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The Failure of Non-State Actors in the Enforcement of the UK's Arms Export Control Criteria with Saudi Arabia

The current Yemen conflict viewed in the context of UK–Saudi financial and security interests from the creation of the modern Saudi State.

by

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Dedication

This thesis is dedicated to Finn - your company has been invaluable. Thank you for the walks.

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List of Abbreviations

APPG	All Party Parliamentary Group
ATT	Arms Trade Treaty
DFID	Department for International Development
EU	European Union
FCO	Foreign & Commonwealth Office
HRW	Human Rights Watch
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IGO	Intergovernmental Organisation
JIAT	Joint Incidents Assessment Team
MOD	Ministry of Defence
MP	Member of Parliament
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
SCR	Security Council Resolution
SFO	Serious Fraud Office
SNIC	Syrian National Investigation Committee
UAE	United Arab Emirates
UN	United Nations
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council

Abstract

UK arms exports to Saudi Arabia for use in the current conflict in Yemen, ongoing since March 2015, provides the focus for exploring the competing interests in the historic UK-Saudi relationship. Specific attention is given to the efforts of non-state actors to raise with the British government the issue of International Humanitarian Law (IHL) violations by Saudi Arabia and thus to compel it to halt licenses. The thesis demonstrates how the efforts of non-state actors have been unsuccessful in forcing the government to halt weapons sales to Saudi Arabia, despite the credible and authoritative evidence provided by them. Structured within Constructivist Theory and its implications for a state's adherence to IHL, the thesis demonstrates Constructivism's limitations in explaining a state's compliance with IHL. Instead, the British Government has embarked upon a deliberate strategy of avoidance and manipulation of its supposed "robust" export regime, allowing it to continue to exploit the other competing interests in the UK-Saudi relationship. These interests are shown to be historically deep and complex, with financial and security factors playing the primary role in shaping its direction since the creation of the modern Saudi state in 1932.

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Introduction

This thesis focuses on the competing interests that have shaped the history of the UK-Saudi relationship through the lens of UK arms exports to Saudi Arabia, in light of the country's military involvement in the conflict in Yemen since March 2015. The analysis will focus specifically on non-state actors' influence on the British government's arms export licensing regime.

Saudi Arabian conduct in the conflict, and consequently the UK's involvement, has drawn considerable criticism from several highly regarded non-state actors. This has focused primarily on extensive and detailed evidence of violations of International Humanitarian Law (IHL) by the Saudis, which have continued to be submitted to the British government from various different sources. Under its own arms export licensing criteria, the UK is legally compelled to halt arms exports if there is a "clear risk" of the weapons being used to breach IHL by the recipient country. However, the British government has continued to ignore such evidence and maintained sales.

This thesis looks specifically at the efforts of five leading non-state actors (one intergovernmental organisation (IGO) and four non-governmental organisations (NGOs)) to provide evidence of IHL violations and thus compel the government to halt export licenses. Detail is then provided of the UK government's response to this evidence. Finally, the analysis focuses on the enduring financial and security interests in the UK-Saudi relationship, to assess the other competing interests involved in the export licensing decision.

The thesis is structured within *Constructivist Theory* and its implications for a state's commitment to and compliance with international law. With regards to arms export controls, Constructivism argues for the strong influence of *humanitarian norms* in explaining a state's

behaviour. Therefore this thesis also explores the extent to which such humanitarian norms are central to the British government's international law commitments, identifying if and where it has departed from them.

i. Historiography

UK Commitment to IHL

To assess the UK's commitment to international humanitarian norms and the role of non-state actors in this process, it is vital to identify historically the relevant academic work. Robert Heinsch identifies the influence of the International Committee of the Red Cross (ICRC) in the development of the Geneva Conventions. He writes, "The ICRC's special approach" to the UK for the 1949 Conventions included contributions of academics on the issue so as "to appease the United Kingdom" and to ensure that the UK "would have a hard time arguing against this."¹ This is reiterated by Martha Finnemore who states that the ICRC played the leading role in the UK's adoption of the Conventions, arguing that British commitment to the treaties was "created and taught to decision makers in states by a transnational, nongovernment group of individuals," the ICRC.² Finnemore also places *humanitarian norms* at the heart of this process, arguing that commitment resulted from the development of ideas of "principled concerns, morality, and individual action."³ With this in mind, Chapter 1 of this thesis looks historically at the UK's IHL commitments, to assess whether non-state actors have played a primary role in the UK's commitment to the "laws of war" through humanitarian principled concerns.

UK Commitment to Arms Control

Towards the end of the 20th Century, IHL developed significantly in the area of arms control, with Jennifer Erickson addressing its acceleration with the New Labour government in 1997. She identifies that Tony Blair set "the reputation baseline" and "sought to use its "responsible" policies to signal the United Kingdom's new image not just at home but also to peers abroad."⁴ Erickson states, "Whether in spite of or because of its commitment to promoting defence

¹ Heinsch, R. "The International Committee of the Red Cross and the Geneva Conventions," in *Humanizing the Laws of War*, ed. Geiß, R., Zimmermann, A., & Haumer, S. (Cambridge: Cambridge University Press, 2017), p.37.

² Finnemore, M. *National Interests in International Society*. (Ithaca and London: Cornell University Press, 1996), p.4.

³ *Ibid.*, p.87.

⁴ Erickson, J. *Dangerous Trade: Arms Exports, Human Rights, and International Reputation*. (New York: Columbia University Press, 2015), p.91.

exports alongside ethical arms transfers, the United Kingdom has created a strong international reputation for leadership on arms export controls and set the policy standard for other top democratic exporters.”⁵ Erickson argues that this then carried through to the Coalition government of 2010-2015.⁶ Again, the merits and credibility of this assessment will be explored in Chapter 1.

Arms Control and Non-State Actors

Arms control policies have been widely recognised as engaging a broad spectrum of differing interests and actors. Muller et al. discuss the role of NGO advocacy in support of such measures, arguing “in particular, transnational action networks on humanitarian arms control have become crucial agents in mobilising the global public, raising concern about the human tragedy caused by the indiscriminate use of weapons, and gaining access to relevant negotiations.”⁷ Significantly, they discuss one of the non-state actors focused on in this thesis, Human Rights Watch (HRW), identifying their role in establishing “hub organisations” to lobby for arms control, which “seem to be a key to success in vetting advocacy agendas and gaining influence on norm generation processes.”⁸ Muller et al. also discuss the important role of NGOs in “assisting implementation” for states, identifying that “NGOs and their networks have pursued significant activities in implementing norms and have thus occasionally taken over the state’s function in zones of limited governance.”⁹ This is important specifically in this thesis due to the role of non-state actors in monitoring IHL violations in Yemen. The UK government itself has no monitoring forces on the ground and, as a result, the question arises as to where authority lies in assessing relevant evidence.

Non-state actors played a prominent role in establishing the most significant recent arms control development, the Arms Trade Treaty (ATT) (2014). Rachel Stohl shows that the ATT was a UN-led ratification process and argues that Article 51 of the Charter of the United Nations “which recognizes the inherent right of all states to individual or collective self-defense and the right to manufacture, import, export, transfer, and retain conventional arms toward that

⁵ Erickson, *Dangerous Trade*, p.93.

⁶ *Ibid.*

⁷ Muller, H., Below, A. & Wisotzki, S. “Beyond the State: Nongovernmental Organisations, the European Union, and the United Nations,” in *Norm Dynamics in Multilateral Arms Control*, ed. Muller, H., & Wunderlich, C. (Athens: University of Georgia Press, 2013), p.307.

⁸ *Ibid.*, p.298.

⁹ *Ibid.*, p.306.

end—frames arms trade discussions.”¹⁰ This intergovernmental input is contextualised by Muller et al. when arguing that “the growth of transnational civil society, as well as international institutions above the state level, and its international impact has been one of the characteristics of the era of globalisation.”¹¹ The role of the United Nations (UN) will be explored in Chapter 2 to assess its influence on the enforcement of the UK government’s arms control policy. Rietiker observes that “a broad and well-organised network of many NGOs was also the driving force behind the ATT.”¹² This was identified alongside the UK government, with the “ATT having been launched by NGOs and some smaller States, it was surely the announcement of UK support of the ATT that gave the campaign a decisive boost.”¹³ He also reinforces that the ATT’s adoption was “inspired by humanitarian concerns.”¹⁴

Despite this, whilst NGOs *can* play an important role their access has been recognised as fluctuating, with Anna Stavrianakis acknowledging that, “The UK government takes NGO advice when it does not threaten defence-industrial and ‘hard’ state security interests to do so, but ignores NGOs and other critics when it considers that necessary.”¹⁵ This contribution is important as it addresses many of the themes of this thesis. In this assessment however, Stavrianakis provides no insight into issues such a state’s interest in its international reputation. Therefore, by detailing the extent to which the British government has prioritised security and financial interests *despite* the evidenced reputation implications, this thesis provides further legitimacy to Stavrianakis’ argument. This will be explored in Chapter 4 when analysing the historic UK-Saudi financial and security interests.

“Reputation”

This idea of “reputation” has been recognised as a key consideration in a state’s IHL adherence. Erickson discusses the *reputational* role of non-state actors following the British Arms to Iraq scandal after the 1991 Gulf War, which marked a key historical moment when the British government became “more concerned about its domestic reputation and arms exporter

¹⁰ Stohl, R. “Putting the Arms Trade Treaty into Context: Perspectives on the Global Arms Trade Existing Arms Trade Initiatives, and the Role of the United States.” *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 103, International Law as Law, (2009): p.333

¹¹ Muller, Below & Wisotzki, “Beyond the State,” p.296.

¹² Rietiker, D. *Humanization of Arms Control: Paving the Way for a World Free of Nuclear Weapons*. (London & New York: Routledge, 2018), p.34.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Stavrianakis, A. *Taking Aim at the Arms Trade: NGOs, Global Civil Society and the World Military Order*. (London & New York: Zed Books, 2010), p.164.

image.”¹⁶ Following this, the UK embarked upon structural changes to “ethical” arms transfers, which “place the contemporary British case in the high-transparency-active NGO category, giving existing NGOs clear standards by which to judge government export behaviour and more information by which to do so.”¹⁷ Importantly, given their focus in this thesis, Erickson writes, “Amnesty and Oxfam in particular “can mobilise significant constituencies,” and Labour might easily lose support from votes important to it.”¹⁸ Again, crucially in relation to this thesis, Erickson writes, “[the UK’s] rapid decision to revoke licenses to North Africa and the Middle East in light of the Arab Spring suggests concern for how arms exports to a repressive region in the public spotlight will be received.”¹⁹

Whilst Erickson references the differing dynamics involved in the arms control process, there is yet to be a comprehensive analysis of the government’s approach to IHL breaches. The Saudi Arabia example therefore provides the opportunity to analyse a case where IHL breaches are significantly in the public and political domain, conflicting with the government’s reputation. According to Erickson, “what changed in the United Kingdom...was the ease with which a party’s reputation could be damaged.”²⁰ This will be directly put to the test in this thesis.

Halting Exports

To provide greater context to the government’s arms decision-making process, it is important to recognise cases where the British government has recently halted arms exports to the Middle East region. Mark Bromley looks at the Arab Spring of 2011, outlining how, in March 2011, “the British government announced that it had revoked 122 export licenses that had been previously granted for exports to Bahrain, Egypt, Libya and Tunisia.”²¹ Importantly, he cites that these licenses had been issued during periods of greater stability, for example with the UK capitalising on the lifting of UN and European Union (EU) arms embargoes on Libya in 2003 and 2004 to issue licenses worth €98 million from 2006-2010.²² However, with the UK government switching its support to the anti-President Gaddafi protestors, the threat of its weapons being visibly used during the Libyan government’s violent crackdown on protestors could have potentially “proved highly embarrassing for the companies and EU member states

¹⁶ Erickson, *Dangerous Trade*, p.115.

¹⁷ *Ibid*, p.114.

¹⁸ *Ibid*, p.119.

¹⁹ *Ibid*, p.119.

²⁰ *Ibid*, p.118/119.

²¹ Bromley, B. “The Review of the EU Common Position on Arms Exports: Prospects for Strengthened Controls.” *EU Non-Proliferation Consortium*, No.7, (Jan. 2012): p.13.

²² *Ibid*, p.11.

concerned.”²³ Bromley also cites British government worries “that Libya might re-export the weapons to the government of Chad or rebel factions in Sudan.”²⁴ This demonstrates the wider political stability considerations in the government’s licensing decisions and its apparent sensitivity to its visible involvement in regional political conflicts.

Importantly, given the focus of this thesis on the UN, Bromley outlines how “the UN Security Council unanimously denounced the gross and systematic violation of human rights by the Libyan government and imposed sanctions, including an arms embargo” in February 2011, shortly prior to the UK’s decision.²⁵ Bromley also makes reference to the “wider international and domestic pressures...that influence government decision making in this area” and cites “the pressure exerted by NGOs” as one of these key sources.²⁶ Bromley’s work is vital in showing a specific historical moment when the UK worked within its arms export processes and relevant intergovernmental structures to halt arms export licenses. His work suggests that there is a tipping point whereby cutting exports is deemed to be more in the UK’s interests than the financial benefits. What this thesis will explore, however, is whether the UK-Saudi relationship has such a tipping point and if in fact what became a “special relationship” makes it markedly unique in such considerations.

i. Theory: *Constructivism*

International Norms

Constructivism emphasises the key role of the international community in socialising a state’s identity and, consequently, its behaviour on the world stage. Leading Constructivist Alexander Wendt views international politics through a “social ontology,” where “content and meaning are constituted by ideas and culture.”²⁷ For Wendt, “the nature of states might be bound up conceptually with the structure of the states system” and “the more deeply that states have internalised the culture of the states system the more difficult it will be to change.”²⁸

Within this socialising state system, *international norms* are identified by Peter Katzenstein as having ““regulative” effects that specify standards of proper behaviour. Norms thus define (or

²³ Bromley, “The Review of the EU Common Position,” p.10.

²⁴ *Ibid*, p.12.

²⁵ *Ibid*

²⁶ *Ibid*, p.9.

²⁷ Wendt, A. *Social Theory of International Politics*. (Cambridge: Cambridge University Press, 1999), p.371.

²⁸ *Ibid*, p.372.

constitute) identities or prescribe (or regulate) behaviour, or they do both.”²⁹ The development of international norms is discussed by Risse and Sikkink, who state that the “process by which international norms are internalised and implemented domestically can be understood as a process of *socialisation*.”³⁰ According to their model, socialisation is a three staged process that ends in the “internalisation of norms in identities, interests, behaviour.”³¹ With the UK having internalised IHL through its international commitments, these norms, according to this model, are now part of the UK’s identity, interests and behaviour.

Compliance

This internalisation process has direct implications for a state’s *compliance* with international norms. According to Finnemore, when the norm is “internalised”³² it adopts a “normative authority,”³³ enforcing compliance. Other Constructivists, such as March and Olsen, have defined this as a “Logic of Appropriateness,” where states’ behaviour “is associated with identities more than with interests, and with the selection of rules more than with individual rational expectations.”³⁴ Importantly, *compliance* marks a crucial point of distinction from other international relations theories which disagree on norms’ effectiveness, with Neorealist Stephen Krasner identifying the “hypocrisy” that “lip service might be given to particular norms and rules, but nothing more.”³⁵

Non-State Actors

Constructivism identifies an important role for non-state actors, with Risse et al. arguing they “remind liberal states of their own identity.”³⁶ They argue that advocacy networks act on three levels: (1) “They put norm violating states on the international agenda in terms of moral consciousness-raising” (2) “They are crucial in mobilising *domestic* opposition” (3) “They challenge norm-violating governments by creating a transnational structure pressuring such

²⁹ Katzenstein, P. “Introduction: Alternative perspectives on national security,” in: *The Culture of National Security. Norms and Identity in World Politics*, ed. Katzenstein, P. (New York: Columbia University Press, 1996), p.5.

³⁰ Risse, T., & Sikkink, K. “The socialisation of international human rights norms into domestic practices: introduction,” in *The Power of Human Rights: International Norms and Domestic Change*, ed. Risse, T., Ropp, S., & Sikkink, K. (Cambridge: Cambridge University Press), p.5.

³¹ *Ibid*, p.12.

³² Finnemore, *National Interests*, p.129.

³³ *Ibid*, p.83.

³⁴ March, J.G. & Olsen, J.P. “The Institutional Dynamics of International Political Orders,” *International Organisation*, Vol.52, No.4 (Autumn 1998): p. 951.

³⁵ Krasner, S. *Sovereignty: Organised Hypocrisy*. (Princeton, New Jersey: Princeton University Press, 1999), p.56/57.

³⁶ Risse, T., Ropp, S., & Sikkink, K. *The Power of Human Rights: International Norms and Domestic Change*. (Cambridge: Cambridge University Press, 1999), p.5.

regimes simultaneously “from above” and “from below”. The more these pressures can be sustained, the fewer options are available to political rulers to continue repression.”³⁷ By this standard, it would suggest that strong non-state actor advocacy should play an important role in compelling the UK government to adhere to arms control law.

Humanitarian Norms and Arms Export Controls

Constructivism’s normative behavioural power has significant implications for international law. Beth Simmons outlines how “one function of international agreements is to enhance the reputational consequences of noncompliant behaviour by providing mechanisms that increase transparency and therefore improve information regarding other states’ behaviour.”³⁸ She adds that “the central mechanism for securing compliance is related to reputation” and that states “have an interest in developing a reputation as “rule of law” countries” to “gain a high degree of legitimacy.”³⁹ This is vital in the assessment of the UK’s commitment to arms control and IHL, where its involvement in Yemen has significant reputational consequences.

This reputational adherence to humanitarian norms also has specific implications for a state’s compliance with arms control measures. As Garcia argues, arms control policy stems from other-orientated moral progress in international politics that has transformed states’ interests.⁴⁰ Erickson supports this, arguing Constructivism expects that states’ export policy and practice will reflect new humanitarian standards.⁴¹ It is important that Constructivism addresses arms control in this way, with this thesis’ historical analysis of the UK’s approach to weapons sales allowing a judgement on the theory’s historical durability. This is crucial in assessing whether there is a point of departure between the UK’s commitment to and compliance with such measures.

ii. Academic Relevancy

The above literature has largely been produced prior to the UK’s ratification of the ATT (2014), which now forms the backbone of its arms regime. With this literature identifying the UK’s

³⁷ Risse, Ropp & Sikink. *The Power of Human Rights*. p.5.

³⁸ Simmons, B. A. “Compliance with International Agreements,” *Annual Review Political Science*, Vol. 1 (2018): p.81.

³⁹ *Ibid.*

⁴⁰ Garcia, D. *Disarmament Diplomacy and Human Security: Regimes, Norms, and Moral Progress in International Relations* (London: Routledge, 2011).

⁴¹ Erickson, *Dangerous Trade*.

leading role in the ATT's global adoption, the thesis will assess the rigor of this new global agreement in enforcing greater compliance.

The literature broadly indicates that, at times, a state may prioritise security and financial interests over compliance with arms control law, yet it has failed to provide sufficient detail explaining exactly how.

By focusing precisely on the "clear risk" assessment, this thesis analyses precisely where the criteria are insufficient. Again, whilst the literature has drawn broad conclusions on non-state actor involvement in this process, this thesis details the government's inconsistency in assessing non-state actors' evidence.

Crucially, there has been no comprehensive focus on the UK-Saudi arms control relationship. With the bilateral relationship arguably never drawing the close scrutiny currently seen in relation to Yemen, the conflict provides a unique opportunity to assess the boundaries of this relationship and the extent of its other interests. Locating this contemporary conflict within the history of the UK-Saudi relationship provides a far deeper context to the UK's weapons sales approach than explored previously. This also allows a credible assessment of future expectations of the relationship, in light of the demonstrated historic trends.

iii. Methodological Framework

So as to understand the multi-levelled nature of non-state actor influence, the thesis focuses on both IGOs and NGOs.

IGOs have a strong and established level of access to a state and primarily conduct their work on the international level. This thesis focuses on the **United Nations**, which has a number of mechanisms to gather and present evidence concerning a state's conduct of war. The UN is of particular relevance to the UK's control regime, given the recent ATT's UN ratification process. Consequently, the relevancy of the organisation in the ATT's effectiveness and durability is without question.

This thesis also focuses on the work of four NGOs: (1) **Amnesty International**, (2) **Human Rights Watch**, (3) **Oxfam** and (4) **Saferworld**. These four NGOs have been selected due to their participation in providing oral evidence to the 2016 inquiry "The Use of UK-manufactured Arms in Yemen," a House of Commons Select Committee on Arms Export

Controls.⁴² Given that these were the only NGOs invited to provide oral evidence to the Committee, it highlights both their authority within the British political process and their proven level of access to the UK government. Of note, this thesis will not provide a deep exploration of the merits of the varying NGO campaigning techniques. With the provision of IHL violation evidence alone legally requiring the government's consideration under its criteria, such campaigning techniques are not relevant to the thesis' specific focus.

The actions of the **UK government** are also analysed on a number of levels. This includes its original commitment to the relevant international law, its prior support for the inclusion of non-state actors in the arms export process and its current response to non-state actor evidence. There is also a focus on the government's other interests in the UK-Saudi relationship, specifically the financial and security ties, so as to assess the strength of these competing interests against its international law commitments.

One limitation regarding sources was a lack of access to government discussions behind-closed-doors. This included situations such as inter-departmental discussions, where it was not possible to access transcripts of the export licensing decision-making process. Therefore, it was important to view government responses critically, recognising that its "public line" on the issue may mask other considerations. This was a constraint in weighing up other interests at play in the government's licensing decisions.

With regards to the time period, Saudi Arabia has led the military coalition in Yemen since 26th March 2015, with the British government issuing licenses throughout this period. Therefore, the timescale for analysis of non-state actors' efforts to halt weapons sales to Saudi Arabia in relation to Yemen is the period of 26th March 2015 to the present day. This analysis is explored during Chapters 2 and 3.

However, a more detailed historical analysis will be embarked upon to understand the Yemen conflict within the wider context of the UK-Saudi relationship. Importantly, in considering the development of the relationship's financial and security interests, with all its fluctuations, Chapter 4 will look back to the creation of modern-day Saudi Arabia as a watershed moment, laying the foundations for the future UK-Saudi relationship.

⁴² Committees on Arms Export Control. "Oral evidence: Use of UK-manufactured Arms in Yemen," *Committees on Arms Export Controls Oral Evidence*, HC 928 (London: House of Commons, 23rd Mar. 2016).

Chapter 1 will also include a historical exploration into the UK's commitments to the "laws of war," starting with the 1949 Geneva Conventions.

Background

a. The UK's Export Criteria: "Clear Risk" Assessment

It is necessary to identify the legal framework of the UK's arms export procedures. The "clear risk" assessment, which "require that the government not grant a licence where there is a clear risk that the items might be used in the commission of a serious violation of IHL,"⁴³ is addressed on three different levels: Articles 6.3 and 7 of the Arms Trade Treaty, Articles 2 and 6 of the EU Common Position, and Criterion 2c of the UK's Arms Export Licensing Criteria.⁴⁴ In March 2014, the British government converged these three measures in domestic law by updating its 'Consolidated Criteria', stating that "the updated version...brings the Consolidated Criteria fully in line with the EU Common Position and the UN Arms Trade Treaty."⁴⁵ Then-Secretary of State for Business, Innovation and Skills, Vince Cable, stated that the assessment is "on a case-by-case basis taking into account *all relevant information available* at the time the licensing application is assessed."⁴⁶

b. The Conflict in Yemen

In 2011, Yemen embarked upon a political transition of power from President Saleh, leader since 1978, to his deputy Abd Rabbuh Mansur Hadi. In 2014, this transition collapsed when an insurgency of Houthi rebels seized the country's capital city, Sana'a, marking the beginning of the current conflict.⁴⁷

Following this, a 10-member coalition of countries across both the Middle East and Africa have supported the Yemeni government militarily. Saudi Arabia, which shares over 1,000 miles of

⁴³ Business, Innovation and Skills and International Development Committees. "The use of UK-manufactured arms in Yemen," *First Joint Report of the Business, Innovation and Skills and International Development Committees of Session 2016-17*, HC 679 (London: House of Commons, 15th Sept. 2016): p.34.

⁴⁴ *Ibid.*

⁴⁵ Lunn, J. "The Legal and Regulatory Framework for UK Arms Exports," *House of Commons Briefing Paper*, No. 2729 (London: House of Commons, 4th Sept. 2017): p.29.

⁴⁶ Cable, V. "Consolidated EU and National Export Licensing Criteria," *House of Commons Written Statement*, Vol. 578 (London: House of Commons, 25th Mar. 2014): cc. 9-14WS.

⁴⁷ BBC News. "Yemen crisis: Who is fighting whom?" *BBC News*, 30th Jan. 2018 [online] Accessed: 18/06/18. Available: <https://www.bbc.com/news/world-middle-east-29319423>

border with Yemen, has contributed by far the largest military support and therefore, the joint coalition has been widely labelled the ‘Saudi-led Coalition.’⁴⁸ The Coalition’s military support was legally endorsed by the international community on 24th March 2015, following President Hadi’s request at the UN for “immediate support...to protect Yemen and deter Houthi aggression.”⁴⁹

Since March 2015, the UN has reported that 9,245 people have been killed in Yemen, with a further 52,807 injured.⁵⁰ The UN have described the humanitarian situation in the country as the “world’s worst man-made humanitarian disaster,” with the conflict directly contributing to 8.4 million Yemenis being just “a step away from famine” and over 22 million people (three-quarters of the population), in desperate need of aid and protection.⁵¹

In May 2016, the Saudi-led Coalition set up a Joint Incidents Assessment Team (JIAT) to investigate and report on alleged incidents of IHL violations, which have been widespread. As of May 2018, the JIAT had announced the findings of just 55 “incidents of potential concern.” No assessment has yet been made of IHL violation.⁵²

Historically, the UK has had a close relationship with Yemen, with the south of the country constituting the British Colony of Aden from 1937-63. The British government therefore has historical strategic interests in the country, explored in greater detail in Chapter 4. In 2013, the British government described itself as “taking a leading role in coordinating international political support for President Hadi as he works to implement reform and to tackle instability in Yemen”⁵³ and has supported both his and the Saudi-led Coalition’s right to conduct military action in Yemen.

It is also noteworthy that the Yemen conflict is not the UK’s only recent military involvement in the Middle East. From 2003-09, 179 British service personnel were killed in Iraq as part of

⁴⁸ This is also a classification used officially by the British Government.

⁴⁹ Hadi, A. R. M. Cited In: BBC News. “Yemen’s President Hadi asks UN to back intervention.” *BBC News*, 25th Mar. 2015 [online] Accessed: 14/06/18. Available: <https://www.bbc.com/news/world-middle-east-32045984>

⁵⁰ BBC News. “Yemen war: Deadly infighting rages in Aden,” *BBC News*, 29th Jan. 2018 [online] Accessed: 25/05/18. Available: <https://www.bbc.com/news/world-middle-east-42858270>

⁵¹ Unites Nations. “UN approves largest-ever emergency funding allocations to scale up response in war-torn Yemen,” *United Nations: UN News*, 5th Jan. 2018 [online] Accessed: 25/05/18. Available: <https://news.un.org/en/story/2018/01/641042-un-approves-largest-ever-emergency-funding-allocation-scale-response-war-torn>

⁵² Burt, A. “Yemen: Military Intervention.” *House of Commons Written Question*, No. 140562. (London: House of Commons, Answered: 9th May 2018)

⁵³ Foreign & Commonwealth Office. “UK priorities in Yemen.” *Foreign & Commonwealth Office*, 1st Feb. 2013 [online] Accessed: 08/06/18. Available: <https://www.gov.uk/government/news/uk-priorities-in-yemen>

an international coalition to overthrow Iraqi dictator Saddam Hussein.⁵⁴ In 2011, British forces led international airstrikes in Libya to support rebels in the country in overthrowing Muammar Gaddafi.⁵⁵ The UK also recently joined the international military operation “Operation Shader” in both Iraq (from 2014) and Syria (from 2015),⁵⁶ conducting airstrikes against the terrorist group, Daesh.⁵⁷ Therefore, in recent years, the UK has shown its preparedness to intervene militarily in Middle Eastern regional conflicts. Again, Britain’s regional interests in this respect will be analysed in Chapter 4.

iv. Thesis Statement

This thesis demonstrates that the British government has actively ignored non-state actors’ IHL evidence in relation to Yemen, despite its recognised credibility. Because of this, there is an evidenced discrepancy between *commitment* and *compliance* in the UK’s approach to IHL. Constructivism’s focus on the behavioural impact of international norms is consequently inherently limited and insufficient as a theoretical explanation. Instead, in continuing its arms export regime with Saudi Arabia, the government has pursued a deliberate policy of avoidance and ambiguity which has allowed it to insist that it is adhering to international law while avoiding full scrutiny. This has been a calculated strategy to allow it to maintain the wider security and financial interests of the UK-Saudi relationship.

Whilst the conflict in Yemen therefore represents a moment of particular historical precedence in the UK’s arms export regime, when understood within the wider historical context of the UK-Saudi relationship the government’s approach is entirely consistent with the dynamics of this bilateral relationship.

The body of this thesis will now be embarked upon, with Chapter 1 looking historically at the UK’s commitments to arms export control and IHL.

⁵⁴ BBC News. “UK military deaths in Iraq.” *BBC News*, 7th Jul. 2016 [online] Accessed: 18/06/18. Available: <https://www.bbc.com/news/uk-10637526>

⁵⁵ Urban, M. “Is overthrow of Gaddafi a new type of intervention?” *BBC News*, 31st Aug. 2011 [online] Accessed: 18/06/18. Available: <https://www.bbc.com/news/world-africa-14738728>

⁵⁶ Williamson, G. “Update: airstrikes against Daesh.” *Ministry of Defence*, 29th Jan. 2016 Accessed: 08/06/18. Available: <https://www.gov.uk/government/news/update-air-strikes-against-daesh>

⁵⁷ Daesh: The terrorist group also known as ISIL, Islamic State, or ISIS. In Dec. 2015, the British Government confirmed that they would officially refer to the group as Daesh and therefore this name will be used throughout this thesis.

Chapter 1.

UK Commitments to the ‘Rules of War’: an “Ethical” Foreign Policy?

Considering that IHL, non-state actors and established international norms are of genuine importance to the British government, it is vital to identify how each of these factors have been imbedded in the UK’s foreign policy. This chapter will provide a historical analysis, identifying the reasons why successive governments have made commitments to such measures and assessing whether their actions have fulfilled this rhetoric. A historical perspective exposes where the government’s current approach to the conflict in Yemen fits within the wider trends of UK foreign policy.

What will become clear is that successive British governments have continued to place international humanitarian norms at the heart of its justification in committing to both arms export control and IHL measures. It has also actively promoted the involvement of non-state actors in this process as a means of lending legitimacy to these decisions. Given Constructivism’s theoretical prescriptions in these areas, this historical analysis provides an important means of testing the effectiveness of Constructivist Theory across time. What is witnessed is government attempts to reinforce the notion that its own *identity* is defined by conscious consideration of humanitarian norms. It is through this justification that the theory of Constructivism develops beyond simply a theoretical lens with which to view the content of this thesis. Instead, the UK government has positively furthered the narrative that its own decisions are shaped by the norms of the international society and is actively involved in reinforcing its rules.

However, it will be argued that there is a fundamental point of departure between *commitment* to and *compliance* with IHL. Commitment allows the government to boost its own humanitarian credentials in the international community, a comparatively easy political decision with clear normative benefits that do not substantially encroach on its other interests. However, the greater behavioural requirements of IHL *compliance* make it a markedly more difficult strategic consideration, with the capacity to infringe more fully on a state’s and other actors’ interests.

Accordingly, the claim that the UK’s foreign policy is predicated principally on “ethical” grounds, beyond mere rhetoric, simply cannot be substantiated in practice.

1.1 The Geneva Conventions and their Additional Protocols

The British government identifies the “landmark agreements” of the four Geneva Conventions of 1949 as marking the beginning of the UK’s commitment to “contemporary International Humanitarian Law.”⁵⁸ Looking back at the UK’s original commitment to the Conventions, ratification was required via the British Parliament through the *Geneva Conventions Bill* introduced in June 1957 and given Royal Assent in July 1957. Analysis of the government’s language used in endorsing the Conventions’ ratification demonstrates how international humanitarian norms played an important role in its decision. Arguing the government’s case for the Bill, the Lord Chancellor’s opening statements were littered with such language, declaring that “these rules are in accordance with the highest demands of humanity...no enlightened nation would wish to dissent from the fundamental principles on which they are based.”⁵⁹ Concluding, he indicated “the dominant purpose in our minds that it will enable this country to ratify these Conventions and take its proper place in supporting them in the eyes of the world.”⁶⁰ In highlighting the need to promote themselves as an “enlightened nation” in the “eyes of the world”, the government recognised the importance of the international community enforcing a degree of legitimation through consensual adoption of international law. The government undoubtedly demonstrated a concern for reputational considerations, deemed to be in its national interest. During the Bill’s passage through the House of Commons such rhetoric was again evident, with Home Office Minister Jocelyn Simon endorsing the Bill within the bounds of morals and principles rather than legal justification. Simon stated that the UK must “honour certain types of international obligation now recognised as morally binding.”⁶¹ The strong and persuasive moral concerns of the Conventions were therefore visibly articulated by the government. Thus at the commitment stage and in its rhetorical justification the Constructivist theoretical parameters of the socialising strength of international society appears prevalent.

Theoretically, in Finnemore and Sikkink’s Constructivist *norm life cycle*, one of the key aspects of influential international norms is their “internalization” and continued presence in the

⁵⁸ Foreign & Commonwealth Office. “United Kingdom and International Humanitarian Law.” *Foreign & Commonwealth Office Report*. Cm. 309931. (London: Foreign & Commonwealth Office, 2014), p.1.

⁵⁹ Kilmuir, Viscount. “Geneva Conventions Bill.” *House of Lords Debate*, vol. 204. (London: House of Lords, 25th Jun. 1957), c. 349.

⁶⁰ *Ibid*, cc. 352-53.

⁶¹ Simon, J. E. S. “Geneva Conventions Bill.” *House of Commons Debate*, vol. 573. (London: House of Commons, 12th Jul. 1957), c. 716.

government's decision making.⁶² Here, the norm becomes "so widely accepted" it achieves a "taken-for-granted" quality that makes conformity with the norm almost automatic."⁶³ Therefore, continued adherence to the norm should be witnessed.

In 1977, the Geneva Conventions were updated with Additional Protocols to meet the necessary standards of war. Whilst the British government "played a leading role"⁶⁴ in the international community adopting the Protocols, the ratification process followed decades later with the *Geneva Conventions (Amendment) Bill* in May 1995. Arguing the government's case for the Bill in the House of Lords, government Minister Lord Archer recognised that the Convention's humanitarian principles had been socialised into the fabric of British society. He stated, "I doubt that your Lordships need a great deal of introduction to the Geneva Conventions, whose protective, humanitarian purposes have been well known through films, television and history books and, of course, taught to our children over many years."⁶⁵ Whilst this appears a slightly trivial portrayal given their serious nature, it does prove the endemic nature with which the norm of IHL had been socialised within British society. Few laws could be described as engaging such a broad spectrum of society and, as a result, their concrete nature cannot be underestimated. Archer again made reference to "humanitarian dictates"⁶⁶ and it is clear that the government's case continued to be based fundamentally on humanitarian norms.

A third Additional Protocol was added in 2005, with ratification sought via the *Geneva Conventions and United Nations Personnel (Protocols) Bill (2009)* and, once again, the socialising effects of the international community were evident. The government strongly argued for "the need for the UK to be seen to be agreeing with the international consensus."⁶⁷ Here the government demonstrated a striking willingness to cede its authority so as to be seen to be acting correctly internationally, demonstrating the international community's very tangible influence.

As well as demonstrating a clear concern for humanitarian norms, the British government has also placed non-state actors at the heart of these international treaty commitments. The

⁶² Finnemore, M. & Sikkink, K. "International Norm Dynamics and Political Change." *International Organization*, Vol. 52, No. 4, International Organization at Fifty: Exploration and Contestation in the Study of World Politics (Autumn, 1998), pp.895.

⁶³ *Ibid*, p.904.

⁶⁴ Archer, Lord. "Geneva Conventions (Amendment) Bill." *House of Lords Debate*, Vol. 564. (London: House of Lords, 25th May 1995), cc. 1078.

⁶⁵ *Ibid*, c. 1076.

⁶⁶ *Ibid*, c. 1079.

⁶⁷ Mallock-Brown, Lord. "Geneva Conventions and United Nations Personnel Bill (Second Reading)." *House of Lords Debate*, Vol. 707, (London: House of Lords, 27th Jan. 2009), c. 190.

ratification of the 1977 Additional Protocols saw the government enthusiastically praise the role of NGOs in the formation process, and specifically the International Committee of the Red Cross (ICRC). During the *Geneva Conventions Amendment Bill*, Lord Archer identified that “the Red Cross movement has been closely associated with [the Conventions’] development”, stating that “it was at the statutory meetings of the International Red Cross and the Red Crescent movement in October 1993 that the Minister for Overseas Development...made a commitment to the movement to ratify the 1977 additional protocols.”⁶⁸ Archer identified their “prominent role in helping to develop and promote subsequent Geneva Conventions” and even declared his position in Parliament as simply “representing the British Red Cross.”⁶⁹ In fact, Archer later identified the ICRC’s direct influence on the content of the legislation itself, stating that the government amendments to be Bill had been negotiated with Red Cross directly.⁷⁰ Whilst the Minister’s delegation of responsibility to a non-state actor clearly demonstrates the power of non-governmental actors in promulgating the norms of international law, it also suggests that the decision is not one that conflicts significantly with the UK’s other interests. Were this decision to be one of real conflict, it is unlikely that this abdication of government responsibility would be so casually permitted.

The UK’s adoption of the Geneva Conventions during this period clearly demonstrates the presence of conscious moral considerations in its foreign policy approach. Yet it was with the ascension of the New Labour government in 1997 that rhetoric concerning a so-called “ethical” foreign policy developed. Consequently, when assessing the humanitarian considerations of the UK’s foreign policy, this moment represents a historic period of change that is crucial for analysis.

1.2 New Labour: An “Ethical” Foreign Policy

After 18 years of Conservative government rule, the advent of Tony Blair’s New Labour government in 1997 instituted a major change in Britain’s foreign policy. Articulated as an “ethical” foreign policy, new Foreign Secretary Robin Cook launched “a New Mission

⁶⁸ Archer. “Geneva Conventions,” (25th May 1995), c. 1077.

⁶⁹ *Ibid*, c. 1079.

⁷⁰ Archer, Lord. “Geneva Conventions (Amendment) Bill.” *House of Lords Debate*, Vol. 564. (London: House of Lords, 14th Jun. 1995), c. 1861.

Statement”⁷¹ for the Foreign & Commonwealth Office (FCO) just 10 days after the government’s election. Arguing that Britain’s foreign policy “must have an ethical dimension,” Cook insisted that Britain had a “national interest in the promotion of our values and confidence in our identity,” with “human rights at the heart of our foreign policy.”⁷² In reinforcing much of the value-based reasoning echoed in the UK’s Geneva Conventions commitments, Cook advocated a foreign policy that “recognises that the national interest cannot be defined only by narrow realpolitik.” Significantly, he also made specific prescriptions to provide “new momentum to arms control and disarmament”, insisting that “The global reach of modern weapons creates a clear national interest in preventing proliferation and promoting international control of conventional weapons.”⁷³ Cook’s definition of the national interest as fundamentally anchored in values and principles rather than material considerations was the cornerstone of this “ethical” approach. Once again, this conscious consideration of Britain’s moral reputation in its identity formation adheres directly with many of Constructivism’s dynamics. With its seismic victory at the time representing a “vast public repudiation”⁷⁴ of the previous Conservative government, Labour’s immediate “ethical” rejection of Tory “isolationism”⁷⁵ can be seen as an important political move, marking a substantial break from the previous government.

However, rhetorical commitment alone is clearly not sufficient, although in some respects positive developments were witnessed. Looking specifically at arms control, the *Export Control Act (2002)* replaced all prior export control provisions that had continued to be outlined in the *Import, Export and Customs (Defence) Act (1939)*.⁷⁶ The 2002 Act was introduced to “increase the transparency and accountability in the export control regime by setting limits on the government’s overarching power to control exports.”⁷⁷ Once again, the government specifically highlighted the important role of non-state actors in the policy formation process. Speaking during the Second Reading of the *Export Control Bill*, Government Minister Lord Sainsbury identified that “A wide range of organisations and individuals—in particular,

⁷¹ Cook, R. “Robin Cook’s speech on the government’s ethical foreign policy.” *The Guardian*, 12th May 1997 [online] Accessed: 25/05/18. Available: <https://www.theguardian.com/world/1997/may/12/indonesia.ethicalforeignpolicy>

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ The Guardian. “A Political Earthquake.” *The Guardian*, 2nd May 1997 [online] Accessed: 13/06/18. Available: <https://www.theguardian.com/politics/1997/may/02/electionspast.comment>

⁷⁵ *Ibid.*

⁷⁶ Lunn. “The Legal,” p.7/8.

⁷⁷ *Ibid*, p.8.

industry and non-governmental organisations—have contributed their views and played an important part in the development of the Bill.”⁷⁸

Despite these apparent consistencies with its lofty “ethical” aspirations, New Labour consistently faced allegations of improper conduct in its arms dealings. Almost immediately after taking office, the government was embroiled in the “Arms to Africa” scandal, which saw the government circumvent a UN international arms embargo to provide weapons to Sierra Leone via the military company Sandline International.⁷⁹ The subsequent investigation by Parliament’s Foreign Affairs Committee was described as “one of the most critical ever published by a select committee.”⁸⁰ Undermining any hopes of an era of greater transparency, Cook declined to co-operate with the inquiry, also refusing to allow the head of MI6 to give evidence.⁸¹ During the same period, the government again faced substantial criticism concerning its supply of Hawk Jets to the Indonesian government. This was despite widespread contestation from both human rights groups and Labour MPs themselves, who argued that the weapons were being used to aid suppression and indiscriminate violence in East Timor.⁸² The arms export decision was roundly criticised for undermining the government’s supposed ethical aspirations, with Shadow Defence Secretary Iain Duncan Smith criticising the government as “driven by hypocrisy at its core”⁸³ and Liberal Democrat Spokesperson Menzies Campbell stating there was “no legal moral obligation for Britain to continue to fulfil the contract.”⁸⁴ NGOs such as Campaign Against Arms Trade also commented that the government’s action “leaves itself open to accusations of complicity in the genocide in East Timor.”⁸⁵ Despite this broader criticism, the British government only halted sales after the United States decided to do so, just days previously.⁸⁶ This provides an insight into the conditions under which the government can be compelled to halt such licenses and suggests that international pressure can act as a forceful incentive. This will be an area explored in Chapter 2 through the role of the intergovernmental UN in the UK’s arms export process. In

⁷⁸ Sainsbury, Lord. “Export Control Bill.” *House of Lords Debate*, Vol. 630. (London: House of Lords, 8th Jan. 2002), c. 468.

⁷⁹ Lunn, J., Miller, V. & Smith, B. “British foreign policy since 1997,” *House of Commons Library Research Paper*, RP. 08/56. (London: House of Commons, 23rd Jun. 2008), p.76.

⁸⁰ The Guardian, “Foreign Office savaged over arms to Africa.” *The Guardian*, 9th Feb. 1999 [online] Accessed: 24/05/18. Available: <https://www.theguardian.com/politics/1999/feb/09/foreignpolicy.politicalnews>

⁸¹ *Ibid.*

⁸² BBC News. “UK Politics Ministers ‘powerless’ to stop jets to Indonesia.” *BBC News*, 19th Sept. 1999 [online] Accessed: 24/05/2018. Available: http://news.bbc.co.uk/1/hi/uk_politics/451562.stm

⁸³ Duncan Smith, I. Cited In: BBC News, “UK Politics Ministers ‘powerless.’”

⁸⁴ Campbell, M. Cited In: BBC News, “UK Politics Ministers ‘powerless.’”

⁸⁵ BBC News, “UK Politics Ministers ‘powerless.’”

⁸⁶ *Ibid.*

2001, the government faced strong internal criticism for its sales of a £28m military air traffic control system to Tanzania. At the time it was reported that “Fierce and sustained opposition in cabinet to the sale was led by Clare Short, the international development secretary, and Gordon Brown, the chancellor,” whilst Oxfam stated that the deal was “deeply disappointing.”⁸⁷

Of perhaps most significance in relation to this thesis was the controversy surrounding allegations of a New Labour government cover-up of the Al-Yamamah arms deal with Saudi Arabia, which in 1985 saw the UK agree its then-largest ever arms deal. Whilst the saga will be explored in greater detail in Chapter 4, the controversy saw the Blair government terminate a public inquiry into allegations that defence company BAE had made secret payments to the Saudis to secure the contracts. In 2008, a High Court ruled that the Labour government had directly broken the law in halting the Serious Fraud Office (SFO) investigation, labelling the actions of the government as “abject” surrender to a “blatant” threat.⁸⁸ Strikingly, the High Court stated that the “impotence of the law invites at least dismay, if not outrage” and referenced the SFO’s “inconsistency in submitting to pressure applied by the government of a foreign state [Saudi Arabia].”⁸⁹ This judgement provides a vital insight that the British government is willing to sidestep its legal responsibilities in order to sustain its relationship with Saudi Arabia. Understanding this will be significant in the following chapters’ analysis of Saudi IHL breaches in Yemen.

More broadly, what these cases demonstrate is a clear distinction between the rhetoric and the actions of the British government in its arms exports. Whilst the Blair government’s ethical approach undoubtedly attempted to mark a substantial break from previous foreign policy, in reality such pledges frequently fell short. However, it is important to note that in some cases, such as East Timor, weapons exports were halted. Therefore, whilst Labour can be seen to have failed to achieve its lofty aspirations, there appears to be a cut-off point where the British government views it as in its national interest to halt weapons sales. It is vital to understand this when judging the other competing interests in the UK-Saudi relationship against the UK’s IHL commitments in relation to Yemen.

⁸⁷ The Guardian. “Tanzania to buy UK air traffic control system.” *The Guardian*, 20th Dec. 2001 [online] Accessed: 24/05/18. Available: <https://www.theguardian.com/world/2001/dec/20/tanzania.Whitehall>

⁸⁸ Russell, B. & Morris, N. “Court condemns Blair for halting Saudi arms inquiry.” *The Independent*, 10th Apr. 2008 [online] Accessed: 24/05/18. Available: <https://www.independent.co.uk/news/uk/politics/court-condemns-blair-for-halting-saudi-arms-inquiry-807793.html>

⁸⁹ *Ibid.*

1.3 Cameron: “Compassionate Conservatism”

Following these high-profile accusations of hypocrisy, as well as New Labour’s legacy-defining catastrophe of the Iraq War, in July 2010, and just weeks after taking office, new Conservative Foreign Secretary William Hague outlined the new government’s foreign policy vision in his first keynote speech after 13 years of Labour rule. Hague’s attempt to draw a decisive line of distinction could not have been clearer. Identifying that the Labour government’s “tenure began...with “a sounding of ethical trumpets,”” Hague declared they “fell into a chasm of their own making between rhetoric and action.” In strikingly bold remarks, he lamented that the Labour government “ended with allegations of British complicity in torture, an Inquiry into the Iraq War, questions about the conduct of our Intelligence Services...accusations of hypocrisy and double standards in respect of international law.”⁹⁰ Contrasting himself drastically with this, and in keeping with David Cameron’s promise of “Compassionate Conservatism”,⁹¹ Hague’s speech used the term “values” 35 times and “human rights” 40 times, arguing that “to act in this way is to act in our enlightened national interests.” Hague also set out specific prescriptions on arms export policy, promising to “work towards an Arms Trade Treaty to reduce the risk that defence exports are used to fuel conflict, violate human rights and undermine development” and argued that establishing global standards “will reduce the harm caused by the flow of arms to fragile regions.”⁹² Once again, non-state actors were afforded a crucial role in this agenda. Hague announced the formation of “an advisory group on human rights which will draw on the advice of key NGOs, independent experts and others” and promised to “harness the ideas and impact of NGOs and civil society” and “be an active member of international institutions that support our values.”⁹³ Contextually, Blair’s “sofa style” government had been continually criticised for its unprecedented centralisation around a small number of close advisers, manifested in the perceived political manipulation of intelligence information by his Press Secretary Alistair Campbell in the

⁹⁰ Hague, W. “Foreign Secretary: Britain’s values in a networked world.” *Foreign & Commonwealth Office*, 15th Sept. 2010 [online] Accessed: 20/05/18. Available: <https://www.gov.uk/government/speeches/foreign-secretary-britains-values-in-a-networked-world>

⁹¹ Cameron, D. Cited in: Stratton, A. “David Cameron: Tory party is ‘modern and compassionate.’” *The Guardian*, 2nd Oct. 2011 [online] Accessed: 24/05/18. Available: <https://www.theguardian.com/politics/2011/oct/02/cameron-tory-party-modern-compassionate>

⁹² Hague. “Foreign Secretary.”

⁹³ *Ibid.*

infamous “dodgy dossier” building the intelligence case for the Iraq War.⁹⁴ With the NGO sector undoubtedly monitoring Hague’s speech closely for early clues as to the direction of the new government, his speech must be seen as a tactical olive branch within the wider political strategy of marking a definitive break from New Labour.

As with Robin Cook, Hague had set out an extremely ambitious foreign policy agenda, structured fundamentally around supposed British humanitarian values. However, with the Middle East becoming a “priority market”⁹⁵ for the government, sustained criticism of arms exports continued, fuelled by serious human rights concerns in the region. During Cameron’s premiership, two thirds of the UK’s arms exports went to the Middle East, with his last two years as Prime Minister seeing the UK agree arms deals with the United Arab Emirates (UAE) for around £388m, Qatar at £170m and with Oman at £120m. Other countries on the UK’s arms export payroll were Turkey, Malaysia and Thailand, all of which had faced accusations of authoritarianism, suppression and the abandoning of human rights.⁹⁶ Yet, as identified during the thesis introduction, the government did halt weapons sales on a number of occasions including to Bahrain, Egypt, Libya, Tunisia⁹⁷ and Yemen.⁹⁸ It also conducted a high-profile review into Israeli weapons sales in 2014 following substantial criticism from non-state actors of Israeli bombing in Gaza, including from NGOs,⁹⁹ whilst Cameron publicly supported the UN’s accusation of Israeli bombing of a school in Gaza as a “moral outrage.”¹⁰⁰ This once again demonstrates that whilst the aspirations of the British government to anchor every decision in humanitarian values was unfulfilled in practice, there is an apparent limit to its willingness to allow weapon sales at any cost or criticism.

⁹⁴ Sherman, J. “Sofa style of government kept ministers in the dark.” *The Times*, 7th Jul. 2016 [online] Accessed: 08/06/18. Available: <https://www.thetimes.co.uk/article/sofa-style-of-government-kept-ministers-in-the-dark-h9hg2sts9>

⁹⁵ Campaign Against Arms Trade. “DSO Priority Markets.” *Campaign Against Arms Trade*, 2018 [online] Accessed: 25/05/18. Available: <https://www.caat.org.uk/issues/govt-promotion/priority-markets>

⁹⁶ Doward, J. “How Britain is cashing in on the Middle East’s hunt for weapons.” *The Guardian*, 21st Aug. 2016 [online] Accessed: 24/05/18. Available: <https://www.theguardian.com/world/2016/aug/20/britain-cashing-in-middle-east-weapons-sales-saudi-arabia-yemen>

⁹⁷ Bromley, B. “The Review of the EU Common Position on Arms Exports: Prospects for Strengthened Controls.” *EU Non-Proliferation Consortium*, No.7, (Jan. 2012): p.13.

⁹⁸ Doward, J. “How Britain is cashing in on the Middle East’s hunt for weapons.” *The Guardian*, 21st Aug. 2016 [online] Accessed: 24/05/18. Available: <https://www.theguardian.com/world/2016/aug/20/britain-cashing-in-middle-east-weapons-sales-saudi-arabia-yemen>

⁹⁹ Mason, M. “UK government reviewing £8bn of commercial and military export licenses granted to Israel,” *The Guardian*, 4th Aug. 2014 [online] Accessed: 15/06/18. Available: <https://www.theguardian.com/world/2014/aug/04/uk-government-reviews-arms-sales-israel-gaza>

¹⁰⁰ BBC News. “UN right to speak out on Gaza strike, says Cameron,” *BBC News*, 4th Aug. 2014 [online] Accessed: 26/06/18. Available: <https://www.bbc.com/news/uk-politics-28638491>

1.4 The Arms Trade Treaty

The ratification of the ATT during Cameron's premiership was a seismic development in international arms control, which FCO Minister Tobias Ellwood declared put "human rights at the heart of the global arms trade."¹⁰¹ Once again, the UK government went to great lengths to reinforce the Treaty's humanitarian principles "to reduce human suffering, and increase security across the globe."¹⁰² During the final week of international negotiations, FCO Minister Alistair Burt stated "We have a duty to protect innocent civilians by placing human rights and international humanitarian law at the forefront of globally-agreed standards for the international arms trade." Addressing the "clear risk" IHL violation assessment, Burt promised that "where there is an unacceptable risk it should be mandatory to refuse exports."¹⁰³ The government's rhetoric also reinforced the importance of international consensus in ensuring that the Treaty had the appropriate leverage to be effective, stating that it needed "broad, ideally universal, participation to achieve its full potential."¹⁰⁴ Yet again, the government aspired to define its identity on the world stage as being based fundamentally around humanitarianism, evidencing its heightened concern for its international reputation.

Also on display was an intense enthusiasm to place non-state actors at the heart of the process, with Minister Ellwood declaring its ratification as following "years of hard work by civil society, to promote action to improve global controls on trade and movement of arms."¹⁰⁵ This sentiment was echoed by Minister Burt when he stated that the "The UK has worked closely with both NGOs and industry, which gives us a particularly strong basis from which to take this work forward."¹⁰⁶ The interconnected relationship between the government and NGOs during the ATT's development was demonstrated in March 2013, when Burt delivered a speech at an Amnesty International and Saferworld event in New York while heading the UK delegation to negotiate the Treaty. The significance of the NGO-organised event should be not understated, with the only official press release posted on the FCO's website from the

¹⁰¹ Ellwood, T. Cited In: Foreign & Commonwealth Office. "Arms Trade Treaty enters into force." *Foreign & Commonwealth Office*, 24th Dec. 2014 [online] Accessed: 25/05/18. Available:

<https://www.gov.uk/government/news/arms-trade-treaty-enters-into-force>

¹⁰² *Ibid.*

¹⁰³ Burt, A. Cited In: Foreign & Commonwealth Office. "Will there finally be an Arms Trade Treaty?" *Foreign & Commonwealth Office*, 20th Mar. 2013 [online] Accessed: 25/05/18. Available:

<https://www.gov.uk/government/news/will-there-finally-be-an-arms-trade-treaty>

¹⁰⁴ Burt, A. Cited In: Foreign & Commonwealth Office. "Will there finally"

¹⁰⁵ Ellwood, T. Cited In: Foreign & Commonwealth Office. "Arms Trade Treaty"

¹⁰⁶ Burt, A. Cited In: Foreign & Commonwealth Office. "Will there finally"

delegation's trip detailing the Minister's speech and event attendance.¹⁰⁷ The willingness of the government to so publicly broadcast the NGO community's support suggests its appreciation of the legitimacy provided by such endorsement, whilst also confirming that organisations such as Amnesty International and Saferworld are authorities in the area of arms control. This is important when assessing their role at the compliance level of such treaties.

The Treaty's non-state intergovernmental influences were also paramount, with Minister Ellwood identifying that "In 2006, we were one of seven states to co-author the original UN Resolution calling for the creation of the Treaty."¹⁰⁸ The Treaty itself was then both negotiated through the UN and adopted by the General Assembly on 2nd April 2013.¹⁰⁹ Minister Burt stated "An enormous amount of time has been invested – in capitals and here at the United Nations - by diplomats and campaigners who have spared no effort to fulfil the promise of the first resolution seven years ago."¹¹⁰ It is very significant that the Treaty was established within the mechanisms of the UN, as it entrenched this forum as an arena for persuading and compelling states to form consensus around international law principles. Arguably, no country more than the UK used the UN to "regularly encourage other states to join us in this commitment"¹¹¹, and thus it would be expected that this institution would also play a key role in enforcing states' compliance with the Treaty. The Yemen conflict will therefore provide the vital context to assess this, judging whether the ATT has again simply been a political commitment of convenience or had genuine implications on a compliance level.

By looking historically at the UK's commitments to the "laws of war", this chapter has highlighted the presence of a number of strategic choices by consecutive British governments. In their continual efforts to define themselves as a country principally concerned with humanitarian norms they have displayed an appreciation of the clear political benefits of IHL commitment in strengthening their humanitarian credentials in the international community and their domestic political situation. Added to this, they have continued to encourage the legitimising influence of non-state actors, recognising the reputational impact of such groups on both the commitments themselves and the government's identity. This incorporation of non-state actors and humanitarian norms is consistent with Constructivist Theory, as the

¹⁰⁷ *Ibid.*

¹⁰⁸ Ellwood, T. Cited In: Foreign & Commonwealth Office. "Arms Trade Treaty"

¹⁰⁹ UN Resolution 67/234B

¹¹⁰ Burt, A. Cited In: Foreign & Commonwealth Office. "Will there finally."

¹¹¹ Ellwood, T. Cited In: Foreign & Commonwealth Office. "Arms Trade Treaty."

government clearly sees the articulation of its identity in this way as the best avenue for achieving its wider foreign policy interests. In many ways, therefore, commitment to the IHL can be judged as a politically easy choice for the government, given the very obvious political benefits.

Despite this, in many instances there is a clear detachment between the government's rhetoric and the reality of its actions. This strongly suggests that compliance with international law is a decision for the government of far greater complexity. Given its behavioural prescriptions, which consequently engage a number of new actors and interests, compliance with IHL clearly has the potential to clash with the government's other interests. A complicated balancing act is required, with the possibility that IHL compliance could be judged less strategically significant. This is a clear departure from Constructivism, which fails both to appropriately recognise the pull of other competing interests and to appreciate the significance of political choice in this process, which can subordinate the need to act consistently with the normative political community.

However, case examples such as Indonesia, Yemen and the Arab Spring demonstrate that under most historical circumstances, when extensive criticism is applied to its weapons sales policies, a threshold is reached where the government makes a strategic assessment that it is in its greater interest to halt weapons sales.

This strategic choice of competing interests must be recognised if we are to make sense of the historically significant situation that the Yemen conflict represents. The need to make tactical decisions on matters of principle, such as human rights, is not necessary a negative indictment of the British government but simply a recognition that states are not unitary actors on the world stage. Instead, a key problem appears to be the rhetorical virtue-signalling of aspirations such as an "ethical" foreign policy, which knowingly distort the reality of competing interests.

With this in mind, it is important to note that since consecutive governments' "ethical" foreign policy aspirations were initiated in 1997, the UK's arms regime has never faced such high-profile criticism as that witnessed after March 2015 in regard to its weapons sales to Saudi Arabia for use in Yemen. Such a direct clash between the UK's export policy and the principles of IHL is unprecedented, exacerbated further by the UK's recent role in promulgating the humanitarian virtues of the ATT. Given all these factors, and in light of the above historical trend, it should be expected that the British government would deem it in its political interest to halt export licenses to Saudi Arabia.

The next two chapters will explore the efforts of the UN and four leading NGOs to force the government to recognise this threshold and halt export licenses to Saudi Arabia.

Chapter 2.

Intergovernmental Action: The United Nations

The United Nations has been at the forefront of intergovernmental cooperation in the post-war international environment, with the UK being a founding member in 1945 and one of the chief architects in the organisation's development. Britain continues to sit as one of five states with a permanent seat on the UN Security Council (UNSC).¹¹²

The UN has played a unique and crucial role in the development of international arms control, most recently as the forum in which the global Arms Trade Treaty was ratified in 2014. As discussed, the UK played one of the most prominent roles in building international support for its ratification and publicly championed its adoption as a "top priority"¹¹³ for the government. In supporting the first global legally binding arms control commitment, the government proudly declared that "it will reduce human suffering by preventing arms from being used in serious violations of human rights and international humanitarian law."¹¹⁴ Given the UN's prominent role, as well as the reverence with which the UK championed the ATT's intergovernmental development, it would be expected that the UN would play a central role in its subsequent application and compliance.

With the Treaty's ratification occurring shortly before the start of the Saudi-led Coalition's military involvement in Yemen in March 2015, the conflict provides fertile ground for analysing the impact of the ATT and the role of the UN in the UK's arms export regime. This is of particular relevance given the ATT's bolstering of the "clear risk" IHL assessment, which the government vocally justified as vital to improve international accountability of IHL and human rights violations. With this in mind, given the extensive allegations of IHL violations surrounding the Coalition's military conduct in Yemen, various UN mechanisms have mobilised their resources in an attempt to hold it accountable. This has primarily taken shape in the gathering of evidence of IHL breaches, as well as calling for the establishment of an independent international investigation mechanism in Yemen.

¹¹² United Nations Association. "The UK's work with the UN." *United Nations Association - UK*, 2016 [online] Accessed: 18/06/18. Available: <https://www.una.org.uk/get-involved/learn-and-teach/uks-work-un>

¹¹³ Warsi, Baroness. "Statement: Arms Trade Treaty." *House of Lords Written Statement*, Vol. 747, No. 35. (London: House of Lords, 15th July 2013), cc. WS53-WS55.

¹¹⁴ *Ibid.*

As identified, the government's acceptance of such evidence as credible would constitute an unavoidable recognition that the "clear risk" IHL assessment had been breached, thus requiring export licenses to Saudi Arabia to be halted. This chapter, therefore, will argue that the government has embarked upon a deliberate strategy of exploiting ambiguities in its arms export regime and perceived weaknesses in the UN's investigative mechanisms to justify its rejection of credible evidence and independent inquiry. A situation has resulted whereby the government's decision to continue Saudi weapons sales is demonstrably inconsistent with its approach to IHL in both current and historical examples. This is important in understanding the particular historical precedence of Yemen.

In focusing specifically on the conflict in Yemen from March 2015 onwards, the work of the UN Panel of Experts on Yemen and the Office of the High Commissioner for Human Rights (OHCHR) will be discussed in turn. Analysis of the government's response to their work, as well as its approach to IHL breaches in the current Syria conflict will be then be explored.

2.1 UN Panel of Experts on Yemen

2.1.1 IHL Violations

On 26th February 2014, the UN Security Council adopted Resolution 2140, aimed at "Welcoming Yemen's Peaceful Transition towards [a] New Constitution [and] General Elections."¹¹⁵ The resolution established a Panel of Experts whose main role was to support the newly created UN sanctions committee on Yemen. The composition of the Panel has consistently included four experts on regional, armed groups, IHL and finance issues, with the UNSC having endorsed its authority as possessing "expertise in areas commensurate with the scope of the sanctions regime."¹¹⁶ Importantly, the UK supported the resolution wholeheartedly, with Britain's UN Permanent Representative, Mark Lyall Grant, stating that its "unanimous adoption delivered a clear message of support for Yemen, and emphasised that those wishing to derail the transition would face swift consequences from the newly established sanctions committee."¹¹⁷ Therefore the formal role of the Panel in assessing IHL violations was

¹¹⁵ United Nations. "Security Council Adopts Resolution 2140 (2014), Welcoming Yemen's Peaceful Transition towards New Constitution, General Elections." *United Nations Security Council*, 26th Feb. 2014 [online] Accessed: 24/05/18. Available: <https://www.un.org/press/en/2014/sc11296.doc.htm>

¹¹⁶ Jadallah, A. A., Bühler, C., Goddard, S. D. & Sbaiti, M. "Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014)" *UN Security Council Report*, S/2015/125. (New York: UN Security Council, 20th Feb. 2015), p.6.

¹¹⁷ United Nations. "Security Council Adopts Resolution 2140"

directly mandated by British support, with the Panel's first report outlining that Resolution 2140 "requested the Panel to provide information...which includes violations of international humanitarian law and human rights law."¹¹⁸

Since 2014 the Panel has produced four separate annual reports. By the Panel's second report in 2016, it had already outlined that "all parties to the conflict in Yemen have violated the principles...in contravention of international humanitarian law." This included incidents that have the "the potential to meet the legal criteria for a finding of a crime against humanity."¹¹⁹ At this early stage in the conflict the Panel had "documented 119 Coalition sorties relating to violations of international humanitarian law."¹²⁰ The report set out in extensive detail 25 different sets of characteristics relating to IHL violations, ranging from "Attacks on schools" to "Attacks on humanitarian organisations and national NGOs," with allegations against the Saudi-led Coalition meeting 23 of the 25 definitions.¹²¹ The highly detailed nature of the report was also demonstrated in its length, set out over 259 pages, making it very difficult to construe the evidence as anything but fully comprehensive.

In the Panel's subsequent reports the trend of IHL violations continued, with the 2017 report detailing 10 additional Saudi-led airstrikes apparently breaching IHL and leading to at least 292 civilian fatalities.¹²² In the latest January 2018 report, set out over 329 pages, the report documented 10 further airstrikes causing at least 157 fatalities and 135 injuries.¹²³ The Panel's report concluded, "it is highly unlikely that the principles of international humanitarian law of proportionality and precautions were respected."¹²⁴

Given the importance of the UK government's assessment of IHL evidence as credible in its "clear risk" assessment, it is vital to emphasise the extremely thorough nature of the Panel's findings. For example, the 2018 report provided detailed appendixes to all of its investigations, reinforcing its very technical considerations. Crucially, this detail allowed the Panel to directly challenge the findings of the Saudi's Joint Incident Assessment Team (JIAT) which has made

¹¹⁸ Jadallah et al. "Final report," (2015), p.16.

¹¹⁹ Himmiche, A., Fernández, D., Hill, V., Methieson, L. & Salek, J. "Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014)." *UN Security Council Report*, S/2016/73. (New York: UN Security Council, 26th Jan. 2016), p.36.

¹²⁰ *Ibid*, p.39.

¹²¹ *Ibid*, p.132.

¹²² Himmiche, A., Gunaratne, D.R., Johnsen, G. & Wilkinson, A. "Final report of the Panel of Experts on Yemen." *UN Security Council Report*, S/2017/81. (New York: UN Security Council, 31st Jan. 2017), p.47.

¹²³ Himmiche, A., Carvajal, F.R., Gunaratne, D.R., Johnsen, G. & Wilkinson, A. "Final report of the Panel of Experts on Yemen." *UN Security Council Report*, S/2018/68. (New York: UN Security Council, 26th Jan. 2018), p.46.

¹²⁴ *Ibid*.

assessments on some of the alleged incidents in Yemen. The report sets out a comprehensive table that directly compares the findings of the Panel with those of the JIAT. In two of these cases, the report identified that “the Panel’s independent investigations found clear evidence of air strikes. The Panel thus concluded that the only criteria capable of carrying out these two attacks was the Saudi Arabia-led coalition.”¹²⁵ This therefore directly undermines the JIAT’s conclusions.

The conclusions of the Panel of Experts therefore could not be clearer in relation to IHL violations, with its highly technical and very detailed evidence continuing to evidence Saudi-led Coalition IHL breaches.

2.1.2 International Independent Investigation

Significantly, the Panel’s 2016 report also recommended for the first time “establishing an international commission of inquiry to investigate reports of violations of international humanitarian law and human rights law in Yemen by all parties.”¹²⁶

This recommendation continued throughout the Expert’s reports in 2017 and 2018, despite the establishment of the Saudi’s JIAT in 2016. For example, in the 2018 report, whilst the Panel acknowledged the JIAT’s establishment as a “positive step,” it also concluded that “there is a lack of transparency in the implementation of JIAT recommendations, which may undermine JIAT’s credibility.”¹²⁷ Additionally, the report documented the failure of the Saudis to be forthcoming with information, stating that on a number of occasions “the panel has not yet received a response to a request for information made to the Saudi Arabia led coalition.”¹²⁸ With the UK government having directly endorsed the Panel of Experts’ jurisdiction, the failure of the Saudis to cooperate in this process directly challenges the British-supported mandate. This creates a very serious position of conflict for the British government who, as will be explored in greater detail below, also continues to reinforce the JIAT as the primary investigative tool into IHL breaches.

The Panel of Expert’s continued call for an *international* independent inquiry demonstrates a clear negative judgement on the effectiveness, reliability and credibility of the JIAT process.

¹²⁵ Himmiche et al. “Final report,” (2018), p.47.

¹²⁶ Himmiche et al. “Final report,” (2016), p.50.

¹²⁷ Himmiche et al. “Final report,” (2018), p.258.

¹²⁸ *Ibid*, p.277.

2.2 UN Office of the High Commissioner for Human Rights

2.2.1 IHL Violations

The Office of the High Commissioner for Human Rights is the “principal United Nations office mandated to promote and protect human rights for all” by “speaking out objectively in the face of human rights violations worldwide.” OHCHR plays a direct role in providing expertise “to the different United Nations human rights bodies as they discharge their standard-setting and monitoring duties.”¹²⁹ Given this position at the UN, the international community has provided OHCHR with a “unique mandate”¹³⁰ to investigate and judge IHL violations worldwide. This often necessitates direct involvement in conflicts via their 65 in-country field presences around the world, set up in response to human rights deterioration. In Yemen, OHCHR first established its presence in March 2012 to aid the political transition of power, subsequently retaining a presence throughout the conflict.¹³¹

OHCHR produce specific annual reports on countries’ human rights situations, including Yemen, which are submitted to the UN’s Human Rights Council (UNHRC) for “technical assistance and capacity building.”¹³² Consistent with the Panel of Experts’ findings, OHCHR’s reports on Yemen have outlined numerous and continued instances of IHL violations by all sides in the conflict. The most recent 2017 report evidenced since March 2015 at least 13,520 verified civilian casualties, with 4,980 killed and 8,540 injured, across over 1,000 incidents.¹³³ Between July 2016 and June 2017 alone, OHCHR reported that “coalition airstrikes continued to be the leading cause of civilian casualties in the conflict” causing at least 933 civilian deaths and 1,423 injuries, which “constitute serious violations of international humanitarian law.”¹³⁴

¹²⁹ United Nations Office of the High Commissioner for Human Rights. “What we do.” *UN Office of the High Commissioner for Human Rights*, 2018 [online] Accessed: 24/05/18. Available:

<http://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>

¹³⁰ United Nations Office of the High Commissioner for Human Rights and the Inter-Parliamentary Union. “Human Rights: Handbook for Parliamentarians N.26.” *United Nations Report*. Geneva, Switzerland: Inter-Parliamentary Union & the UN (Office of the High Commissioner for Human Rights), 2016. p.73.

¹³¹ United Nations Office of the High Commissioner for Human Rights. “OHCHR in Yemen.” *UN Office of the High Commissioner for Human Rights*, 2018 [online] Accessed: 18/06/18. Available:

<https://www.ohchr.org/EN/Countries/MENARegion/Pages/OHCHR Yemen.aspx>

¹³² Al Hussein, Z. R. “Report of the United Nations High Commissioner for Human Rights: Situation of human rights in Yemen, including violations and abuses since September.” *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General*, A/HRC/36/33. (Geneva: UN Human Rights Council, 13th Sept. 2017), p.1.

¹³³ *Ibid*, p.6.

¹³⁴ *Ibid*, p.7.

Importantly, in demonstrating the link between the OHCHR's work and the UK government, the High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, has delivered a series of statements directly to the Security Council concerning Yemen. Firstly, on 22nd December 2015, the UNSC was informed that "the findings of my Office indicate that there continues to be an intensification of existing patterns of violations, including – amongst others - the violation of the right to life, destruction of civilian objects and infrastructure and illegal detention, at the hands of all parties to the conflict."¹³⁵ In case Saudi inclusion in the "all parties to conflict" assessment was in anyway unclear, the statement continued that "a disproportionate amount appeared to be the result of airstrikes carried out by Coalition Forces."¹³⁶

The OHCHR have also issued regular press updates, ensuring that its findings are widespread and accessible. By July 2015, after only three and a half months of Coalition involvement in the conflict, OHCHR issued their first press release stating that "our team on the ground has been able to document human rights violations and abuses and violations of international humanitarian law by all parties to the conflict."¹³⁷ Subsequently, OCHCR have issued 20 further press releases alleging Saudi-led Coalition IHL violations in Yemen, whilst a substantially larger number more contain details of vast civilian casualties in Yemen, yet to be formally assessed concerning their legality.¹³⁸

2.2.2 International Independent Investigation

OHCHR's annual reports on Yemen have also all consistently called for the establishment of an international independent body of inquiry on account of the Saudi Coalition's failure to conduct appropriate investigations. For example, whilst the OHCHR's 2015 report recommended "the coalition forces and the government of Yemen ensure prompt, thorough, effective, independent and impartial investigations into alleged violations and abuses,"¹³⁹ it

¹³⁵ Al Hussein, Z. R. "Statement by the High Commissioner for Human Rights to the United Nations Security Council." *UN Office of the High Commissioner for Human Rights*, 22nd Dec. 2015 [online] Accessed: 25/05/2018. Available:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16917&LangID=E>

¹³⁶ *Ibid.*

¹³⁷ Pouilly, C. "Press Briefing note of Yemen." *UN Office of the High Commissioner for Human Rights*, 7th July 2015. [online] Accessed: 11/04/18. Available:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16209&LangID=E>

¹³⁸ United Nations Office of the High Commissioner for Human Rights. "OHCHR LATEST NEWS." *UN Office of the High Commissioner for Human Rights*, 2018 [online] Accessed: 25/05/18. Available:

<http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?CID=YE>

¹³⁹ Al Hussein, Z. R. "Report of the United Nations High Commissioner for Human Rights: Situation of human rights in Yemen." *Annual report of the United Nations High Commissioner for Human Rights and reports of the*

was clear that just one year later such efforts had failed. By the 2016 report, OHCHR called instead for an *international* independent mechanism due to “the absence of decisive and comprehensive national accountability processes enjoying consent by all concerned parties and given the challenges faced by the national commission of inquiry.”¹⁴⁰ Once again, localised or regional inquiry mechanisms were judged incapable of properly investigating IHL allegations.

In his statement to the UNSC on 22nd December 2015, the High Commissioner advocated directly to the British government for “an international investigation into credible allegations of violations of international humanitarian law and international human rights laws and accountability for perpetrators.”¹⁴¹ This message has also been reiterated publicly, with OHCHR first issuing a press release calling for “an international independent and impartial mechanism” on 29th September 2015.¹⁴² The need for this was outlined in a press release from 18th March 2016, where the High Commissioner stated that “despite public promises to investigate such incidents, we have yet to see progress in any such investigations.”¹⁴³ Following the initial call in September 2015, OHCHR have issued 12 further press releases requesting an international investigation.¹⁴⁴

As with the Panel of Experts, OHCHR’s judgements could not be more conclusive, whilst its ability to regularly report directly to the UN Security and Human Rights councils prescribes it a level of access and legitimation unachievable for any other non-state actor. If such a body, so clearly viewed as credible by the international community, fails to be considered as authoritative, it is very difficult to imagine precisely what evidence the British government would deem as compelling. The inadmissibility of such information is therefore not just striking, but poses serious questions regarding the UN’s relevancy as an important player in international politics.

Office of the High Commissioner and the Secretary-General, A/HRC/30/31. (Geneva: UN Human Rights Council, 7th Sept. 2015), p.17.

¹⁴⁰ Al Hussein, Z. R. “Report of the United Nations High Commissioner for Human Rights: Situation of human rights in Yemen.” *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, A/HRC/33/38.* (Geneva: UN Human Rights Council, 4th Aug. 2016) p.22.

¹⁴¹ Al Hussein. “Statement by the High Commissioner.”

¹⁴² Colville, R. “Press briefing notes on Yemen, Central African Republic and Escalating tensions in East Jerusalem and West Bank.” *UN Office of the High Commissioner for Human Rights, 29th Sept. 2015* [online] Accessed: 25/05/18. Available:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16518&LangID=E>

¹⁴³ Al Hussein, Z. R. Cited In: Colville, R. “Zeid condemns repeated killing of civilians in Yemen airstrikes.” *UN Office of the High Commissioner for Human Rights, 18th Mar. 2016* [online] Accessed: 25/05/18. Available: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17251>

¹⁴⁴ United Nations Office of the High Commissioner for Human Rights. “OHCHR LATEST NEWS.”

2.3 British Government Response

2.3.1 IHL Violations

Despite this detailed evidence alleging IHL breaches the UK government's response has continued to undermine the technical procedures of the UN's investigative processes. On a number of occasions FCO Minister Tobias Ellwood has refuted the information due to the Panel of Experts' reliance on satellite imagery for gathering evidence. As Ellwood outlined in March 2016, "we looked at that [Experts' report] very closely...the report was conducted by people who did not enter the country, but used satellite technology to make their assessments."¹⁴⁵ Again, in a written parliamentary response, then-Foreign Secretary Philip Hammond stated that "We recognise the importance of the work of the UN Panel of Experts. Looking at the information available to us, we have assessed that there has not been a breach of IHL by the coalition."¹⁴⁶ The problem in rejecting all of the Experts' evidence on account of an overarching technical disagreement, is its blanket nature which fails to provide specific, public responses to any of the report's hundreds of accusations or cited incidents. This is of real significance given the Panel's mandate and undoubted credibility in the international community.

Further problems with the government's approach are demonstrated when considering precisely who is responsible for making an assessment of IHL breaches. For example, addressing the Experts' report in February 2016, the government stated that "The Ministry of Defence [MOD] monitors incidents of alleged IHL violations using available information which in turn informs our overall assessment of IHL compliance in Yemen."¹⁴⁷ Yet, despite this insistence regarding MOD responsibility, on countless other occasions the government states, "It is important that the Saudis, in the first instance, conduct conclusive investigations."¹⁴⁸ Addressing this apparent contradiction, renowned arms trade academic Dr Anna Stavrianakis informed MPs in her evidence to Parliament's 2016 Arms Export Control Committee that "The UK government is thus currently both refusing to respond to published

¹⁴⁵ Ellwood, T. "War in Yemen: First Anniversary." *House of Commons Debate*, vol. 607, (London: House of Commons, 22nd Mar. 2016), c. 517WH.

¹⁴⁶ Hammond, P. "Yemen: Military Intervention." *House of Commons Written Question*, No. 24771. (London: House of Commons, Answered: 15th Feb. 2016)

¹⁴⁷ Ellwood, T. "Yemen: Military Intervention." *House of Commons Written Question*, No. 25397. (London: House of Commons, Answered: 12th Feb. 2016)

¹⁴⁸ Burt, A. "Yemen: Bombings." *House of Commons Written Question*, No. 135975. (London: House of Commons, Answered: 19th Apr. 2018)

documented evidence provided by independent experts; and relying on secret claims provided by the Saudi military. This creates an information black hole that makes it impossible...to properly assess UK government policy and hold it account.”¹⁴⁹ It is important to note that at no point in the UK’s export criteria does it state a preference for the importing country to take responsibility for IHL assessments. Given this, it is fair to judge that this is a legal prescription that the government itself is fully aware of and yet it has managed to achieve a degree of political acceptance that deference to the JIAT is appropriate. Therefore, whilst this lack of clarity on the issue of responsibility could be viewed as incidental, in reality it strongly suggests that the government has a direct interest in stoking this information “black hole,” as a deliberate political tactic to avoid full scrutiny of its export regime.

2.3.2 IHL Violations: *Comparison with Syria Conflict*

The government’s approach is perhaps most visibly demonstrated as inconsistent within the current political context when compared to its assessment of IHL allegations in other ongoing conflicts, most strikingly the current war in Syria. For example, in Yemen, the OHCHR’s 2017 report detailed an incident at Al-Kbra Hall in Sana’a on 8th October 2016 where Saudi Coalition airstrikes killed 132 civilians and injured 695 at a funeral.¹⁵⁰ The specific details of the incident are significant, with OHCHR reporting “two missiles that struck the hall only minutes apart,” with “the short interval between the strikes meant that those assisting victims of the first strike were hit by the second.”¹⁵¹ This pause between the two strikes is of paramount importance in relation to the technicalities of international law. The incident evidenced a “double-tap” manoeuvre, defined as the “practice of hitting a targeted strike site multiple times in a very short period of time...which may infringe the specific rules relating to the protection of the wounded civilians and combatants.”¹⁵² According to legal adviser and academic Gilles Giacca, “Under existing law, the lawfulness of such practice will depend on who the rescuers are and whether the wounded refrain from any hostile act.”¹⁵³ According to the Panel of Experts, in

¹⁴⁹ Stavrianakis, A. “Written Evidence from Dr. Anna Stavrianakis.” *Written Evidence to Committees on Arms Export Controls: Use of UK-manufactured arms in Yemen inquiry*. UK0003. (London: House of Commons, 24th Mar. 2016), p.2.

¹⁵⁰ Al Hussein. “Report of the United Nations High Commissioner,” (2017) p.7.

¹⁵¹ *Ibid.*

¹⁵² Giacca, G. “The Obligations to Respect, Protect, Collect and Care for the Wounded, Sick, and Shipwrecked,” in: *The 1949 Geneva Conventions: A Commentary*, edited by Clapham, A., Gaeta, P. & Sassòli, M., (Oxford: Oxford University Press, 2015), p.786.

¹⁵³ *Ibid.*

this incident “the Saudi Arabia-led coalition violated several principles of IHL, including those protecting hors de combat, in this double tap attack.”¹⁵⁴ Crucially, months after the incident, Chris White MP stated in the House of Commons that “According to UN reports, the attacks were minutes apart, targeting a location where it was known that senior Houthi officials were assembling among families and children.”¹⁵⁵ However, in response, Minister Ellwood responded that whilst “the machine is slow in putting these things together,” “first and foremost, we want the Saudis to investigate allegations of breaches of international humanitarian law attributed to them.”¹⁵⁶

The government’s response to the Sana’a “double-tap” incident is given real significance when juxtaposed to similar incidents in Syria. Speaking during the same month as the Sana’a incident in October 2016, but instead referring to Russian military action in Syria, Foreign Secretary Boris Johnson stated in an interview that “One thing I think is certainly a war crime is the double tap procedure that they [Russia] do...They drop one bomb and then they wait for the aid workers to come out, civilian people pulling the injured from the rubble, and then five minutes later they drop another bomb...that is in my view unquestionably a war crime.”¹⁵⁷ Interestingly, the Foreign Secretary made this accusation despite admitting that the government did not have the full evidence, stating that “we are trying to document that fully.”¹⁵⁸ The haste with which Johnson accused Russia of a war crime, when compared with the technical and methodological process insisted upon by the government in Yemen is striking. When responding to reports of the funeral bombing in Yemen, Minister Ellwood took the opportunity to insist that the “UK has an important relationship with Saudi Arabia”¹⁵⁹ whilst, in relation to the Syria incidents, Boris Johnson declared that “Russia is in danger of becoming a pariah nation.”¹⁶⁰

The rhetorical sentiment behind the government’s approach to the “double tap” violations in Yemen and Syria could not be starker. It is important to note that Johnson’s interview was his

¹⁵⁴ Himmiche et al. “Final report,” (2018), p. 259.

¹⁵⁵ White, C. “Yemen.” *House of Commons Debate*, Vol. 619. (London: House of Commons, 12th Jan. 2017), c.507.

¹⁵⁶ Ellwood, T. “Yemen.” *House of Commons Debate*, Vol. 619. (London: House of Commons, 12th Jan. 2017), c.545.

¹⁵⁷ Johnson, B. Cited In: Newton Dunn, T. “‘Unquestionably a War Crime’ Vladimir Putin is slaughtering innocent civilians in Syria on purpose, claims Boris Johnson.” *The Sun*, 30th Sept. 2016 [online] Accessed: 24/05/18. Available: <https://www.thesun.co.uk/news/1887484/vladimir-putin-is-slaughtering-innocent-civilians-in-syria-on-purpose-claims-boris-johnson/>

¹⁵⁸ *Ibid.*

¹⁵⁹ Ellwood, T. “Yemen.” *House of Commons Debate*, Vol. 616. (London: House of Commons, 26th Oct. 2016), c.388.

¹⁶⁰ Johnson, B. Cited In: Newton Dunn, “‘Unquestionably a War Crime.’”

first as Foreign Secretary, just days before the Conservative Party conference and in one of the UK's foremost right-wing tabloid newspapers, the Sun. Because of this, the aggressive nature of his words must be viewed contextually, no doubt capitalising on the opportunity to bolster his credentials as Foreign Secretary. This demonstrates the British government's willingness to take fundamentally different approaches to matters of technical international law and its readiness to play politics with these facts. Consequently, it is not only appropriate to conclude that the British government is failing to enforce the ATT's aspirations to deliver "consistent standards to regulate the global arms trade,"¹⁶¹ but suggests too that this approach has been adopted as a deliberate political strategy within the UK's wider foreign policy priorities.

2.3.3 International Independent Investigation

Given the UK's continued insistence of Saudi innocence, the establishment of an international independent mechanism of inquiry should not appear controversial and, in theory, would provide both greater legitimacy to the UK's arms export process and faith in the ATT.

Yet, despite this, in September 2016, it was reported that the UK had directly blocked European Union efforts at UNHRC to establish such an inquiry in Yemen. Instead, Boris Johnson insisted that the UK was "using a very, very wide variety of information sources about what is happening to acquaint ourselves with the details."¹⁶² The proposal was then replaced by Resolution A/HRC/33/L.32 which requested OHCHR "to dispatch a mission, with assistance from relevant experts, to monitor and report on the situation of human rights in Yemen."¹⁶³ This revision was certainly not without significance, "prompting dismay among human rights groups" who roundly criticised the UK government for watering down the proposal to avoid a fully independent investigation.¹⁶⁴

¹⁶¹ Rycroft, M. "The Arms Trade Treaty will remain central to the United Kingdom's approach to preventing irresponsible trafficking in arms." *Foreign & Commonwealth Office*, 2nd Aug. 2017 [online] Accessed: 08/06/18. Available: <https://www.gov.uk/government/speeches/the-arms-trade-treaty-will-remain-central-to-the-united-kingdoms-approach-to-preventing-irresponsible-trafficking-in-arms>

¹⁶² Johnson, B. Cited In: Doward, J. "UK accused of blocking UN inquiry into claim of war crimes in Yemen." *The Guardian*, 25th Sept. 2016 [online] Accessed: 24/05/18. Available: <https://www.theguardian.com/world/2016/sep/24/yemen-britain-human-rights-inquiry>

¹⁶³ United Nations General Assembly. "Human rights situation in Yemen." *UN General Assembly Document*, A/HRC/33/L.32. (New York: UN General Assembly, 27th September 2016), p.3.

¹⁶⁴ Doward. "UK accused of blocking UN inquiry."

One year later, in September 2017, with the trend of accusations of IHL violations continually reported, the issue returned again to UNHRC.¹⁶⁵ Significantly, “intensive talks between the Saudis, the Arab League, the Netherlands, the UK, France and the US” agreed that an independent investigation would be established. However, this outcome represented a substantial “compromise”, avoiding “a full-scale UN international commission of inquiry...that could have led to referrals to the international criminal court.”¹⁶⁶ Notably, the agreement’s text itself made no direct reference to the term “investigation”, and instead pledged its support to Yemen’s national commission on human rights.¹⁶⁷ As was reported by HRW, whilst it “offers glimmer of hope,” they admitted that the success of the investigation “will be in direct proportion to what UN member countries do next. Establishing an inquiry is just a first step; governments need to press for that inquiry to have real effect.”¹⁶⁸ However, shortly following the vote, the British government reiterated its insistence that “nation states should be allowed to carry out their own inquiries where countries are carrying out credible investigations into international humanitarian law.”¹⁶⁹ The positive response of the Saudis themselves also hinted at the real implications of the vote, with Saudi ambassador Abdulaziz Alwaskil stating that “The combination of international and national mechanisms is an excellent result for the promotion and protection of human rights.”¹⁷⁰ The British government’s determination to force this compromise in “one of its most fiercely contested resolutions,”¹⁷¹ indicates once again a deliberate strategy by the British government, working directly against the efforts of non-state actors, to achieve its desired outcome in avoiding full transparency in its arms regime.

The government’s actions here are also very revealing in relation to the theoretical standpoint of the thesis. With Constructivism insisting upon the *reputational* concerns of a state, the British government has displayed a clear lack of concern for alliances such as those in the EU. Instead, on a high-profile matter of human rights and confidence in intergovernmental procedures, it has proactively sided with Saudi Arabia, a country that the UK itself has

¹⁶⁵ Beckerle, K. “Yemen International Inquiry Offers Glimmer of Hope.” *Human Rights Watch*, 3rd Oct. 2017 [online] Accessed: 25/05/18. Accessed: <https://www.hrw.org/news/2017/10/03/yemen-international-inquiry-offers-glimmer-hope>

¹⁶⁶ Wintour, P. & Border, J. “Independent Investigation will look into human rights abuses in Yemen.” *The Guardian*, 29th Sept. 2017 [online] Accessed: 4/10/17. Available: <https://www.theguardian.com/world/2017/sep/29/yemen-un-investigation-human-rights-abuses>

¹⁶⁷ Cumming-Bruce, N. “In a Compromise, U.N Rights Experts Will Examine Abuses in Yemen’s War.” *The New York Times*, 29th Sept. 2017. Accessed: 24/05/18. Available: <https://www.nytimes.com/2017/09/29/world/middleeast/yemen-saudi-rights-abuse.html>

¹⁶⁸ Beckerle, K. “Yemen International Inquiry.”

¹⁶⁹ Wintour & Border. “Independent Investigation”

¹⁷⁰ Abdulaziz, A. Cited In: Cumming-Bruce. “In a Compromise, U.N Rights Experts Will Examine”

¹⁷¹ Cumming-Bruce, N. “In a Compromise. U.N Rights Experts Will Examine”

repeatedly identified as a human rights “country of concern.”¹⁷² In the case of Saudi Arabia at least, the humanitarian reputational concerns for the UK appear secondary.

2.3.4 International Independent Investigation: Comparison with Syria Conflict

The inconsistencies in the government’s position within the current political context are again most clearly highlighted in comparison to Syria, where on a number of occasions it has attempted to force inquiries into both Russia and Syria at the UN.

In May 2014, the UK provided strong support for a UNSC resolution to refer Syria to the International Criminal Court (ICC) for war crimes. Although the resolution was blocked, the parallels with the Yemen case are striking. Firstly, in blocking the resolution, Russia and China insisted that the Syrian National Investigation Committee (SNIC) was best placed to assess such allegations, something the UK notably disagreed with.¹⁷³ While the British government has continued to rely on the Saudis to investigate its own violations, at the same time it has judged that the SNIC should not. Secondly, despite the UK having “fiercely contested”¹⁷⁴ proposals to include an ICC referral in the 2017 Yemen resolution, in relation to Syria, the UK led efforts for the inclusion of an ICC referral in the resolution.¹⁷⁵ In responding to the Syria resolution’s blocking, UK representative Mark Lyall Grant stated that “It was to the Russian Federation’s and China’s shame that they had blocked justice for the Syrian people and the appalling human rights violations committed daily.”¹⁷⁶ The language used here is strikingly reminiscent of much of the criticism levelled by human rights organisations, explored in detail in the next chapter, in response to the UK’s attempts to block full investigations into Yemen.

Given that accusations of chemical weapons being used in Yemen have not been reported, such violations of IHL are not the focus of this thesis. However, a brief recognition of the British government’s approach to the use of chemical weapons in Syria provides important insights into other areas of IHL also rooted originally in the Geneva Conventions. On 28th February 2017, UN UK Permanent Representative Matthew Rycroft lambasted Russia at the Security

¹⁷² Foreign & Commonwealth Office. “Human Rights & Democracy.” *Foreign & Commonwealth Office Report*. Cm. 9487. (London: Foreign & Commonwealth Office, Jul. 2017), p.43.

¹⁷³ United Nations. “Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution.” *United Nations Security Council*, SC/11407, 22nd May 2014. [online] Accessed: 24/05/18. Available: <https://www.un.org/press/en/2014/sc11407.doc.htm>

¹⁷⁴ Cumming-Bruce, N. “In a Compromise. U.N Rights Experts Will Examine”

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

Council for its “seventh veto on Syria in five years,”¹⁷⁷ referring to the country’s latest veto against measures to impose sanctions on those involved in the production or use of chemical weapons in Syria.¹⁷⁸ In reinforcing the merits of the Security Council-mandated UN-Organisation for the Prohibition of Chemical Weapons Joint Investigative Mechanism (JIM),¹⁷⁹ Rycroft stated that “Russia’s answer is that Syria should conduct its own investigation. The idea that the guilty party should investigate itself is absurd and it is clearly recorded that the JIM’s investigation has been obscured by the Syrian regime.”¹⁸⁰ In all of the evidence analysed within this thesis, this statement is arguably one of the most telling indictments of the hypocrisy in the government’s position. It is very difficult not to judge Rycroft’s bold assessment as to the absurdity of a guilty party investigating itself in light of the UK’s continued insistence of Saudi Arabia’s right to do so in Yemen, despite these accusations spanning exactly the same time period. Although this opinion is stated in relation to chemical weapons, Rycroft is undoubtedly making this point as a matter of broad principle, unconfined to any specific area of IHL. He is identifying a standard in international law that those who are facing accusation should not be allowed to conduct their own investigation.

Rycroft’s statement also argued that “Russia will claim the JIM doesn’t meet a legal standard of evidence. Well, it was never intended to. As we all agreed in SCR 2235 it was meant to examine the available evidence in an impartial manner and come to a conclusion.”¹⁸¹ This acceptance of incomplete but comprehensive evidence within the bounds of JIM’s mandate, clearly prompts questions of the UK’s disregard for the Panel of Experts’ information. The Panel have also conducted impartial analysis on a level directly mandated by the UK, in the process detailing extremely clear conclusions. Finally, Rycroft makes a telling assessment of the normative concerns in allowing such action to go unchecked, stating that by “not taking action...undermines confidence in the international community’s ability to tackle flagrant violations of international law...we must be able to demonstrate that the international system works.”¹⁸²

¹⁷⁷ Rycroft, M. “This is Russia’s seventh veto on Syria in five years.” *Foreign & Commonwealth Office*, 28th Feb. 2017 [online] Available: <https://www.gov.uk/government/speeches/this-is-russias-seventh-veto-on-syria-in-five-years>

¹⁷⁸ United Nations. “Double Veto Prevents Security Council from Adopting Draft Resolution Intended to Impose Sanctions for Use of Chemical Weapons in Syria.” *United Nations Security Council*, SC/12737, 28th February 2017 [online] Accessed: 24/05/18. Available: <https://www.un.org/press/en/2017/sc12737.doc.htm>

¹⁷⁹ OPCW-UN Joint Investigative Mechanism: Adopted by UN Security Council resolution 2235 (2015) on 7th August 2015.

¹⁸⁰ Rycroft. “This is Russia’s seventh veto on Syria in five years.”

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

With the British government outwardly voicing such strong opinions on these matters of principle, it is again very difficult not to believe that it is fully aware of the hypocrisy of its stance in relation to Yemen. If this judgement can rightfully be disseminated, the juxtaposition of the criticism of Russia and the lack of criticism of the Saudis must be understood as a strategic consideration by the government within the wider political context. Importantly, the conflict in Syria sees the UK side with a number of fellow UN allies against Russia, Iran and President Assad of Syria. Therefore, the opportunity for the UK, sitting alongside its military allies at UN, to castigate Russia for its lack of transparency on human rights in the context of Syria, no doubt serves a political purpose in bolstering its own perceived humanitarian commitments within the international community. This undoubtedly serves British interests in deflecting focus from its own lack of IHL enforcement in Yemen, a conflict that engages the broader international community in a far less direct way than Syria.

In analysing the UK's approach to the UN, this chapter has demonstrated the government's willingness to flagrantly undermine the same intergovernmental processes that it itself claims to hold as crucial to the functioning of the international system. Matters of reputation, which Constructivism has constituted as vital to a state's behaviour, appear to be markedly subordinate to the UK's support for Saudi Arabia, with the UK willing to directly challenge and undermine its traditional EU allies. It has been vital here to set out the sheer scale of credible evidence that the government has ignored, as well as its willingness to engender controversy in this process, so as to appropriately contextualise the strength of the other interests involved in the UK-Saudi relationship.

The juxtaposition between the British government's differing approaches to the Yemen and Syria conflicts provides the clearest justification yet that this current inconsistency is the result of a wider and deliberate political foreign policy strategy by the government. At this stage, such a strategy appears to be one of deflection and ambiguity in the arms export process in a way that attempts to reinforce its humanitarian credentials through other conflicts, whilst actively undermining attempts to provide appropriate transparency in its own weapon sales to Saudi Arabia.

Although this conclusion has been drawn from the current political context, when viewed in light of the UK's historical commitments to arms control it further reinforces the specific significance of the current Yemen conflict. Whereas in previous historical examples the

government has recognised a threshold whereby weapons sales should be halted to a state, its failure to do so in the context of Yemen represents a substantial departure from historical precedent.

This therefore prompts the very obvious assumption that the Saudi relationship is one that is unprecedentedly unique, with its other competing interests more compelling than the UK's intergovernmental and arms export commitments. Before exploring these interests in Chapter 4, the work of NGOs will be considered to judge whether their technical and humanitarian endeavours have been more effective in compelling the government to consider IHL violation evidence.

Chapter 3.

The Failure of Non-Governmental Organisations

Within the British political system the level of access granted to NGOs has been one that has historically fluctuated depending on the different areas of policy, changes in government and the contextual situations at hand. As outlined in Chapter 1, a succession of British governments have continued to stress the importance of NGO involvement in the arms export controls policy-making process. Constructivist Theory credits this to the government's appreciation that the visible inclusion of NGOs adds a degree of legitimacy to its actions. This has been shown to be consistent with the historical development of Britain's IHL commitments, most recently in the close working relationship between the government and leading NGOs in the ATT ratification. Despite this, on a number of occasions NGO criticisms have been ineffective in holding the government to account in complying with its supposed "robust"¹⁸³ arms control criteria. In other instances, however, the government has clearly judged that it is in its interests to halt licenses on account of the controversy and criticisms of civil society.

Looking specifically at the UK's current arms export policy to Saudi Arabia in Yemen, this thesis has argued that the government's export criteria has never yet come under such intense and sustained criticism by non-state actors, since successive governments' post-1997 commitment to a more ethical foreign policy.

The following chapter will focus on the efforts of Amnesty International, Human Rights Watch, Oxfam and Saferworld, to hold the British government to account and compel it to halt export licenses to Saudi Arabia. All of these NGOs were called to give oral evidence before Parliament's Arms Export Control 2016 Select Committee on "the use of UK-manufactured arms in Yemen." The Committee was established "in response to considerable public concerns that such arms were being used in contravention of international law and the UK's international, European and domestic obligations."¹⁸⁴ With "a specific remit to investigate and report back to [Parliament],"¹⁸⁵ their published findings require a formal response from the

¹⁸³ HM Government. "National Security Strategy and Strategic Defence and Security Review 2015." *HM Government Report Presented to Parliament*, Cm. 9161. (London: UK Parliament, Nov. 2015), p.77.

¹⁸⁴ Business, Innovation and Skills and International Development Committees. "The use of UK-manufactured arms in Yemen," p.4.

¹⁸⁵ House of Commons. "Select Committee: Brief Guide." *House of Commons Report*. (London: House of Commons Information Office, Aug. 2011), p.1.

government. The direct involvement of these four NGOs therefore not only proves their perceived credibility within the parliamentary process, but establishes beyond doubt that the government has directly considered their evidence. This is fundamental given the government's insistence that it takes note of all "the information available"¹⁸⁶ in forming its "clear risk" IHL assessment. With this in mind, the following analysis will focus on these four NGO's work and the government's response to their efforts.

3.1 Amnesty International

An important aspect of Amnesty International's work is the production of detailed reports on countries that the NGO is working in. Consequently, they have produced a series of reports on Yemen that have continued to detail evidence of IHL violations. The first of these reports, "Nowhere Safe For Civilians", was published in August 2015 and documented on-the-ground evidence that the Saudi coalition "have killed and wounded civilians, in unlawful airstrikes which failed to distinguish between military targets and civilian objects," across 20 of Yemen's 22 governorates since March 2015.¹⁸⁷ Significantly, just months into Saudi involvement in the conflict, the report already set out arguments that the international community should halt weapons sales due to IHL violation allegations and also called for an international inquiry to be established.¹⁸⁸ A broader Amnesty International report was published later that year entitled "Yemen: The Forgotten War" which documented that 36 Saudi Coalition airstrikes "have committed serious violations of human rights and international humanitarian law, including war crimes."¹⁸⁹

One of the most important duties that NGOs can offer is 'issue research' capabilities that governments lack the resources to produce. Since March 2015, Amnesty International have published 41 separate reports on Yemen,¹⁹⁰ identifying their strong interest and authority on issues concerning the country. Important examples of this include the NGO's response to the Saudi-led JIAT investigation mechanism where they detail their "concern the JIAT's investigations appear to be falling short of international standards including those of

¹⁸⁶ Ellwood. "Yemen: Military Intervention."

¹⁸⁷ Amnesty International. "Nowhere Safe for Civilians. Airstrikes and Ground Attacks in Yemen." *Amnesty International Report*, MDE 31/2291/2015. (London: Amnesty International, August 2015), p. 6-7.

¹⁸⁸ *Ibid*, p. 46.

¹⁸⁹ Amnesty International. "Yemen: The Forgotten War" *Amnesty International*, 2018 [online] Accessed: 26/05/18. Available: <https://www.amnesty.org/en/latest/news/2015/09/yemen-the-forgotten-war/>

¹⁹⁰ Amnesty International (2018) "Search Results: Research." *Amnesty International*, 2018 [online] Accessed: 26/05/18. Available: <https://www.amnesty.org/en/search/?q=&sort=date&contentType=2564&country=38563>

transparency, independence, impartiality, and effectiveness.”¹⁹¹ This 2017 report set out in detail the numerous cases of IHL violations that they disagreed with the JIAT on.¹⁹²

In November 2015, Amnesty International issued a press release that directly indicated the use of British-made weapons on civilian targets in Yemen. According to Amnesty International’s “field research and interviews with eyewitnesses at the scene,”¹⁹³ the attack on a ceramics factory in Sana’a in September 2015 killed one person, breaching IHL in the process. In their view, this “undermines the claim...that the UK monitors such compliance “very carefully.””¹⁹⁴ It also stated that they were “unaware of any credible coalition investigation in this incident,” but confirmed that their UK Director had written to Foreign Secretary Phillip Hammond detailing the incident and calling for weapon sales to be halted immediately.¹⁹⁵ This evidence elevates the “clear risk” considerations of the government into an unavoidable recognition that UK weapons are being directly used to breach IHL in Yemen. It is extremely difficult to explain how the government could continue to insist that there is not a credible clear risk given this and the stated lack of Saudi investigation into the incident. Precisely what evidence the government has relied upon to discredit Amnesty International’s evidence is wholly unclear.

During his evidence session at the 2016 Arms Export Control Committee, Oliver Sprague, Programme Director of Military Security and Police at Amnesty International, outlined the organisation’s judgement that “the UK would be in violation of those three cornerstone principles of the UK’s own export control system, EU controls and, importantly, articles 6.3 and 7 of the arms trade treaty.”¹⁹⁶ The assessment was “predicated on a risk-prevention methodology”¹⁹⁷ and therefore fundamentally structured around the UK’s “clear risk” assessment process. In Amnesty International’s view, “the UK government have not applied a suitable risk analysis and have been granting licenses too easily to some of the very problematic regimes, including Saudi Arabia.”¹⁹⁸ Sprague confirmed “that is why we are so strong in our calls that the UK government are in breach of their obligations.”¹⁹⁹ Importantly, he also

¹⁹¹ Amnesty International. “Amnesty International response to the Saudi Arabia-led coalition’s investigations.” *Amnesty International Public Statement*, MDE 31/5294/2017, (16th Jan. 2017), p.1.

¹⁹² *Ibid.*, p.4-8.

¹⁹³ Amnesty International UK. “UK-made missile used in airstrike on ceramics factory in Yemen.” *Amnesty International*, 25th Nov. 2015 [online] Accessed: 26/05/18. Available: <https://www.amnesty.org.uk/press-releases/uk-made-missile-used-airstrike-ceramics-factory-yemen>

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ Sprague, O. Cited In: Committees on Arms Export Control, “Oral evidence,” (23rd Mar. 2016), p.7.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*, p.9.

¹⁹⁹ *Ibid.*, p.11.

highlighted inconsistencies in the government's recent conflicting statements, where it had outlined that "the use of UK-supplied weaponry in the conflict in Yemen was an operational matter for the Saudi Royal Air Force", which Sprague forcefully argued "is fundamentally incorrect in our view." Instead, he reinforced that "the entire purpose of our export control regime is to link the responsibility of the exporter to the eventual use of their weapons in a particular theatre." Because of this, "it is impossible for a decision to be made to authorise those weapons lawfully on the basis of the relevant articles in the arms trade treaty."²⁰⁰ This passage of testimony is crucial in structuring the relevancy of Amnesty International's evidence within the government's wider legal commitments. Given the important role that NGOs, including Amnesty International, were afforded in the development and ratification of treaties such as the ATT, their views on a state's compliance with it should not be easily dismissed.

3.2 Human Rights Watch

Human Rights Watch are also notable for their annual reports into various human rights situations around the world, which are produced with the remit to "Scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice."²⁰¹ In relation to Yemen, in consecutive reports since the beginning of the conflict, HRW have detailed Saudi-led Coalition IHL violations. Although reporting on Yemen for a number of years, their 2016 report into the events of 2015 was the first since the beginning of the current conflict. It documented that "dozens of coalition airstrikes were indiscriminate, violating the laws of war and killing and wounding thousands of civilians."²⁰² In the 2017 report, this had risen to 58 incidents that had killed nearly 800 civilians.²⁰³ Importantly, this report also detailed investigations into 18 apparently unlawful strikes "some of which used US or UK-supplied weapons, on 14 civilian economic sites. The strikes killed 130 civilians."²⁰⁴ The 2018 report reinforced this, asserting that "The coalition has conducted scores of indiscriminate and disproportionate airstrikes hitting civilian objects that have killed thousands of civilians in violations of the laws of war, with munitions that the US, United Kingdom, and

²⁰⁰ Sprague, O. Cited In: Committees on Arms Export Control, "Oral evidence," (23rd Mar. 2016), p.12.

²⁰¹ Human Rights Watch "World Report 2018: Events of 2017." *Human Rights Watch Report*. New York: Seven Stories Press, 2018. p.5.

²⁰² Human Rights Watch. "World Report 2016: Events of 2015." *Human Rights Watch Report*. (New York: Seven Stories Press, 2016), p.643.

²⁰³ Human Rights Watch. "World Report 2017: Events of 2016." *Human Rights Watch Report*. (New York: Seven Stories Press, 2017), p.675.

²⁰⁴ *Ibid.*

others still supply.”²⁰⁵ As with Amnesty International’s evidence, the identification of the direct use of UK-supplied weapons in unlawful strikes inescapably links IHL violations with the UK’s arms export regime. By the 2018 report, HRW had documented 85 unlawful coalition airstrikes, killing nearly 1,000 civilians. HRW noted that the JIAT “did not conduct credible investigations” and failed “to release full investigation reports or detailed information on their methodology,” so as to “avoid international legal liability by refusing to provide information on their role in unlawful attacks.”²⁰⁶ Given the UK’s unabashed support for the JIAT, HRW’s assessment that the Saudis have deliberately attempted to avoid legal liability adds further weight to the suggestion that UK-Saudi cooperation on this issue is orchestrated in a strategic manner to avoid full transparency. In fact placing the responsibility on the JIAT has allowed the British government strategic breathing space, with its indirect complicity being far less quantifiable.

HRW UK Director David Mepham’s evidence to the 2016 Select Committee was crucial in verifying the NGO’s direct access to the government. Mepham detailed a recent meeting with the Foreign Secretary, stating “I gave him copies of our report and said, “These are the GPS co-ordinates; these are the strikes; these are the markets and schools that were hit.” Therefore, he has the evidence.” In his assessment, “It is extraordinary that the line comes back that they do not have evidence, when that evidence has been shared with them for a considerable period of time.”²⁰⁷ As well as proving the NGO-government link, his testimony was also notable in debunking the government’s criticism of the UN Panel of Experts’ evidence. Addressing the government’s criticism of the Experts, Mepham stated the government “said it was all based on satellite imagery; they had not been to the country, although we and Amnesty International have.”²⁰⁸ Finally, Mepham’s evidence also cited the hypocrisy of the government’s approach to NGOs, stating that HRW’s investigations in Yemen “is exactly the way we do it in other parts of the world, and on a very regular basis Foreign Ministers cite our work as a very credible source of evidence.”²⁰⁹ This prior acceptance of equivalent NGO information, as well as the reality that they are working directly on-the-ground in Yemen, is crucial in undermining the government’s criticism of non-state actors’ investigation processes. This validates questions

²⁰⁵ Human Rights Watch “World Report 2018: Events of 2017.” *Human Rights Watch Report*. (New York: Seven Stories Press, 2018), p.631.

²⁰⁶ Human Rights Watch. “World Report 2018: Events of 2017,” p.636-637.

²⁰⁷ Mepham, D. Cited In: Committees on Arms Export Control, “Oral evidence,” (23rd Mar. 2016), p.3.

²⁰⁸ *Ibid*, p.6.

²⁰⁹ *Ibid*, p.8.

about whether these criticisms are honest explanations for the government's motivation in discrediting such evidence or simply a measured tactic of avoidance.

3.3 Oxfam

Given the leading role that Oxfam has so visibly played in international affairs since its founding in 1942,²¹⁰ Oxfam Middle East Region Director Tim Holme's statement in March 2016 is striking in stating that, "Oxfam staff have experience of many contexts and they have never experienced such intensity and devastation as is currently happening in Yemen."²¹¹

Oxfam have also attempted to influence the government through detailed reports that raise the issue of IHL violations. The first of these reports from Oxfam GB was released in September 2015, entitled "British Aid and British Arms: A Coherent Approach to Yemen?"²¹² At this date, within just six months of the Saudi-Coalition's involvement in the conflict, Oxfam had already judged that "there is clear evidence that all sides in Yemen's devastating conflict have failed to distinguish between civilians and combatants, the principle at the heart of international humanitarian law."²¹³ It called on the government to "suspend or revoke current licenses...until Saudi Arabia and other coalition partners have in place other mechanisms to ensure observance of international humanitarian law."²¹⁴

Despite Oxfam not being in a position to directly monitor IHL violations themselves, the organisation has had a direct presence in Yemen for more than 30 years in a humanitarian capacity. This has included providing humanitarian support throughout the current conflict by working "with government authorities, as well as civil society organisations"²¹⁵ to address "one of the world's gravest humanitarian crisis."²¹⁶ This establishes their status as a credible organisation in the country. The humanitarian factor is important given the twofold focus of this thesis, which looks at the UK's commitment to arms control on both a technical legal and a humanitarian norm level. Oxfam's role in this respect is seen in the broad range of their

²¹⁰ Oxfam International. "History of Oxfam International." *Oxfam International*, 2018 [online] Accessed: 26/05/18. Available: <https://www.oxfam.org/en/countries/history-oxfam-international>

²¹¹ Holme, T. Cited In: Committees on Arms Export Control, "Oral evidence," (23rd Mar. 2016), p.18.

²¹² Cairns, E. "British Aid and British Arms: A Coherent Approach to Yemen?" *Oxfam GB Briefing Note*. Oxford: Oxfam GB, 11th Sept. 2015.

²¹³ Cairns. "British Aid and British Arms," p.12.

²¹⁴ *Ibid*, p.3.

²¹⁵ Oxfam International. "Yemen." *Oxfam International*, 2018 [online] Accessed: 08/06/18. Available: <https://www.oxfam.org/en/countries/yemen>

²¹⁶ Oxfam International. "Crisis in Yemen." *Oxfam International*, 2018 [online] Accessed: 08/06/18. Available: <https://www.oxfam.org/en/emergencies/crisis-yemen>

reports, including those on specific issues such as vulnerable women and girls in Yemen,²¹⁷ “Yemen’s Invisible Food Crisis”²¹⁸ and “Yemen: Catastrophic cholera crisis.”²¹⁹ Such reports regularly cite the drastic role that UK supplied weapons have played in worsening these crises. With Oxfam structuring much of their government advocacy around humanitarian concerns, it provides a vital insight into the extent to which humanitarian norms are a priority interest for the government. This was something commented on by Oxfam Policy Adviser Martin Butcher in giving evidence to the 2017 Arms Export Control Committee, where he stated that Oxfam have consistently asked the government for “robust implementation...not just adhering to the absolute minimum letter of the law but to the spirit of the law, too.”²²⁰ The government’s inconsistency in vocally championing the ratification of the ATT around humanitarian principles, yet failing to appropriately address the clear humanitarian concerns in Yemen, suggests the presence of strategic contextual considerations in its approach to the inclusion of non-state actors in its weapons sales process. Evidently, in Yemen, the context of the Saudi relationship constitutes a more pressing consideration, which has caused the Yemen conflict to take such historical significance.

3.4 Saferworld

Saferworld have had a presence in Yemen since 2010, which has continued throughout the current conflict by working “with Yemeni civil society organisations” to support “women, youth and community groups in their efforts to build peace and respond to the impact of the war.”²²¹

Consequently, as with Oxfam, Saferworld do not directly assess IHL violations in a technical sense. However, in August 2015, Saferworld issued their first piece of analysis on the conflict that cited Amnesty International and HRW’s evidence relating to IHL violations. Notably, Saferworld’s assessment is strikingly more forthright in its criticism, with its UK Advocacy

²¹⁷ Chughtai, S. & Paul, S. “Our Country, Our Peace: Why women must be included in Yemen’s peace process.” *Oxfam Briefing Note*. (Oxford: Oxfam International, 11th Dec. 2015)

²¹⁸ Oxfam International. “Yemen’s invisible food crisis.” *Oxfam Media Briefing*. (Oxfam International, 24th Mar. 2016)

²¹⁹ Alles, L & El-Mamoun, D. “Yemen: Catastrophic Cholera Crisis.” *Oxfam Briefing Note*. (Oxford: Oxfam International, Aug. 2017)

²²⁰ Butcher, M. Cited In: Committees on Arms Export Control. “Oral evidence: UK Arms Exports During 2016.” p.6.

²²¹ Saferworld. “Yemen.” Saferworld, 2018 [online] Accessed: 08/06/18. Available: <https://www.saferworld.org.uk/yemen/yemen>

Officer Zarina Khan stating that the British government's "counterproductive" approach appears "prepared to disregard the impact of the military intervention in Yemen in the interest of maintaining its relationship with Saudi Arabia."²²² Later that month, Saferworld published a joint statement by 23 NGOs (including Saferworld, Amnesty International and HRW) calling on the UN Human Rights Council to create a commission of inquiry for Yemen. The robust statement included the claim that "the Saudi-led coalition has conducted indiscriminate airstrikes in violation of international humanitarian law that have killed scores of civilians and hit civilian objects and infrastructure."²²³ With the UK sitting on the UNHRC, this message was aimed directly at the British government. The participation of such a broad range of NGOs in this initiative, including many regional organisations, highlights the strong and early engagement across an international spectrum of civil society on IHL violations. Saferworld's work has often involved collaboration with other organisations' efforts, including in September 2015, when they publicised the Oxfam report "British Aid and British Arms."²²⁴ This shows the positive mobilisation of efforts and resources across the NGO community in an attempt to establish greater legitimacy concerning accusations of IHL violations, which makes the government's decision to ignore it all the more striking. This again justifies the question of whether this has been done simply on the merits of the evidence.

Saferworld have also demonstrated a full range of different techniques in their attempts to influence the government. These have included providing advice ahead of EU Foreign Affairs Council meetings on Yemen along with 15 other international NGOs,²²⁵ submitting detailed memorandums to the International Development Committee inquiry on the crisis in Yemen²²⁶ and publishing rolling monitoring figures on UK weapon sales to Saudi Arabia. Saferworld's submission to the All Party Parliamentary Group (APPG) on Yemen in October 2015 also

²²² Khan, Z. & Northedge, L. "Public outcry looms over the UK's contradictory policy towards Yemen." *Saferworld*, 4th Aug. 2015 [online] Accessed: 25/05/18. Available: <https://www.saferworld.org.uk/resources/news-and-analysis/post/168-public-outcry-looms-over-the-ukas-contradictory-policy-towards-yemen>

²²³ Saferworld. "Joint Statement – UN Human Rights Council: Create Commission of Inquiry for Yemen." *Saferworld*, 19th Aug. 2015 [online] Accessed: 25/05/18. Available: <https://www.saferworld.org.uk/resources/news-and-analysis/post/629-joint-statement---un-human-rights-council-create-commission-of-inquiry-for-yemen>

²²⁴ Nevens, K. "Have we abandoned our Friends in Yemen?" *Saferworld*, 11th Sept. 2015 [online] Accessed: 25/05/18. Available: <https://www.saferworld.org.uk/resources/news-and-analysis/post/659-have-we-abandoned-our-friends-in-yemen>

²²⁵ Saferworld. "Civil society recommendations ahead of the EU Foreign Affairs Council Conclusions on Yemen." *Saferworld*, London, 13th Nov. 2015 [online] Accessed: 25/05/18. Available: <https://www.saferworld.org.uk/resources/news-and-analysis/post/638-civil-society-recommendations-ahead-of-the-eu-foreign-affairs-council-conclusions-on-yemen>

²²⁶ Saferworld. "Crisis in Yemen: A contradictory UK approach." *Saferworld Submission to the International Development Committee inquiry on the crisis in Yemen*. (London: Saferworld, 18th Dec. 2015)

highlights another avenue of NGO influence. Although APPGs hold no formal powers within the British political system, their composition of cross-party MPs who engage in an authoritative manner with a multitude of actors and organisations means that their work is often cited with high regard in the political process. In their submission, Saferworld called for the British government to “take immediate steps to withdraw material and political support for Saudi Arabia’s bombardment of Yemen” and to “investigate whether UK weapons were used in alleged war crimes.”²²⁷

During the 2016 Arms Export Control Committee’s oral evidence session, Roy Isbister, Head of the Arms Unit at Saferworld, also identified that the organisation had commissioned legal opinion on the matter. In collaboration with Amnesty International, the two organisations commissioned “eminent international law experts” Professor Philippe Sands QC, Professor Andrew Clapham and Blinne Ní Ghrálaigh of Matrix Chambers.²²⁸ The credibility of this legal opinion is clear in the Committee’s decision to invite Professor Sands QC to give oral evidence before the committee himself.²²⁹ As outlined in a press release by Saferworld, Matrix Chambers “affirm that the UK government is breaking national, EU and international law and policy by supplying weapons to Saudi Arabia in the context of its military intervention and bombing campaign in Yemen.”²³⁰ The importance of Saferworld commissioning this legal judgement is highlighted in its coverage in *The Telegraph*, *The Guardian* and *The Independent* amongst a range of newspapers, whilst it was also reported by BBC Newsnight and Channel 4 News.²³¹

Saferworld’s wide variety of efforts in engaging legal opinion, organising grassroots campaigns and meeting directly with Ministers to evidence IHL violations in Yemen substantiates the fact that the government has received extensive and broad lobbying on the issue. Once again the strength of these efforts has been vital in shedding light on the striking inadmissibility of this evidence by the government, implying that this has been a considered decision within the broader contextual dynamics of the UK-Saudi relationship.

²²⁷ Saferworld. “Yemen in crisis: urgent action needed for peace.” *Saferworld Submission to the APPG on Yemen*. (London: Saferworld, 13th Oct. 2015), p.1.

²²⁸ Isbister, R. Cited In: Committees on Arms Export Control “Oral evidence” (23rd Mar. 2016), p.7.

²²⁹ Committees on Arms Export Controls. “Oral evidence: Use of UK-manufactured Arms in Yemen.” *Committees on Arms Export Controls Oral Evidence*, HC 928. London: House of Commons, 13th Apr. 2016.

²³⁰ Saferworld. “Leading lawyers find UK Government to be breaking the law supplying arms to Saudi.” *Saferworld*, 16th Dec. 2015 [online] Accessed: 25/05/18. Available:

<https://www.saferworld.org.uk/resources/news-and-analysis/post/641-leading-lawyers-find-uk-government-to-be-breaking-the-law-supplying-arms-to-saudi>

²³¹ *Ibid.*

3.5 British Government Response

In the previous chapter, it was suggested that the government used technical criticism of the UN mechanisms' procedures to undermine the credibility of its IHL evidence, allowing a "clear risk" IHL breach assessment to be avoided. However, in relation to NGOs, given Amnesty International and HRW's on-the-ground evidence gathering, the government has instead rationalised disregard for NGO evidence by insisting that the Saudi regime has the "first and foremost"²³² right of investigation. It is necessary to reiterate that the government's own criteria makes no such prescriptions and insists specifically upon the UK's responsibility to consider all available information on a case-by-case basis. Given this, the tone of the government's insistence on the Saudi's right to assess IHL violations must be noted, based not upon a specific clause in legislation but justified instead as a matter of principle.²³³ With the government's undoubted awareness of the inconsistency of its position with its legal duties, the structuring of this argument on principled grounds appears to be a deliberate tactic to appeal rationally to the notion that a sovereign state has the first right to investigate its own crimes. The effectiveness of this tactic is demonstrated by the extent to which it has gathered a degree of political acceptance and allowed weapons sales to continue, despite it flagrantly undermining the government's own legal standards. With the government having previously maintained that "The idea that the guilty party should investigate itself is absurd,"²³⁴ its willingness to insist that Saudi Arabia has "the best insight into their own military procedures"²³⁵ must be understood as a ploy to allow weapons sales to continue.

The government's capacity to adopt legally inconsistent, yet politically convenient justifications was again demonstrated when addressing Amnesty International and HRW's specific allegation that UK weapons were used illegally on a ceramics factory on 23rd September 2015. Both NGOs identified that no JIAT investigation had taken place. However, just two months after the incident Foreign Secretary Phillip Hammond insisted to the BBC that

²³² Fox, L., Fallon, M., Johnson, B. & Patel, P. "The use of UK-manufactured arms in Yemen: Response of the Secretaries of State for International Trade, Defence, Foreign and Commonwealth Affairs, and International Development." *HM Government Report Presented to Parliament*. Cm. 9349. London: UK Parliament, Nov. 2016. p.7.

²³³ Ellwood, T. "Yemen." *House of Commons Debate*, Vol. 619. (London: House of Commons, 12th Jan. 2017), c.545.

²³⁴ Rycroft. "This is Russia's seventh veto on Syria in five years."

²³⁵ Johnson, B. "Yemen Update," *House of Commons Written Statement*, HCWS128. (London: House of Commons, 5th Sept. 2016).

“what matters is that they are used legally in compliance with international humanitarian law, and we monitor that very carefully.”²³⁶ Apart from its incompatibility with the NGO evidence, Hammond’s statement reveals yet another political response by the government to a matter of legal significance which allows it to hide behind the lack of clarity in its position. The government has created a climate of uncertainty regarding responsibility for monitoring IHL violations and Hammond’s extremely ambiguous “very carefully” statement can clearly be seen as a purposefully evasive political tactic which capitalises on the confusion that the government itself has helped to foster. With nothing conclusive being substantiated by this response, it allows the government to once again avoid full scrutiny of its own responsibilities.

Further reinforcing the suggestion that the government has deliberately adopted evasive tactics to maintain weapons sales is its capacity to provide contradictory statements directly alongside each other. This appears to take place when the government is pressed on a more technical level, which undermines its appeal to principles of Saudi Arabian sovereignty. For example, in its formal response to the Arms Export Control Committee the government stated that “Where allegations of IHL violations are reported by NGO partners to DFID [Department for International Development] these are passed to FCO and MOD to inform IHL updates.”²³⁷ However, later on in the same document, it again claims that “First and foremost, we want to see the Saudis investigate allegations of breaches of IHL which are attributed to them.”²³⁸ It is very difficult to imagine that the government is not aware of the inherent contradiction in both insisting that the evidence of NGOs is taken into account, yet at the same time rendering it irrelevant as subordinate to JIAT’s assessments. Instead, it suggests that the government is simply willing to seek an appropriate answer to any relevant challenge at any given time, as long as it allows weapons sales to continue. Its true motivation is perhaps most clearly demonstrated in its failure to provide any detailed responses to the numerous specific incidents that have been raised by NGOs, which evidence a consistent trend of IHL Saudi violations.

One of the key criticisms of the government’s approach to the NGO community was highlighted in the 2016 Select Committee report on the use of UK weapons in Yemen, which identified that “the UK government frequently cites Human Rights Watch and Amnesty International evidence in other conflicts, such as Syria, but in Yemen the government appears

²³⁶ BBC Newsnight. “Philip Hammond: A vote on airstrikes in Syria should go ahead – Newsnight.” *Youtube: BBC Newsnight*, 10th Nov. 2015. [online video] Accessed: 25/05/18. Available: <https://www.youtube.com/watch?v=CLcIfraLXW8>

²³⁷ Fox et al. “The use of UK-manufactured arms in Yemen,” p.13.

²³⁸ *Ibid*, p.7.

to be relying on assurances from the Saudi authorities.”²³⁹ Again, the Syria conflict provides a significant comparison which highlights the importance of contextual determinants in the government’s motivation to consider IHL. For example, in relation to Syria, there are a number of instances where the government has supported NGO’s work in collating evidence. In May 2016, when addressing the enforcement of the Geneva Conventions in light of a recent attack on a hospital in Aleppo, Minister Ellwood stated that “[the Conventions] are part of collecting the evidence that is necessary in the longer term to bring the culprits to account. That work is ongoing with a number of non-governmental organisations that Britain is supporting.”²⁴⁰ In direct contradiction to Yemen, in Syria the involvement of NGOs in documenting evidence of IHL breaches is not just actively encouraged, but directly supported by the government. The government’s differing interests in the two conflicts must be viewed as significant in this hypocrisy, with the NGO’s provision of tangible evidence in Syria that attests to Russia and Assad’s barbarism in breaching IHL fitting constructively within the government’s wider interests in characterising the adversarial nature of the conflict.

Similar hypocrisy in the government’s approach to NGOs was also evidenced in January 2017, with an expression of its “deep concern at alleged human rights violations and abuses and violations of international humanitarian law against residents of Benghazi and other Libyan cities.”²⁴¹ In encouraging the ICC to “prioritise” investigations into these “indiscriminate attacks”, the government stated that “it is clear from the reports written by human rights organisations such as Amnesty International and Human Rights Watch, as well as the UN OHCHR and UN Special Mission to Libya, that civilians continue to suffer inexcusably from ongoing conflict in Libya.”²⁴² With British involvement in the overthrow of President Gadhafi in 2011 drawing strong criticism for its lack of post-conflict planning,²⁴³ it is evident that the British government has specific interests in publicly supporting measures to find judicial and humanitarian solutions to instability in the country. Rather than attempting to provide a judgement on the government’s lack of genuine commitment to IHL in Syria or Libya, these examples instead highlight the contextual factors that often determine the government’s

²³⁹ Business, Innovation and Skills and International Development Committees. “The use of UK-manufactured arms in Yemen,” p.15.

²⁴⁰ Ellwood, T. “Aleppo.” *House of Commons Debate*, Vol. 609, (London: House of Commons, 3rd May 2016), c.29.

²⁴¹ Ellwood, T. “Libya: Human Rights.” *House of Commons Written Question*, No. 60656. (London: House of Commons, Answered: 26th Jan. 2017).

²⁴² *Ibid.*

²⁴³ Foreign Affairs Committee. “Libya: Examination of intervention and collapse and the UK’s future policy options.” *Foreign Affairs Committee Third Report of Session 2016-17*, HC. 119. (London: House of Commons, 14th Sept. 2016).

response. With such concerns blatantly absent in its approach to Yemen, the government's lack of urgency suggests strongly that other wider interests have prompted this divergence.

Any belief that the government was unaware of these contradictions was strikingly undermined in July 2016. On the eve of British Parliament entering into summer recess, the government issued a number of corrections to previous ministerial statements relating to Saudi IHL allegations in Yemen. The FCO corrected six separate statements, including one from February 2016 which had previously stated ““We have assessed that there has not been a breach of IHL by the coalition” to state “We have not assessed that there has been a breach of IHL by the coalition.”²⁴⁴ As well as further demonstrating the confusion over the responsibility to assess violations, it was the manner of these ministerial corrections that is significant. With the amendments taking place just before Parliament's closure, thereby capitalising on the opportunity to avoid full scrutiny by MPs or NGOs, this incident highlighted the government's proactive attempts to avoid full transparency in its export procedures. As well as posing very serious questions about its character, it is yet another example of the adoption of questionable political tactics to sustain weapon sales rather than show concern for its legal requirements.

Irrespective of the NGO community's best efforts to exhaustively mobilise all of its available resources to raise the issue of IHL violations in Yemen, the government has remained immovable in its approach. Despite resolving many of the government's criticisms of the UN processes, Amnesty International and HRW's detailed on-the-ground evidence has been irrelevant. The supposed additional importance of NGOs in reminding the government of its humanitarian responsibilities has also been inconsequential, undermining the Constructivist argument that humanitarian norms are a priority for states. The level of information provided by the NGO community in this unprecedented mobilisation of their efforts marks the government's continued decision to authorise weapons sales to Saudi Arabia for use in Yemen as a moment of historical precedence in the UK's arms export regime.

Instead, the government has appeared to actively exploit the confusion surrounding precisely where ultimate responsibility lies for making the “clear risk” assessment. Its continued insistence that it monitors incidents “very carefully” can be seen as a direct manipulation of

²⁴⁴ Wintour, P. “Foreign Office retracts statements to MPs on Saudi campaign in Yemen.” *The Guardian*, 21st July 2016 [online] Accessed: 25/05/18. Available: <https://www.theguardian.com/politics/2016/jul/21/foreign-office-retracts-statements-to-mps-on-saudi-campaign-in-yemen>

this situation, allowing it to avoid full scrutiny of its own responsibilities. The impact of this assessment as a judgement on the effectiveness of the ATT is also crucial, showing that it has provided no adequate solution to the government's contradictions in insisting that both it and the Saudis hold primary responsibility in this respect. Consequently it is clear that this much celebrated development has failed dramatically in allowing states to pursue interests which conflict with those enshrined in the global agreement.

It has been vital to establish the government's approach as a calculated strategy of obfuscation in order to understand exactly how the conflict in Yemen has taken on such significance. However, this still does not provide an understanding of *why* the Yemen has prompted this break from the historical trend. The conclusions so far have hinted strongly at the presence of other more compelling interests in the UK-Saudi relationship and therefore, its *financial* and *security* interests will now be explored.

Chapter 4.

A “Special Relationship”: The Competing Financial and Security Interests

Having looked in detail at the criticisms surrounding the British government’s continued arms exports to Saudi Arabia for use in Yemen, it has been shown that its position is viewed as highly contentious across a spectrum of both domestic and international actors. The unprecedented nature of this approach has been displayed in the government’s ongoing willingness to sustain the most pressing and widespread criticisms of its arms export control regime since consecutive governments has committed to an “ethical” foreign policy since 1997. These criticisms have engaged some of the most highly controversial elements of the UK’s commitments to humanitarianism, human rights and the principles of international law. In the process, the government has directly challenged traditional allies, undermined established intergovernmental processes and risked alienating an NGO community which forms such an important backbone of the political process. Through the government’s inconsistent approach with both current and previous precedents, the Yemen conflict has been shown to be a moment of historical significance in its arms export regime and approach to IHL.

It has been argued that this discrepancy is the result of a deliberate government strategy to evade and manipulate IHL evidence so as to allow Saudi weapons sales to continue. In adopting such an approach and in prioritising its bilateral relationship with a country which by the UK’s own standards constitutes a human rights “priority country of concern,”²⁴⁵ the case example of Yemen has raised inescapable questions as to precisely why the government has been so prepared to take this path.

Consequently it is crucial to analyse the competing interests in the UK-Saudi relationship that have directly impacted on the government’s deliberations. This chapter, therefore, will consider the history of the strong *financial* and *security* interests in the UK-Saudi relationship. It will be shown that on a number of occasions these interests have been so compelling that the British government has been willing to risk its own international reputation and undermine established international norms. Crucially, since its creation, the Saudi state has shown its capacity to

²⁴⁵ Foreign & Commonwealth Office. “Human Rights & Democracy.” *Foreign & Commonwealth Office Report*. Cm. 9487. (London: Foreign & Commonwealth Office, Jul. 2017), p.43.

exercise its considerable leverage in this respect. Consequently it will be argued that the UK-Saudi relationship rightfully constitutes a “special relationship.”²⁴⁶

Before embarking on this analysis, it is important to recognise the UK’s central role in the creation of modern day Saudi Arabia. Following the Ottoman Empire’s alliance with Germany in World War I, Britain “supported Arab resistance to Ottoman occupation”²⁴⁷ in the East and Western coasts of the Arabian Peninsula, via direct support for Ibn Saud, the head of the House of Saud who then dominated the central region of the Peninsula. With the signing of the Anglo-Saudi Treaty in 1915, followed by its formal recognition of Saudi Arabia in 1927, British support was crucial in abetting the House of Saud’s growing regional influence.²⁴⁸ This was granted in exchange for Saud respecting British protectorates in the Persian Gulf, which included the UAE, parts of Persia, Bahrain, Kuwait, Oman and Qatar. Ibn Saud consolidated this position in 1932 by declaring Saudi Arabia as an absolute monarchy, uniting the Peninsula as “the property of one dynasty.”²⁴⁹ British influence was therefore absolutely vital in aiding Saudi Arabia’s initial establishment, marking a watershed in British-Saudi relations, with the dynamics of its financial and security interests developing from this point onwards.

4.1 Financial Concerns: The “Prosperity Agenda”

Although it “owed its early existence to the suffrage of the British government,” Saudi Arabia “did not want to become another protectorate”²⁵⁰ and sought economic independence by exploiting its vast oil reserves. With the Middle East “dominated for decades by the British,”²⁵¹ including through oil concessions with countries such as Iraq, Kuwait, and Bahrain, Ibn Saud instead sought close ties with the United States in 1932.²⁵² This marked the start of the US-

²⁴⁶ Norton-Taylor, R. “UK-Saudi Arabia: the new special relationship.” *The Guardian*, 7th Oct. 2015 [online] Accessed: 01/04/2018. Available: <https://www.theguardian.com/news/defence-and-security-blog/2015/oct/07/uk-saudi-arabia-the-new-special-relationship>

²⁴⁷ Bowen. *The History of Saudi Arabia*, p.118

²⁴⁸ Foreign Affairs Committee. “The UK’s relations with Saudi Arabia and Bahrain: Fifth Report of Session 2013-14.” *Foreign Affairs Committee Fifth Report of Session 2013-14*. vol. 1, HC. 88. (London: House of Commons, 22nd Nov. 2013), p.28.

²⁴⁹ Bowen. *The History of Saudi Arabia*, p.118

²⁵⁰ *Ibid*, p.92.

²⁵¹ *Ibid*, p.104.

²⁵² *Ibid*, p.104.

Saudi petroleum relationship which “In future decades...would be essential for the security of the Kingdom of Saudi Arabia and the United States.”²⁵³

Following World War II, the UK was “weakened and indebted by the conflict” and forced to “reduce its global commitments dramatically,”²⁵⁴ resulting in the loss of a substantial part of its Empire, including countries in the Middle East. To compensate for this, Britain sought close economic ties with Middle Eastern states in order to continue to capitalise on the region financially, with the Foreign Office stating in 1945 that “what we are aiming at in the Middle East is the creation of a number of respectable independent states which will rely on the Western powers for advice and help in coping with their very difficult and intricate technical problems.”²⁵⁵ With Saudi Arabia boasting vast and newly discovered oil reserves, the economic opportunities for Britain in this respect were clear. However, this period continued to be characterised by the strong US-Saudi relationship.

In 1958, King Saud was forced to cede power to Crown Prince Faisal, who subsequently embarked upon extensive reforms, including massive increases in military expenditure.²⁵⁶ Whilst it was during this period that the UK-Saudi arms relationship first blossomed, it was not without fluctuation, with the UK facing two Saudi oil embargoes following Britain’s controversial involvement in the Suez Crisis in 1956 and its support for Israel in the Yom Kippur War of 1973. In fact, diplomatic relations were cut off completely from 1953-1965 after a boundary dispute concerning Bahrain.²⁵⁷ Importantly, this early period from the creation of the Saudi state showed that despite British desires for close economic ties, Saudi Arabia was prepared to flex its muscles economically, as a means of leveraging its wider political interests.

Nevertheless, during the 1980s the relationship developed substantially, with the UK becoming a primary arms provider to Saudi Arabia. The most significant development in this respect was the highly controversial Al-Yamamah deal in 1985, then the UK’s largest ever arms deal. The contract was agreed between the UK and Saudi governments, with UK defence manufacturer BAE as supplier.²⁵⁸ The deal’s controversy first arose during the final stages of its completion,

²⁵³ Bowen. *The History of Saudi Arabia*, p.93.

²⁵⁴ *Ibid*, p.105.

²⁵⁵ Louis, W. R. *The British Empire in the Middle East, 1945-1951: Arab Nationalism, the United States, and Postwar Imperialism*. (Oxford: Clarendon Press, 1984), p.132.

²⁵⁶ Bowen. *The History of Saudi Arabia*, p.109.

²⁵⁷ Foreign Affairs Committee. “The UK’s relations with Saudi Arabia and Bahrain,” p.28.

²⁵⁸ Williams, S. “The BAE/Saudi Al-Yamamah Contracts: Implications in Law and Public Procurement: Public International Law,” *International & Comparative Law Quarterly*, Vol. 57, Iss. 1, (Jan. 2008): p.201.

with the Guardian newspaper headlining “Bribes of £600m in jets deal”²⁵⁹ through massive commission payments made to BAE agents. However, the British government continued unabashed, with Whitehall advising, “We suggest MoD should simply refuse all comment.”²⁶⁰ In the following years, the Conservative government continued to insist that the deal was “on a government-to-government basis in which no commissions were paid, and no agents or any middlemen were involved.”²⁶¹

Historian Nicholas Gilby recognises the importance of Al-Yamamah within the wider geopolitical context, writing that “the Saudis had lost patience with the Americans, because the pro-Israeli lobby in Congress was now blocking arms sales to Saudi Arabia.”²⁶² In light of the initial strength of the US-Saudi relationship, this is vital in explaining why the UK-Saudi arms relationship developed so significantly at this juncture. Delivered as an ‘oil-for-arms deal’, the opportunity for the British to access such substantial oil reserves, restricted in recent history since the Saudi State’s creation, was of great significance. Importantly, Gilby also notes the lack of international accountability, arguing that “With the failure of international action against corruption in the UN, and the Thatcher government anxious there should be no impediments to arms export to the Middle East, dubious practices would be firmly institutionalised in British arms deals with Saudi Arabia in the 1980s and beyond.”²⁶³ The Al-Yamamah deal therefore represented a crucial opportunity for the British to both capitalise on strained US-Saudi relations and a lack of checks and balances internationally. The Saudi government’s willingness to seek other weapons markets if obstacles arose with even its most traditional allies was unquestionably noted by the British government which was evidently fully prepared to exploit this.

The government’s awareness of the Saudi’s leverage in seeking other arms markets was also apparent in later bilateral agreements. When completing the Al-Yamamah II deal in 1989, Defence Minister Michael Heseltine stated that “it is of considerable significance that the Saudis should have a continuing relationship with this country. They want the kit and they are

²⁵⁹ The Guardian. “Bribes of £600m in jets deal.” *The Guardian*, 21st Oct. 1985, p.5.

²⁶⁰ Ricketts, P.F. “Saudi Arabia: Tornado/Hawk.” *Foreign and Commonwealth Office Confidential Memorandum: Written by Peter F. Ricketts, FCO Private Secretary*. London: Foreign & Commonwealth Office, 10th Oct. 1985. Accessed via The Guardian [online] on 25/06/18. Available: <http://image.guardian.co.uk/sys-files/Guardian/documents/2007/06/01/ch07doc05.pdf>

²⁶¹ Freeman, R. “Defence Estimates.” *House of Commons Debate*, Vol. 248, (London: House of Commons, 18th Oct. 1994), c.235.

²⁶² Gilby, N. *Deception in High Places: A History of Bribery in Britain’s Arms Trade*. (London: Pluto Press, 2014), p.134.

²⁶³ *Ibid*, p.131.

going to get it from somewhere. So why shouldn't we sell it?"²⁶⁴ This concession to the strength of Saudi leverage is vital in assessing why the British government has continually failed to take a stronger stance against Saudi violations of humanitarian norms. Al-Yamamah II also displayed the economic relationship's increasingly two-way nature, with British companies committing to use 'best endeavours' to generate £1bn of investment in Saudi Arabia,²⁶⁵ revealing the additional economic and commercial potential of such deals. These wider economic implications were also displayed in 1993, when Prime Minister John Major agreed to sell 48 Tornado aircrafts to Saudi Arabia. The agreement was reported as "a tremendous lift for British Aerospace, which has been forced to lay off thousands of workers because of the worldwide cut in defence spending."²⁶⁶ The deal, worth £3bn, demonstrates the importance of Saudi arms sales to the wider British economy, vitally compensating for other economic factors.

Controversy resurfaced in 2006 with the establishment of the Serious Fraud Office inquiry into the original Al-Yamamah deal, only for the investigation to be halted following Tony Blair's direct intervention. In doing this, the government's Attorney General Lord Goldsmith stated brazenly that "the wider public interest...outweighed the need to maintain the rule of law."²⁶⁷ This startling admission clearly demonstrates the government's willingness to "balance"²⁶⁸ competing interests *against* the rule of law in its relationship with Saudi Arabia and sets an important precedent in relation to Yemen. Despite Goldsmith's insistence to Parliament that the decision was taken on security grounds, with "no weight...given to commercial interests or to the national economic interest,"²⁶⁹ in reality, such justification would be completely unfeasible in both a realpolitik and legal sense, breaching Criterion 5 of the government's export criteria.²⁷⁰ Reports at the time insisted that "BAE and the Saudi embassy had frantically lobbied" that Britain would "lose out on a third phase of the Al-Yamamah deal, in which the

²⁶⁴ Heseltine, M. Cited In: Hirst, C. "The Arabian Connection: The UK Arms Trade to Saudi Arabia." *Campaign Against Arms Trade*, 2018 [online] Accessed: 08/06/18. Available:

<https://www.caat.org.uk/resources/countries/saudi-arabia/arabian-connection#section1>

²⁶⁵ Al-Ghrai, A. M. & Hooper, N. "Saudi Arabia and Offsets," in: *The Economics of Offsets: Defence Procurement and Countertrade*, ed. Martin, D. S. (Amsterdam: Overseas Publishers Association, 1996), p.225.

²⁶⁶ The Independent. "Saudis buy British warplanes worth pounds 3bn." *The Independent*, 29th Jan. 1993 [online] Accessed: 02/06/18. Available: <https://www.independent.co.uk/news/saudis-buy-british-warplanes-worth-pounds-3bn-1481361.html>

²⁶⁷ Goldsmith, Lord. Cited In: Mulholland, H. & Walker, P. "BAE inquiry decision faces legal challenge." *The Guardian*, 15th Dec. 2006 [online] Accessed: 26/05/18. Available: <https://www.theguardian.com/politics/2006/dec/15/immigrationpolicy.armstrade>

²⁶⁸ Goldsmith, Lord. "BAE Systems: Al Yamamah Contract." *House of Commons Debate*, Vol. 6998. (London: House of Commons, 14th Dec. 2006), c. 1715.

²⁶⁹ *Ibid*, c. 1712.

²⁷⁰ Arms Export Control Committee. "Oral evidence," (23rd Mar. 2016), p.11.

Saudis would buy 72 Typhoon aircraft in a deal worth £6bn²⁷¹ and, significantly, the Guardian reported Saudi threats to turn to the French for the weapons instead, issuing “a 10-day ultimatum” to halt the inquiry.²⁷² Following these reports, Lord Goldsmith was directly challenged in Parliament for countenancing Saudi “blackmail,”²⁷³ which, in light of the above history, seems credible. With the UK itself having been initially shunned economically by the Saudi State and then capitalising dramatically on other countries’ hesitancy in exporting arms to Saudi Arabia, it is obvious that the British government would view such Saudi threats as completely credible, impacting directly on Blair’s considerations.

The Al-Yamamah deal is therefore fundamental in demonstrating the Saudi’s economic leverage in forcing the government to abandon its rule of law commitments. Crucially, despite halting the SFO’s investigation into the Saudi deal, the government allowed the continuation of SFO investigations into BAE activities in Romania, Chile, Czech Republic, South Africa and Tanzania.²⁷⁴ Little else could so clearly demonstrate Saudi Arabia’s “special relationship” status.

With the Cameron government increasingly viewing the Gulf region as a priority market,²⁷⁵ the special status of Saudi Arabia evolved significantly, representing by far the most profitable export market for the UK over the last ten years. During this time the UK has made over £10.3bn in arms exports to the Saudis, more than double the figure exported to the second placed United States.²⁷⁶ Despite its controversy, in the first two and a half years of the Yemen conflict, the UK provided more than £4.6bn worth of export licenses to Saudi Arabia.²⁷⁸ It should not be viewed as insignificant that this coincided with the government’s economic policy of austerity from 2010-16 in response to the global financial crash of 2008. With

²⁷¹ Leigh, D. & Evans, R. “‘National Interest’ halts arms corruption inquiry.” *The Guardian*, 15th Dec. 2006 [online] Accessed: 25/05/18. Available: <https://www.theguardian.com/uk/2006/dec/15/saudi-arabia-armstrade>

²⁷² Mulholland. & Walker. “BAE inquiry decision faces legal challenge.”

²⁷³ Goodhart, Lord. “BAE Systems: Al Yamamah Contract.” *House of Commons Debate*, Vol. 6998. (London: House of Commons, 14th Dec. 2006), c. 1715.

²⁷⁴ Mulholland. & Walker. “BAE inquiry decision faces legal challenge.”

²⁷⁵ Campaign Against Arms Trade. “DSO Priority Markets.”

²⁷⁶ Exact figure: £4,596,961,519

²⁷⁷ Campaign Against Arms Trade. “UK Arms Export Licenses.” *Campaign Against Arms Trade*, 2018 [online] Accessed: 25/05/18. Available: <https://www.caat.org.uk/resources/export-licences/region?use=military>

²⁷⁸ Date sample from March 2015 to September 2017.

²⁷⁹ Campaign Against Arms Trade. “UK Arms Export Licenses: Saudi Arabia.” *Campaign Against Arms Trade*, 2018 [online] Accessed: 25/05/18. Available: https://www.caat.org.uk/resources/export-licences/date?region=Saudi+Arabia&date_from=2015-03-01&use=military

Cameron building his “long-term economic plan”²⁸⁰ fundamentally around job growth, whilst inflicting drastic austerity cuts on British public finances,²⁸¹ the importance of the UK’s arms exports to the wider economic context was vital. In 2012, Cameron insisted that “I make no apology for going out there and trying to help win” new contracts, given the “vital” role it played with “300,000 [defence] jobs depending on it.”²⁸² As with Major, this suggests that the wider economic environment had impacted significantly on the UK’s willingness to agree controversial arms deals, irrespective of its humanitarian concerns. Such an assessment was recognised in 2015 by the UK’s most senior Foreign Office official, Sir Simon McDonald, who starkly informed Select Committee MPs that “Human rights is not one of our top priorities” and instead, the government’s “prosperity agenda is further up the list.”²⁸³

Recently, the UK-Saudi financial ties have also extended far beyond weapon sales, with Saudi Foreign Minister Adel al-Jubeir describing the relationship as reaching a “higher level”²⁸⁴ in 2018. This was in reference to a Joint Communique between the two countries announcing a series of new deals to generate over \$100bn over the next decade. This included Britain’s position as a strategic partner in Saudi Arabia’s ‘Vision 2030’ modernisation programme “for economic diversity and social reform.”²⁸⁵ This “long term partnership”²⁸⁶ included new positions for high-profile British figures Sir Anthony Seldon and Sir Mike Richards as ‘Special Representatives’, stressing its deeply-entrenched nature. The prioritisation of financial interests was also made abundantly clear in the assertion that the UK “welcomed” Saudi Arabia’s “continuing commitment to ensuring that the Coalition’s military campaign [in Yemen] is conducted in accordance with international humanitarian law.”²⁸⁷ Given that the most recent

²⁸⁰ Cameron, D. “The values that underpin our long-term economic plan.” *HM Government: Prime Minister’s Office*, 4th Mar. 2014 [online] Accessed: 08/06/18. Available: <https://www.gov.uk/government/speeches/the-values-that-underpin-our-long-term-economic-plan>

²⁸¹ Watt, N. “David Cameron makes leaner state a permanent goal.” *The Guardian*, 12th Nov. 2013 [online] Accessed: 08/06/18. Available: <https://www.theguardian.com/politics/2013/nov/11/david-cameron-policy-shift-leaner-efficient-state>

²⁸² Cameron, D. Cited In: BBC News. “David Cameron: We must push in ‘global trade race.’” *BBC News*, 12th Nov. 2012 [online] Accessed: 08/06/18. Accessed: <https://www.bbc.com/news/uk-politics-20304800>

²⁸³ McDonald, S. Cited In: The Guardian. “The Guardian view on human rights and foreign policy: do the right thing, not the easy one.” *The Guardian*, 5th Apr. 2016 [online] Accessed: 26/05/18. Available: <https://www.theguardian.com/commentisfree/2016/apr/05/guardian-view-on-human-rights-and-foreign-policy-philip-hammond-foreign-office>

²⁸⁴ Al-Jubeir, A. Cited In: Raval, A. & Kerr, S. “Saudi crown prince visits UK with \$100bn deals said to be on table.” *Financial Times*, 5th Mar. 2018 [online] Accessed: 25/05/18. Available: <https://www.ft.com/content/3149b714-2073-11e8-a895-1b1f72c2c11>

²⁸⁵ Foreign & Commonwealth Office. “United Kingdom-Saudi Arabia Joint Communique.” *Foreign & Commonwealth Office*, 10th Mar. 2018, London [online] Accessed: 26/05/18. Available: <https://www.gov.uk/government/news/united-kingdom-saudi-arabia-joint-communique>

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

figures on arms exports to Saudi Arabia saw a dramatic spike over the first half of 2017 from £280m²⁸⁸ to £836m in sales,²⁸⁹²⁹⁰ such a statement is unsurprising. However, it was striking that the Communique did not mention the term “human rights” once, given the scale of evidence of IHL violations and the failure of the JIAT. This dramatically undermines the government’s insistence that the relationship provides it the opportunity to raise human rights issues, suggesting instead that this is simply another strategic excuse for sustaining the relationship.²⁹¹ The backdrop of the economic uncertainty caused by the Brexit result in 2016 also provides crucial context for this tactic. With the UK set to leave the world’s largest single market and customs union, the financial importance of such bilateral relationships has grown exponentially in importance.

With this in mind, the “gut feeling” opinion of HRW’s David Mepham before the 2016 Select Committee that “the British Government do not want to upset the Saudis”²⁹² has gathered real credibility in light of the history of the UK-Saudi financial interests. The 2018 Joint Communique appears only to have further entrenched these interests, rendering public criticism of Saudi IHL violations all the more precarious. This historical perspective has evidenced the extent of economic leverage that the Saudis can exercise, with the British government consequently displaying a striking realpolitik sensitivity concerning criticism of the Saudis.

4.2 Security Concerns: “Keep us Safe”

In assessing the security relationship between the two countries, analysis of both the regional and domestic security interests of the UK-Saudi relationship will be explored.

4.2.1 Regional Security

As previously discussed, prior to World War II the British government retained a strong degree of colonial influence in the Arabian Peninsula, with Ibn Saud committing to respect British

²⁸⁸ Figures from January to March 2017

²⁸⁹ Figures from April to June 2017

²⁹⁰ Elgot, J. “UK sales of arms and military kit to Saudi Arabia hit £1.1bn in 2017.” *The Guardian*, 24th Oct. 2017 [online] Accessed: 25/05/18. Available: <https://www.theguardian.com/world/2017/oct/24/uk-sales-of-arms-and-military-equipment-to-saudi-arabia-2017>

²⁹¹ BBC News. “Theresa May defends UK ties with Saudi Arabia.” *BBC News*, 4th Apr. 2017 [online] Accessed: 25/05/18. Available: <http://www.bbc.co.uk/news/uk-politics-39485083>

²⁹² Mepham, D. Cited In: Committees on Arms Export Control. “Oral evidence,” p.4.

interests in the region in exchange for its support for the creation of the Saudi Kingdom. Therefore, despite its rejection of protectorate status, from its beginning Saudi Arabia constituted a vital UK ally in matters of regional political stability in the Gulf during this period. Then, from 1937-63, the British Colony of Aden located in the south of the country that is now contemporary Yemen, assumed important strategic influence for the British. Given the presence of a key British military base and the Port of Aden's close proximity to the Suez Canal, the need to maintain a strong relationship with its neighbouring country of Saudi Arabia was vital in sustaining British jurisdiction.²⁹³ Despite the "American 'Stranglehold'" over Saudi Arabia, "political influence" was maintained with the Saudis via an "annual subsidy to Ibn Saud."²⁹⁴ The importance of this was identified by British Prime Minister Harold Macmillan in 1961, outlining that "the real problem is how to use the influence and power of the Sultans to help us keep the colony [Aden] and its essential defence facilities... give as much power as we can to the Sultans who are on our side."²⁹⁵ Although Aden's position as a British Colony officially ended in 1963, Britain sought to maintain a strong defence presence by sustaining a British garrison there. However the growing threat of Arab Nationalism in the region during this period directly threatened British defence interests, demonstrated during the Suez Crisis of 1956, when the British government directly challenged the main architect of Arab Nationalism, Egypt's Leader Gamel Abdel Nasser for control of the canal.²⁹⁶

The relevance of this to British-Saudi interests can be seen in the UK's involvement in the Yemeni Civil War from 1962-1970, following a *coup d'état* by insurgent Republican forces which, at its height, had the support of 60,000 of Nasser's Egyptian troops.²⁹⁷ The "overpowering anti-Nasser feeling within the Conservative Party"²⁹⁸ was best articulated by Macmillan in 1963 who wrote, "For Nasser put Hitler and it all rings familiar."²⁹⁹ With the government extremely wary of direct involvement following the saga of Suez, "London

²⁹³ Pieragostini, K. *Britain, Aden and South Arabia: Abandoning Empire*. (New York: Palgrave Macmillan, 1991), p.3.

²⁹⁴ Louis. *The British Empire in the Middle East*, p.189.

²⁹⁵ Macmillan, H. Cited In: Curtis, M. *The Great Deception: Anglo-American Power and World Order*. (London: Sterling, 1998), p.127.

²⁹⁶ Brown, D. "1956: Suez and the end of empire." *The Guardian*, 12th Mar. 2001 [online] Accessed: 14/06/18. Available: <https://www.theguardian.com/politics/2001/mar/14/past.education1>

²⁹⁷ Hill, G. *Yemen Endures: Civil War, Saudi Adventurism and the Future of Arabia*. (New York: Oxford University Press), p.33.

²⁹⁸ Mawby, D. S. *British Policy in Aden and the Protectorates 1955-67: Last outpost of a Middle East empire*. (London & New York: Routledge, 2005), p.109.

²⁹⁹ Macmillan, H. Cited In: McNamara, R. *Britain, Nasser and the Balance of Power in the Middle East, 1952-1977*. (London: Frank Cass, 2004), p.180.

sanctioned a policy of covert operations”³⁰⁰ to support Royalist efforts to reclaim power. Despite continuing to insist to Parliament that “Our policy towards the Yemen is one of non-intervention...It is not therefore our policy to supply arms,”³⁰¹ the government informed the US in 1964 of its “local counter-subversion operations in Yemen designed to subvert the Federation, including the sending in of arms and explosives.”³⁰² Such interactions demonstrate the government’s capacity to mislead Parliament on its activities in the region, setting an important precedent when considering future explanation of British security interests in Yemen. This covert support was again reinforced in a Foreign Office memorandum from 1967, stating that “we have raised no objection to [British pilots] being employed in operations, though we made it clear to the Saudis that we could not publicly acquiesce in any such arrangements.”³⁰³ The extent of British involvement was also clear in the provision of “large and unprecedented military contracts from the United States and Britain” to Saudi Arabia from 1966-1967 via a \$400m Anglo-American air defence programme.³⁰⁴

Despite Republican forces eventually prevailing, the encounter clearly demonstrated the British government’s willingness to participate in conflicts in the Gulf so as to achieve its own security objectives regarding stability in the region. As expressed by Prime Minister Macmillan in 1961, the stability of monarchies such as Saudi Arabia who had accepted British influence in the region from its creation, rendered them far more favourable partners in exploiting British interests in the Gulf, particularly against the threat of the anti-British Nasserism. The risk of a regional “domino effect”³⁰⁵ was perceived as a very present danger, mostly aptly described by Chief of Defence Staff Lord Mountbatten in 1963, “if we fail to contain Nasser there Saudi Arabia may break up; we shall certainly be pushed out of Aden sooner rather than later; and Nasser will have little difficulty in eroding our position in the Persian Gulf.”³⁰⁶ British involvement in these wider dynamics of regional security has been described as a “Proxy war

³⁰⁰ Jones, C. “‘Among Ministers, Mavericks and Mandarins’: Britain, Covert Action and the Yemen Civil War, 1962-64,” *Middle Eastern Studies*, vol. 40, no. 1 (Jan. 2004): p.105.

³⁰¹ *Ibid.*

³⁰² *Ibid.*, p.106.

³⁰³ Cathcart, B. “Revealed: the invisible millions who have been killed by Britain’s foreign policies.” *The Independent*, 3rd Nov. 2004 [online] Accessed: 08/06/18. Available: <https://www.independent.co.uk/news/uk/politics/revealed-the-invisible-millions-who-have-been-killed-by-britains-foreign-policies-531798.html>

³⁰⁴ Orkaby, D. A. *Beyond the Arab Cold War: The International History of the Yemen Civil War, 1962-68*. (Oxford: Oxford University Press, 2017), p.112.

³⁰⁵ Jones. “‘Among Ministers, Mavericks and Mandarins,’” p.107.

³⁰⁶ Mountbatten, Lord. Cited In: P.108. Mawby, S. (2005) *British Policy in Aden and the Protectorates 1955-67: Last outpost of a Middle East empire*. London and New York: Routledge.

on Nasser,³⁰⁷ which finds a number of striking parallels with the current conflict in Yemen explored below.

In the following decades, the regional security importance of Saudi Arabia continued through its position as an “important ally”³⁰⁸ to the UK in the first Iraq Gulf War in 1990-91. As part of Operation Granby, Britain stationed its Tornado fighter aircrafts at the Saudi airbase in Dhahran, allowing direct access to the combat fields of Iraq and Kuwait.³⁰⁹ Again, in the 2003 Iraq War, the British government relied heavily on the Saudis in “providing support and bases for allies.”³¹⁰ In both Gulf Wars, therefore, Saudi Arabia and Britain combined in a military capacity to pursue joint defence objectives, highlighting its mutual defence interests in the region.

As with the British government’s preoccupation with the threat of Nasserism decades earlier, the events of September 11th marked a crucial turning point whereby UK security interests grew substantially in the region, ushering in the era of the global “War on Terror.”³¹¹ The threat that “Tyrannical regimes with [Weapons of Mass Destruction] and extreme terrorist groups” could combine in opposition against the West, was identified by Tony Blair as a “real and present danger”, justifying direct intervention in Iraq and Afghanistan.³¹² Consequently, the regional significance of Saudi Arabia as an ally in this ideological fight, as well as its tangible military support against regional terrorist threats, provided fresh impetus in cementing the Saudi relationship as absolutely fundamental to British national security priorities. In recent years, the growth of Daesh in the region has accentuated this, as the regional terrorist threat has increased as an “unprecedented threat to international peace and security”³¹³ in the UK’s foreign policy priorities. Following its declaration of a global Islamic Caliphate in 2015, Daesh proved to be the first terrorist group capable of conquering vast swathes of land in the Middle East, including territorial conquests in Iraq and Syria.³¹⁴ In 2014, the British government joined

³⁰⁷ Mawby. *British Policy in Aden*, p.107.

³⁰⁸ Foreign Affairs Committee. “The UK’s relations with Saudi Arabia and Bahrain,” p.28.

³⁰⁹ Defence Committee. “Defence: Thirteenth Report.” *Defence Select Committee Report: Session 1999-2000*, HC 453, (London: House of Commons, 26th Jul. 2000), c. 65.

³¹⁰ Foreign Affairs Committee. “The UK’s relations with Saudi Arabia and Bahrain,” p.29.

³¹¹ Bush, G. W. “Text of George Bush’s speech: Address to a Joint Session of Congress and the American People.” *The Guardian*, 21st Sept. 2001 [online] Accessed: 01/06/18. Available: <https://www.theguardian.com/world/2001/sep/21/september11.usa13>

³¹² Blair, T. “Blair’s statement in full.” *The Telegraph*, 18th Mar. 2003 [online] Accessed: 04/06/18. Available: <https://www.telegraph.co.uk/news/1424951/Blairs-statement-in-full.html>

³¹³ Cameron, D. “ISIL in Syria.” *House of Commons Debate*, Vol. 603, (London: House of Commons, 2nd Dec. 2015), c. 323.

³¹⁴ Strange, H. “Islamic State leader Abu Bakr al-Baghdadi addresses Muslims in Mosul.” *The Telegraph*, 5th Jul, 2014 [online] Accessed: 04/06/18. Available:

an international coalition, including Saudi Arabia, conducting airstrikes against Daesh. The regional importance of Saudi Arabia in addressing this threat was highlighted by Defence Minister, Philip Dunne, in 2015 stating that Saudi Arabia “specifically, is an important member of the coalition against Daesh in which we have been participating over Iraq and, more recently, over Syria. It is very important to us that the stability of the region is maintained by encouraging military stability there.”³¹⁵ The growing regional terrorist threat has therefore proven crucial in further cementing the UK-Saudi security relationship and has increased the British government’s prioritisation of Saudi Arabia as its “key Gulf partner.”³¹⁶

Importantly, these increasingly mutual regional security interests have had direct implications for the contemporary Yemen conflict which, as in the 1960s, sees a rebel insurgency prompt serious strategic concern for both Britain and Saudi Arabia. However, rather than facing Nasser-supported rebels, today’s conflict instead engages “Iranian-backed Houthi rebels who are trying to overthrow the legitimate government.”³¹⁷ It is within the wider context of this accusation of Iranian influence that allegations of British participation in another Middle East ‘proxy war’ resurface. The geopolitical importance of Saudi Arabia as “bitter rivals”³¹⁸ with Iran sees two of the region’s foremost powers also represent the two predominant strains of Islamic belief: Sunni and Shia. The capacity for the two countries to conduct proxy wars across the Middle East has been an ever-present feature of the regional political environment, with Al-Jazeera labelling the conflict in Yemen as a “Great Game”³¹⁹ between Saudi Arabia and Iran. With Saudi Arabia joining the conflict in response to the direct request of its fellow Sunni government in Yemen, the war sees it fighting against the predominantly Shia-led Houthi rebels who are widely reported to enjoy support from the Shia government in Tehran.³²⁰ With the British government often criticising Iran as making the Middle East “a more unstable and

<https://www.telegraph.co.uk/news/worldnews/middleeast/iraq/10948480/Islamic-State-leader-Abu-Bakr-al-Baghdadi-addresses-Muslims-in-Mosul.html>

³¹⁵ Dunne, P. Cited in: Business, Innovation and Skills and International Development Committees. “The use of UK-manufactured arms in Yemen,” p.22.

³¹⁶ Fallon, M. “New agreement strengthens UK-Saudi Arabia Defence relationship.” *Ministry of Defence*, 19th Sept. 2017 [online] Accessed: 09/06/18. Available: <https://www.gov.uk/government/news/new-agreement-strengthens-uk-saudi-arabia-defence-relationship>

³¹⁷ Coughlin, C. “UK must keep supporting Yemen campaign to prevent terror in West, says Saudi foreign minister.” *The Telegraph*, 6th Sept. 2016 [online] Accessed: 09/06/18. Available: <https://www.telegraph.co.uk/news/2016/09/06/uk-must-keep-supporting-yemen-campaign-to-prevent-terror-in-west/>

³¹⁸ Marcus, J. “Why Saudi Arabia and Iran are bitter rivals.” *BBC News*, 18th Nov. 2017 [online] Accessed: 09/06/18. Available: <https://www.bbc.com/news/world-middle-east-42008809>

³¹⁹ Reardon, M. “Saudi Arabia, Iran and the ‘Great Game’ in Yemen.” *Al-Jazeera*, 26th Mar. 2015 [online] Accessed: 18/06/18. Available: <https://www.aljazeera.com/indepth/opinion/2014/09/saudi-arabia-iran-great-game-ye-201492984846324440.html>

³²⁰ *Ibid.*

more dangerous place,”³²¹ the British government’s public siding with Saudi Arabia in this regional proxy war has been clear. As with Nasser in the 1960s, current British involvement in Yemen must be understood within the much broader and historical politics of the region, so as to understand the larger security interests that Britain undoubtedly perceives to be at stake.

4.2.2 Domestic Security

Whereas analysis of British regional security interests has been considered from Saudi Arabia’s original formation, exploration of the domestic security interests will begin with the “War on Terror” from 2001, due to the unprecedented link that this era forged between the regional politics of the Middle East and British domestic concerns. With the September 11th attacks planned in part from Afghanistan, as well as a series of subsequent terrorist atrocities across Europe involving either training or coordination in the Middle East,³²² the need for regional intelligence grew substantially as a government priority.

Once again, the controversy surrounding Al-Yamamah I was vital in revealing British interests in this respect. When justifying Blair’s decision to halt the SFO investigation, Lord Goldsmith argued that its continuation would “cause serious damage to UK/Saudi security, intelligence and diplomatic co-operation...likely to have seriously negative consequences for the United Kingdom public interest in terms of both national security and our highest priority foreign policy objectives in the Middle East.”³²³ Specific details of this concern were exposed in 2008 during a High Court case into the Al Yamamah deal, which revealed that Prince Bandar, Head of the Saudi National Security Council, “threatened to make it easier for terrorists to attack London unless corruption investigations into their arms deals were halted.”³²⁴ Contextually, it is important to recognise that Blair’s intervention in 2006 was within just one year of “7/7”, the largest-ever terrorist attack on British soil that killed 52 people. It was reported that Prince Bandar flew directly to London, just days before Blair halted the investigation, to warn him

³²¹ Cameron, D. Cited In: Black, I. “David Cameron: UK arms sales to Gulf countries ‘legitimate’.” *The Guardian*, 6th Nov. 2012 [online] Accessed: 25/05/18. Available: <https://www.theguardian.com/politics/2012/nov/05/david-cameron-arms-sales-gulf>

³²² Nash, E. “Madrid bombers ‘were inspired by Bin Laden address.’” *The Independent*, 7th Nov. 2006 [online] Accessed: 16/06/18. Available: <https://www.independent.co.uk/news/world/europe/madrid-bombers-were-inspired-by-bin-laden-address-423266.html>

³²³ Goldsmith. “BAE Systems,” c. 1712

³²⁴ Leigh, D. & Evans, R. “BAE: secret papers reveal threats from Saudi prince.” *The Guardian*, 15th Feb. 2008 [online] Accessed: 04/06/18. Available: <https://www.theguardian.com/world/2008/feb/15/bae.armstrade>

that the UK would face “another 7/7” and the loss of “British lives on British streets.”³²⁵ With the spectre of “7/7” clearly playing a key role in Blair’s decision in 2006, it is important also to view the government’s current approach to Saudi IHL violations in light of the three high-profile Daesh-inspired terrorist attacks that occurred in Britain during 2016. With hundreds of British recruits having travelled to the battlefields of Syria and Iraq to join Daesh, the threat of “returning fighters” has unprecedentedly increased the link between regional instability in the Middle East and domestic security in the UK.³²⁶ With this renewed sensitivity to the domestic terrorist threat, the importance of Saudi intelligence is again pivotal to British security interests and it is credible to assume that this leverage plays a crucial role in the government’s considerations towards Yemen.

The UK’s capacity to withstand controversy was again evidenced in 2015 following reports that the two countries had established a secret vote-trading agreement for election to the UN Human Rights Council.³²⁷ The agreement was made despite 158 executions taking place in Saudi Arabia in 2015,³²⁸ following a new Saudi counterterrorism law³²⁹ that Amnesty International reported “will entrench existing patterns of human rights violations and serve as a further tool to suppress peaceful political dissent.”³³⁰ In October 2015, Channel 4 News presenter Jon Snow pushed David Cameron on this “squalid” agreement with “one of the most human rights abusing regimes on earth.” Cameron countered that “we receive from them important intelligence and security information that keep us safe...the reason we have the relationship is our own national security.” He then cited a specific incident where “a bomb that would have potentially blown up over Britain was stopped because of [Saudi] intelligence.”³³¹ This supported the Foreign Affairs Select Committee’s conclusions in 2013 that “Counter-

³²⁵ Leigh & Evans. “BAE: secret papers”

³²⁶ Dearden, L. “More than 400 British Isis jihadis have already returned to UK, report warns.” *The Independent*, 24th Oct. 2017 [online] Accessed: 04/06/18. Available: <https://www.independent.co.uk/news/uk/home-news/isis-british-jihadis-return-uk-iraq-syria-report-islamic-state-fighters-europe-threat-debate-terror-a8017811.html>

³²⁷ Bowcott, O. “UK and Saudi Arabia ‘in secret deal’ over human rights council place.” *The Guardian*, 29th Sept. 2015 [online] Accessed: 25/05/18. Available: <https://www.theguardian.com/uk-news/2015/sep/29/uk-and-saudi-arabia-in-secret-deal-over-human-rights-council-place>

³²⁸ The Guardian. “Saudi Arabia: beheadings reach highest level in two decades.” *The Guardian*, 2nd Jan. 2016. [online] Accessed: 25/05/18. Available: <https://www.theguardian.com/world/2016/jan/02/saudi-arabia-beheadings-reach-highest-level-in-two-decades>

³²⁹ Law for the Crimes of Terrorism and it’s Financing (2014)

³³⁰ Amnesty International. “Saudi Arabia: New terrorism law is latest tool to crush peaceful expression.” *Amnesty International*, 3rd Feb. 2014. [online] Accessed: 25/05/18. Available: <https://www.amnesty.org/en/latest/news/2014/02/saudi-arabia-new-terrorism-law-one-more-tool-crush-peaceful-protest/>

³³¹ Channel 4 News. “David Cameron on Ali Mohammed al-Nimr and Saudi Arabia.” *Youtube: Channel 4 News*, 6th Oct. 2015. [online video] Accessed: 12/10/17. Available: <https://www.youtube.com/watch?v=khGa49rM6iM>

terrorism co-operation has proven to be of great and practical benefit to both sides and has been instrumental in protecting British lives and interests.”³³² Cameron’s comments that “Britain’s national security and our people’s national security comes first,”³³³ reinforces the understanding that the UK-Saudi relationship is based upon a delicate balancing act of mutual interests, requiring the UK to legitimise the Saudi regime by overlooking its human rights abuses in exchange for important security information. The real cynicism in this approach was demonstrated by Cameron’s concession that he had not personally raised concerns over the plight of a 17-year-old boy facing crucifixion by the Saudi State, despite Snow’s insistence that it would help the boy’s case.³³⁴ In light of this, it is very difficult not to view the government’s capacity to ignore evidence of IHL violations as demonstrating that security interests have been prioritised over humanitarian norms.

With current Prime Minister Theresa May having led the government’s security remit from 2010-16 as Home Secretary, any anticipation of this approach changing appears highly unlikely. For example, in 2014, May attempted to hide the details of a UK-Saudi ‘memorandum of understanding’ on “the UK’s security co-operation with Saudi Arabia,” as the Home Office judged it “would damage the UK’s bilateral relationship.”³³⁵ This echoes many of Lord Goldsmith’s sentiments a decade previously. With the 2018 Joint Communique citing “security” 16 times through “countering terrorism” and “cyber security,”³³⁶ and the Home Office announcing in June 2018 that “we expect the threat from Islamist terrorism to remain at its current, heightened level for at least the next two years,”³³⁷ it appears likely that the UK-Saudi security relationship will only increase in importance.

In looking historically at these financial and security interests, it is clear that these factors have played and continue to play the primary role in shaping the direction of the UK-Saudi relationship. With Britain capitalising economically in the 1980s on a weakening of the historic US-Saudi ties and its subsequent sensitivity to the threat of the Saudis seeking alternative

³³² Foreign Affairs Committee. “The UK’s relations with Saudi Arabia and Bahrain,” p.51.

³³³ Channel 4 News. “David Cameron on Ali Mohammed al-Nimr and Saudi Arabia.”

³³⁴ *Ibid.*

³³⁵ Wright, O. “UK Government attempting to keep details of secret security pact with Saudi Arabia hidden from public.” *The Independent*, 22nd Dec. 2015 [online] Accessed: 25/05/18. Available:

<https://www.independent.co.uk/news/uk/politics/uk-government-attempting-to-keep-details-of-secret-security-pact-with-saudi-arabia-hidden-from-a6783376.html>

³³⁶ Foreign & Commonwealth Office. “United Kingdom-Saudi Arabia Joint Communique.”

³³⁷ HM Government. “Contest: The United Kingdom’s Strategy for Countering Terrorism.” *HM Government Report Presented to Parliament*, Cm. 9608. (London: House of Commons, Jun. 2018), p.22.

weapons markets, it is evident that the Saudi's economic leverage has played a key part in the British government's considerations in weapons sales in relation to Yemen. The saga surrounding Al-Yamamah I was fundamental in setting a precedent in this respect, demonstrating that these interests could trump the government's commitments to the rule of law.

Britain's colonial rule in Aden and its subsequent military involvement in the country during the 1960s also provides a vital point of contemporary comparison concerning the UK's security interests, attesting to the historic strategic importance of Saudi Arabia to British aspirations for Middle Eastern stability. With the exponential growth of the terrorist threat in recent decades as a UK security priority, and Cameron's open concession of the government's willingness to temper humanitarian criticisms in exchange for Saudi intelligence, the importance of the UK-Saudi security interests in the government's arms export decisions appears dominant.

The conclusion, therefore, that these financial and security interests have been unremitting in dictating the UK-Saudi relationship throughout its history provides fundamental validation of the proposition in the earlier chapters that the British government has avoided reaching a "clear risk" IHL assessment as part of a purposeful political strategy. This chapter has shown that this has been embarked upon in conscious recognition of the Saudi capacity from its creation to exercise considerable leverage, confirmed through a persuasive trend of historical consistency.

Therefore, whilst Chapters 2 and 3 have demonstrated the current and historical precedence of the Yemen conflict failing to provoke a halting of weapons sales, when viewed in light of the history of the UK's relationship with Saudi Arabia the Yemen example has been shown to be entirely consistent with British interests in Saudi Arabia. With the UK facing an increasingly precarious economic future post-Brexit and the perceived national security threat of terrorism showing no signs of abating, it should be expected that the UK's capacity to ignore Saudi breaches of international law will continue.

The belief that the UK-Saudi relationship is unique in strength and rightly called a "special relationship" has been confirmed in this chapter.

Conclusion.

“Everything we do is in our British national interest.”

When evaluating the UK’s bilateral relationships it is clear that a select few countries are judged to rightfully merit the label “special relationship”. Whether it be the shared language and culture celebrated in the UK-US relationship or the overlapping citizenry continuing to hold the Republic of Ireland in the hearts of British society, typically, there are very easily identifiable factors which have contributed to this classification. This, however, cannot be said so easily for the ever-developing relationship between the UK and Saudi Arabia. With the apparent irreconcilability of its wide and contradictory social structures and values, best encapsulated by Saudi Arabia’s dynastic theocratic rule compared to Britain’s representative democracy, the UK-Saudi relationship has continued to perplex. However, this thesis has sought not just to explain the presence of historically deep and complex interests, but has also attempted to test the boundaries whereby the UK judge it in its wider national interests to curtail some of the relationship’s most contentious elements. This, of course, has been done by directly juxtaposing the enduring interests of the UK-Saudi relationship with those of the UK’s broader commitments to the international norms of arms control and IHL. The conclusions of this analysis will now be detailed in full.

In looking historically at the UK’s commitments to the “laws of war”, Chapter 1 provided clear evidence that a succession of British governments have proactively sought to credit such pledges on adherence to influential norms within the international community. When adopting the various Geneva Conventions and the ATT, the British government rationalised ratification on the basis of humanitarian dictates, whilst promoting their universal adoption and jurisdiction as a global priority. Non-state actors have also been afforded a vital role in this promulgation process, legitimising both the agreements themselves, and the government’s supposed humanitarian character in the process. This chapter was crucial in demonstrating that these commitments resulted from continual strategic assessments by consecutive governments in light of their wider foreign and domestic policy considerations. With this in mind, it was judged that the UK’s commitments to IHL were relatively easy decisions that reaped obvious rewards, including the opportunity to join the growing international consensus on human rights principles and mark substantial breaks domestically from previously unpopular governments.

This assessment was seen as consistent with Constructivist Theory's prescriptions regarding the strong normative influence of the international community, which impacts on the national interest through a state's conscious construction of its identity. However, this historical analysis also displayed the clear discrepancy between a state's *commitment* to and *compliance* with IHL. This is due to the very differing demands that these two factors place on a state, with the greater behavioural determinants of *compliance* engaging a number of new actors and competing interests, rendering it a far more complicated decision for a state. It was here that Constructivism was shown to be limited, failing to give adequate consideration to a state judging that its interests are best served outside of conformity to the international community. Consecutive British governments' rhetorical commitments to an "ethical" foreign policy since 1997 have accentuated this point further, with the gap between rhetoric and reality all the more marked. However, despite this discrepancy, what the historical analysis importantly demonstrated was the presence of a threshold which, when met, caused the British government to judge it in its national interests to halt weapons sales.

Since March 2015, this threshold has been thoroughly put to the test, following the advent of the Yemen conflict. The subsequent sustained criticism that has engulfed the British government over its failure to enforce its own "clear risk" IHL assessment by continuing weapons sales to Saudi Arabia has been unprecedented. Chapter 2 demonstrated that despite the primary role afforded by the government to the mechanisms of the UN when negotiating the ATT, it has subsequently completely disregarded the comprehensive body of evidence provided by a variety of UN bodies on IHL violations. The government has also been prepared to go into direct conflict with its traditional EU allies in blocking attempts at the UN to establish an international independent investigatory mechanism. Instead, the government has adopted a deliberate political strategy of exposing the perceived technical limitations of the UN's approach in a manner that has allowed it to justify ignoring its evidence. Consequently, the recent development of the ATT has had no tangible impact in preventing the British government avoiding its legal arms control obligations, despite its apparently "robust" characterisation. Specifically, it has fundamentally failed to fully address the issue of responsibility for the "clear risk" IHL assessment, allowing the British government to manipulate this fact for its own gain. The government's real hypocrisy was most strikingly demonstrated in its inconsistent consideration of IHL evidence in Syria, despite its obvious technical consistencies with evidence in Yemen. Therefore, the UK's approach to the Yemen conflict is unprecedented in relation to both current and historical comparative examples.

NGO efforts have proven to be no more successful, despite providing detailed evidence that addresses many of the government's criticisms of the UN process. Chapter 3 clearly demonstrated the confusion in the government championing NGO IHL assessments in other situations around the world, further undermining any aspirations that international law should be principled and universal in delivery. The NGOs' attempts to highlight the humanitarian impact of the government's export policy have also been completely unsuccessful, strengthening the argument of Constructivism's ineffectiveness as an explanatory theory. Instead, in the absence of any credible technical criticisms of the NGO's evidence, the government has sought to tactically exploit the lack of clarity in its arms regime, providing contradictory and politically convenient statements concerning responsibility for IHL assessments. The cynical nature of its actions in amending prior ministerial statements to avoid scrutiny in July 2016 fundamentally substantiated the argument that the government's obfuscation has been motivated by a deliberate strategy of evading full transparency.

Bearing this in mind, it is of note that in their oral evidence to the 2016 Arms Export Control Committee both Oxfam and Saferworld cited the government's continued refrain that the UK "was the fourth largest donor to the Yemen in terms of humanitarian aid"³³⁸ as a means of justifying their humanitarian concern.³³⁹ However, the contradiction in providing aid while yet contributing so drastically to Yemen's humanitarian devastation was addressed in the Committee's final report which highlighted that "the limited role of DFID in arms licensing decisions...has created an incoherence between the Government's development policy and its wider security and foreign policy."³⁴⁰ Looking to the future therefore, as addressed in the Committee's recommendations, the inclusion of a risk assessment that would formally involve DFID consultation on weapons sales' humanitarian implications is a tangible development that could substantially impact the prioritising of humanitarian concerns and enforcing IHL. With testimonies such as that from Oxfam Policy Adviser, Martin Butcher, highlighting that the NGO community "worked very closely with DFID,"³⁴¹ such measures could also allow for greater non-state actor involvement, particularly NGOs, given their established working relationship with DFID.

³³⁸ BBC News. "Theresa May defends UK ties with Saudi Arabia."

³³⁹ Committees on Arms Export Control. "Oral evidence," (23rd Mar. 2016), p.18.

³⁴⁰ Business, Innovation and Skills and International Development Committees. "The use of UK-manufactured arms in Yemen," P.41.

³⁴¹ Butcher, M. Cited In: Committees on Arms Export Control. "Oral evidence: UK Arms Exports During 2016." *Committees on Arms Export Controls Oral Evidence*, HC 666i. (London: House of Commons, 21st Feb. 2018), p.13.

With the government's approach to the Yemen conflict being recognised as a moment of particular historical precedence in relation to its arms control and IHL commitments, it was important to demonstrate the deeply engrained interests in the UK-Saudi relationship, offering an explanation as to why the government has approached the Yemen conflict in this way. The intertwined and increasingly embedded financial ties that extend far beyond the parameters of weapons sales have ensured a degree of British economic reliance on Saudi Arabia. The halting of weapons sales therefore constitutes a significant impediment to Britain's financial prosperity. This was visibly demonstrated in Britain's determination to develop the relationship in the 1980s through the Al-Yamamah deal in the face of substantial criticism, thus capitalising on the financial interests previously reserved for the US. With regards to security interests the government has proved far more willing to concede their importance in a *realpolitik* sense, even admitting openly to their priority over the rule of law. The importance of the UK's historic consideration of the Saudi Monarchy as a bastion of stability in a region so acclimatised to political instability cannot be underestimated in this respect. The UK's involvement in the two proxy wars in Yemen in the 1960s and the present day must also be viewed in light of this, with the perceived threat of rebel insurgency on the Saudi-Yemen border constituting a vital threat to British regional defence interests.

Most pivotal, however, has been the continued willingness of the Saudis to exercise its substantial and ever-growing clout in these financial and security interests. It is evident that this leverage has played a key role in the government's considerations of its export regime when authorising weapons sales in the context of the current Yemen conflict. With the development of these financial and security interests only likely to accelerate, it is clear that Saudi Arabia's position as a pivotal ally to the UK will only grow. Given the above factors, it has been appropriate to conclude that the UK-Saudi relationship is one that truly constitutes a "special relationship" of quite remarkable proportions.

The impact of this assessment within the wider considerations of British foreign policy has taken on heightened importance given the unprecedented geopolitical change that the UK is currently embarking upon. With the shadow of the June 2016 Brexit referendum looming large over all of the UK's actions on the world stage, the UK-Saudi relationship has already taken on added significance. In March 2018, Theresa May announced that the UK was set to leave membership of the EU Single Market and Custom's Union,³⁴² allowing it to sign independent

³⁴² May, T. "Mansion House Speech: PM speech on our future economic partnership with the European Union." *HM Government: Prime Minister's Office*, 2nd Mar. 2018 [online] Accessed: 26/05/18. Available:

free trade deals with countries around the world, a freedom previously prohibited under the Union. The immediate significance of this has been witnessed in a number of high profile trips conducted by the newly appointed International Trade Secretary, Liam Fox, to the countries of Oman, Bahrain and Kuwait,³⁴³ as well as the Prime Minister herself meeting with the Saudi and UAE leadership at the Gulf Cooperation Council (GCC).³⁴⁴ As with Saudi Arabia, all of these countries have faced substantial criticisms in relation to matters of humanitarianism and human rights. With the government now celebrating “the standard of free and open trade as a badge of honour”³⁴⁵ it has earmarked such relationships as a means to compensate for the loss of the financial benefits of EU membership. However, this decision to double-down on its economic relationship with the countries of the GCC should be viewed with great caution. As the UK becomes ever more reliant on the region financially, it is anticipated that these countries will hold far more power when bargaining over competing mutual interests with the UK. As a result both the British government’s capacity and willingness to both reinforce and challenge violations of international norms such as IHL or human rights has the potential to be greatly compromised.

In 2017, when pushed on the controversy surrounding the UK-Saudi relationship, Theresa May declared that the “May Doctrine” on foreign policy was that “everything we do is in our British national interest.”³⁴⁶ Undoubtedly on display was a Prime Minister who had learned from the pitfalls of anchoring foreign policy rhetoric fundamentally along “ethical” virtues, only to fall so visibly short in reality. However, this non-descript interpretation of the “national interest” raises worrying questions about the full manner of sins which could be then justified. With the case example of Saudi Arabia so evidently demonstrating the prioritisation of British interests in the region, the fate of the new “Global Britain”³⁴⁷ is one that should cause genuine concern

<https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union>

³⁴³ Sharma, G. “Liam Fox courts Qatar ahead of triggering Article 50.” *International Business Times*, 27th Mar. 2017 [online] Accessed: 26/06/18. Available: <https://www.ibtimes.co.uk/qatar-seeks-free-trade-deal-uk-post-brex-1613859>

³⁴⁴ May, T. “Prime Minister’s speech to the Gulf Co-operation Council 2016.” *HM Government: Prime Minister’s Office*, 7th December 2016 [online] Accessed: 26/05/18. Available: <https://www.gov.uk/government/speeches/prime-ministers-speech-to-the-gulf-co-operation-council-2016>

³⁴⁵ Fox, L. “Liam Fox’s free trade speech.” *Department for International Trade*, 29th Sept. 2016 [online] Accessed: 26/05/18. Available: <https://www.gov.uk/government/speeches/liam-foxs-free-trade-speech>

³⁴⁶ BBC News. “Theresa May defends UK ties with Saudi Arabia.”

³⁴⁷ May, T. “The government’s negotiating objectives for exiting the EU: PM speech.” *HM Government Prime Minister’s Office*, 17th Jan. 2017 [online] Accessed: 26/05/18. Available: <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

for all those who believe that British interests are best served in the pursuit and defence of humanitarian principles.

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