Playing with words while Yemen burns. Managing criticism of UK arms sales to Saudi Arabia

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On 21 July 2016, on the day the UK Parliament was breaking for summer recess, the Foreign and Commonwealth Office (FCO) issued a set of corrections to its statements about arms exports to Saudi Arabia. Having previously stated that the Saudi-led coalition was not targeting civilians and had not breached international humanitarian law (IHL) in the war in Yemen, the essence of the corrections was that the UK government "have not assessed that there has been a breach" of IHL, and "has not assessed that the … coalition is targeting civilians" (Ellwood, 2016a). Whilst claiming that the amendments did not constitute a change in policy, but rather a clarification for the record, the response was scathing. Hilary Benn MP's tweeted response called it "extraordinary" that such a response was "smuggled out on the last day of the session" (Benn 2016). Amnesty International (2016a) described it as "jaw-dropping," beyond doublespeak and "grossly misleading parliament." Oxfam accused the government of being "in denial and disarray," "flagrantly" ignoring its international commitments (Graham-Harrison 2016).

The government's shift in public messaging came in the run-up to a judicial review of UK arms sales to Saudi Arabia. Held in February 2017 at the High Court in London, the case was brought by Campaign Against Arms Trade (CAAT), who argued that the ongoing supply of weapons to Saudi Arabia breaks UK law, which stipulates that the government will not export weapons if there is a clear risk that they might be used in serious violations of IHL. The judicial review, which eventually found in favour of the government, has been the highest profile element of a longer controversy: since the start of the Saudi-led coalition's intervention in the war in Yemen in March 2015, UK arms exports have become highly politicised, making headline news and forcing the government to justify its policies in the face of criticism. The corrections to the public record ahead of the hearing raise the issue of how the government has attempted to handle controversy over its arms export policy.

This article surveys the ways in which the UK government has attempted to manage criticism over its arms export policy towards Saudi Arabia. It identifies the key strategies used by the UK government to manage domestic criticism – some specific to the Saudi case, and some generic – as well as those deployed to maintain and manage the relationship with the Saudi government. Paying attention to the discursive strategies deployed by the state to manage criticism and navigate the pressures coming from different audiences helps us understand how arms exports are justified and facilitated. The Saudi case is distinctive, given its centrality to UK arms export and wider foreign policy, and the importance and longevity of weapons sales to the bilateral relationship. The war in Yemen has created one of the world's largest humanitarian crises, though, to which the UK government also claims to be responding effectively. This makes the Saudi case a good test of the competing commitments of the UK government, and of the UN

Arms Trade Treaty (ATT), which entered into force in 2014 and to which the UK is a State Party. How states manage contradictory pressures on sensitive policy areas, and how war and violence are facilitated through arms transfers, form the more general context in which such a case should be considered.

UK arms sales to Saudi Arabia

The use of UK-supplied weapons by the Saudi-led coalition in the war in Yemen has generated the biggest parliamentary, media and public outcry since the 1980s "arms to Iraq" scandal and the late 1990s controversy over arms sales to Indonesia and the Labour government's "ethical dimension" to foreign policy. Such scandals are relatively rare: the broad swathe of arms sales are depoliticised and uncontroversial in the public eye, in the UK as well as elsewhere. The UK has been a major arms supplier to Saudi Arabia since the 1960s. The Al Yamamah contracts of the 1980s marked the reliance of the UK arms industry on the relationship with Saudi Arabia; a relationship further cemented with under the more recent Al Salam Project. In these contracts, BAE Systems (formerly British Aerospace) acts as the prime contractor to the UK Ministry of Defence (MOD): a private company operating on behalf of the state, under a government-to-government contract. While allegations of corruption have persisted over the years, it was not until Saudi intervention in the war in Yemen that the arms relationship became more widely controversial.

Saudi Arabia now accounts for almost half of UK arms exports, and the UK and USA together supply over 70% of Saudi weapons imports (SIPRI 2015). Since the start of Saudi military involvement in the war in Yemen in March 2015, there has been a massive surge in arms orders. Between July and September 2015, for example, the UK government's licensing data showed that it approved over £1 billion of licences for the export of bombs to the Saudi Royal Air Force. It also diverted Paveway IV bombs from RAF supplies to Saudi Arabia as they were depleting their stocks so rapidly (Milmo 2016). The conduct of the war has been subject to extensive allegations of violations of the laws of war. For example, the Saudi-led coalition designated the entire towns of Marran and Saada as military targets, and launched multiple airstrikes on over fifty hospitals and health centres, including a Medecins Sans Frontieres (MSF) hospital, both of which violate the IHL prohibitions against indiscriminate attacks and attacks directed against the civilian population (Sands et al, 2015). The UN Panel of Experts on Yemen report (2016) identified 119 sorties in violation of the laws of war; Human Rights Watch (2016) identified thirty-six such airstrikes and fifteen attacks using cluster munitions, and Amnesty International (2016b) a further thirty-two unlawful strikes. The UK government response to this information has not been to refuse, revoke or suspend licences; nor has there been a slowing of decision making. Indeed, there has been a speeding up of the licensing process, and massive increases in the financial value of arms exports to Saudi Arabia.

UK arms exports are bound by its obligations under the EU Common Position (CP) and the ATT, which have been incorporated into national policy. Whilst military production is significantly globalised and arms transfer control regimes have been internationalising, arms exports and their regulation remain a national prerogative.

Multilateral regimes such as the ATT and CP must be implemented nationally by states. In the UK they are given legal effect through the Consolidated EU and National Arms Export Licensing Criteria, which are implemented through risk-based assessment processes. For example, and of particular significance in the Saudi case, the government must assess (under Criterion 2c) whether there is a "clear risk" that equipment "might" be used in serious violations of international humanitarian law, and to deny licences if this is the case (Cable 2014). In a highly unusual development, anti-arms trade activists took the government to court in a case of judicial review. CAAT claims the government has broken its legal commitment to Criterion 2c by failing to "ask correct questions and make sufficient enquiries" (CAAT 2017) in its assessments of whether there is a clear risk weapons might be used in serious IHL violations. The judges dismissed the claim in July 2017, finding that the government's policy is indeed lawful: that the government has access to more and better information than activists, and that "the Secretary of State was rationally entitled to conclude" that the Saudi-led coalition was not deliberately targeting civilians; that Saudi Arabia respects and is committed to complying with IHL, investigates controversies, and engages in dialogue with the UK (The Queen v Secretary of State for International Trade 2017).[1]

The overarching narrative coming from the UK government rests on the claims that the UK is not party to the war in Yemen, but supports the right of the Saudi-led coalition to come to defence of the legitimate government of Yemen; that the Houthis – supported by Iran – are also committing war crimes; that there is no contradiction between supplying weapons and providing humanitarian aid; that the strength of the relationship is what gives the UK the leverage to push for humanitarian measures and a political settlement to end the war; and that the relationship with Saudi Arabia protects Britons from terrorism. Yet growing censure for the conduct of the war has forced the UK government to engage in extensive efforts to mitigate criticism and manoeuvre amongst the contradictory pressures on arms export policy.

Managing domestic criticism

There have been five key responses from the UK government to manage domestic criticism over arms exports to Saudi Arabia. They range from the general to the specific: the first two strategies are generic to arms export licensing policy, and indeed can be seen in other policy areas and beyond the UK; while the latter three are specific to the Saudi case. First is the strategy of *"rigorous repetition"*: the frequent, repeated use of a stock claim in response to criticisms in parliament and the media. In this, the government claims that the UK operates "one of the most rigorous arms export control regimes in the world" (at times substituting "rigorous" for "robust" and/or "transparent"), assessing licence applications on a case-by-case basis against its licensing criteria (see CAAT n.d., a). This is a tautologous move, common across UK arms export licensing policy and seen in other policy areas, in which there is no space to acknowledge the possibility of violations. By pointing to the existence of a policy that protects human rights and IHL,

[1] The ramifications of this decision for a risk-based assessment process, and the gap between what the government was "rationally entitled to conclude" and any substantive account of UK complicity in violations of IHL are of considerable future interest, and likely to form part of CAAT's appeal of the judgment.

and to bureaucratic processes to implement that policy, by definition the government cannot have contravened its policy.

Second is a *deluge of data*: the publication of reams of statistics that require specialist knowledge to assess, but that impart little meaningful information. The government vaunts its transparency through its publication of quarterly licensing statistics and twenty other forms of report. More prompt release of licensing data, and an ability to make broad-brush analysis of the contours of policy – in the Saudi case as elsewhere - is of value to those with specialist knowledge, and the UK is in some respects one of the more transparent of the world's arms exporters. But there are also significant amounts of data that are broadly meaningless even to those with such specialist knowledge. And the key information never made available (through licensing data, follow-up requests or interviews) is *how* decisions were reached. The politics of data provision are illustrated by the launch of a web browser by CAAT that uses the government's own published licensing data and allows observers to run queries that show the date on which specific licences were granted, and to relatively confidently match Military List codes to the financial value of licences (see CAAT n.d., b). For example, it allows us to see that, of the £1bn+ figure for bombs mentioned earlier, a single licence for the export of £990,400,000-worth of air-to-air missiles to Saudi Arabia was approved on 8 July 2015. This shows the difference in intent between the government's and CAAT's presentation of statistics, and the mobilisation of data for the purposes of accountability by activists is a step forward. But observers still do not know what the threshold of risk was, such that this licence was deemed compatible with UK obligations. More generally, the UK government does not collect, let alone publish data on actual deliveries; and is increasingly encouraging use of so-called open licences, which allow multiple deliveries to named destinations without the need to declare the financial value or amount of equipment.

A third strategy is one of *wilful non-knowledge:* the failure or unwillingness of the government to look for evidence that it is responsible for searching out as part of the risk assessment process, which then allows it to claim there is no reason to deny licences. The government's policy requires an assessment of whether there is a "clear risk" that weapons "might" be used in serious IHL violations (Cable 2014). As allegations have mounted, the government has refused to respond to the many and varied forms of independent analysis by simply ignoring them, later claiming in preparation for the judicial review that the government is not obliged to "find or explain why views expressed by … third parties are wrong" (Secretary of State for Business, Innovation and Skills, 2016). During the judicial review hearing, attention was paid to the adequacy or otherwise of the MOD "Tracker" database in capturing, analysing and assessing relevant information (Watkins 2017; Ross and Evans 2017). The government position was that it is impossible to track every allegation, that allegations do not equate to violations, and that the government possessed other, secret information (which was withheld until the closed sessions with Special Advocates) that trumped the material provided in open court. Whilst the High Court verdict found the government's position to be lawful ,the political ramifications of such a claim for a national, EU and international regulatory regime based on risk assessment are troubling. A risk-based framework is designed to be

preventive; its application in the Saudi case – in which evidence that Saudi Arabia has committed serious violations of IHL is not taken to generate a "clear risk" that weapons "might" be misused - illustrates the virtues of ambiguity in regulatory language and malleability of legal regimes for political gain (Hansen 2016).

The strategy of wilful non-knowledge also plays out in a fourth practice, that of *obscuring the role of BAE Systems.* BAE Systems is responsible for fulfilling government-to-government arms agreements with Saudi Arabia. Yet very little is known about the contractual and legal arrangements of the agreements, let alone the oversight and accountability mechanisms with regard to arms export rules such as Criterion 2c. In its response to the parliamentary Committees on Arms Export Controls (CAEC), the government claimed that it "do[es] not have full visibility of the prime contractor's [BAE Systems'] manpower footprint in Saudi Arabia" (Secretary of State for International Trade et al 2016, 8). Even though the MOD contracts BAE Systems to do this work and "Saudi-based members of the MOD Saudi Armed Forces Projects monitor the delivery of contracted activities" (Secretary of State for International Trade et al 2016, 8), the MOD claims that it "does not maintain a record of the number and location of BAE Systems employees in Saudi Arabia," nor of the tasks they perform (MOD 2017). Whilst the MOD oversees "quality standards" and "safety processes", and "audit[s] the underlying policies and training standards" (MOD 2017) it remains unclear what MOD oversight there is of BAE Systems activity with regard to IHL, and what the legal chains of responsibility are. Any reference to BAE Systems was redacted from the legal documents made available from the judicial review hearing. The UK government's reliance on BAE Systems to carry out a government-to-government contract allows the government to hide behind the shield of commercial confidentiality, and the company to benefit from the cover of government support and redaction of its role from the public record.

Fifth is the issuing of *corrections to the official record*. In July 2016, the FCO amended previous statements that there "has not been a breach of IHL by the coalition," to the rather different claim that "we have not assessed that there has been a breach of IHL by the coalition" (Ellwood 2016a). The clarifications were ostensibly simply a matter of consistency of wording, and not a change in policy. Yet civil service emails released under the Freedom of Information Act reveal the political context of the review exercise that led to the corrections: the "high profile nature of this subject and the attention it is getting from Parliament, the media and the courts" (FCO 2016). Government anxiety about "consistency of messaging" and what may have been "implied" by the "misdrafted" responses (FCO 2016) raises questions about bureaucratic failure, but also about the interpretation of policy and political direction given to civil servants. The government emphasised that "neither the MOD nor the FCO reaches a conclusion as to whether or not an IHL violation has taken place in relation to each and every incident of potential concern" (FCO 2016). And the government's barrister, James Eadie, QC, claimed in court that the government, in agreeing to the Consolidated Criteria, did not set itself up to act as "auditors of the armed conflict pursuit [sic] by foreign friendly sovereign governments" (Eadie, in CAAT vs. Secretary of State for International Trade, p12). But the essence of a criterion-based control regime is judgement and discrimination, in the sense of refusing arms export licences when the threshold of international standards is crossed

e.g. when there is a clear risk that weapons might be used in serious violations of IHL. . While some observers have concluded that the corrections mean that an assessment was not conducted (Casey-Maslen 2016) – which would be a straightforward violation of policy – it might be the case that assessments have been conducted, but were deemed inconclusive, raising more complicated questions about the adequacy of the assessment process, the everyday practices of policy implementation and the ends to which that policy is put. The main effect of the corrections has been confusion and – presumably an unintended effect – further criticism.

Boomerang effects

The strategies outlined thus far have primarily been intended to assuage criticism from domestic constituencies such as the CAEC and International Development Committee; NGOs and campaign groups such as Amnesty International, CAAT, Human Rights Watch, Oxfam and Saferworld; and to prepare for the legal challenge. However, a crucial audience for these claims is also the Saudi government: the UK government has to manage the boomerang effects when criticism from domestic actors reverberates with a key arms client. The twists and turns in its defence of the Saudi regime show the difficulty the UK government has faced in both assuaging domestic critics and maintaining its relationship with the Saudi government.

One key strand of UK government strategy is the *public defence of Saudi practices and sovereignty:* that there is "no evidence of deliberate breaches" of IHL (Hammond 2016); that it is important to support the Saudis in the fight against the Houthis (Patel 2016); that the Houthis may have fabricated evidence of atrocities (Ellwood 2016b); and that is "naïve" to say the UK cannot supply its allies with weapons (Ellwood 2016c). As criticism has grown, the UK government has defended the Saudi response to allegations, describing it as "a country that has never had to be pressed to write a report before" (Ellwood 2017). As indicated earlier, the UK government has been careful to make clear it is making an "overall assessment" (FCO 2016) or "overall judgement" (Ellwood 2016a) in order to meet its export control requirements, and is not judging whether Saudi Arabia, a fellow sovereign state, has breached IHL. As the controversy has developed, there has been a more robust defence of the Saudi regime, seen in the statement that the Saudis "have the best insight into their own military procedures," and the emphasis that "This is the standard we set ourselves and our allies" (Ellwood 2016a). This strategy is part of an attempt to manage the bind the UK government is caught in, between international commitments to IHL and bilateral commitments to arms clients. Defence of a friendly (and politically and economically significant) state's sovereignty rubs up against the essence of a control regime based on judgment and discrimination.

The need to publicly defend the Saudi regime has been accompanied by *muted public criticism* as the domestic controversy has grown. By January 2017, the acknowledgement that Saudi investigations are slow gave way to admission that the UK government's "patience is being tested here" (Ellwood 2017). The public character of the airing of differences, the spilling into the media and public statements of dissatisfaction from UK politicians has been "unusual; it is not normally the way that British foreign policy with regard to the Gulf is constructed" (Stephens 2016). The tone of the

engagement is one of ongoing post-imperial nostalgia for British influence and leverage. Orientalist tropes of the conservative culture of Saudi Arabia have been accompanied by a sense of British reasonableness in trying to encourage them to be more transparent: "what we try to do overtly, but also quietly, to advance change in Saudi Arabia" (Ellwood 2016b).

A third response that grows out of the previous two is *increased pressure on the Saudis to engage in public legitimation work.* In September 2016, at the same time as the CAEC inquiry into arms sales to Saudi Arabia descended into leaks and *Newsnight* appearances on the BBC, and irrevocable splits within and between the constituent committees, Saudi Foreign Minister Adel al-Jubeir visited the UK to brief MPs, and appear on *Channel Four News* to defend Saudi conduct in the war in Yemen. This unusual move suggests efforts by both governments to mitigate reputational damage done by the controversy and shows the work that goes into maintaining the arms relationship. A key mode of public legitimation by the Saudi government has been the managed and partial responses published by the Joint Incident Assessment Team (JIAT). Established in response to international criticism, the JIAT found "shortcomings in two cases while the rest were in line with international humanitarian law" (Al Monitor 2016). However, there remain (as yet unanswered) factual and legal discrepancies between allegations and the JIAT response (HRW 2017). The formation of the JIAT and increased public communications are presented by the UK Government as evidence that the Saudis are learning lessons and learning to comply, and be seen to comply, with IHL (Crompton 2016, para 85a). There is also a clear legitimation function in play, however. The UK runs workshops with the Saudis given its "considerable experience of prosecuting air campaigns in the full view of the world's media," and these workshops "may provide additional evidence to support our defence of the Judicial Review" (Watkins 2016). The UK's experience of managing criticism in war is deployed to help an ally whose conduct has become controversial for the UK at home.

Conclusion

The practices surveyed in this article have been central to justifying UK arms export policy towards Saudi Arabia. Managing criticism has proved challenging for the government: in January 2017 Foreign Minister Boris Johnson conceded that the UK is only "narrowly on the right side" of its export control commitments (quoted in Wintour 2017). The High Court eventually agreed with the government, in a decision that has been roundly criticised by campaigners, who promise to seek an appeal. But beyond questions of lawfulness, there are also political questions around the ways in which policy is implemented; how controversial or unpopular arms exports are justified and facilitated; and how governments manage the competing demands of satisfying domestic opinion and relations with arms recipients. In the Saudi case the UK government is caught between two sets of demands: for secrecy and ongoing arms supplies by the Saudi regime; and for transparency and restrictions on exports by domestic activists and some parliamentarians.

In terms of ramifications of this case, paying attention to the management of criticism poses challenges for a "name and shame" strategy that attempts to mobilise

normative concern in pursuit of more restrictive arms export policies. Campaign groups and NGOs "tap into states' domestic reputational concerns and motivate some compliance" with arms transfer control commitments (Erickson 2015, 19). Hoisting states on the petard of their own publicly made normative commitments is one of the strongest tools available to activists. But the Saudi case is simultaneously an easy and a hard case: the scale of civilian harm in the war in Yemen is such that any reasonable application of a framework of "clear risk" should result in the denial of arms exports. But Saudi Arabia is economically, militarily and diplomatically important to the British establishment. Norms of national security and diplomatic relations that emphasise reliability of arms supplies are stronger in this case than those of humanitarian values that would restrict transfers. How to mobilise normative commitments in pursuit of compliance – indeed, whether this remains a viable strategy – is probably the biggest challenge facing arms trade activists in liberal democracies. In the post-Brexit context of the amplification of the importance of arms exports to the economy and of diplomatic relations with Middle Eastern states, now with the added stamp of legal confirmation, this seems a dim prospect.

Author biography

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