

UK ARMS SALES TO THE GULF **REPORT**

BATTLE OF NARRATIVES

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September 2022

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Preface

The UK has a long history of strategic alliance with the Kingdom of Saudi Arabia, and with a range of other states in the Gulf region. Indeed, the UK was one of the first states to formally recognise the Al-Saud's dominion of Saudi Arabia in 1927. In the post-war period, despite an announcement by Prime Minister Harold Wilson in 1968 that the UK was retrenching from its commitments "east of Suez", a close military connection with the Gulf states persisted and remain very strong to this day. With the post-Brexit re-orientation of "Global Britain's" strategic position, it is becoming clear that the deeply entrenched relationships with the Gulf states are likely to become even more important.

As the papers in this publication describe, this relationship has been characterised by two factors. Firstly, the regional strategic imperative of having strong, Sunni Arab friends alongside one of the most important bodies of water in the world, has ensured that diplomatic and political ties with the Gulf states have endured through thick and thin. Holding to this line has become increasingly difficult in recent years in the face of mounting concerns over human rights abuses in the region.

The second key factor is the enormous scale of the arms trade between the UK and Saudi Arabia: a level of trade fairly unique in the Western world, which partially accounts for the difference between the UK's willingness to draw back from supplying arms to Saudi Arabia, as compared to most of its European neighbours. From the £40 billion Al Yamamah deal in the 1980s – thought to be the single largest commercial deal of any in the UK's history – to the fact that UK arms sales to Saudi Arabia account for fully 40 per cent of the estimated £86 billion of all sales in the five years from 2015; the domestic political risk to the UK in not rocking the boat in this area is clear to see.

The outcome of these factors is perhaps troubling in a number of ways. Firstly, despite claiming that it has one of the most robust arms trade licensing regimes in the world, the UK is at risk of demonstrating a growing "misalignment" between its intent to champion a liberal and rules-based world order, and a willingness to licence arms sales to actors involved in problematic military campaigns at home and abroad. This risk prevails despite a

comprehensive post-Brexit resetting of the UK's Strategic Export Licensing Criteria. Secondly, the national security card is repeatedly played in parliament to suppress meaningful debate about the scale and details of the trade. Thirdly, the UK finds itself engaged in a waxing and waning legal battle over the legality of its arms sales to Saudi Arabia, particularly during the Yemen War, in which human rights advocates led by the Campaign Against the Arms Trade (CAAT) have scored some significant successes and may yet prevail.

The outcome for the UK government, as described in this publication, is a complex battle of narratives that tries to balance the need to keep the arms trade flowing with a supposed commitment to global peace and security. It is recognised that the UK can and should have an important role to play in global diplomacy, and in the exercising of its political and economic capital in ensuring the consolidation of a liberal world order. In some ways, the post-Brexit era may offer some new opportunities to achieve these lofty aims. But, as this volume describes, severe reputational damage could be suffered in this pursuit, if some of the critical challenges described here are not debated and confronted in an effective way. We hope this volume adds usefully to this discussion.

I. UK Arms Sales to Saudi Arabia and the UAE: Historical Ties and Economic Linkages

Courtney Freer



Introduction: Historical Ties between the UK and Arab Gulf Monarchies

While ties between the UK and both Saudi Arabia and the UAE did not begin with arms sales, in recent years, arms sales have become one of the most visible indications of their strong economic and political connections. After 1971, when the UAE, Bahrain and Qatar became independent following British withdrawal east of Suez and after the increase in oil revenue between 1973-1974, the value of major arms purchases in the Gulf states increased markedly.¹ For the newly independent UAE alone, the total value of arms purchases were 37 times higher in the period between 1971 and 1991 than between 1950 and 1970.² Interestingly, during the initial periods of Emirati arms purchase, 61 per cent came from France, compared to only 18 per cent from the UK and six per cent from the US.³

The balance of arms trade has shifted in recent decades, with the US the largest arms exporter to the entire Gulf Cooperation Council (GCC) since 1991, accounting for 55 per cent of the total, compared to the UK at 14 per cent and France at 16 per cent.⁴ This shift is not incidental; rather, as Mark Pythian explains, British policy was “defined by the need to maintain the existing beneficial configuration of power and influence in the international system. Arms sales played a key role in cementing influence and securing the continuation of the existing order.”⁵ This existing order, importantly includes both considerations of political status quo domestically as well as abroad. Indeed, arms transfers help to bolster Gulf governments locally among potentially restive domestic populations and in the regional system more broadly.

In the below, we trace the historical relationships between the UK and Saudi Arabia and the UK and the UAE, with a view to understanding how arms sales from the UK to these states fit into these bilateral relationships more broadly, and how they reflect both British priorities in the Gulf and Saudi and Emirati priorities locally and regionally.

¹ David Wearing, *AngloArabia: Why Gulf Wealth Matters to Britain* (London: Polity, 2018), 358.

² Ibid.

³ Ibid.

⁴ Pieter D. Wezeman, Aude Fleurant, Alexandra Kuimova, Diego Lopes da Silva, Nan Tian, and Siemon T. Wezeman, “Trends in International Arms Transfers, 2019, SIPRE Fact Sheet, March 2020, https://www.sipri.org/sites/default/files/2020-03/fs_2003_at_2019.pdf.

⁵ Mark Pythian, *The Politics of British Arms Sales since 1964* (Manchester: Manchester University Press, 2000), 2.

The UK and Saudi Arabia

Saudi Arabia formally became independent in 1932, yet official ties between the UK and Saudi Arabia date back to 1848 when Faisal bin Turki, who ruled the second Saudi state, requested the support of the British Political Resident in Bushire through his representative in Oman. In 1915, the Treaty of Darin signed between Ibn Saud and the British government made Saudi Arabia a British protectorate. It did not remain one for long, however, as the UK became one of the first states to recognise Saudi independence. Indeed, a new Anglo-Saudi treaty was signed in 1927 in which the UK recognised the independence of Saudi Arabia under Ibn Saud's political leadership.⁶ The relationship was so strong that, when a rebellion broke out within the kingdom, the UK provided Ibn Saud with military assistance, including air power.⁷ This incident appears to be the first in which the UK provided military aid to their Saudi allies – notably not for reasons of geopolitical threat but due to domestic political unrest.

The first bilateral arms deal between the UK and Saudi Arabia took place in the 1960s. Specifically, in 1964, the British Aircraft Corporation (BAC) conducted demonstration flights of their new aircraft, the Lightning, in Riyadh, leading Saudi Arabia to sign a letter of intent the next year for the supply of the Lightning as well as another aircraft and air missiles. In 1973, the Saudi government signed an agreement with the British government to make BAC the contractor for all parts of its defence system. In the 1970s, US defence contractors entered Saudi Arabia in large numbers, eager to take advantage of the increasing oil revenue available to the Saudi government, but in the 1980s, the Saudis gravitated towards UK arms deals due to pro-Israeli sentiment in the US Congress which could have blocked the deal or imposed restrictions on the use of the purchased aircraft.

The Saudi National Guard, which is charged specifically with protecting the king, has historically been trained by the British military, which reorganised the force (previously known as the White Army) in 1963. In 1973, the UK signed a £250 million deal to train Saudi air force pilots and service their aircrafts.⁸ In 1975, however, the American company Vinnell took control of training the National Guard, specifically to convert it into a force to fight

⁶ Daniel Silverfarb, "The Treaty of Jiddah of May 1927," *Middle Eastern Studies*, vol 18, no. 3 (1982): 276-285.

⁷ Wearing, 44.

⁸ Wearing, 75-76.

counterinsurgencies. The British Military Mission to the Saudi Arabian National Guard (BMM SANG) programme continues, however, with around a dozen British army personnel under the command of a brigadier in Saudi Arabia.⁹ British involvement in this domestically focused group came under fire from human rights groups and politicians alike when segments of the Saudi National Guard were sent to Bahrain to forcefully end pro-democracy protests in 2011.¹⁰

By far the most famous, broad-ranging and controversial arms deal between the UK and Saudi Arabia was Al-Yamamah, signed in the 1980s. In 1985, British Prime Minister Margaret Thatcher and Bander bin Sultan al-Saud, son of the Saudi defence minister, negotiated the Al-Yamamah arms deal for BAE Systems, which had merged with the BAC in 1977. The deal has since accounted for £43 billion in revenue for BAE Systems and was paid for by the delivery of up to 600,000 barrels of crude oil per day to the British government. The deal is Britain's single largest export agreement in history and employs 5,000 people in Saudi Arabia. Indeed, Al-Yamamah has been called "the biggest British sale ever of anything to anyone",¹¹ as well as "staggering both by its sheer size and complexity".¹² Notably, no conditions were put in place on the deal linked to human rights or security sector reforms.

As David Wearing explains, "To describe the Al-Yamamah programme as a mere sale of jet fighters would be to downplay its significance to the point of distorting its true nature. The contract effectively provided for the creation of a modern air force and aerial defence system. As well as purchasing Tornado aircraft and Hawk trainer jets and ongoing support for both, the Saudis bought a number of improvements to their airbases."¹³ Further, Al-Yamamah II included, along with Tornado aircrafts and Hawk jets, 50 helicopters, four minesweepers and the construction of an airbase, leading to a level of dependence of the Saudi Royal Air Force on the UK, despite its continued ties with the US military.¹⁴ And although British politicians have emphasised the importance of the Al-Yamamah deals in producing jobs domestically,

⁹ Jamie Doward and Philippa Stewart, "UK training Saudi forces used to crush Arab spring," *The Guardian*, 28 May 2011, <https://www.theguardian.com/world/2011/may/28/uk-training-saudi-troops>.

¹⁰ Doward and Stewart.

¹¹ Qtd. In Christopher Davidson, *Shadow Wars: The Secret Struggle for the Middle East* (London: Oneworld, 2016).

¹² Qtd. In Mirza H. Alqassab, *Life After Oil: Predicament of the Gulf Arab States* (Leicester: Matador, 2020), 35.

¹³ Wearing.

¹⁴ Wearing.

Wearing insists that the most important contribution of the deals was “the way in which Gulf petrodollars were available, through Britain’s long-standing relationship with Saudi Arabia, to fund an enormous export order for the British arms industry, an industry whose health is vital to Britain maintaining its role as a global military power. In addition, through the negotiation and performance of the contract, close and enduring relationships were forged at several levels of the British military-industrial-political complex and its counterparts in the Saudi system.”¹⁵

The deal did come under fire, however, due to charges of corruption, with accusations that £6 billion was delivered in corrupt payments, most prominently to Prince Bandar, as well as through a “slush fund” used by BAE to entertain Saudi royals in the UK.¹⁶ Allegations of corruption surfaced as early as 1985, but the first investigation began only in 1989, with a report completed in 1992 yet never released publicly. Another investigation surfaced in the early 2000s, with the Saudi government making efforts to stop it, as it was in the process of negotiating the Eurofighter deal described below; as a result, then Prime Minister Tony Blair intervened and wrote to the head of the Serious Fraud Office investigating the corruption charges linked to Al-Yamamah, ultimately convincing him to cancel the investigation.¹⁷

The next large-scale arms deal between the UK and Saudi Arabia took place in 2005. The two governments signed a memorandum of understanding to “establish a greater partnership in modernising the Saudi Arabian Armed Forces and developing close service-to-service contacts especially through joint training and exercises.”¹⁸ Further, the agreement detailed that BAE Systems would supply Saudi Arabia Eurofighter Typhoons, to replace the Tornado fleet that had been supplied under Yamamah; BAE Systems, in turn, would invest in Saudi companies. The Saudi-British Defence Cooperation Programme was signed in 2007 for existing equipment to be upgraded and serviced; it is overseen by the Ministry of Defence through its Saudi Armed Forces Project (MODSAP) and funded by the Saudi Defence Budget.¹⁹ As it stands currently, major UK-Saudi arms deals are overseen in the UK by the MODSAP, which manages the

¹⁵ Wearing, 88-89.

¹⁶ “The Al Yamamah Arms Deals,” World Peace Foundation, The Fletcher School, Tufts University, 5 May 2017, <https://sites.tufts.edu/corruptarmsdeals/the-al-yamamah-arms-deals/>.

¹⁷ “The Al Yamamah Arms Deals.”

¹⁸ “Eurofighter sale to Saudi Arabia agreed,” The Guardian, 21 December 2005, <https://www.theguardian.com/business/2005/dec/21/politics.arms>.

¹⁹ “The UK’s relations with Saudi Arabia and Bahrain,” Foreign Affairs Committee, House of Commons, 12 November 2013, <https://publications.parliament.uk/pa/cm201314/cmselect/cmfaaff/88/8802.htm>.

supply of military jets and other equipment.²⁰ The Saudi Arabian National Guard Communications Project is another state-to-state deal through which the UK provides communications equipment for the Saudi National Guard. As Wearing explains,

In each case, memoranda of understanding have been signed between the two governments, following which the MoD places contracts with manufacturers to fulfil the UK's obligations. Both MODSAP and SANGCOM are run by British military and civil personnel, although MODSAP is funded directly by Saudi Arabia. No other major British export industry enjoys quite this level of state support.²¹

The Al-Salam deal in 2007 involved an agreement that the UK government would supply, over the course of 11 years, 72 Typhoon aircraft to the Saudi government, in addition to training, ground support and technical and manpower assistance at a price of £4.43 billion, all overseen by the MODSAP. In 2009, the British and Saudi governments agreed to a three-year Typhoon support programme through which BAE Systems would provide maintenance, support and training; in 2012, two six-month extensions were agreed, and in 2013 a five-year £1.8 billion contract was agreed to the end of 2017.

In 2013, a UK parliamentary committee report was published examining the relationship with Saudi Arabia.²² It outlined criticism over the UK's continued cooperation with Saudi Arabia, more specifically, its decision to prioritise arms sales over human rights. According to the report, "The current UK-Saudi relationship is based on these historical ties as well as a continued sense of common interests in defence, security and trade."²³ Concerns over UK arms sales to Saudi Arabia intensified after it became involved in Yemen's civil war in 2015. This will be further expanded on in the proceeding chapter.

Between the start of the war in Yemen in March 2015 and again in December 2016, the UK licensed £3.3 billion worth of arms exports to Saudi Arabia, despite accusations that they were being used against civilians. In June 2016, the Campaign Against Arms Trade (CAAT) gained

²⁰ Wearing, 353.

²¹ Wearing, 353-354.

²² "The UK's relations with Saudi Arabia and Bahrain," Foreign Affairs Committee, House of Commons, 12 November 2013, <https://publications.parliament.uk/pa/cm201314/cmselect/cmfaff/88/8802.htm>.

²³ "The UK's relations with Saudi Arabia and Bahrain," Foreign Affairs Committee, House of Commons, 12 November 2013, <https://publications.parliament.uk/pa/cm201314/cmselect/cmfaff/88/8802.htm>.

permission from the British High Court to bring a judicial review against the UK government, on the grounds that weapons sold to Saudi Arabia for use in Yemen were “used in the commission of a serious violation of International Humanitarian Law”.²⁴ Ultimately, the High Court rejected CAAT’s claim in July 2017, on grounds that it “recognises the rigorous and robust processes that we have in place across Government to ensure that UK defence exports have licenced consistently with the Government’s consolidated EU and national arms export licensing criteria”.²⁵

Nonetheless, political opposition emerged in parliament as well. In November 2016, two parliamentary committees (the Committee on Arms Export Controls and International Development and Business Committee) released a joint report that called on the British government to stop licensing arms exports to Saudi Arabia until an independent UN investigation could clarify breaches in international humanitarian law.²⁶ Government ministers released a statement disagreeing with this assessment, but the public debate over arms sales to Saudi Arabia continues, as have legal appeals.²⁷

CAAT appealed the 2017 High Court decision in favour of continuing arms sales to Saudi Arabia, and this appeal was heard in April 2019. In a June 2019 judgement, the Court of Appeal ruled in favour of CAAT, stating that “the Government’s decision-making process for granting export licences was ‘irrational’ and therefore ‘unlawful’.”²⁸ In response, the British government pledged to review all existing licenses and suspend new licences for export to Saudi Arabia and coalition partners for use in Yemen until the review was completed; the government received permission to appeal to the Supreme Court in July 2019.²⁹ In September 2019, however, International Trade Secretary Liz Truss apologised after discovering that the

²⁴ Brooke-Holland and Smith, “UK arms exports to Saudi Arabia: Q&A,” House of Commons Briefing Paper Number 08425, 29 January 2021, p. 3, <https://researchbriefings.files.parliament.uk/documents/CBP-8425/CBP-8425.pdf>.

²⁵ Brooke-Holland and Smith, p. 3.

²⁶ “UK arms sales must stop until human rights abuses investigated,” UK Parliament, 15 September 2016, <https://www.parliament.uk/external/committees/commons-select/business-innovation-and-skills/news/2016/uk-arms-yemen-report-published-16-17/>.

²⁷ Jon Stone, “Government rejects MPs’ call to suspend arms sales to Saudi Arabia over alleged war crimes,” The Independent, 14 November 2016, <https://www.independent.co.uk/news/uk/politics/saudi-arabia-arms-sales-committee-mps-government-response-rejected-a7417191.html>.

²⁸ Brooke-Holland and Smith, 3.

²⁹ Ibid.

government had in fact granted new export licences to Saudi Arabia and its partners in breach of their agreement.³⁰

According to the Stockholm International Peace Research Institute (SIPRI), the UK was the second largest exporter of arms to Saudi Arabia after the US between 2010 and 2019, accounting for some 19 per cent of total arms imports to Saudi Arabia.³¹ In the same period, Saudi Arabia was the largest importer of arms from the UK, accounting for some 40 per cent of the UK's total arms export.³² In addition, the UK and Saudi Arabia have a government-to-government programme through which the UK has exported various aircraft, countermeasure vessels, logistics and manpower support.³³ BAE Systems, the primary contractor for this programme, is tasked with applying for the appropriate export licences.

In July 2020, Liz Truss announced that the UK would resume arms exports to Saudi Arabia, which had been blocked (at least in theory) after the Supreme Court's ruling in 2019. Truss explained that the government has a new methodology for granting export licences and that, in their estimation, "there is not a clear risk that the export of arms and military equipment to Saudi Arabia might be used in the commission of a serious violation of IHL."³⁴ The CAAT in October 2020 launched a judicial challenge against this decision, which remains ongoing. In January 2021, across the Atlantic, the Biden administration announced a temporary freeze on US arms sales to Saudi Arabia, alongside scrutinizing purchases by the UAE.

³⁰ Dan Sabbagh, "Truss admits UK broke ban on Saudi arms sales three times," *The Guardian*, 26 September 2019, <https://www.theguardian.com/politics/2019/sep/26/truss-admits-uk-breached-court-order-banning-arm-sales-to-saudis-again>.

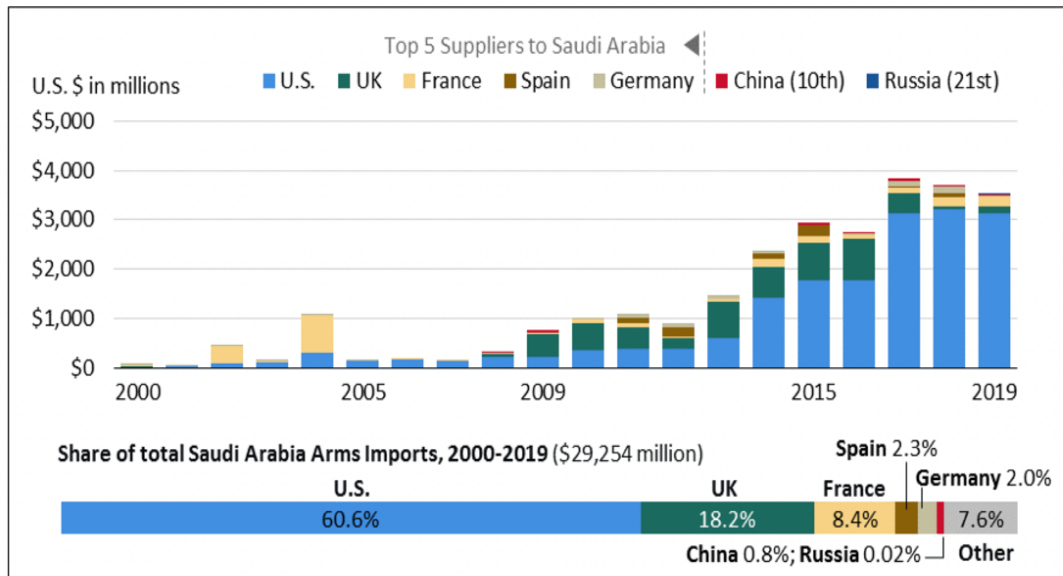
³¹ Brooke-Holland and Smith.

³² Brooke-Holland and Smith.

³³ Brooke-Holland and Smith.

³⁴ Brooke-Holland and Smith.

Figure 7. Arms Suppliers to Saudi Arabia
Value and Rank, by Supplier, 2000-2019



Source: Stockholm International Peace Research Institute (SIPRI), importer/exporter total trend-indicator value (TIV) tables. Figure created by CRS.

The UK and the UAE



Official diplomatic ties between the United Kingdom and the present-day UAE date back to 1820, when a General Treaty of Peace was signed by the UK and individual rulers of six of the UAE's seven constituent emirates: Abu Dhabi, Ajman, Dubai, Sharjah, Umm al-Quwain and Jazirat al-Hamra (today known as Ras al-Khaimah) to maintain peace in the Gulf, which at the time was experiencing high levels of piracy (indeed the coast of the Arabian Gulf was known to the British as "Pirate Coast"). In 1853, Britain and the rulers of Abu Dhabi, Ajman, Dubai and Sharjah signed the first Maritime Truce to ban all hostilities at sea during pearling season (21 May-21 November), as pearling was the primary source of income for the states at this time. The signing of these treaties led the emirates to be known collectively as the Trucial States. Lord Palmerston explained British interests at the time: "All we want is trade and land is not necessary for trade; we can carry on commerce on ground belonging to other people."³⁵

³⁵ Lord Palmerston, Qtd. In Ronald Hyam, *Britain's Imperial Century, 1815-1914: A Study of Empire and Expansion* (London: Palgrave Macmillan, 2002), 30.

In 1892, the British Government formally took control over the foreign affairs of the Trucial States, leaving individual emirate rulers to manage internal affairs; the emirates were, however, prohibited from entering into relationships with any other foreign government without British consent. In 1951, the Trucial States Council was established to provide a forum for scholarship and research on international and regional issues. It did not have decision-making powers, however, and thus served more as a forum for the exchange of ideas than a legislative body. A defence force, under the aegis of the Foreign Office, was established in 1951, run by British officers and using British equipment.³⁶

Over time, the Trucial States Council expanded its remit to advise on public health, education and agriculture, but only obtained funding in 1965 when the chairman became Shaykh Saqr bin Mohammed al-Qassimi, the ruler of Ras al-Khaimah, rather than the British Political Agent.³⁷ As Christopher Davidson explains,

From the 1820s and onwards, ruling families became clients who were unwilling to upset the status quo: the truces that they had signed elevated them above other members of the local elite and ensured them British ‘trucial’ protection in the event of domestic insurgency. Thus, in many ways the centuries-old ebb and flow of tribal power had been frozen in time, as Britain signed treaties with whichever family happened to hold the reins of power at the time. This effectively created robust British-dependent dynasties [...] In parallel to this political dependency, Britain also sought to control pearling markets and often limited access to new technologies offered by foreign merchants, especially those that represented powers seeking to gain influence in the region.³⁸

In January 1968, British Prime Minister Harold Wilson announced that the United Kingdom would permanently withdraw its troops from the east of Suez. The UK abandoned its military bases in the Middle East and southeast Asia soon thereafter. Consequently, the Trucial States, along with Bahrain and Qatar, embarked on negotiations to attempt to put together an independent state. Indeed, “the shaykhdoms expressed unique reluctance at the prospect of

³⁶ Rosemarie Said Zahlan, *The Origins of the United Arab Emirates* (London: Routledge, 2017), 190-191.

³⁷ Zahlan.

³⁸ Christopher M. Davidson, “Arab Nationalism and British Opposition in Dubai, 1920-66,” *Middle Eastern Studies*, vol. 43, no. 6 (2007): 880.

British withdrawal, for it was Britain that had preserved them from being absorbed by their larger and more powerful neighbours.”³⁹ To avoid that fate, there were unsuccessful attempts to put together a nine-member independent state. Ultimately, the foundation of an independent, sovereign state was formally proclaimed on December 2, 1971. When Ras al Khaimah joined on February 10, 1972, the federation was complete with the inclusion of all of the seven former Trucial States.

The same year as achieving independence, in 1971, the UAE and UK signed a Treaty of Friendship, with the aim of “strengthening the bonds of friendship between the two countries on the basis of mutual respect for sovereignty and mutual interest”.⁴⁰ The agreement sought to continue cooperation between the countries. Indeed, the UK remains the only country represented by two embassies in the emirates.

In 1981, Margaret Thatcher became the first British prime minister to visit the UAE and used the visit to negotiate for the supply of military hardware, as well as military training facilities to the emirates. Thatcher negotiated the sale of the Hawk aircraft in the face of competition from France who made the Alpha jet. As the embassy noted at the time, “The local feeling, prevalent at one time, that after our withdrawal from the Gulf in 1971 we had lost interest in its peoples and problems must have been dispelled forever.”⁴¹ Thatcher’s visit, as well as her later trips to the emirates, helped to solidify British presence in the region and reassure the UAE of British political and defence support.

On 28 March 1989, Shaykh Khalifa bin Zayed al-Nahyan, Crown Prince of Abu Dhabi and Deputy Supreme Commander of the Emirati Armed Forces, revealed that the UAE had signed a deal with the UK to buy several Hawk fighters to strengthen its armed forces – the first official military deal between the two states. July 1989 marked the first official visit of Emirati president Shaykh Zayed to the UK, where he met Queen Elizabeth II at Buckingham Palace.

³⁹ Zahlan, 196-197.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/238663/7535.pdf.

⁴¹ John Dennehy, “Memories of the Iron Lady: Margaret Thatcher’s first visit to the UAE,” *The National*, 14 August 2019, <https://www.thenationalnews.com/uae/heritage/memories-of-the-iron-lady-margaret-thatcher-s-first-visit-to-the-uae-1.898143>.

UK exports to the UAE were estimated to have risen over 40 per cent over the course of 1993, eventually reaching a record high of £1.31 billion.

In November 1996, the UAE signed a Defence Cooperation Agreement (DCA) with the UK to protect it against potential foreign aggression. This landmark agreement “sets out arrangements for cooperation and represents Britain’s largest defence commitment outside NATO”.⁴² The DCA, then, “lies at the heart of a revived defence and security relationship between the UK and the UAE which was kick-started by the British coalition government in 2010, after 14 years of neglect by the Labour governments of Blair and Brown”.⁴³ And the UK-UAE relationship, both commercially and in terms of security, has only grown since that period.

The next large deals were struck in the early 2000s. Launched in June 2004, the Istanbul Cooperation Initiative (ICI) was “offered by NATO to interested countries in the region, starting with the countries of the Gulf Cooperation Council, to foster mutually beneficial bilateral relationships and thus enhance security and stability ... [through] practical cooperation where NATO can add value”.⁴⁴ Saudi Arabia and Oman refused to participate in the initiative, however, and so bilateral ties remained of crucial importance. In March 2006, the UAE and UK signed an agreement for intelligence sharing to fight terrorist financing and money laundering. In 2009, the UK signed a memorandum of understanding with the UAE to allow British forces to use airbases in the UAE.⁴⁵ The same year, the UAE signed an intelligence-sharing agreement with NATO and appointed an ambassador to NATO in 2011.⁴⁶

And in 2010, the UK-UAE Taskforce, headed by the countries’ foreign ministers, was established to provide a mechanism for strengthening bilateral ties in the fields of defence and counterterrorism, commercial links, international aid, expatriate affairs, energy issues, nuclear cooperation and others.⁴⁷ This taskforce was established after a declaration reaffirming the

⁴² Saul Kelly and Gareth Stansfield, “Britain, the United Arab Emirates and the defence of the Gulf revisited,” *International Affairs*, vol. 89, no. 5 (2013): 1207.

⁴³ Kelly and Stansfield, 1207.

⁴⁴ Kelly and Stansfield, 1208.

⁴⁵ Kelly and Stansfield, 1206.

⁴⁶ Kelly and Stansfield, 1208.

⁴⁷ “UAE-UK taskforce marks first year of work,” *Gulf News*, 22 June 2011, <https://gulfnews.com/uae/government/uae-uk-taskforce-marks-first-year-of-work-1.825604>.

1971 Treaty of Friendship was signed in November 2010. As Kelly and Stansfield explain, this treaty was different in its focus on defence:

The 1971 treaty provided for consultation on matters of mutual interest as required, and expressed an interest in developing educational, scientific and cultural ties. But there was no real mention of a defence relationship. On the contrary, Britain had decided to cut its military commitments in the Gulf as part of its withdrawal from its bases east of Suez. It is surprising, therefore, that the Foreign and Commonwealth Office (FCO) felt the need to state, in one of its press releases on the 2010 visit, that ‘defence co-operation between the UAE and the UK was a key element of the 1971 Treaty of Friendship’.⁴⁸

A 2013 Arms Trade Treaty was also signed between the UK and UAE, but BAE Systems failed to secure a contract that year to supply 60 Eurofighter Typhoons, as the UAE turned, instead, to France and its Rafale fighter jets.⁴⁹ It was a major setback for BAE as it sought to reduce its reliance on US and British defence markets that had been hit by government spending cuts. Furthermore, then Prime Minister David Cameron intervened personally to try to secure a deal that would have been a significant boost for British exports. The UK’s 2015 National Security Strategy and Strategic Defence and Security Review, however, made a commitment to establish a permanent British Defence Staff in the Gulf, based in Dubai.⁵⁰

Notably, the UAE was also initially involved in the coalition fighting in Yemen alongside Saudi Arabia. As of 2019, however, the UAE removed the bulk of its ground troops, handing control of the mission to Saudi Arabia.⁵¹ Saudi Arabia and the UAE had clashed over the course of the campaign in Yemen, and both have been accused of war crimes in their campaigns, with investigations into these crimes ongoing.⁵² Since the UAE has scaled back its involvement, however, considerable attention has been paid to Saudi Arabia’s continued campaigns in Yemen and efforts to stop arms sales to the kingdom.

⁴⁸ Kelly and Stansfield, 1210.

⁴⁹ “United Arab Emirates,” Campaign Against Arms Trade, 4 June 2021, <https://caat.org.uk/data/countries/united-arab-emirates/>.

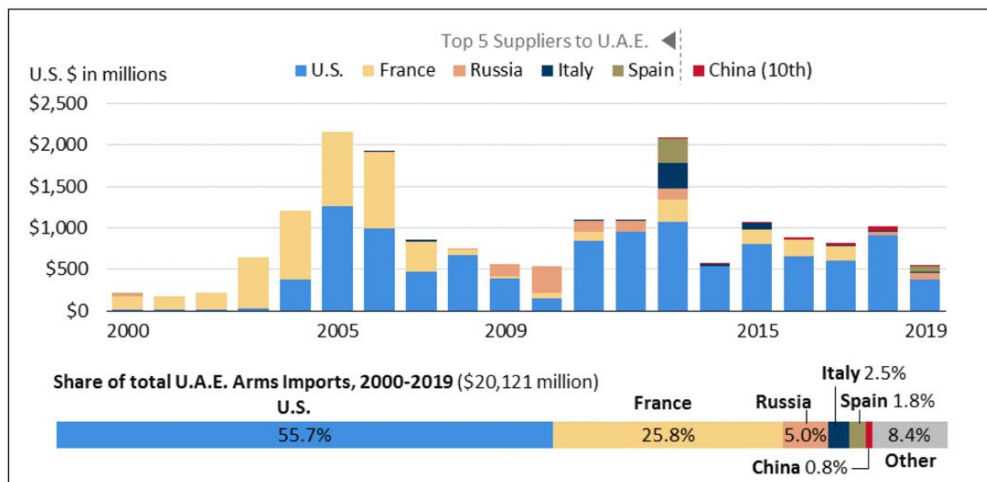
⁵⁰ “United Arab Emirates.”

⁵¹ “UAE withdraws its troops from Aden, hands control to Saudi Arabia,” *Reuters*, 30 October 2019, <https://www.reuters.com/article/us-emirates-military-yemen/uae-withdraws-its-troops-from-aden-hands-control-to-saudi-arabia-idUSKBN1X923A>.

⁵² “Yemen war: Lawyers submit case to UK police accusing UAE, Saudi,” *Al Jazeera*, 20 October 2021, <https://www.aljazeera.com/news/2021/10/20/group-of-lawyers-to-submit-yemen-war-crimes-dossier-to-uk-police>.

In the last three years, the published value of UK arms exports licenced to the UAE amounted to £422 million.⁵³ These exports include artillery, aircraft, surface-to-air missiles and armoured vehicles from BAE Systems, in addition to sniper rifles, aircraft and other mounted cannons and machine guns, and small arms from other manufacturers.⁵⁴ In September 2021, the UK and UAE signed a memorandum of understanding on artificial intelligence to see a transfer of knowledge, as well as investments, as well as a separate memo signed between the UAE's Tawazun Economic Council with the UK Ministry of Defence to strengthen cooperation in defence-relevant research and development.⁵⁵

Figure 8. Arms Suppliers to UAE
Value and Rank, by Supplier, 2000-2019



Source: Stockholm International Peace Research Institute (SIPRI), importer/exporter total trend-indicator value (TIV) tables. Figure created by CRS.

Economic Linkages between the UK and Arab Gulf Monarchies

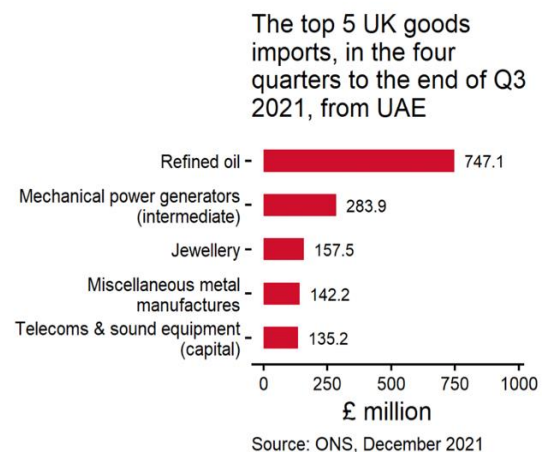
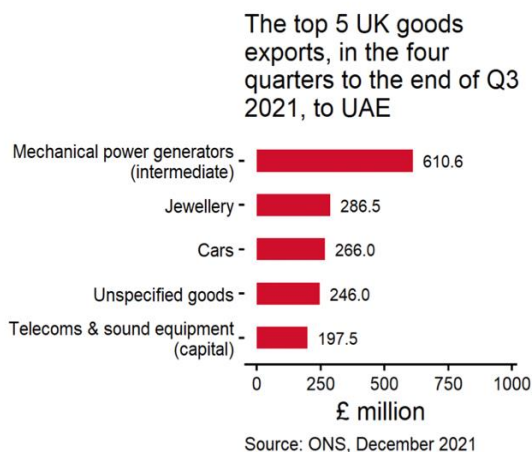
Arms sales are situated within the broader political economy of UK relations with the Gulf Arab monarchies. Interestingly, although UK arms sales to Saudi Arabia have been larger in scale and higher in profile than those to the UAE, UK-UAE economic connections, in general, are stronger, with more business-to-business and people-to-people connections across borders.

⁵³ "United Arab Emirates."

⁵⁴ "United Arab Emirates."

⁵⁵ Agnes Helou, "UAE, Britain ink defense research and AI tech deals," *Defense News*, 22 September 2021, <https://www.defensenews.com/global/2021/09/22/uae-britain-ink-defense-research-and-ai-tech-deals-heres-what-comes-next/>.

Indeed, the UAE alone houses more than 120,000 British expatriates.⁵⁶ The UK has also publicly proclaimed that the UAE is a key market as it aims to double the number of businesses exporting goods and services worldwide, with trade between the UK and UAE worth around £19 billion in 2019, compared to £12 billion in the second quarter of 2021.⁵⁷ The UK recently expanded its Strategic Investment Partnership with the UAE in September 2021, which led Mubadala Investment Company to commit £9 billion toward the technology, infrastructure and energy transition in the UK, in addition to the £800 million already pledged to life sciences as of March 2021.⁵⁸ The UAE was the UK's 25th largest trading partner in the four quarters to the end of the third quarter of 2021, accounting for 1 per cent of total UK trade, with outward FDI from the UK to the UAE amounting to £7.4 billion and inward FDI from the UAE to the UK amounting to £12.2 billion.⁵⁹



⁵⁶ Alice Haine, "British expatriates move to UAE in search of new lifestyle after Covid-19 and Brexit," *The National*, 17 September 2021, <https://www.thenationalnews.com/business/money/2021/09/18/british-expatriates-flock-to-the-uae-for-new-life-away-from-covid-and-brexite/>.

⁵⁷ "United Arab Emirates," "Trade and Investment Factsheets," UK Department for International Trade, 18 February 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1055100/united-arab-emirates-trade-and-investment-factsheet-2022-02-18.pdf.

⁵⁸ Alice Haine, "UAE 'a key market' as Britain aims to double exports by 2030," *The National*, 22 November 2021, <https://www.thenationalnews.com/world/uk-news/2021/11/23/uae-a-key-market-as-britain-aims-to-double-exports-by-2030/>.

⁵⁹ "United Arab Emirates," Trade and Investment Factsheets.

In contrast, around 30,000 British expatriates live in Saudi Arabia.⁶⁰ Saudi Arabia was the UK's 27th largest trading partner in the four quarters to the end of the third quarter of 2021, accounting for 0.9 per cent of total UK trade, with outward FDI amounting to £5.5 billion and inward FDI to £1 billion for 2020.⁶¹ And despite efforts to enhance trade with Saudi Arabia, government data showed that less than one-third of the British public would support a trade deal with Saudi Arabia.⁶² The country's human rights abuses have come under greater scrutiny in recent years, particularly following the release of a US intelligence report that implicated Saudi Crown Prince Mohammed bin Salman in the murder of exiled Saudi journalist Jamal Khashoggi in 2018. More recently, a consortium led by Saudi-based Public Investment Fund took control of Premier League club Newcastle, the latest in a line of Gulf states investing in sports as a form of soft power to enhance their image and strengthen strategic and economic ties. Foreign Secretary Liz Truss has said that she wants trade and security to be more closely aligned, which would involve greater UK-Saudi bilateral trade.⁶³ Indeed, the UK ran a £4.2 billion trade deficit with Saudi Arabia between August and October 2021.⁶⁴

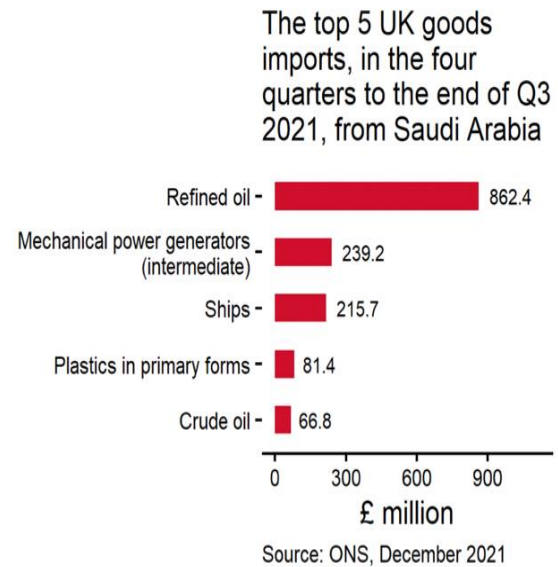
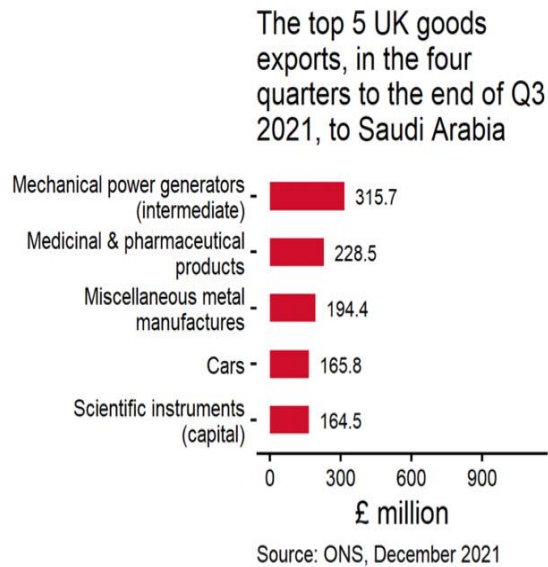
⁶⁰ Esther Marshall, "'Know the rules' Expats explain what life is like as a foreigner in Saudi Arabia," *The Express*, 3 December 2021, <https://www.express.co.uk/travel/articles/1530979/saudi-arabia-british-expat-life-rules-tips-advice-hsbc>.

⁶¹ "Saudi Arabia," Trade and Investment Factsheets, UK Department for International Trade, 18 February 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1055055/saudi-arabia-trade-and-investment-factsheet-2022-02-18.pdf.

⁶² Heather Stewart, "Less than a third of UK public would support a Saudi Arabia trade deal," *The Guardian*, 20 October 2021, <https://www.theguardian.com/politics/2021/oct/20/less-than-a-third-of-uk-public-would-support-a-saudi-arabia-trade-deal>.

⁶³ Heather Stewart, "Less than a third of UK public would support a Saudi Arabia trade deal," *The Guardian*, 20 October 2021, <https://www.theguardian.com/politics/2021/oct/20/less-than-a-third-of-uk-public-would-support-a-saudi-arabia-trade-deal>.

⁶⁴ Stewart.



Conclusions

Arms sales are likely to continue to remain central to future UK-Gulf ties, despite legal challenges and growing public opposition to their centrality. The UK relationship with Saudi Arabia and its GCC neighbours has historically been based on two central pillars: security and economics. Central to security has been a focus on counterterrorism and intelligence sharing, particularly since 2001, with military arms sales continuing to underpin broader security relationships. Particularly against the backdrop of Brexit, Britain is seeking closer security and economic ties with Gulf states, and arms exports are likely to form a key part of any trade push, although substantial trade ties certainly exist in other industries.

Given the scale of military export deals from the UK and the history behind them, they will be difficult to disrupt, even as new actors try to forge security and military partnerships with GCC states. Indeed, despite successive UK prime ministers' promises to implement a rules-based international order that prioritises human rights and the rule of law, the UK-Gulf partnership continues to emphasise trade and investment opportunities, buttressed by a network of bilateral security relationships. As long as UK relationships with the GCC remain underpinned by the twin pillars of security and economic interest, the contours of this relationship, and the role of arms sales within them, are unlikely to change meaningfully. Nonetheless, the UK may

enhance efforts to exert soft power to increase links with the GCC as it faces the foreign policy realities of the post-Brexit era.

II. UK Complicity in Yemen War Crimes

Julian Richards

Introduction

The war in Yemen gathered pace in early 2014 when instability following the handover of power from authoritarian president Ali Abdullah Saleh in 2011 developed into open hostilities. By the beginning of the following year, the Houthi rebel movement and its supporters achieved substantial territorial gains and seized control of the national capital, Sana'a, forcing the incumbent president Hadi to flee the country. In March 2015, a military coalition composed primarily of Arab Gulf states, led by Saudi Arabia and backed with military and intelligence support from the US, UK and France, began a comprehensive air and ground campaign which drove the Houthis back out of the south of the country. And yet, as has been hauntingly familiar with a number of recent military campaigns, a military operation that was supposed to be over in weeks has ground on, with the Houthis digging in stubbornly in the north and west of the country, including continued occupation of the capital Sana'a. An ugly stalemate has ensued, with untold consequences for the people of Yemen.

It is difficult to over-exaggerate the human misery inflicted by the ongoing war. The United Nations describes the situation as the world's worst humanitarian crisis currently, with roughly four million internally displaced people, and 20 million in "dire need of humanitarian assistance", including approximately five million on the brink of famine.⁶⁵ By the end of 2021, it was estimated that over 18,400 civilians had been directly killed or injured by military action,⁶⁶ with wider deaths from the effects of the war closer to 233,000.⁶⁷ The NGO, Human Rights Watch, contends that all sides in the conflict have committed "serious violations of the laws of war", including indiscriminate bombing of civilian targets, the abuse and murder of detainees, and the laying of prohibited landmines.⁶⁸ The situation has also started to spill over into neighbouring countries, with the firing of rockets by the Houthi rebels into civilian areas in Abu Dhabi in early 2022.⁶⁹

⁶⁵ USA for UNHCR, "Yemen Humanitarian Crisis," 2022, <https://www.unrefugees.org/emergencies/yemen/>.

⁶⁶ Human Rights Watch, "Yemen: Events of 2020," 2022, <https://www.hrw.org/world-report/2021/country-chapters/yemen#>.

⁶⁷ UN, "UN humanitarian office puts Yemen war dead at 233,000, mostly from 'indirect causes,'" 2022, [UN humanitarian office puts Yemen war dead at 233,000, mostly from 'indirect causes' | UN News](#).

⁶⁸ UN, *Ibid*.

⁶⁹ Abubakr Al-Shamahi, "What is behind the Houthi attacks in the UAE?" *Al Jazeera*, 17 January 2022, [What is behind the Houthi attacks in the UAE? | Houthi News | Al Jazeera](#).

From the perspective of the Saudi-led military coalition, a decision to largely remove land troops from the conflict in 2019 in favour of a primarily air-led campaign has led to multiple accusations of the disproportionate and indiscriminate bombing of civilian targets. According to the Yemen Data Project, more than 24,000 airstrikes have been conducted by the coalition during the war at the time of writing.⁷⁰ The data suggests that approximately a third of these have hit civilian targets, including residential areas, schools and hospitals, leading to the death or injury of more than 3,600 women and children.⁷¹ In a third of the remaining airstrikes, the final target could not be verified, suggesting that non-military targets may account for an even bigger proportion of the overall death and destruction. Whether the picture amounts to wholesale transgressions of International Humanitarian Law (IHL) including the necessity to minimise collateral civilian casualties in the targeting of military objectives, is a point of contention at the heart of this analysis.

At the beginning of the air campaign in Yemen in March 2015, the UK was among a group of Western states that declared their full backing for the Arab Gulf military coalition. Then Foreign Secretary, Philip Hammond, declared that the UK would “support the Saudis in every practical way short of engaging in combat” in their fight against the Iranian-backed Houthi rebels.⁷² In practical terms, this has comprised multi-billion pound support for the Royal Saudi Air Force, including the supply of aircraft; the weaponry fired from them; and training and logistical support. Reports have also emerged more recently that British special forces may be involved on the ground in Yemen, and not only to facilitate humanitarian operations.

Pressure has mounted on the UK since 2015 from a variety of international NGOs and humanitarian advocates, who claim that a seemingly unquestioning support for the Saudi Air Force’s operations in Yemen amounts to complicity in the widespread humanitarian abuse of Yemeni civilians. A spotlight has been shone on the conditions around defence export licensing

⁷⁰ Yemen Data Project, “Yemen Data Project,” 2022, <https://www.yemendataproject.org/>

⁷¹ Ibid.

⁷² Cited in Arron Merat, “The Saudis couldn’t do it without us’: the UK’s true role in Yemen’s deadly war,” *The Guardian*, 18 June 2019, [‘The Saudis couldn’t do it without us’: the UK’s true role in Yemen’s deadly war | Yemen | The Guardian](https://www.theguardian.com/world/2019/jun/18/saudis-yemen-uk-role).

to Saudi Arabia, a trade estimated at over £20 billion since 2015.⁷³ The fact that much of this trade is covered by ongoing “open licences” rather than specific individual export licences, means that official figures quoted by the UK government on the scale of the trade tend to suggest a significant underestimation. In 2019, military export licences to Saudi Arabia were temporarily halted following a ruling against the UK government in the Court of Appeal, on the grounds that ministers had not made proper attempts to assess the humanitarian implications of the exported munitions.⁷⁴ However, just over a year later, it was announced that arms exports to Saudi Arabia had resumed following an assessment that there were only “isolated incidents” of airstrikes breaching humanitarian law.⁷⁵ In the subsequent quarter, £1.4 billion of further arms sales were authorised. At the beginning of 2021, the UK found itself at odds with its key ally, the US, when President Biden announced the cessation of military aid to the Saudi-led coalition in the Yemen war in his first major foreign policy announcement. (The world’s third largest arms exporter, France, has found itself in a similarly invidious position as regards arms exports to Saudi Arabia and the UAE.)⁷⁶

It seems clear that the UK government is attempting to fight a battle of narratives around its support for the Saudi-led coalition in Yemen. In the face of charges of complicity in widespread humanitarian abuse in the conflict, the UK contends, firstly, that it has one of the most robust export-licensing regimes in the world; and secondly, that it is not directly involved in target selection in the conflict: this, it argues, is the job of the forces in the region. In this way, the government is attempting to build a narrative that it is not doing anything demonstrably wrong and that it is sticking to the “rules-based” world that “Global Britain” aspires to lead.⁷⁷ Such a contention may be dubious at best, and deeply problematic at worst in the eyes of many of the government’s critics, when faced with the evidence of the death and destruction in Yemen

⁷³ CAAT, “True value of UK arms trade to Saudi Arabia worth over £20 billion since 2015,” 2021a, [CAAT - True value of UK arms trade to Saudi Arabia worth over £20 billion since 2015](#) accessed 24 January 2022.

⁷⁴ BBC News, “UK arms sales to Saudi Arabia unlawful, court rules,” BBC News, 20 June 2019, <https://www.bbc.co.uk/news/uk-48704596> accessed 24 January 2022.

⁷⁵ Dan Sabbagh, “Britain to resume sale of arms to Saudi Arabia despite Yemen fears,” The Guardian, 7 July 2020, [Britain to resume sale of arms to Saudi Arabia despite Yemen fears | Arms trade | The Guardian](#).

⁷⁶ Benjamin Dodman, “France under pressure to come clean over arms exports in Yemen war,” France24, 20 April 2019, <https://www.france24.com/en/20190420-france-arms-exports-yemen-saudi-uae-khashoggi-disclose> accessed 24 January 2022.

⁷⁷ Dominic Raab, “Global Britain is leading the world as a force for good,” The Telegraph, 22 September 2019, [Global Britain is leading the world as a force for good: article by Dominic Raab - GOV.UK \(www.gov.uk\)](#).

wrought by the coalition airstrikes. The former Labour Party leader, Jeremy Corbyn, was forthright in this analysis: the UK military assistance to Saudi Arabia in Yemen was “a moral stain on our country” and should end immediately.⁷⁸

A different reading of the situation is that the UK is conducting foreign policy in the Middle East exactly as it has done for many years. From the colonial era through to the present day, the strategic balance of power in the Gulf region, in which the aspirations of a resurgent Iran need to be balanced with the Sunni Arab forces in the region (from whom most of the global economy’s oil is still purchased) arguably supersedes any interests of the communities on the ground, or, indeed, of ethical approaches and humanitarian considerations. One might suggest it is all about the great game of major geopolitical balances of power and strategic alliances. Iran’s backing of the Houthis leads to a potentially dangerous disruption of the balance of power in this most sensitive and economically critical of regions, and this determines the outcomes.

More specifically, the depth of the strategic relationship with the Kingdom of Saudi Arabia is once again shown to be a key determinant of the UK’s foreign and economic policy in the Gulf. In the 1960s, an earlier episode of conflict in Yemen showed that the imperative of protecting the strategically vital port of Aden was much more influential than the interests of the Yemeni people in the UK’s decision on who to back in the conflict. In the 1980s, the massive Al Yamamah arms deal signed between the UK and Saudi Arabia, as discussed in the previous chapter,⁷⁹ continues to be a critical element of the UK’s arms industry, and a source of sensitivity whenever the merits of the alliance with Saudi Arabia are discussed. More recently, despite an egregious record on human rights punctuated by such events as the gruesome murder and then cover-up of the Saudi dissident, Jamal Khashoggi in October 2018, which caused many other Western countries to suspend military trade with Saudi Arabia, the UK continues on its path of military cooperation. It may be that, through this relationship, charges of complicity in humanitarian oppression in Yemen will catch up with the UK government, and the battle of the narratives will be lost.

⁷⁸ Cited in: Dan Sabbagh and Bethan McKernan, “UK arms sales to Saudi Arabia unlawful, court of appeal declares,” *The Guardian*, 20 June 2019, [UK arms sales to Saudi Arabia unlawful, court of appeal declares | Court of appeal | The Guardian](#).

⁷⁹ Merat, *ibid.*

Strategic History: the UK, Yemen and Saudi Arabia

In 1962, a coup in Yemen led to the declaration of the Yemen Arab Republic, over-throwing the long rule of the Imamate of North Yemen. The battlelines were drawn, with Nasser's Egyptian military supporting the new Arab Republic, while Royalist forces supporting the overthrown Imam Al Badr were backed by the kingdoms of Saudi Arabia and Jordan. Analysing recently declassified files describing the position of the UK in the conflict, whose main interest was in protecting the colonial holding of the port of Aden in the south of the country, Mark Curtis writes that Britain fell alongside the Saudis and Jordanians in covertly supporting an insurgency to undermine the new Republic.⁸⁰

It soon became apparent that the anti-republican insurgency incorporated despotic and reactionary forces with a distinctly ambivalent attitude towards human rights. An official in Number 10 described the rebel forces as “shifty, unreliable and treacherous”. The Prime Minister himself, Harold Macmillan, wrote that it was “repugnant to political equity and prudence alike” that Britain should find itself backing retrogressive forces, and yet, this was the strategic calculation made in the wider geopolitical context. Indeed, in a note to President Kennedy in 1963, Macmillan himself observed that a military stalemate in Yemen “would not suit us too badly” and would mean that the competing forces would have “no time or energy left over to make trouble for us in Aden”.⁸¹ It was to prove a pious hope as the anti-colonial violence in Yemen gathered pace. Having first seized the port as a vital strategic asset on the route to India in 1839, Britain was eventually forced to depart in 1967, setting the stage for withdrawal from east of Suez shortly after.

Curtis's damning assessment of the period is that the Yemenis were “unpeople” in the eyes of British foreign policy: their interests and longer-term aspirations were of no importance to the strategic calculations, much as has arguably been the case with the Kurds in more recent times, or the Pashtuns in the old North West Frontier between British India and Afghanistan.

⁸⁰ Mark Curtis, *Unpeople: Britain's Secret Human Rights Abuses* (London: Vantage, 2004).

⁸¹ *Ibid*, 292.

In more recent times, one key factor is highly pertinent to the shaping of British military strategy in the Gulf region. This is the continued, deeply entrenched strategic relationship with Saudi Arabia outlined in the previous chapter. As described, the relationship has become a controversial but unshakeable feature of foreign, defence and indeed economic policy. On the last point, Margaret Thatcher's relentless lobbying of the Saudi royal family in the 1980s, which eventually led to the signing of the Al Yamamah arms deal in 1985, has been described as the one that saved the British defence industry. As described, the deals have also been mired in controversy and secrecy. A long-running Serious Fraud Office (SFO) investigation has looked at alleged bribery connected with the original Al Yamamah deal and has identified corrupt payments of up to £6 billion to a member of the Saudi royal family through a network of agents and offshore companies.⁸²

The UK's involvement in the Yemen war has brought the military relationship with Saudi Arabia sharply back into focus. Attempts to establish the exact degree of military support for the air war in Yemen, however, have been met with a wall of secrecy. In April 2019, the Labour MP, Lloyd Russell-Moyle, tabled a question in parliament to the Secretary of State for Defence, asking for an estimate of arms sales transacted under the Al Yamamah deal. The Deputy Chief Whip of the Conservative Party, Stuart Andrew MP, replied simply that such information is withheld as "its disclosure would... prejudice relations between the United Kingdom and another state".⁸³

The post-Brexit era in which the question was tabled has, of course, been party to official attempts to reshape Britain's role as a diplomatic and military power in the new world order. The notion of "Global Britain" espoused by Theresa May and Boris Johnson after 2016 has started to take shape in terms of regional defence strategy, including in the Gulf. This may be a constant tendency for "retired imperialists like Britain and France", as Nairn describes,⁸⁴ but it is also a response to changing geopolitical, and – indeed – financial environments in which

⁸² David Leigh and Rob Evans, "Secrets of al-Yamamah," *The Guardian*, 2011, [Secrets of al-Yamamah | The Guardian BAE investigation | guardian.co.uk](https://www.guardian.co.uk/secretsofalyamamah).

⁸³ UK Parliament, "Saudi Arabia: Arms Trade – Question for Ministry of Defence," 2019, [Written questions and answers - Written questions, answers and statements - UK Parliament](https://www.parliament.uk/written-questions/answers-and-statements/saudi-arabia-arms-trade).

⁸⁴ Tom Nairn, "The New Furies," *New Left Review*, 2006 (37), 139.

further downward pressures on defence spending are relentless. This, in turn, further develops the logic of working closely through partners to achieve strategic effect.

A renewed interest in prioritising regional relationships with Arab Gulf states before and after Brexit has aimed to build on historical colonial relationships in the region, which were themselves originally based on “maritime security and imperial communications” to and from the parts of the Empire further east.⁸⁵ In the contemporary environment, Britain’s interests could perhaps be said to be shaped by a desire to appear as an active and significant voice in the region, despite an uncoupling from the EU. At the same time, the traditional deference to the US has been a key feature of British regional foreign policy, perhaps limiting room for manoeuvre in response to such incidents as the US assassination of Iranian General Soleimani in 2020, about which the UK government chose to stay largely quiet despite misgivings.⁸⁶

Such constraints aside, the recent Integrated Review of Security, Defence, Development and Foreign Policy, published in early 2021, gave a clear voice to the UK’s intended approach to its global aspirations.⁸⁷ On defence, there is a reference to the Integrated Operating Concept published a year earlier,⁸⁸ which emphasises the importance of interoperability with partners and allies to ensure continued military relevance and reach in the face of shrinking capabilities. In the Gulf, aside from wanting to tap into the economic potential of the region, the Integrated Review makes it clear that regional military priorities include working to “ensure the freedom of navigation in the Gulf of Aden”; and building on “close security partnerships” such as that with Saudi Arabia.⁸⁹ The long-standing British naval presence in the Gulf is identified as relating in part to Operation Kipion, which includes the permanent deployment of four Royal Navy mine-hunting vessels.⁹⁰ Iran is mentioned a handful of times in the report as a “threat” and a destabilising force. It is also conveyed that: “Alongside our allies, the UK will hold Iran to account for its nuclear activities.”⁹¹ Interestingly, Yemen is only mentioned once explicitly

⁸⁵ Joe Devanny and Philip Berry, “Gulf Security is Our Security”: Global Britain and the UK Gulf Strategy, 2010-20. *Defence Studies*, 2021 (21/2), 145.

⁸⁶ *Ibid*, 153.

⁸⁷ HM Government, “Global Britain in a Competitive Age,” London, HM Stationery Office, CP 403, 2021, [Global Britain in a competitive age \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/94404/global-britain-in-a-competitive-age.pdf).

⁸⁸ Ministry of Defence 2021, Integrated Operating Concept. London, DCDC.

⁸⁹ HM Government 2021, 63.

⁹⁰ Royal Navy, “Operation Kipion,” 2022, [Operation Kipion | Royal Navy \(mod.uk\)](https://www.royalnavy.mod.uk/operation-kipion).

⁹¹ HM Government 2021, 85.

in the report, in the context of “working towards durable political solutions”.⁹² One might ask how comprehensively arming military powers in the region to undertake an aerial bombardment squares with this policy.

Arms Exports

Within the Middle East region, Saudi Arabia is by far the largest recipient of UK arms exports, accounting for approximately 40 per cent of all UK arms exports between 2015 and 2020. (Oman is the second-largest recipient, at 13 per cent of all sales, and the UAE 25th, with less than 0.5 per cent of all sales over the same period.)⁹³

Establishing exact figures for such sales is difficult as the government, as established, does not, for national security reasons, release details of arms exports to any country. Some degree of extrapolation can be undertaken by analysing the value of export licences granted and the annual reports of key exporters. At the same time, however, the UK government itself only release figures on Specific Individual Export Licences (SIELs), which do not include details of arms exported under Open Licences. The Campaign Against Arms Trade estimates that, while the UK government quotes the figure of £6.7 billion in arms sales to Saudi Arabia in the five years from 2015, for example, the true figure is closer to £20 billion when taking into account open licences for components and services to the Saudi Air Force, and the export of related munitions.⁹⁴ The majority of this was supplied by one company, BAE Systems, judging by openly available information in the company’s annual reports. Using the same methodology, and looking over the ten years from 2010, the CAAT estimates the full value of the UK’s arms exports to all countries to be £85.9 billion. This is just over twice the amount of arms exports quoted by the UK government for the same period.

The argument put forward by the CAAT, who brought the court case against the UK government which temporarily interrupted arms sales to Saudi Arabia in 2019, is that this degree of obfuscation of the true extent of arms exports amounts to a lack of transparency on behalf of the government and a concomitant lack of accountability.

⁹² Ibid, 64.

⁹³ SIPRI, “SIPRI Arms Transfers Database,” 2022, [SIPRI Arms Transfers Database](#) | SIPRI.

⁹⁴ CAAT, “True value of UK arms trade to Saudi Arabia worth over £20 billion since 2015,” 2021a, [CAAT - True value of UK arms trade to Saudi Arabia worth over £20 billion since 2015](#).

The purpose of open individual, and open general export licences (respectively OIELs and OGELs) is to reduce the administrative burden on regular and uncontroversial exports of components and services. The CAAT's contention, however, is that the UK government uses these licences in dubious ways. A recent report suggests that:

Both OIELs and OGELs are used to facilitate the export of controversial equipment to controversial destinations, and they serve to obscure the nature and extent of these continuing sales.⁹⁵

Examples include the export of bombs and air-to-surface missiles to Saudi Arabia under an OIEL covering the 2014-19 period, of a type used repeatedly in air-raids in Yemen. Key munitions include the Paveway IV laser-guided missile, exported from the UK by the US arms manufacturer, Raytheon. In 2016, the NGO Human Rights Watch (HRW) reported on a series of airstrikes in Yemen by the Gulf coalition that had killed "several dozen civilians".⁹⁶ Remnants of Paveway missiles were found at the bomb sites, adding to similar finds amongst the 23 "apparently unlawful" airstrikes over the preceding year.⁹⁷ (It should be noted that most of the instances of missile remnant finds are of US-supplied Paveway II munitions.) In 2019, it was reported that Raytheon had declined an invitation to send a representative to a hearing by the parliamentary Committees for Arms Export Controls.⁹⁸

Other munitions include the Brimstone radar-guided surface-to-surface and air-to-surface missile; and the Storm Shadow cruise missile, both manufactured by the European arms company, MBDA: a joint venture of which BAE Systems is a major shareholder. Such "fire and forget" guided weapons allow for bombers to launch attacks against static targets such as bridges or buildings, or moving targets in the case of the Brimstone, from some distance away, thus minimising the risk of anti-aircraft attack. The sophistication of the guidance mechanisms on these missiles is supposed to allow for greater avoidance of illegitimate non-military targets, but this is not always achieved in practice. Examples of how such munitions are used include

⁹⁵ CAAT, "Open? The UK's Secret Arms Sales," London, 2021b, CAAT.

⁹⁶ Human Rights Watch, "Yemen: US-Made Bombs Used in Unlawful Airstrikes," 2016, [Yemen: US-Made Bombs Used in Unlawful Airstrikes | Human Rights Watch \(hrw.org\)](https://www.hrw.org/report/2016/05/12/yemen-us-made-bombs-used-unlawful-airstrikes)

⁹⁷ Ibid.

⁹⁸ Billy Briggs, "Fife arms firm snubs meeting with MPs over Yemen bombs," *The Ferret*, 1 April 2019, <https://theferret.scot/scots-arms-dealer-raytheon-mps-yemen/>.

the “Fallujah massacre”: an attack on a suspected retreating ISIS convoy in Iraq in 2016, which was alleged to have caused a large number of civilian casualties, although the allegation has proved difficult to verify.⁹⁹

While attention often focuses on the more sophisticated guided missile attacks, the supply and use of prohibited cluster bombs in the Yemen conflict also raise questions. In May 2016, a researcher working for the NGO Amnesty International found evidence of a partially-detonated British-manufactured BL-755 cluster bomb in a village in northern Yemen.¹⁰⁰ Investigations strongly suggested that it must have been dropped since the air campaign commenced in March 2015. Later that year, the Saudi government admitted that it had been using the bombs – which the UK had ceased manufacturing some years before and subsequently signed a treaty banning their use – but would henceforth cease doing so. While this type of munition supplied by the UK is allegedly no longer used, it speaks more widely to the apparent disregard of civilian casualties by the Saudi-led coalition during the Yemen conflict. This, in turn, raises questions about the trust which the UK is supposedly investing in its relationship with the Saudi military.

Boots on the Ground

Reports are also emerging of British Special Forces being involved in operations on the ground in Yemen. Pro-Conservative government media such as *The Express* newspaper have heralded such reports as evidence of valiant humanitarian assistance activities.¹⁰¹ Other more critical sources, however, have noted instances of SAS soldiers being involved in firefights with Houthi rebels.¹⁰² This pours a degree of cold water on the initial declaration by the UK’s Defence Secretary that assistance to Saudi Arabia in the conflict would fall short of boots on the ground. Of course, it may be that the Special Forces *are* primarily supporting humanitarian activities, but the problem is that such operations are shrouded in secrecy and cannot be openly debated in parliament.

⁹⁹ Christiaan Triebert, “An Open Source Analysis of the Fallujah ‘Convoy Massacre,’” *Bellingcat*, 6 July 2016, [An Open Source Analysis of the Fallujah "Convoy Massacre"\(s\) - bellingcat](#).

¹⁰⁰ Amnesty International UK, “UK-Manufactured BL-755 Cluster Munition in Yemen,” 2016, [amnesty international uk - uk-manufactured bl-755 cluster munition in yemen may 2016 final.pdf](#).

¹⁰¹ Marco Giannangeli, “SAS soldiers on aid mission injured in roadside bombing,” *The Express*, 17 February 2019, [SAS soldiers on aid mission injured in roadside bombing | World | News | Express.co.uk](#).

¹⁰² Patrick Wintour, “‘Serious’ questions over SAS involvement in Yemen war,” *The Guardian*, 27 March 2019, [‘Serious’ questions over SAS involvement in Yemen war | Military | The Guardian](#).

This feeds into a wider concern about a strategy of “remote warfare”, in which arms-length military activities such as working through regional partners and using under-the-radar Special Forces can appear to be a strategy of “opacity” with attendant implications for accountability.¹⁰³ As is the case with details of arms exports, the UK government holds to a long tradition of not discussing Special Forces operations in parliament and specifically exempting this category of information from Freedom of Information Requests. Aside from the recent reports about activities in Yemen, numerous previous cases have arisen of the presence of Special Forces in other problematic situations, such as in Libya and Syria.¹⁰⁴

While these cases do not concern the question of arms exports, they do speak to a problematic narrative about the nature of the UK government’s complicity in complex overseas conflicts in which IHL transgressions may be a significant factor. In many ways, an environment of enhanced citizen and NGO reporting from war zones using smartphone technology constantly increases the risk of the government being caught out on its stated position on a rules-based and democratically accountable approach.

The Legal Question

Regarding assessments of humanitarian problems on the ground, there appeared to be a change in UK government strategy in 2016 to not fully assess IHL infringements in the conflict when considering arms licences to Saudi Arabia. This emerged during the 2019 court case that saw a temporary cessation of such exports, in which the court adjudged the UK government’s risk assessment strategy over arms licences to be “irrational and therefore unlawful”.¹⁰⁵ On 7 July 2020, however, the Secretary of State for International Trade, Liz Truss, made a statement in parliament to announce the resumption of arms exports following a review of the risk methodology.

The 2019 case was brought to the Court of Appeal by CAAT, following a ruling in the Divisional Court in 2017 that the government “applied a rigorous and robust, multi-layered

¹⁰³ Alasdair McKay, Introduction. In Alasdair McKay, Abigail Watson and Megan Karlshøj-Pedersen, *Remote Warfare: Interdisciplinary Perspectives* (Bristol: E-International Relations Publishing, 2021) 2.

¹⁰⁴ Watson, A., and McKay, A. 2021, *Remote Warfare: A Critical Introduction*. In Alasdair McKay, Abigail Watson and Megan Karlshøj-Pedersen, *Remote Warfare: Interdisciplinary Perspectives* (Bristol: E-International Relations Publishing, 2021) 20.

¹⁰⁵ Dan Sabbagh and Bethan McKernan, “UK arms sales to Saudi Arabia unlawful, court of appeal declares,” *The Guardian*, 20 June 2019, [UK arms sales to Saudi Arabia unlawful, court of appeal declares | Court of appeal | The Guardian](https://www.theguardian.com/world/2019/jun/20/uk-arms-sales-to-saudi-arabia-unlawful-court-of-appeal-declares).

process of analysis to making our licensing decisions”.¹⁰⁶ CAAT’s contention was that this was a distinctly disingenuous narrative when it came to the export of arms to the Saudi Arabian military during the Yemen conflict.

Notwithstanding an “administrative error” following the 2019 Court of Appeal ruling against the government, which had caused further restricted arms licences to be issued to Saudi Arabia,¹⁰⁷ the Trade Secretary announced in 2020 the findings of a “revised methodology” to undertake “detailed analysis” of all allegations of IHL transgressions in Yemen by fixed-wing aircraft.¹⁰⁸ The key to this methodology was the categorisation of any “possible breach of IHL” as being grounds for investigation of a particular incident, under the stipulations of Criterion 2c of the Consolidated EU and National Arms Export Licensing Criteria. However, the aim was to look for “patterns” and “systematic weaknesses” leading to IHL transgressions, noting that, in a majority of cases, it is very difficult to gain precise and verifiable details of what has happened on the ground following an airstrike.

The government’s review found there was no evidence of a systematic pattern of abuse, but rather that apparent instances of IHL violations were dispersed and “isolated incidents”. The Trade Secretary, therefore, announced that:

On that basis, I have assessed that there is not a clear risk that the export of arms and military equipment to Saudi Arabia might be used in the commission of a serious violation of IHL.¹⁰⁹

Exports were subsequently restarted and continue at the time of writing pending a new judicial review into the legality of the UK government’s position, which is expected to be heard sometime in 2022. In the meantime, the new Trade Secretary, Anne-Marie Trevelyan, announced to parliament a revised Strategic Export Licensing Criteria, under which a “theoretical risk” is not enough to block an export licence in court.¹¹⁰ Even under previous

¹⁰⁶ UK Parliament, “Trade Update: Statement made on 7 July 2020,” 2020, <https://questions-statements.parliament.uk/written-statements/detail/2020-07-07/HCWS339>.

¹⁰⁷ Dan Sabbagh, “Truss admits UK broke ban on Saudi arms sales three times,” *The Guardian*, 26 September 2019, [Truss admits UK broke ban on Saudi arms sales three times | Liz Truss | The Guardian](https://www.theguardian.com/world/2019/sep/26/truss-admits-uk-broke-ban-on-saudi-arms-sales-three-times).

¹⁰⁸ UK Parliament, 2020.

¹⁰⁹ Ibid.

¹¹⁰ UK Parliament, “Trade Policy Update: Statement made on 8 December 2021,” 2021, <https://questions-statements.parliament.uk/written-statements/detail/2021-12-08/hcws449>.

regulations, the UK sold arms to a large number of countries castigated for their record on human rights abuses,¹¹¹ and critics argue it will be even easier for the government to do so henceforth.

Conclusions

The resumption of arms exports to Saudi Arabia in 2020 triggered the resignation of a lawyer advising the government on the issue, Molly Mulready. She then issued a stinging attack on Britain's approach to allegedly obfuscating the reality of civilian abuses in the war on Yemen and Britain's contribution to them.¹¹² In the view of Mulready and her co-author, Brig. John Deverell, a former military attaché to Saudi Arabia, the arms exports are "demonstrably illegal".¹¹³ Meanwhile, the pan-NGO UK Working Group on Arms recently noted that:

UK policy on arms sales into conflicts should not be about finding narrow technical and legal justifications for fundamentally problematic transfers. It should be about the protection of civilians and doing everything possible to protect life and dignity.¹¹⁴

The sense in these words is that the UK government is playing a semantic dance around the issue and hiding behind the fog of war to downplay the multiple allegations of airstrikes causing terrible humanitarian violations.

On the ground, the Saudi-led coalition has put in place the Joint Incident Assessment Team (JIAT) to investigate specific incidents during the conflict and attempt to reassure the watching international community that everything is being done to minimise civilian casualties. Part of the UK government's justification for its position is that the JIAT has the lead responsibility for investigations in theatre, and, if the JIAT declares all is well, then there is no reason for the UK government to take a different view.

¹¹¹ Mark Townsend, "£17bn of UK arms sold to rights' abusers," *The Guardian*, 27 June 2021, [£17bn of UK arms sold to rights' abusers | Arms trade | The Guardian](#).

¹¹² John Deverell and Molly Mulready, "The UK must stop arming Saudi Arabia," *The Spectator*, 7 January 2021, [The UK must stop arming Saudi Arabia | The Spectator](#).

¹¹³ Deverell and Mulready, *ibid*.

¹¹⁴ Saferworld, "UK Working Group on Arms statement on the continuous conflict between Israel and Palestine," 9 July 2021, [UK Working Group on Arms statement on the continuous conflict between Israel and Palestine - News and resources - Saferworld](#).

However, a UN Eminent Panel of Experts reported to the Security Council in January 2021 a number of instances in which JIAT's claims about hitting Houthi militants rather than civilians in various airstrikes could not be confirmed, either because no suitable details could be obtained from the battlefield, or because other open-source reporting seemed to conflict with JIAT assessments. An example was the bombing of the Al Khamees market in Mastaba, Hajjah Province, in March 2016. While the JIAT had claimed that the airstrike had hit a gathering of Houthi militants and had not affected a nearby market, verifiable evidence suggested that 116 civilians had been killed in the strike, including 22 children.¹¹⁵ Detailed analysis of this incident by the open-source intelligence analysis company, Bellingcat, found evidence of Paveway missile laser guidance components at the bombed site,¹¹⁶ and agreed that amongst the more than 100 people killed in the attack, some were undoubtedly civilians, including children.

This example is sadly one amongst many in which civilian targets such as markets, residential houses and prisons have been hit in airstrikes. In many of these cases, munitions supplied by the UK will have been used by the Saudi-led coalition aircraft. One might conclude that the relentless drumbeat of reports from Yemen concerning such incidents of civilian deaths would seem to indicate a clear charge of complicity by the UK and other partners in serious IHL violations. From the UK's point of view, the enormous significance of the military relationship with Saudi Arabia has trumped all attempts at disruption by human rights advocates and is likely to continue doing so. Evidence suggests that the current government has hardened its position on this issue and facilitated the continued licensing of arms exports with amendments to the licensing regime. This sets it apart from many of its European neighbours, to whom the arms trade with Saudi Arabia is less significant.

In the meantime, a legal and semantic battle of narratives is undertaken by the UK government in which its obligations to a robust arms licensing regime – allegedly one of the toughest in the world – are set alongside strategic security priorities for a new Global Britain. For the campaign group, DeclassifiedUK, the notion of a robust UK arms licensing regime is a “fiction” and

¹¹⁵ UNSC, “Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council,” 2021, [S_2021_79.pdf \(securitycouncilreport.org\)](#).

¹¹⁶ Bellingcat, “HAJ10006 – the al-Khamis Market Strike”, 24 June 2019, [HAJ10006 - The al-Khamis Market Strike \(bellingcat.com\)](#).

“illusion”.¹¹⁷ At the moment, the government is winning the legal battle, but it remains to be seen whether it will continue to be able to do so. In the meantime, charges of hypocrisy will mount, matched only by the suffering of the ordinary people of Yemen.

¹¹⁷ Andrew Feinstein and Alexandra Smidman, “Britain’s ‘robust’ arms export controls are a fiction,” *The Daily Maverick*, 14 September 2021, <https://www.dailymaverick.co.za/article/2021-09-14-britains-robust-arms-export-controls-are-a-fiction/>.

III. The UK's Arms Export Licensing Control: Why past Human Rights Violations Matter in the Present

Julia Auf dem Brinke

Introducing the Myth of the Robust UK Arms Export Control Regime: A History of Arms Exports to States Involved in Active Conflict

This chapter will look at current debates from civil society, academia and policy experts on the United Kingdom's (UK) new arms export regulatory framework, implemented in December 2021, and critically examines the execution of the previous framework. Specific emphasis will be placed on how the former policy was applied throughout the duration of the Saudi-coalition's military campaign in the Yemen conflict, and what this indicates about its robustness in regulating arms exports to countries engaged in active conflict and their adherence to international humanitarian law (IHL).

While the production and export of arms are generally conceived of as a matter of national security, their utilisation by conflict parties and their role within conflict development places them under international scrutiny and IHL. The Arms Trade Treaty (ATT), which came into force on the 24th of September 2014 and was ratified by the UK, clearly lays out that conventional arms cannot legally be exported to states under the suspicion of violating international warfare practices. According to Article 6(3) of the ATT:

A state party shall not authorize any transfer of conventional arms [...] if it has knowledge at the time of the authorisation that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements.¹¹⁸

¹¹⁸ U.N., "The Arms Trade Treaty," 24 December 2014, <https://www.thearmstradetreaty.org/hyperimages/file/TheArmsTradeTreaty1/TheArmsTradeTreaty.pdf>.



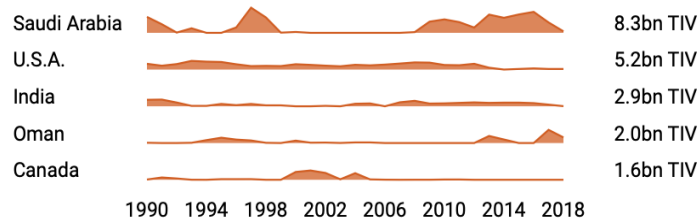
This prioritisation, during conflict, of human security, human rights protection and peace over the economic and geopolitical interests of states is also mirrored within UK law. The European Code of Conduct, as part of the previous UK licensing regime, stipulates that no licensing should take place which could have a negative impact on the peace and security of a region or state. A policy and value mirrored in the new Strategic Export Licensing Criteria, creating the impression that the UK's provision of arms licenses is led by considerations of how and by whom the weapons will be used.

During the nearly 30-year period between 1990-2018, the UK sold major conventional weapons to active parties in the following conflicts: Afghanistan, Colombia, India, Iraq (2003), Iraq (2004 – onwards), Libya (2013 – onwards), Pakistan, Philippines, Somalia, Sri Lanka, Turkey, Ukraine and Yemen.¹¹⁹ During this timeframe, Saudi Arabia was the largest importer of UK conventional weapons (*see figure 1*).

¹¹⁹ World Peace Foundation. "United Kingdom: Who Arms War?" United Kingdom | Who Arms War? n.d, <https://whoarmswar.tufts.edu/supplier/united-kingdom>.

Figure 1: Major Conventional Weapons Sale by the UK (1990-2018)

The greatest recipients of **Major Conventional Weapons** from United Kingdom by value* between 1990 and 2018 are as follows:



*The **SIPRI Trend Indicator Value (TIV)** is a relative measure of arms transfer value, normalized for inflation and currency.

Source: <https://whoarmswar.tufts.edu/supplier/united-kingdom/>

The UK was also a significant arms supplier¹²⁰ to conflicts taking place in Angola, Israel-Gaza, Nepal, Nigeria, Russia-Chechnya, Sudan, Syria and Uganda. These findings, of which conflicts were armed by the UK, are grounded in research by Perlo-Freeman, who investigates whether “*conflict in, or involving, a recipient state, affect[s] the willingness of exporters to supply war?*”¹²¹ His extensive quantitative study found no statistical evidence that, within the nearly 30-year period, the UK’s arms exports diverged between countries in active conflict or peace.¹²² A finding that calls into question the effectiveness of the UK’s arms export licensing control when it comes to limiting the risk of its weapons being utilised within active conflicts, thus endangering regional peace.

Stavrianakis, in a recent comparative case study, assessed whether the UK’s public commitment to the protection of human rights, as well as to conflict prevention, is mirrored in its recent

¹²⁰ World Peace Foundation. “Methodology: Who Arms War?” Methodology | Who Arms War? n.d, <https://whoarmswar.tufts.edu/methodology/#other>.

¹²¹ Sam Perlo-Freeman, Business as Usual: How Major Weapons Exporters Arm the World's Conflicts. World Peace Foundation, 3 March 2021, <https://sites.tufts.edu/wpf/files/2021/03/Business-as-Usual-final-print.pdf>.

¹²² *ibid*.

history of arms export licensing decisions.¹²³ Specifically, she looks at the UK's policy approach towards states which are taking a lead-role within conflict development, namely India and Pakistan towards Kashmir, Sri Lankan armed forces during the civil war, Israel towards the Palestinian Occupied Territories and the Saudi-led coalition towards Yemen. Overall, Stavrianakis's findings support her claim that risk assessments, as part of a functioning arms export control regime, rarely take the previous behaviour and actions of potential arms importers into account, thereby, failing to consider essential data which could indicate probable scenarios of how exported weapons systems will be used.¹²⁴ By negating past behaviour of potential buyer states, the ATT and national regulations effectiveness is severely undermined.

While a recipient state's engagement in active conflict and pattern of previous behaviour (e.g., history of violence, violations of IHL) was not reflected in the UK's arms licensing and export pattern, the data collected did indicate that an increase in a state's military expenditure and overall military acquisition led to an increase in arms sales by the UK.¹²⁵

Figure 2: Frequency of UK Arms Sales



Money

Arms sales from United Kingdom are:

- More frequent as the **military expenditure** of the recipient increases ¹
- More frequent as the **total military acquisition** of the recipient from all other suppliers increases

Source: <https://whoarmswar.tufts.edu/supplier/united-kingdom/>

¹²³ Anna Stavrianakis, Missing in Action: UK Arms Export Controls during War and Armed Conflict. World Peace Foundation, 15 March 2022, <https://sites.tufts.edu/wpf/files/2022/03/Missing-in-Action-UK-arms-export-controls-during-war-armed-conflict.pdf>.

¹²⁴ *ibid.*

¹²⁵ Perlo-Freeman, 2021.

Overall, the UK appears to favour recent customers, as reflected in their frequency of exports to these states.¹²⁶ With the UK's arms trade being an 8.2 billion pounds industry,¹²⁷ economic interests cannot be discounted when discussing the application of arms regulatory regimes. Perlo-Freeman's & Stavrianakis's studies are some of the most recent and in-depth publications on the application of the UK arms export regulatory regime. These findings, however, do not stand in isolation but rather build on a series of academic research and public findings that, grounded in empirical evidence, call into question whether the country's public stance on human rights protection is reflected in the application of its arms export licensing policy.

Arms Sales to Saudi Arabia: The Consequences of UK Arms Export Licensing for Yemen

Under the Consolidated EU and National Arms Export Licensing Criteria, which the UK had implemented until 2021, Criterion 2c states that if a clear risk exists that the weapons systems *might* be employed to violate IHL, licences to said country should not be granted. What constitutes knowledge of war crimes under the ATT legislation is open to some interpretation, but it is ultimately grounded in the presentation of verified evidence. As the International Committee of the Red Cross states, a "State party must know (because the circumstances are notorious) or have reasonable suspicion that the arms would be used for such crimes, even if it failed to check widely available credible reports",¹²⁸ thereby making the structured and verified documentation of violations of international law an essential prerequisite for arms embargoes and stops on arms transfers.

Human rights groups, namely Mwatana for Human Rights, have since 2015 been documenting the indiscriminate use of weapons systems, including UK products, by the Saudi-led coalition during its military campaign in Yemen. In October 2021, the United Nations (UN) resolved its investigation into Yemen. Since then, according to the Yemen Data Project, there has been an increase in civilian casualties and air raids by the Saudi-led coalition.¹²⁹ January of 2022, marked the most devastating month in three years in terms of civilian deaths and injuries, with

¹²⁶ *ibid.*

¹²⁷ CAAT, "The Arms Trade," Campaign Against Arms Trade, 5 May 2021, <https://caat.org.uk/challenges/the-arms-trade/>.

¹²⁸ ICRC. "United Kingdom, Arms Trade with Saudi Arabia." United Kingdom, Arms Trade with Saudi Arabia | How does law protect in war? - Online casebook: B9, n.d, <https://casebook.icrc.org/case-study/united-kingdom-arms-trade-saudi-arabia>.

¹²⁹ Yemen Data Project, "Yemen Data Project Air Raids Summary January 2022," 2022, <https://mailchi.mp/7af91bc30aee/january2022-yemen-data-project-update-13429404>.

91 people reportedly killed and 226 people injured.¹³⁰ While the conflict and suffering of the Yemeni population is becoming less of a focus in the international media and public eye, European and UK weapons systems are still being utilized to commit human rights violations and will most likely continue to be used considering the longevity of a weapons life cycle.

Kamel Jendoubi, chairman of the UN Expert Group, stated: “After years of documenting the terrible toll of this war, no one can say “we did not know what was happening in Yemen”.”¹³¹ In 2016, knowledge of the war crimes being committed prompted the head of the UK’s Export Control Joint Unit (ECJU) to recommend a pause on weapons exports to Saudi Arabia.¹³² The UK’s decision to continue selling weapons systems to Saudi Arabia, while publicly critiquing the violations of human rights and the international law of armed conflict, clearly shows a misalignment of their arms licensing guidelines and the country’s commitment to human rights protection in conflict.



¹³⁰ *ibid.*

¹³¹ Stephanie Nebehay, “Possible War Crimes in Yemen Fuelled by Arms Flows from West, Iran - U.N,” *Reuters*, 15 September 2020, <https://www.reuters.com/article/us-yemen-security-un/possible-war-crimes-in-yemen-fueled-by-arms-flows-from-west-iran-u-n-idUSKBN2601OM>.

¹³² Arron Merat, “‘The Saudis Couldn’t Do It without Us’: The UK’s True Role in Yemen’s Deadly War,” *The Guardian*, 18 June 2019, <https://www.theguardian.com/world/2019/jun/18/the-saudis-couldnt-do-it-without-us-the-uks-true-role-in-yemens-deadly-war>.

This misalignment and continued export of arms to Saudi Arabia is the foundation for the Campaign Against Arms Trade's (CAAT) legal challenge of the UK government in front of the country's High Court. After having been rejected by the High Court in 2017, the Appeal Court sided with CAAT in 2019 and ruled that the government had “to retake on a lawful basis its export licensing decisions on extant licences and not to issue any new ones, where the equipment might be used by Saudi Arabia in Yemen.”¹³³ After having been granted the right to appeal in 2019, the government in 2020 declared that the mandatory review had been completed.¹³⁴ The government's analysis concluded that: “notwithstanding the **isolated incidents** which have been factored into the analysis as historic violations of IHL, Saudi Arabia has a genuine intent and the capacity to comply with IHL.”¹³⁵ This argumentation was used as justification for the UK to fill licenses to Saudi Arabia and its coalition partners. CAAT is now taking the UK government back to court over its decision, having initiated a second judicial review.

The reaction of the UK government to the CAAT court case provides ample information about the *robustness* of its risk analysis regime. While the court sided with CAAT for having provided enough evidence of the risk that UK-produced weapons would be used to violate international human rights law, existing licenses continued to be filled. This provokes the question: Whether these arms exports are the result of a failing policy or of an active policy choice hidden from the public eye through bureaucratic mechanisms?

Revised UK Strategic Export Licensing Criteria: Changes & Commonalities

On the 8th of December 2021, the UK's export control regulations were amended, as communicated by the current Secretary of State for International Trade to the Parliament Anne-Marie Trevelyan, concluding the export control review implemented on the 12th of January 2021 by the UK Government. Revised UK strategic export licensing criteria were applied instantaneously to all upcoming exports, including decisions on appeal, and replaced the

¹³³ CAAT, “CAAT's Legal Challenge.” Campaign Against Arms Trade, 12 November 2021, <https://caat.org.uk/homepage/stop-arming-saudi-arabia/caats-legal-challenge/>.

¹³⁴ Elizabeth Truss (2020). “Trade Update: Statement Made on 7 July 2020.” UK Parliament, 7 July 2020, <https://questions-statements.parliament.uk/written-statements/detail/2020-07-07/HWS339>.

¹³⁵ Ibid.

Consolidated EU and National Arms Export Licensing Criteria.¹³⁶ which had been in place since 25th March 2014. The new Strategic Export Licensing Criteria,¹³⁷ next to the exclusion of any reference to the European Union post-Brexit, which in addition to a better alignment with the ATT was named as the reason for the amendments having taken place, the new regulatory regime encompassed a series of other changes. This section will, after a short overview, highlight those that bear the potential for positive and negative change in the UK's arms licensing procedure, reflecting the risks associated with the arms trade to states engaged in active conflict.

The previous and present arms export licensing systems are organised around eight criteria, plus an 'add-on' to allow for the inclusion of other factors:

Criterion One: Respect for the UK's international obligations and relevant commitments, in particular sanctions adopted by the UN Security Council, agreements on non-proliferation and other subjects, as well as other international obligations.¹³⁸

Criterion Two: Respect for human rights and fundamental freedoms in the country of destination as well as respect by that country for international humanitarian law.¹³⁹

Criterion Three: Preservation of internal peace and security.¹⁴⁰

Criterion Four: Preservation of peace and security.¹⁴¹

Criterion Five: The national security of the UK and territories whose external relations are the UK's responsibility, as well as that of friendly and allied countries.¹⁴²

Criterion Six: The behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism and

¹³⁶ Vince Cable, "Consolidated EU and National Arms Export Licensing Criteria." UK Parliament - Hansard, 25 March 2014, <https://hansard.parliament.uk/Commons/2014-03-25/debates/14032566000018/ConsolidatedEUAndNationalArmsExportLicensingCriteria>.

¹³⁷ Anne-Marie Trevelyan, "Trade Policy Update: Statement Made on 8 December 2021." UK Parliament, 8 December 2021, <https://questions-statements.parliament.uk/written-statements/detail/2021-12-08/hcws449>.

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

¹⁴² *ibid.*

transnational organised crime, the nature of its alliances and respect for international law.¹⁴³

Criterion Seven: The existence of a risk that the items will be diverted to an undesirable end-user or for an undesirable end-use.¹⁴⁴

Criterion Eight: The compatibility of the transfer with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.¹⁴⁵

While the baseline structure of the policy stayed the same after the amendment, a multitude of smaller changes in the language were made as well as additions to criteria. The following table highlights select changes between the export licensing regimes as they related to the scope of this chapter; however, it does not portray the entirety of the criteria as they are written out in the legislature, or a complete portrayal of all amendments.

Table 1: Comparing the Consolidated EU and National Arms Export Licensing Criteria (2014-2021) with the Strategic Export Licensing Criteria (2021-present)

Table 1	<i>Consolidated EU and National Arms Export Licensing Criteria (2014-2021)</i> ¹⁴⁶	<i>Strategic Export Licensing Criteria (2021 – present)</i> ¹⁴⁷
Criterion 2a	The Government will not grant a licence if there is a clear risk that the items might be used for internal repression;	Not grant a licence if it determines there is a clear risk that the items might be used to commit or facilitate internal repression;
Criterion 3	The Government will not grant a licence for items which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.	The Government will not grant a licence if, having assessed the potential that the items would either contribute to or undermine internal peace and security, it determines there is a clear risk that the items would, overall , undermine internal peace and security.

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.*

¹⁴⁶ Cable, 2014.

¹⁴⁷ Trevelyan, 2021.

Criterion 3c		<p>(iv) humanitarian purposes or impacts;</p> <p>(v) the nature of the conflict, including the conduct of all states or actors involved, and any involvement by the UK and allied states;</p> <p>(vi) border stability and legitimate national security interests of the recipient.</p>
Criterion 4	The Government will not grant a licence if there is a clear risk that the intended recipient would use the items aggressively against another country, or to assert by force a territorial claim.	The Government will not grant a licence if, having assessed the potential that the items would either contribute to or undermine peace and security, it determines there is a clear risk that the items would, overall , undermine peace and security.
Criterion 4d		<p>(iv) humanitarian purposes or impacts;</p> <p>(v) the nature of the conflict, including the conduct of all states or actors involved, and any involvement by the UK and allied states;</p> <p>(vi) border stability and legitimate national security interests of the recipient.</p>
Criterion 4e		e) Whether the items might be used to commit or facilitate gender-based violence or serious acts of violence against women or children.
Criterion 5a	a) the potential effect of the proposed transfer on the UK's defence and security interests or on those of other territories and countries as described above, while recognising that this factor cannot affect consideration of the criteria on respect for human	a) the risk of the items undermining or damaging the UK's national security or those of other territories and countries as described above;

	rights and on regional peace, security and stability;	
Criterion 5c	c) the need to protect UK military classified information and capabilities.	c) the need to protect classified information and capabilities.
Other Factors	<p>The Government will thus continue when considering licence applications to give full weight to the UK's national interest, including:</p> <ul style="list-style-type: none"> a) the potential effect on the UK's economic, financial and commercial interests, including our long-term interests in having stable, democratic trading partners; b) the potential effect on the UK's international relations; c) the potential effect on any collaborative defence production or procurement project with allies or EU partners; d) the protection of the UK's essential strategic industrial base. 	In exceptional circumstances, the government may decide not to grant a licence for reasons other than those set out in Criteria 1 to 8 where the items may have a significant negative impact on the UK's international relations.

Since their implementation, the new amendments have so far received very limited public and political coverage. Members of civil society and human rights activists are particularly concerned about the following amendments to the UK's Strategic Licensing Criteria. First, Anne-Marie Trevelyan, the UK's Secretary of State for the International Trade, in her statement accommodating the new legislature declared that "[the government] will not refuse a licence on the grounds of a purely theoretical risk of a breach of one or more of those criteria".¹⁴⁸ As was documented throughout the CAAT Court Case, the emphasis on the clear risk threshold is particularly worrisome since this argumentation has previously been used to exclude states past behavioural patterns from the risk analysis.

¹⁴⁸ Trevelyan, 2021.

Second, the new and repeated emphasis on the government's reading of a situation (e.g., if it determines) builds into the policy an element of interpretation, instead of focussing purely on the factual existence of a clear risk. Paired with the circumstance that, under the new regulation, ministers can decide on a transfer being 'given the green-light' based on their overall perception of the recipient country's adherence to IHL.¹⁴⁹ Grounded within these observations, Martin Butcher, policy adviser on conflict and arms for Oxfam, stipulates that the new criteria "would reduce accountability and transparency and will lead to more UK arms being used to commit war crimes and other abuses",¹⁵⁰ while also making it more difficult for civil society to confront the UK's decision making on arms sales through its court system. Overall, the changes made to the policy carry the risk of further disregard for the human rights violations perpetrated by importing states, a not surprising but still saddening development considering the large-scale public critique of this practice under the previous policy.

Revised Military-End Use Control: Consequences for Arms Embargoes

A new definition of military end-use, was a further aspect of the government's amendments, while not being part of the Strategic Export Licensing Criteria. This change is intended to increase the efficiency of the policy, according to the UK Government's Export Control Joint Unit, by permitting "the control, on a **case-by-case basis**, of non-listed items intended for use by the military, paramilitary, security forces or police forces of a destination subject to an arms embargo".¹⁵¹ This amendment will form part of changes to the Export Control Order 2008, to be implemented in spring 2022.

An arms embargo, as a form of sanctions, legally prohibits the export of **any type** of military product or services related to military items to a state under sanctions. As of March 2022, the following countries are placed under an arms embargo by the UK: Afghanistan, Armenia, Azerbaijan, Belarus, Burma (Myanmar), Central African Republic, China, Democratic People's Republic of Korea, Democratic Republic of Congo, Hong Kong Special Administrative

¹⁴⁹ Emma Graham-Harrison, "New Rules on UK Arms Trade Make It 'Easier' to Sideline Human Rights," *The Guardian*, 12 December 2021, <https://www.theguardian.com/world/2021/dec/12/new-rules-on-uk-arms-trade-make-it-easier-to-sideline-human-rights>.

¹⁵⁰ Ibid.

¹⁵¹ Export Control Joint Unit, "NTE 2021/14: Updates to the Export Control Regime." GOV.UK. GOV.UK, 9 December 2021, <https://www.gov.uk/government/publications/notice-to-exporters-2021-14-updates-to-the-export-control-regime/nte-2021-14-updates-to-the-export-control-regime>.

Region, Iran, Iraq, Lebanon, Libya, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, Yemen and Zimbabwe. The practical enforcement of these arms embargoes and military sanctions is however not as clear cut as it sounds. According to the UK Government website: “There may be specific exceptions under which it is possible to engage in an activity that would otherwise be prohibited. It may also be possible to get a license that would permit you to engage in an activity that would otherwise be prohibited.”¹⁵² Through the existence of this exception, the arms embargo's all-encompassing application is being hollowed out. A system based on case-by-case individual interpretation, instead of an overall risk assessment of the recipient country, bears an inherent danger of opaque licensing procedures that can be exploited for the geopolitical and economic benefits of the state or even the personal benefits of the individual.

Policy Recommendations: Background

To provide an effective policy recommendation, it is first essential to understand the underlying factors and motivations that have created this not-so-robust export control regime. Namely, the relationship between state and corporate military actors as well as geopolitical interests. In theory, the riparian state, according to the traditional-realist lens, understands that national security interests are fundamentally separate from the interests of private-military companies.¹⁵³ Therefore, private-military companies (PMCs) are conceived of as actors without agency that merely support the national security goals of the state.¹⁵⁴ However, an alternative understanding, as proposed by Van Creveld, would be to conceive of PMCs as active agents with interests that influence state policies.¹⁵⁵ These active agents, through the revolving doors between the private and public security sector, have privileged access to decision-makers, a pattern that is in large parts mirrored or even further intensified when we are looking at the interaction between the state and arms producers. With arms producers being shielded even further from public scrutiny since they are still often conceived as passive actors that are only providing goods.

¹⁵² Department for International Trade and Export Control Joint Unit, “Trade Sanctions, Arms Embargoes, and Other Trade Restrictions.” GOV.UK, 29 October 2021, <https://www.gov.uk/guidance/current-arms-embargoes-and-other-restrictions#arms-embargo-trade-sanctions-and-other-trade-restrictions>.

¹⁵³ Vino Kanapathipillai, *State/corporation/security: relations, practices, governmentality*. Doctoral dissertation, 2018, SOAS University of London.

¹⁵⁴ Deborah Cowen, *The deadly life of logistics: Mapping violence in global trade* (Minnesota: U of Minnesota Press, 2014).

¹⁵⁵ Martin van Creveld, *Supplying war: logistics from Wallenstein to Patton* (Cambridge: Cambridge University Press, 2004).

Initially theorised as an actual revolving door between the two spheres, Leander's study into power relations in the global security field showed how PMCs are conceived of as experts with privileged access to intelligence and policymakers. This gives them epistemic power to influence public policy decisions.¹⁵⁶ It can be theorised that the same epistemic power is being placed upon corporate weapons manufacturers. Taking the example of the arms trade by the UK to Saudi Arabia, we see decades of state and corporate actors, representing BAE Systems and the British government, as well as the British royal family and the Saudi royal family, creating an elite network of relationships.

In addition to the influence of corporate actors, states' geopolitical interests play a role in the conceptualisation and application of arms control legislation. Arms, in a world of hard power politics, are still being used as a controlling mechanism within inter-state relationships. The resulting network of power relationships is grounded within international weapons sales,¹⁵⁷ creating a strong motivation for weapons export countries to maintain these links through their foreign policy. The consideration of national interests in arms licensing procedures was even formally outlined in the old UK regulatory regime¹⁵⁸ (see Table 1) and reflected in EU law. It is positive to note that this section was excluded in the new regulations. However, it is unclear, whether or not this will practically impact the UK licensing regime.

¹⁵⁶ Anna Leander, "The Power to Construct International Security: On the Significance of Private Military Companies," *Millennium - Journal of International Studies*, vol 33, no.3 (2005): 803–825.

¹⁵⁷ Andrew Feinstein, *The shadow world: Inside the global arms trade* (New York: Macmillan, 2011).

¹⁵⁸ Cable, 2014.

Policy Recommendations and Conclusion

With the new regulatory system only having been in place since December 2021, its long-term impact remains to be seen. However, critiques by experts from policy, academia and civil society can in large part be applied to pre-and post-December 2021 policies due to the policy's similarities, with the amendments only serving to increase the relevance of some of the resulting policy recommendations listed here.

Grounded within an analysis of the previous arms export control system, Stavrianakis proposed the following avenues for improvement.¹⁵⁹ These recommendations, however, depend on the mobilisation of political will to address the shortcomings of the existing legislature. Something that based on past track record, Stavrianakis calls into question.¹⁶⁰ The policy recommendations follow:

1. The Committees on Arms Export Controls' (CAEC) conversion into a full standing Select Committee is a critical step towards enhancing parliamentary oversight. A conversion of the committee could be implemented through a motion by parliament or a debate within the four component committees, through which the CAEC has its indirect membership, to call for a change under the standing orders.
2. Systemic critical debates about and reframing of the UK's arms export policy that address the UK's overall favourable stance towards exports as well as geopolitical goals. Overall, this would position the debate in the larger conversation of the UK's foreign, defence and security policy.
3. To implement a series of policy recommendations previously brought forward by non-state and state actors, including:
 - a. End the subsidies on arms production and export.
 - b. Halt the privileged access of industrial actors to state budgets and decision-making fora.
 - c. Move the licensing bureaucracy out of the government responsible for international trade and into a more pro-control part of the state.

¹⁵⁹ Stavrianakis, 2022.

¹⁶⁰ *ibid.*

- d. Institute a “presumption of denial” for licenses to sensitive destinations.
- e. Engage in prior parliamentary scrutiny of export decisions.
- f. Establish increased end-use monitoring of exports.¹⁶¹

While still speculative since the new policy has not yet been applied in practice, the following recommendations are based on the policy revision process as well as the language used to outline the new strategic export licensing criteria, and what this could indicate about its application:

1. The process of how the new regulatory regime itself was created and implemented can be improved upon. There are a multitude of experts from the civil society, policy and law arenas, as well as other external stakeholders that should be consulted in regular intervals during the policy revision process.
2. The evaluation of what stipulates a ‘clear risk’ under Criterion 2a should be a transparent as well as a coherent process that takes past behaviour by recipient states into account. The government’s determination of a country’s status should be informed by a diversity of actors, verified evidence of past violations of human rights and under parliamentary or judicial oversight (see point 5).
3. Criterion Three (preservation of internal peace and security) and Criterion Four (preservation of peace and security) should be reversed to the threshold of ‘clear risk’ as an absolute measure for a hold on arms licenses and transfers, instead of the new policies emphasis on the overall risk.
4. Also, in relation to Criterion Three and Four, the government should clearly define and provide strict guidelines for what type of ‘humanitarian purposes or impacts’ would justify the transfer of arms and military equipment.
5. Overall, mechanisms for parliamentary or judicial oversight should be expanded upon.

Considering the previous arms export control regimes failure to take the recipient state’s engagement in active conflict and pattern of previous behaviour (e.g., history of violence, violations of IHL) into account, which resulted in the continued arms sales to Saudi Arabia (and many other states) long after the coalition’s human rights violations in Yemen had been

¹⁶¹ Stavrianakis, 2022.

extensively documented, the newly implemented Strategic Export Licensing Criteria does not reflect the large-scale public call for a more robust and stricter licensing regime. However, as Stavrianakis outlines there is a multitude of policies, ranging from the Committees on Arms Export Controls' (CAEC) conversion into a full standing Select Committee to an end to the subsidies on arms production and export,¹⁶² that could be imposed to create a truly *robust* arms export regime that lives up to the commitments the UK has made under the ATT as well as its national legislature. The question remaining is whether enough political will be mobilised for the government to implement these necessary policy changes.

¹⁶² Ibid.

About the Authors



Courtney Freer is a nonresident fellow in the Foreign Policy program at Brookings and is an assistant professorial research fellow at the Middle East Centre at the London School of Economics and Political Science (LSE). She specializes in domestic politics and foreign policies of the states of the Gulf Cooperation Council (GCC), as well as connections between the two. Her work has appeared in a variety of academic outlets, including *International Journal of Middle East Studies*, *British Journal of Middle Eastern Studies*, *Studies in Ethnicity and Nationalism*, and *Middle Eastern Studies* as well as in policy publications and newspapers in the U.S. and Middle East. She has briefed U.S. and U.K. governments and U.N. agencies on issues related to the GCC states and Islamism and gave evidence in U.K. Parliament related to the United Kingdom's Political Islam Inquiry.

Julian Richards is a Professor of Politics, and Director of the Centre for Security and Intelligence Studies (BUCSIS) at the University of Buckingham, UK. Prior to co-founding BUCSIS in 2008, Julian spent 17 years working for the British government in security and intelligence analysis and policy. He has given formal evidence to Government inquiries on privacy and security issues and is a regular media commentator on security and intelligence issues for national and international television and radio, including the BBC, Sky News, Al Jazeera, LBC radio, and the Islam Channel. His current research interests include a range of issues concerning global security and security policy; questions of extremism and radicalization; and the development of techniques in intelligence analysis.



Julia Auf dem Brinke is one of the Founders & Co-Programme Manager of the Corruption Tracker Project, where she works on documenting corruption in the arms trade. She holds an MSc from SOAS in Politics of Conflict, Rights and Justice. Her interests include arms trade, corruption and the military-industrial complex. She holds an MSc from SOAS in Politics of Conflict, Rights and Justice.

Publication Department
July 2022