aircraft and UK personnel are not in any way implicated in the use or deployment of these weapons, which is prohibited under the Convention, but also the steps it has taken to stop Saudi Arabia from using cluster munitions.* (Paragraph 31)

Investigations into reports of violations of International Humanitarian Law

5. The reports of potential violations of IHL in Yemen since September 2014 have been widespread, with both parties to the conflict being accused of failing to take the necessary and proportionate precautions to protect civilians. We are not convinced that Saudi Arabia is best placed to investigate reports of IHL breaches and their lack of progress in reporting findings only confirms our concerns that they are obstructing the process. Since September 2015, the Saudis have announced the results of nine investigations, despite having received evidence of at least 185 incidents from the UN, Human Rights Watch and Amnesty International. Moreover, a number of the Saudi investigations reported results which contradict evidence documented by the UN. This raises concerns about the credibility of the process. Following the FCO corrections to written answers and statements made by Ministers on the conflict in Yemen, it is unclear what analysis the Government has undertaken to assess the risk that UK arms transfers to Saudi Arabia might be used in breach of IHL. Without credible investigations, neither the Saudi-led coalition nor the Houthis are being held accountable for their actions and it is Yemeni civilians who bear the consequences. (Paragraph 42)
6. *We welcome the progress that has been made to date by the Saudi-led coalition establishing the mechanisms to investigate allegations of violations of International Humanitarian Law. However, further progress is needed to ensure that JIAT is transparent, credible, and publishes its investigations in a timely manner. We recommend that the UK Government offer its support to the JIAT where appropriate so that it can meet these ends. We also believe that an independent, United Nations-led investigation of alleged violations by all parties to the conflict is necessary to supplement the internal investigations of the Saudi-led coalition. We recommend that the UK Government support calls for the establishment of such an investigation as a matter of urgency.* (Paragraph 43)

Instability in the Gulf

7. The Gulf is a region where the UK's security and prosperity agendas overlap. It is in the UK's strategic interests to support a secure, prosperous and politically stable Gulf and we recognise that military support and arms sales play a key role in that. However, our relationships in the region, particularly in terms of arms sales can counterpose our interests—understood as security, stability, jobs and prosperity—against our values of respect for international law. There are also pragmatic judgements to be made about how to advance our values in a region where revolutionary or imposed changes of government have usually had catastrophic practical consequences and seriously reversed progress towards our values. (Paragraph 48)
8. The UK's relationship with Saudi Arabia is characterised by compromise. We agree with Ministers that there are balances to be struck, but we are not on the whole as confident that we have that balance right. The UK Government needs to explain its claims that defence exports to Saudi Arabia give us a close and influential relationship with the Kingdom and allow us to play an important role in the Middle East, and show where this has been the case. *We recommend it uses this influence, firstly to*

put pressure on the Saudis to allow independent international investigation of claims of IHL violations, and secondly to persuade them to conduct coalition operations in Yemen in accordance with international standards. (Paragraph 52)

Defence industry

9. The UK defence industry is hugely successful and an important part of our export portfolio. Globally the UK is one of the top three exporters of defence equipment with the US and France. While domestic budgets have faced reductions, exports have been essential in sustaining the industry in the UK, its manufacturing expertise and maintaining economies of scale to ensure value for money for our own armed forces and the taxpayer. It is an industry which has a value beyond the purely economic: defence exports build international relationships and ensure interoperability of equipment with our allies, and they underpin long-term alliances which help deliver our wider foreign policy objectives. They are vital both for our security and our prosperity. (Paragraph 61)
10. The Gulf is a crucial market for defence exports, in particular Saudi Arabia to which over 30 per cent of all UK arms export licences in 2015 were approved. As we move towards expanding our military presence and relationships in the Gulf, we would expect defence exports to that region to have a key role to play. However, this cannot be without conditions or without regard for the UK's international obligations. (Paragraph 62)

Defence engagement

11. The UK's support for Saudi Arabia's military intervention in Yemen has been extensive while remaining short of engaging in the actual combat. Professor Sands QC argued that the UK is in effect involved in the conflict; as "we characterise the nature, extent or depth of that involvement, it is impossible, on the basis of the evidence that is before us, to claim plausibly that the United Kingdom is not involved". Our involvement extends from providing the planes and bombs for airstrikes to UK personnel in the Joint Combined Planning Cell and Saudi Air Operations Centre. This level of involvement without being a party to a conflict is unprecedented and is a result of the "privileged" relationship the UK has with Saudi Arabia and its armed forces. There is again a difficult balance to be struck. We are not convinced that the Government has enough oversight of coalition procedures and operations. (Paragraph 75)
12. We were told that UK personnel are not part of the intelligence planning cells, but that they are in the Joint Combined Planning Cell HQ. We also heard that UK personnel are in Saudi Arabia to train, educate and teach best practice, which includes understanding IHL and training air crews and planners how to go about assessing targets for the future, but that our liaison officers "do not provide training, they do not provide advice on IHL compliance, and they have no role in the Saudi targeting chain." This is an area in which there is much confusion and greater clarity is needed. (Paragraph 76)

13. *We recommend that the UK Government provide more detail with regards to the role of UK personnel in Saudi Arabia, in particular answering the following questions:*
- *How many UK personnel are assisting the Saudi Arabian armed forces and in what roles, including BAE Systems employees;*
 - *What is the extent of the involvement of each group of UK personnel with the Saudis' operations in Yemen; and*
 - *How are UK personnel advising the Saudi Arabian armed forces on IHL and what level of understanding do they have of the coalition's regard for IHL in its operations in Yemen. (Paragraph 77)*

A global leader in the rule of law

14. The UK's support for the Saudi-led coalition in Yemen, primarily through arms sales in the face of evidence of IHL violations, is inconsistent with the UK's global leadership role in the rule of law and international rules-based systems. The very rules the UK championed—represented by the Arms Trade Treaty—are at risk of unravelling. As an instigating member of the ATT, the UK should not set the example to other signatories that it is not bound by its obligations. This puts the UK's own international reputation at risk and we are concerned that the UK's voice will ring hollow in advocating for compliance with IHL on global platforms. (Paragraph 83)

Assessing risk

15. The UK Government operates a risk-based arms export licensing regime, requiring Government to assess the risk that arms exports might be used in violation of IHL. In the face of widespread allegations of violations of IHL in Yemen, it is difficult for the public to understand how a reliable licence assessment process would not have concluded that there is a clear risk of misuse of at least some arms exports to Saudi Arabia. At present, the Government's export licensing policy towards Saudi Arabia could be interpreted as not living up to the UK's robust and transparent regulations, nor upholding the UK's international obligations. (Paragraph 89)
16. *The credibility of the Government's policy and practice of its arm export licensing regime has been called into question. In response, we recommend it issue a public explanation of its risk assessment process and what level of risk would trigger the refusal of a licence. (Paragraph 90)*

A lack of transparency

17. The Government points to its robust licensing regime as evidence that its arms export practices are responsible. However, by failing to provide persuasive evidence to support this statement or to respond to reports of IHL breaches, the Government is preventing scrutiny of its practices. It is problematic that, at the very time the Government was in receipt of reports documenting violations of IHL by the Saudi-led coalition the processing times for those licence applications were speeded up.

The Government should provide a detailed explanation for those licensing decisions rather than a simple assertion that we have a rigorous licensing regime. (Paragraph 98)

18. *We recommend that the Government implement greater transparency in the policy and practice of its arms exports. As a first step towards this, it should provide further details on the following:*
 - *the changes in information, assessment methods and political direction which have occurred since the war in Yemen began;*
 - *how differences in opinion between the departments involved in licensing are resolved; and*
 - *how often decisions are being referred up the chain of political responsibility, and how far up these decisions go.* (Paragraph 99)

Suspending licences

19. Saudi Arabia is one of our closest allies. However, the weight of evidence of violations of IHL by the Saudi-led coalition in Yemen is now so great that it is very difficult to continue to support Saudi Arabia while maintaining the credibility of our arms licensing regime. The failure of the Government to support the establishment of an independent international investigation to provide conclusive evidence on IHL violations in Yemen, on which to base arms export licensing decisions, has allowed for the transfer of items to Saudi Arabia very possibly in contravention of the UK's legal obligations. We believe it is in the interests of all those involved in arms exports that arms transfers are seen as responsible. While such doubt and uncertainty about IHL compliance in Yemen exists, the default position of the UK Government should not be to continue to sell weapons but to pause until it is satisfied that allegations have been properly investigated. (Paragraph 106)
20. *In the case of Yemen, it is clear to us that the arms export licensing regime has not worked. We recommend that the UK suspend licences for arms exports to Saudi Arabia, capable of being used in Yemen, pending the results of an independent, United Nations-led inquiry into reports of violations of IHL, and issue no further licences. In addition, the UK Government should investigate whether any licences so far issued have led to the transfer of weapons which have been used in breach of IHL. This suspension must remain in place until such time as the UN-led inquiry can provide evidence that the risk that such exports might be used in the commission of serious violations of IHL has subsided.* (Paragraph 107)

A role for development

21. The transfer of arms to Saudi Arabia for use in Yemen has highlighted the limited role of DFID in arms licensing decisions which can ultimately have a significant impact on development and the work of the Department. It is clear that the humanitarian crisis which DFID is working to address in Yemen has been exacerbated by the flow

of arms to Saudi Arabia which other government departments have licensed. This has created an incoherence between the Government's development policy and its wider security and foreign policy. (Paragraph 116)

22. *We do not support the exclusion of DFID from licence decisions beyond those for ODA-eligible countries, and from considering the end-use of weapons, as a result of which DFID has had no formal role in assessing arms export licences to Saudi Arabia for use in Yemen. We recommend that the Government reassess whether DFID should be involved formally in arms export licence assessments in addition to those under Criterion 8, for example those under Criterion 3 ("Internal situation in the country of final destination") and Criterion 4 ("Preservation of regional peace, security and stability") giving regard to the use of UK-manufactured arms in Yemen. We also recommend that Criterion 8 be expanded to consider whether the proposed transfer would seriously undermine the economy or seriously hamper the sustainable development of the recipient country, and the country or countries where the proposed transfer might ultimately be used. (Paragraph 117)*

Appendix 1: Chris White MP to Rt Hon Boris Johnson MP

29 July 2016

Rt Hon Boris Johnson MP
 Secretary of State for Foreign and Commonwealth Affairs
 Foreign and Commonwealth Office

Corrections to Parliamentary Questions and Westminster Hall debates on the subject of allegations of breaches of IHL in Yemen by the Saudi Arabia-led coalition

May I congratulate you on your appointment as Foreign Secretary; the Committees on Arms Export Controls look forward to continuing our close and productive relationship with the FCO under your stewardship.

As you will be aware, CAEC is currently undertaking an inquiry into the use of UK-manufactured arms in the conflict in Yemen, particularly by the Saudi-led coalition. We have taken oral and written evidence from NGOs, academics and from the four relevant Government departments, and are currently considering our draft Report, which we intend to agree and publish in September when the House of Commons returns from its summer recess.

During the course of oral and written evidence, we were especially concerned by allegations about breaches of international humanitarian law in the military actions of the Saudi-led coalition. We were told that Saudi Arabia should, first and foremost, conduct investigations into these allegations. However, the Saudi Arabians were due to report to the UN Human Rights Council on their investigations in March, which has since slipped to September and, in the 10 months since their commission of inquiry was established, they have reported on only one incident. As you will be aware, there have been widespread calls for an international, United Nations-led inquiry into the allegations, a point which was made powerfully to CAEC by several witnesses.

The FCO in particular, in written evidence, told us that the Saudi Arabian authorities had given assurances that its armed forces were not specifically targeting civilians, and that their military operations had been conducted in accordance with IHL. Both Mr Ellwood, for the FCO, and Mr Dunne, for the MoD, told us that the UK Government was taking note of these assurances from the Saudi Arabian government, but also that it had access to Saudi intelligence and operational reports; furthermore, Mr Dunne detailed to us the analysis the MoD were undertaking into incidents and compliance with IHL, which they then share with other branches of Government and with the Saudi authorities themselves to inform their investigations.

Last week, your department issued a Ministerial Correction—on the last day on which Parliament was sitting—to answers given in PQs and in response to Westminster Hall debates on these allegations. The corrections seem to suggest that any analysis undertaken by the UK Government was limited at best, and did not provide clear proof that IHL had not been breached. Indeed, the Government line seems to have changed from being

satisfied that IHL was not being breached and that civilians were not being targeted, to being unable to verify that IHL was not being breached or that civilians were not being targeted. This is, to say the least, a significant change of emphasis.

You will understand that the fact, substance and timing of these corrections are of deep concern to CAEC. I would therefore ask you, as a matter of urgency, to review the oral and written evidence which the UK Government, across all four participating departments, has given to CAEC on breaches of IHL by the Saudi-led coalition in Yemen. In addition, we would like answers to the following questions:

- How was inaccurate information presented to Parliament in the first place?
- Why was a decision made to review the content of statements made on IHL and the conflict in Yemen?
- When did these inaccuracies come to light?
- Why was the decision made to issue this Ministerial Correction on the last day on which Parliament was sitting?

It would be very helpful if we could have any further comments or corrections by Friday 19 August, so that we may reflect on any additional information you may provide when we come to consider our draft Report.

Chris White MP Chair of the Committees on Arms Export Controls

Cc Iain Wright MP, Chair of the Business, Innovation and Skills Committee
Dr Julian Lewis MP, Chair of the Defence Committee
Crispin Blunt MP, Chair of the Foreign Affairs Committee
Rt Hon Stephen Twigg MP, Chair of the International Development Committee

Appendix 2: Reply from Tobias Ellwood MP with attached Written Ministerial Statement on Yemen

12 August 2016

Mr Chris White MP
Chair of the Committees on Arms Exports Controls
House of Commons
London
SW1A 0AA

Dear Chris,

Thank you for your letter of 29 July to the Foreign Secretary regarding your concerns over corrections made to the parliamentary record on 21 July. I am responding on the Foreign Secretary's behalf as Minister responsible for the Middle East.

On 24 June it was brought to the attention of officials at the Foreign and Commonwealth Office (FCO) that there were inconsistencies in two of our replies to parliamentary questions.

In order to ensure ministers' information to parliament was accurate and consistent, officials thoroughly reviewed all our parliamentary responses and debates on this subject since March 2015. Amongst over 90 references, we found four further inconsistencies. These were set out in the Written Ministerial Statement, a copy of which is attached.

As I am sure you can appreciate, given the significant interest in Yemen the process of reviewing all written parliamentary questions, ministerial correspondence and parliamentary debates was considerable. The necessary liaison across three departments (MOD, FCO and DfID) during a period of new government appointments meant this was a substantial task. Unfortunately, given the changes in ministerial appointments, there were delays to the standard clearance processes and we were not in a position to issue the corrections until 21 July.

The phrase "earliest opportunity" will always require definition in relation to the details of each case. In this instance, I am satisfied that the necessary corrections were made without undue delay given the importance of the issue and the need to review thoroughly the parliamentary record at a time of government change.

Additionally, we are aware of calls for an independent, international investigation into violations of International Humanitarian Law (IHL) in Yemen. The Government is not opposing calls for an international independent investigation, but, first and foremost, we want to see the Saudis investigate allegations of breaches of IHL which have been made against them; and for their investigations to be thorough and conclusive. This is the standard we set ourselves and our allies. Saudi Arabia has publicly stated that it is investigating reports of alleged violations of IHL, and has released outcomes of its investigations on 31 January and 4 August, and that any lessons learned will be acted upon.

These clarifications have ensured that responses provided to parliamentary questions and debates are now consistent, and accurately reflect Government policy. In no way do they represent a change in policy.

I welcome the work of the CAEC and we await the outcome of your inquiry with interest. I would be happy to meet with you and other CAEC members to discuss this matter further.

Yours sincerely,

TOBIAS ELLWOOD MP
Parliamentary Under Secretary of State



Foreign &
Commonwealth
Office

Written Ministerial Statement

21 July 2016

Corrections to Parliamentary Questions and Westminster Hall Debates

**The Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs,
the Member for Bournemouth East (Mr Tobias Ellwood):**

The Foreign and Commonwealth Office (FCO) has recently reviewed all correspondence and parliamentary proceedings on the subject of allegations of breaches of international humanitarian law (IHL) in Yemen by the Saudi-led Coalition. During this exercise it became clear that the drafting of answers to four written questions and two responses given in debates relating to allegations of breaches of IHL did not fully reflect HMG's policy as set out in numerous other written questions and debates on this topic. I would like to clarify these.

The responses given on 12 February to Question 24770

(<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-01-28/24770/>) and on 15 February to Questions 24769 (<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-01-28/24769/>) and 24771 (<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-01-28/24771/>) stated "we have assessed that there has not been a breach of IHL by the coalition". However, these should have stated, as in previous PQs such as 27085 answered on 24 February, "we have not assessed that there has been a breach of IHL by the coalition".

The response given on 4 January to Question 15523

(<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-11-09/15523/>) stated "I regularly review the situation with my own advisers and have discussed it on numerous occasions with my Saudi counterpart. Our judgement is that there is no evidence that IHL has been breached, but we shall continue to review the situation regularly". However, this should have stated "I regularly review the situation with my own advisers and have discussed it on numerous occasions with my Saudi counterpart. Looking at all the information available to us, we have been unable to assess that there has been a breach of IHL by the Saudi-led Coalition. The situation is kept under careful and continual review".

During the Westminster Hall debate on Human Rights and Arms Sales to Saudi Arabia on 8 June (HC Deb, col WH138), the former Minister of State for Foreign and Commonwealth Affairs, my Rt Hon. Friend the Member for Aylesbury (Mr Lidington)

said, “In respect of the allegations about breaches of international humanitarian law, the Ministry of Defence makes assessments of how the Saudis are acting and whether the coalition is observing international human rights obligations. The MOD assessment is that the Saudi-led coalition is not targeting civilians that Saudi processes and procedures have been put in place to ensure respect for the principles of international humanitarian law; and that the Saudis both have been and continue to be genuinely committed to compliance with international humanitarian law.” This should have said, “In respect of the allegations about breaches of international humanitarian law, the Ministry of Defence (MOD) analyses how the Saudis are acting and whether the coalition is observing international humanitarian law. The MOD has not assessed that the Saudi-led coalition is targeting civilians. We have assessed that Saudi processes and procedures have been put in place to ensure respect for the principles of international humanitarian law; and that the Saudis both have been and continue to be genuinely committed to compliance with international humanitarian law.”

During the Westminster Hall debate on War in Yemen: First Anniversary from 22 March (HC Deb, col WH518), I stated that, “we make it clear that we are doing our own assessments to understand whether the equipment we sell has any participation in that and indeed whether the breaches are by the Houthis or the Saudi Arabians.” This should have stated “we make it clear that we are doing our own analysis. We encourage the Saudis to conduct their own investigations to understand whether the equipment we sell has any participation in that and indeed whether the breaches are by the Houthis or the Saudi Arabians.”

These corrections ensure the answers given in all written questions and debates now accurately reflect HMG policy in this area and consistent with other statements and questions answered.

The MOD monitors incidents of alleged IHL violations using available information. This is used to form an overall view on the approach and attitude of Saudi Arabia to IHL. This, in turn, informs the risk assessment made under the Consolidated Criteria (i.e. whether there is a clear risk that it might be used in the commission of a serious violation of IHL). We are not acting to determine whether a sovereign state has or has not acted in breach of IHL, but instead - as Criterion 2(c) requires - we are acting to make an overall judgement.

It is important to make clear that neither the MOD nor the FCO reaches a conclusion as to whether or not an IHL violation has taken place in relation to each and every incident of potential concern that comes to its attention. This would simply not be possible in conflicts to which the UK is not a party, as is the case in Yemen.

We regularly encourage Saudi Arabia to investigate any allegations of breaches of IHL which are attributed to them; and for their investigations to be thorough and conclusive. Saudi Arabia has publicly stated that it is investigating reports of alleged violations, and that any lessons learned will be acted upon. We continue to believe that they have the best insight into their own military procedures, allowing them to understand what went wrong and apply the lessons learnt in the best possible way, if required. This is the standard we set ourselves and our allies. For example, when allegations have been made against us in Afghanistan and Iraq we have investigated these claims ourselves. We did not expect other states to do this and form judgements on our behalf.

Formal Minutes

Wednesday 7 September 2016

The Business, Innovation and Skills and the International Development Committees met concurrently, pursuant to Standing Order No. 137A.

Members present:

Business, Innovation and Skills Committee	International Development Committee
Peter Kyle	Dr Lisa Cameron
Jonathan Reynolds	Stephen Doughty
Michelle Thomson	Mr Nigel Evans
Chris White	Stephen Twigg
Mr Iain Wright	

Chris White was called to the Chair, in accordance with Standing Order No. 137A(1)(d).

Draft Report (*The use of UK-manufactured arms in Yemen*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be considered concurrently, in accordance with Standing Order No. 137A (1)(c).

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 117 read and agreed to.

Summary agreed to.

Appendices agreed to.

[The Committees adjourned.]

BUSINESS, INNOVATION AND SKILLS COMMITTEE

Tuesday 13 September

Members present:

Mr Iain Wright, in the Chair

Paul Blomfield	Michelle Thomson
Richard Fuller	Craig Tracey
Peter Kyle	Chris White
Jonathan Reynolds	

Question proposed, that the draft Report (*The use of UK-manufactured arms in Yemen*) proposed by the Chair be brought up and read.

The Committee divided.

Ayes 6	Noes 1
Paul Blomfield	Richard Fuller
Peter Kyle	
Jonathan Reynolds	
Michelle Thomson	
Craig Tracey	
Chris White	

Question accordingly agreed to.

Paragraph 3 read as follows:

“We heard evidence from Human Rights Watch, Amnesty International, Saferworld and Oxfam on the crisis in Yemen and the evidence of violations of IHL; from Professor Philippe Sands QC on the findings of his and others’ legal opinion on the lawfulness of UK arms exports to Saudi Arabia in the context of the conflict in Yemen; from ADS, the leading trade body for the aerospace, defence and security industries; from leading experts on our relationship with the Gulf and our arms export policies; and from Ministers from the Foreign and Commonwealth Office, the former Department for Business, Innovation and Skills, the Ministry of Defence and the Department for International Development. We are grateful to all of those who gave oral and written evidence.”

Paragraph rescinded.

Paragraph 33 read, as follows:

“The Saudi authorities announced on 31 January 2016 the results of an investigation into the October 2015 airstrike on a Médecins Sans Frontières (MSF) facility in Sa’ada. Tobias Ellwood wrote to us about the steps taken by the Saudis following this investigation¹⁷⁷, as follows:

177 FCO supplementary evidence

Inviting MSF to Riyadh to discuss the incident and agree on new measures, including a hot line to MSF and greater protection for hospitals;

- Setting up a new investigation team outside Coalition Command to review all existing procedures and suggest improvements;
- Improving Saudi procedures on rules of engagement and targeting;
- Ensuring that people on the ground who are providing intelligence to Coalition forces are aware of all protected sites on the no strike list and have better means of communicating information to pilots; and
- Providing additional IHL training for Saudi officers and pilots, including courses supported by the US and UK.

On 4 August 2016 the Joint Incidents Assessment Team (JIAT), comprising 14 members from coalition states, reported its conclusions to eight further incidents they had investigated. The JIAT found that the coalition had abided by military rules of engagement in six out of the eight incidents and in only one of the instances in which errors were made were there civilian casualties and therefore reparations required. The JIAT reported that “Coalition forces are committed to observing the rules laid down in international conventions on humanitarian law and in particular not directly targeting civilians during military operations and take all measures to preserve their safety and lives.” The JIAT’s legal adviser said that the work of the JIAT in assessing the incidents “depends on ensuring the legal aspects of target operations that are compatible with the international law, and on using the American and British mechanism to assess accidents in addition to the law of armed conflict.”¹⁷⁸ Mr Ellwood admitted:

I share the Committee’s frustration that that information has been slow to come forward. This is a nation that is not used to sharing information in this manner and to having to expose internationally the details of what it does. This is the first time it has had to do sustained warfare. It must look up and answer to the international standards that we expect. We will make it very clear if we feel that it does not meet those standards, but we require time, and Saudi Arabia will require time, to provide the analysis that needs to be done in all these cases.”

Paragraph rescinded.

Summary rescinded.

Paragraph (now paragraph 3) brought up, read the first and second time, and inserted.

Paragraph (now paragraph 33) brought up, read the first and second time, and inserted.

Summary amended and agreed to.

Resolved, That the draft Report prepared by the Business, Innovation and Skills and International Development Committees be the Fifth Report of the Committee to the House.

¹⁷⁸ [Saudi Arabian Embassy media statement](#), 5 August 2016

Ordered, That the provisions of Standing Order No. 137A(2) be applied to the Report.

Ordered, That Chris White make the Joint Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No.134 (Select committees (reports)).

[Adjourned till Tuesday 11 October at 9.00 a.m.]

INTERNATIONAL DEVELOPMENT COMMITTEE

Wednesday 14 September

Members present:

Stephen Twigg, in the Chair

Fiona Bruce	Jeremy Lefroy
Dr Lisa Cameron	Albert Owen
Stephen Doughty	Mr Virendra Sharma

Question proposed, that the draft Report (*The use of UK-manufactured arms in Yemen*), proposed by the Chair, be brought up and read.

The Committee divided.

Ayes 4	Noes 2
Dr Lisa Cameron	Fiona Bruce
Stephen Doughty	Jeremy Lefroy
Albert Owen	
Virendra Sharma	

Question accordingly agreed to.

Paragraph 3 read as follows:

“We heard evidence from Human Rights Watch, Amnesty International, Saferworld and Oxfam on the crisis in Yemen and the evidence of violations of IHL; from Professor Philippe Sands QC on the findings of his and others’ legal opinion on the lawfulness of UK arms exports to Saudi Arabia in the context of the conflict in Yemen; from ADS, the leading trade body for the aerospace, defence and security industries; from leading experts on our relationship with the Gulf and our arms export policies; and from Ministers from the Foreign and Commonwealth Office, the former Department for Business, Innovation and Skills, the Ministry of Defence and the Department for International Development. We are grateful to all of those who gave oral and written evidence.”

Paragraph rescinded.

Paragraph 33 read, as follows:

“The Saudi authorities announced on 31 January 2016 the results of an investigation into the October 2015 airstrike on a Médecins Sans Frontières (MSF) facility in Sa’ada. Tobias Ellwood wrote to us about the steps taken by the Saudis following this investigation¹⁷⁹, as follows:

- Inviting MSF to Riyadh to discuss the incident and agree on new measures, including a hot line to MSF and greater protection for hospitals;
- Setting up a new investigation team outside Coalition Command to review all existing procedures and suggest improvements;
- Improving Saudi procedures on rules of engagement and targeting;
- Ensuring that people on the ground who are providing intelligence to Coalition forces are aware of all protected sites on the no strike list and have better means of communicating information to pilots; and
- Providing additional IHL training for Saudi officers and pilots, including courses supported by the US and UK.

On 4 August 2016 the Joint Incidents Assessment Team (JIAT), comprising 14 members from coalition states, reported its conclusions to eight further incidents they had investigated. The JIAT found that the coalition had abided by military rules of engagement in six out of the eight incidents and in only one of the instances in which errors were made were there civilian casualties and therefore reparations required. The JIAT reported that “Coalition forces are committed to observing the rules laid down in international conventions on humanitarian law and in particular not directly targeting civilians during military operations and take all measures to preserve their safety and lives.” The JIAT’s legal adviser said that the work of the JIAT in assessing the incidents “depends on ensuring the legal aspects of target operations that are compatible with the international law, and on using the American and British mechanism to assess accidents in addition to the law of armed conflict.”¹⁸⁰ Mr Ellwood admitted:

I share the Committee’s frustration that that information has been slow to come forward. This is a nation that is not used to sharing information in this manner and to having to expose internationally the details of what it does. This is the first time it has had to do sustained warfare. It must look up and answer to the international standards that we expect. We will make it very clear if we feel that it does not meet those standards, but we require time, and Saudi Arabia will require time, to provide the analysis that needs to be done in all these cases.”

Paragraph rescinded.

Summary rescinded.

¹⁷⁹ FCO supplementary evidence

¹⁸⁰ [Saudi Arabian Embassy media statement](#), 5 August 2016

Paragraph (now paragraph 3) brought up, read the first and second time, and inserted.

Paragraph (now paragraph 33) brought up, read the first and second time, and inserted.

Summary amended and agreed to.

Resolved, That the draft Report prepared by the Business, Innovation and Skills and International Development Committees be the First Joint Report of the Committees to the House.

Ordered, That the provisions of Standing Order No. 137A(2) be applied to the Report.

Ordered, That Chris White make the Joint Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No.134 (Select committees (reports)).

[Adjourned till Tuesday 11 October at 10.00 a.m.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#).

Wednesday 23 March 2016

Question number

Roy Isbister, Arms Unit, Saferworld, **Oliver Sprague**, Programme Director, Military Security and Police, Amnesty International, **David Mepham**, UK Director, Human Rights Watch, and **Tim Holmes**, Regional Director, Middle East & Commonwealth of Independent States, Oxfam

[Q1–54](#)

Wednesday 13 April 2016

Professor Philippe Sands QC, Matrix Chambers

[Q55–96](#)

Paul Everitt, Chief Executive Officer, ADS

[Q97–128](#)

Wednesday 27 April 2016

Lt Gen (retd) Sir Simon Mayall KBE CB, former Defence Senior Adviser, Middle East, Ministry of Defence, **Dr Anna Stavrianakis**, Senior Lecturer in International Relations, University of Sussex, and **Michael Stephens**, Research Fellow for Middle East Studies, RUSI

[Q129–152](#)

Philip Dunne MP, Minister of State for Defence Procurement, Ministry of Defence, **Tobias Ellwood MP**, Minister for the Middle East, Foreign and Commonwealth Office, **Rt Hon Anna Soubry MP**, Minister for Small Business, Industry and Enterprise, Department for Business, Innovation and Skills, and **Rt Hon Desmond Swayne TD MP**, Minister of State, Department for International Development

[Q153–228](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#).

UKY numbers are generated by the evidence processing system and so may not be complete.

- 1 ADS ([UKY0016](#))
- 2 Article 36 ([UKY0010](#))
- 3 Campaign Against Arms Trade ([UKY0002](#))
- 4 Colchester Creek ([UKY0009](#))
- 5 Dietrich Klose ([UKY0007](#))
- 6 Dr Anna Stavrianakis ([UKY0003](#))
- 7 Foreign and Commonwealth Office ([UKY0018](#))
- 8 Foreign and Commonwealth Office ([UKY0013](#))
- 9 Human Rights Watch ([UKY0014](#))
- 10 Jamila Hanan ([UKY0006](#))
- 11 Lieutenant General (Retired) Sir Simon Mayall ([UKY0015](#))
- 12 Mrs and Dr Julie and Jim Maxon ([UKY0008](#))
- 13 Mwatana Organization for Human Rights ([UKY0011](#))
- 14 Save the Children ([UKY0017](#))
- 15 Southwest Initiative for the Study of Middle East Conflicts ([UKY0005](#))
- 16 Transparency International UK ([UKY0004](#))
- 17 UK Working Group on Arms /Control Arms UK ([UKY0012](#))
- 18 University of Leicester ([UKY0001](#))