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Public Bill Committee

ECONOMIC ACTIVITY OF PUBLIC BODIES (OVERSEAS MATTERS) BILL

Second Sitting

Tuesday 5 September 2023

(Afternoon)

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Saturday 9 September 2023

The Committee consisted of the following Members:

Chairs: † Dame Caroline Dinenage, Sir George Howarth

† Blackman, Bob *(Harrow East)* (Con)
† Buchan, Felicity *(Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities)*
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† David, Wayne *(Caerphilly)* (Lab)
† Evans, Dr Luke *(Bosworth)* (Con)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Holmes, Paul *(Eastleigh)* (Con)
† Jenkinson, Mark *(Workington)* (Con)
† Leadbeater, Kim *(Batley and Spen)* (Lab)
† McCabe, Steve *(Birmingham, Selly Oak)* (Lab)
† Nici, Lia *(Great Grimsby)* (Con)
† Norris, Alex *(Nottingham North)* (Lab/Co-op)
† Qaisar, Ms Anum *(Airdrie and Shotts)* (SNP)
† Richards, Nicola *(West Bromwich East)* (Con)
† Smith, Greg *(Buckingham)* (Con)
† Stephens, Chris *(Glasgow South West)* (SNP)
† Young, Jacob *(Redcar)* (Con)

Bradley Albrow, Huw Yardley, *Committee Clerks*

† attended the Committee

Witnesses

Dr Bryn Harris, Chief Legal Counsel, The Free Speech Union

Dr Alan Mendoza, Executive Director, Henry Jackson Society

Rahima Mahmut, UK Director, World Uyghur Congress

Stephen Cragg KC, Doughty Street

Francis Hoar, Field Court Chambers

Professor Andrew Tettenborn, University of Swansea

Professor Adam Tomkins, Glasgow University

Andrew Whitley, Chair, Balfour Project

Mark Beacon, International Officer, UNISON

Rozanne Foyer, General Secretary, Scottish TUC

Public Bill Committee

Tuesday 5 September 2023

(Afternoon)

[Dame Caroline Dinenage *in the Chair*]

Economic Activity of Public Bodies (Overseas Matters) Bill

Examination of Witnesses

Dr Bryn Harris and Dr Alan Mendoza gave evidence.

2 pm

The Chair: Good afternoon, everybody. Welcome to the second sitting of evidence on the Bill. We will hear from six panels of witnesses this afternoon. Gentlemen are more than welcome to remove their jackets; it is quite warm in here.

First we will hear from Dr Bryn Harris, chief legal counsel at the Free Speech Union, and Dr Alan Mendoza, the executive director of the Henry Jackson Society. Presumably Dr Bryn Harris will be brought in when he arrives, but meanwhile, Dr Mendoza, if you are happy for us to do so, we will start by directing our questioning to you. We have until 2.30 pm for this panel. Could you please introduce yourself for the record?

Dr Mendoza: Yes, I am Dr Alan Mendoza, the executive director and a founder of the Henry Jackson Society, which is a foreign and security policy think-tank.

Q54 The Parliamentary Under-Secretary of State for Levelling Up, Housing and Communities (Felicity Buchan): The Government's assessment is that the Bill does not breach anyone's rights under article 10 of the European convention on human rights, as the ban that it introduces applies only to the public functions of public authorities. For example, councillors, when they are not representing the council, can express their own views and can support boycotts and divestments. Do you agree with that position?

Dr Mendoza: Thank you, Minister. The answer is very simple: yes. I think it is quite obvious that the Bill does not preclude any individual councillor, or indeed anyone working for a public body, from expressing their personal opinion on a boycott or something similar. It merely prevents bodies that really have no jurisdiction in such areas from passing formal motions on them. That is quite clearly laid out in the legislation, and the ECHR would agree.

Q55 Felicity Buchan: Statements of intent to boycott, even when not implemented, can undermine community cohesion, so do you think it makes sense to prohibit statements of intent to boycott, as we do under clause 4?

Dr Mendoza: Yes, again, I agree. First, if you are stopping the ability to boycott, there is no point having the ability to talk about those issues collectively. Secondly, if you have a debate about that, it can inflame community tensions. We have seen lots of examples in the past few years where even discussing these matters—alleging or suggesting that one country might be responsible for x, y or z—lends itself to an increase in community tensions on the ground; people take it as an excuse to go into worse forms of hatred. There is evidence that that has happened. If we are saying that public bodies that are not the UK Parliament or UK Government should not have control over foreign policy decisions, it makes sense to stop them having the ability to talk about the intent to do something that they will not be allowed to do.

Q56 Felicity Buchan: Dr Harris, I do not know if you heard the questions and want to add anything.

Dr Harris: If you could repeat the questions, that would be helpful.

Felicity Buchan: The first question was about the Government's assessment that the Bill does not breach article 10 of the ECHR because it applies only to public authorities while they are carrying out public functions, and private individuals can express views, and choose to boycott and divest. The second question was on clause 4, and on whether stating an intent to boycott has similar impacts on community cohesion to boycotting.

Dr Harris: Thank you. To state my position generally, the goal in clause 1 is broadly okay and compatible with free speech; clause 4 is not. I disagree with some of the Government's analysis. The explanatory notes state that public bodies do not have article 10 rights. That is certainly true of core public bodies—the police, the NHS, Whitehall—but my understanding is that that is not true of hybrid public bodies, which may well include universities. Certainly, the European Court has held that boycott is, or can be, an exercise of the right to freedom of expression, as in the 2020 case of Baldassi and France, and so free speech rights are certainly engaged. This Bill very clearly targets expressions of political and moral conscience, which is to say the form of expression that is most highly protected by article 10. I think there are some very real problems, and perhaps there will be time to develop my view on what those issues are.

Regarding clause 1, as I say, I think it is acceptable, first, that Parliament sets out the relevant considerations that a public authority may have in mind in making a decision. The public law—the common law—already does that, so I think that is perfectly acceptable in principle. I think it is right as well that the UK should not be embarrassed by perhaps rather adolescent campaigning issues, rather overstated campaigns that perhaps unfairly denigrate friendly countries; I think that is completely understandable.

The problem I have with clause 1 is the justification, and that would go to any assessment by a court were there to be a compatibility challenge. On that justification—that the UK should have a single front or a single, agreed foreign policy—I am not sure that the full range of public authorities owe, or should owe, any duty of fidelity to central Government's foreign policy. In fact, I think the opposite: that our public debate is likely to be enriched and informed by greater diversity. I think that that justification is questionable and would go into the article 10 assessment were there a challenge.

I very much agree that the second justification—of preserving community cohesion—is a legitimate aim. I think it is entirely foreseeable, and probably has occurred,

that some BDS campaigns have been informed by malice against Jewish people. However, it is to be noted that this Bill will do far more than merely target and limit those divestment campaigns that are malicious. It would cover, for instance—and I draw no parallel here with BDS—the anti-apartheid movement of the 1980s.

I will move on to clause 4 because you did raise that. My position is that clause 4 really needs to go in its entirety. To take clause 4(1)(a), which is the prohibition on statements of intent, there is no need—I think it is not necessary either politically or perhaps even legally—to prohibit statements. The mischief that is to be prohibited is the threatened act. The law will already help there. If a local authority were to resolve that it is going to divest the goods of a certain country, there would be the option of a prohibiting order by way of judicial review, and that targets the act. The court would be able to say, "You may not carry out this act that you threaten to carry out." It is not clear to me that the law needs to go further in prohibiting statements. That is not to say that the law could not go a bit further, but I think there is a question regarding the necessity of this measure and the necessity of interfering with the freedom to make political and moral statements.

Clause 4(1)(b), as you can probably imagine, is the most problematic. I do not think the Government, from what I have seen, have put forward any rationale for why hypothetical statements are a mischief. It seems to me a huge overreach concerning political speech. I see very little harm that it would do, and I think it is going to cause serious defensiveness and caution in debates on the governance of universities and local authorities, which perhaps may be well worth having, but I will leave it there for now.

Q57 Felicity Buchan: I have a few follow-up questions and a couple of points for clarification. I want to clarify that the Bill would apply to hybrid institutions when they are working in a public function but not in a private function.

Dr Harris: Correct.

Q58 Felicity Buchan: You said that clause 4 would affect freedom of speech. Again, I want to clarify that clause 4 applies to the council only when it is talking in a council capacity, and not to the individual councillors when they talk in a private capacity.

Just a few quick follow-up questions. The Bill contains the power to exempt certain countries as time goes on so that foreign policy can be adaptive. Do you agree with that? Secondly, briefly, do you think that the BDS movement has been successful in pressurising Israel?

Dr Harris: Sorry, can you repeat the first question? I am so sorry; it skipped my mind.

Felicity Buchan: The first question was about the Bill containing the power to exempt certain countries as time goes on, so it can be adaptive to foreign policy.

Dr Harris: I see. I accept that. Again, I will go to the example of the anti-apartheid movement. I want to make it clear that I think it is entirely wrong to compare the only democracy in the middle east, Israel, to apartheid South Africa, but for the purposes of the Bill, the anti-apartheid movement in the '80s is relevant. In the debate that occurred there, there was a broad disagreement between central Government and their foreign policy, and a wider civil society movement of churches, trade unions and, eventually, a large number of local authorities —about 120. It was eventually curbed in 1988 with the Local Government Act, but the question is: was that debate and that tension productive? Did it inform the public debate? Did it aid the global movement against apartheid? I think it surely did.

It is beyond doubt that the British anti-apartheid movement led the world outside South Africa. For me, that is a great victory of British decency—of British soft power and, of course, British free speech. Going back to the power that you mentioned, whereby the Minister can, by regulation, add countries to the list, that debate and that soft power would be considerably diminished, especially in their legitimacy, if they were essentially licensed by the imprimatur of the Minister saying, "These are debates you can have." For me, that would really reduce the power of that bottom-up movement.

Q59 Felicity Buchan: I am conscious of time. Dr Mendoza, do you want to come in on those final questions and then I can hand over?

Dr Mendoza: Yes. I disagree a bit with Dr Harris. I am not for a moment saying that the anti-apartheid movement in civil society was not valuable or successful—it hugely was—but let us focus on what we are talking about: a tiny sliver of institutions looking at the question of boycotts, as opposed to forbidding the discussion of boycotts in public, which sounds like where Dr Harris is heading in this sort of discussion. That is not what the Bill prevents. In fact, you can talk about any foreign policy aspect and any country, even in areas where a local authority or university has no power or authority to particularly affect a policy, and that will not be stopped. We need to focus very much on the narrowness of the Bill, which relates purely to boycotts and the sanctions policy.

Casting our minds back to the 1980s, had that been forbidden, would it have had any effect on the effectiveness of the anti-apartheid movement? I think absolutely not. There was enough out there that would have driven it anyway in terms of foreign policy; there would have been that debate. We are not talking about having any curbs on the freedom of speech of individuals.

I can guarantee that, in today's society, with the 24/7 focus on social media and with so many outlets to talk about things, all the Bill is trying to do is, essentially, keep authorities that have no particular purpose in looking at specific foreign policy issues in the form of boycotts from wasting their time and public money in doing so. Again, privately, they will be perfectly able to do it: publicly, there is no call for it and there is no need for it, given that it will be covered elsewhere. This House is where you should be debating foreign policy—not in local councils, not in devolved Assemblies. I speak as a local councillor in that regard. I can assure you that were I to be speaking on my area of expertise—foreign policy—in the council chamber of my local authority, my residents would rightly ask, "What on earth are you doing wasting council time like this?"

Let us get back to the focus of what we are trying to do, which is something very narrow, to reflect the proper place of foreign policy in this country and the proper people entitled to make decisions on it, without compromising anyone's ability to talk about, argue and discuss it, and tear it apart if necessary, in a private capacity.

Dr Harris: If I can briefly follow up, I defer entirely to Dr Mendoza on the effectiveness of the BDS movement: I do not know.

I omitted to say that I accept that the clause 4 prohibition is on a person who is subject to clause 1. The difficulty—and this is perhaps a drafting point—is that clause 1 concerns decisions, and therefore it squarely fits within section 6 of the Human Rights Act. Then, in clause 4, we go to persons who are subject to clause 1. What is unclear to me—and I trust this is not my misreading of the Bill—is when the clause 4 duty bites on that person. Does it only bite on them when they are exercising the decision-making power in clause 1, or does it bite on them if they hold that power? If they generally have that power by statute, are they therefore constantly under that clause 4 duty? The scope of clause 4 is unclear at the moment and, as with any restriction on liberty, it should be narrowly stated and certainly be narrowly construed by the courts.

Dr Mendoza: Dr Harris has reminded me that I did not answer the BDS effectiveness question. It has been entirely ineffective as a campaign globally, so much so of course that it is not shared formally by the Palestinian Authority itself as a policy. That should tell you that this is a fringe movement that has no purchase even with the elected authority within the PA.

Dr Harris: If I could quickly come back—there is a bit of a double act going on with Dr Mendoza—

The Chair: Just a reminder that this panel is due to conclude at 2.30 pm and I have three more Members who have indicated that they wish to contribute. If anyone wishes to contribute, please waggle your fingers at me. Do you want to add anything further, Dr Harris?

Dr Harris: Briefly, I agree with Dr Mendoza. The justification here should be the limitation of vires—of the powers—of these bodies. That is the way to justify clause 1 for me. The justification is not, "Get behind Government policy" or "Do not make these moral or political statements": it is vires and powers. We can come back to that in further questions.

Alex Norris (Nottingham North) (Lab/Co-op): I have just one question, about clause 7, which governs the information notices—the mechanism by which the Government can compel information from public bodies to find out if they have made, or are about to make, a decision that would contravene clause 1. In clause 7(8), those notices override any obligation of confidence, so if it is a conversation between someone and their lawyer, the Government can compel that information. That seems to me to be a very strong power. What is your opinion?

Dr Harris: My reading of that, on its face, is that it would be something like the whistleblowing protection, whereby a whistleblower is exempted from duties of confidence to their employer. Without more, it would strike me as extremely unlikely that this would override the privilege between a lawyer and client.

Alex Norris: Even though it says "any obligation" on the face of the Bill?

Dr Harris: Yes.

Dr Mendoza: I have a slightly different response. I am slightly perplexed by the question. What were you thinking that was so secretive and furtive in nature that would even require a lawyer/client confidentiality level? We are talking about a simple foreign policy discussion, not about someone's secret actions.

Q60 Alex Norris: What I would say is that you would know, as a local authority councillor, that local authorities routinely take legal advice about their actions, certainly if they thought they might be an edge case in such legislation. On a fair reading—I would be delighted if I were wrong—this would permit the extraction of such information, which we would normally consider privileged, by dint of a Government information notice, and I wondered if you felt that was proportionate.

Dr Harris: It is important to note that it does not say that the enforcer can demand information that is confidential. All that happens is that the person disclosing will not be liable if they breach a right of confidence. It is not a right to extract the information, or a power of the Government; it is simply a freeing from liability of the discloser.

Dr Mendoza: I would agree with that reading. It says:

"A person providing information in compliance",

so I think that is the correct reading of that clause.

Dr Harris: There is one, perhaps related, problem for me. Clause 4 states:

"A person who is subject to section 1 must not publish a statement",

and that can include statements of intent or hypothetical intent. Consider, for instance, a university governing body—senate or council—making a decision about divestment. Let us say that there is a meeting, there are minutes and they are kicking ideas around. They may well benefit from a degree of those deliberations not being public.

The problem I have is that my understanding is that an FOI disclosure would constitute publication. If you look at section 79 of FOIA, it is explicitly called "publication". This body would be in a position whereby it would say, "Well, we have to comply with FOIA, because we have to disclose, and if we do disclose, we may be breaching the law by publishing a statement whereby we say that we intend to act in a certain way." It is a drafting point, I think, but that needs to be cleared up. We do not want over-defensiveness in these deliberations by public authorities.

Dr Mendoza: I agree. That is an interesting technicality that probably should be taken note of by the Committee.

Q61 Chris Stephens (Glasgow South West) (SNP): I have a question for you, Dr Mendoza, and then a separate question for Dr Harris. The Henry Jackson Society, the organisation that you represent, is described as being

"focused primarily on supporting global democracy in the face of threats from China and Russia".

Does your organisation in any way support divestment in China, particularly regarding the treatment of Uyghur Muslims?

Dr Mendoza: I would say, on that point, absolutely. The position that we adopt with China is very simple. I believe that you have a witness who will be able to tell

you about the experiences of her family, her relatives and, indeed, her people in what are effectively modern-day concentration camps, to the point that many among us believe that the Chinese Government are practising genocide against this particular group in Xinjiang. If we look at what is actually happening there—the eradication of their culture, the imprisonment of people for forced labour and that sort of activity—on that basis, we are essentially talking about modern-day slavery. You will be aware that the Bill will be superseded by modern slavery actions and the UK's sanctions regime on this. Yes, we do believe that there ought to be accountability from the Chinese Government on this score, and I personally would not be buying things from Xinjiang province.

Q62 Chris Stephens: I welcome your comments. I think we will be having a debate about what the Bill actually says in relation to that.

Dr Harris, you mentioned the anti-apartheid movement. Obviously, Glasgow has a history around that: Glasgow District Council renamed a street, gave Nelson Mandela the freedom of the city and, like many other local authorities, boycotted South African goods and services. If this Bill had been in operation then, it would have prohibited Glasgow District Council from taking such actions, wouldn't it?

Dr Harris: Yes, that is my understanding. As you say, Strathclyde local authority was one of the first in the UK, along with Sheffield, to divest from South African goods. My understanding is that it certainly would have prevented the divestments, and also the discussion around them. There is a debate to be had, on which I have no expertise, as to how effective the anti-apartheid movement was in terms of pure efficacy—in terms of pure pressure on the South African Government—but my understanding is that, were the Bill in place during the '80s, had the Government not added South Africa to the roster, as it were, by way of regulations, you would be correct. While it would also prohibit perhaps slightly more—forgive me—adolescent campaigns, or ones that are perhaps less well-reasoned, it would also prohibit those that have greater moral force behind them.

Chris Stephens: Thank you.

Q63 Kim Leadbeater (Batley and Spen) (Lab): Clause 4 prevents public bodies, and anybody representing them, from saying that they would support a boycott if it was legal to do so. Do you agree that, on the face of it, that feels like a limit on freedom of speech? Is it compatible with free speech for it to be legal to say that you are against something—in this case, any kind of boycott—but illegal to say that you are in favour of it?

Dr Mendoza: I would go back to the question that Dr Harris posed. It is really a question of vires; it is about what a public body collectively should or should not be doing. A public body should not be making decisions in contrast to UK foreign policy on something like a boycott, basically. Individual members—individual fellows or whatever it might be—have every ability and right, still, to say what they like on the subject, but they cannot speak on behalf of their institution or their authority to do that. However, when it comes to opposing a boycott, there are rights and abilities there. That is something that public bodies are not allowed to do, so that would be in keeping with that.

I think there is a clear distinction between the two things. One is something that the body is not competent, or does not have the jurisdiction, to legally carry out; on that basis, what is the purpose of speaking on it? The other—opposing a boycott—is something it can do, because that is the norm and the effective position, in law, for that authority. I therefore see no problem, or indeed contradiction between the two things.

Dr Harris: Again, as I have said, it certainly conflicts with the spirit of free speech, and I suspect also with the law regarding freedom of expression. As I said, the European Court of Human Rights, at least in one case—that of Baldassi in France, which I hope the GLD will have taken on board—certainly does say that a boycott is a protected act of protest. The very interesting thing about that case is that the court said that justification for the restriction of political speech is key; there needs to be a tight justification for it. That is entirely in keeping with the common law in this country, and the political philosophy of this country, that political speech, especially, must merit the utmost protection in law.

I think that there is a point on which the Government are on safer ground. Let us say that they want to avoid the embarrassment of legal challenge—they might reasonably wish to, and I am sure that they do. I would certainly say that the community cohesion point is a stronger justification, and the European court makes that distinction very clearly too. As I have said, BDS, especially in the light of recent events, clearly goes to community cohesion, but it is entirely foreseeable that there may be future foreign policy controversies where that is not an issue and the Bill will still apply to them. That raises the question of proportionality: because it will cover even cases where community cohesion is not in play, is there overreach?

Let me quickly say on vires, because I think it is quite important, that it is entirely right for the law and Parliament to say to subordinate bodies, "This is the extent of your power; you serve the public interest in this way, to this extent, and you use your resources for this purpose." I think it is entirely right for Parliament to say, as it already does, "If you're a local government authority, foreign policy isn't really what you should be spending your money on." I think it is right to say that to other bodies. However, I think it is extremely provocative for Parliament to say that to universities. This Government and Parliament have done excellent work protecting academic freedom, but there is a second limb to academic freedom, which is the autonomy of academic institutions, and I think it is extremely questionable to challenge that.

Q64 Kim Leadbeater: Can I follow up on the point about community cohesion? Do you think that the Bill will have a positive or negative impact on community cohesion?

Dr Harris: It is a good question. I am not entirely sure. It is obvious that in some areas, where perhaps there is a certain degree of activism in the local authority, it could lead to some members of the community—I mean Jewish members of the community specifically—feeling like there is less pressure, and feeling less victimised and targeted. But as I say, there is going to be a significant number of cases where this justification will not apply because there is not an issue of community cohesion. Take the Ethiopian and Eritrean war: how likely is that to raise questions in this country of community cohesion?

The Chair: Order. I am afraid that brings us to the end of the time allotted for the Committee to ask questions—I apologise. I thank our witnesses on behalf of the Committee.

Examination of Witness

Rahima Mahmut gave evidence.

2.30 pm

The Chair: Welcome. We will now hear from Rahima Mahmut, the UK director of the World Uyghur Congress. We have until 2.45 pm for this session. Would the witness introduce herself for the record?

Rahima Mahmut: I am Rahima Mahmut. I am Uyghur. I have been living in the UK since 2000, and I am a human rights activist. I have not been able to return home for the last 23 years. Since the implementation of the genocidal policy in my country in 2016, I have been heavily involved in leading the campaign in this country. I am the UK director of the World Uyghur Congress and the executive director of Stop Uyghur Genocide. That is all I can tell you about me, but if you want to know more I am happy to continue.

The Chair: Thank you very much. I call the Minister.

Q65 Felicity Buchan: Thank you for being here and sharing your thoughts and experiences, which I imagine are very painful. One of the purposes of the Bill is to say that we should have one foreign policy. It does not prevent our central Government from having sanctions regimes, for instance. Do you agree that foreign policy should be reserved for the UK Government, rather than local authorities making up independent foreign policies?

Rahima Mahmut: All my life, I have been fighting for freedom of speech and the freedom to make decisions. I do believe that foreign policy is not necessarily fair. For example, since 2016 and especially since 2017, mass arrests have started in my country. The UN said that up to 1 million people are in concentration camps but we believe that it could be up to 3 million people. I have lost contact entirely with family members since January 2017. In April, I learned that my sister had died in March—one month earlier—and I was told not to contact anyone in case I put their life in danger. I learned that my brother was in a camp for over two years and released because he was almost dying.

I have been campaigning in Parliament, and it has passed a motion declaring that genocide is happening. The independent UK Uyghur tribunal, led by Sir Geoffrey Nice KC, also found evidence of genocide based on the forced sterilisation, forced abortion, and prevention of future births of Uyghur children. There is also forced labour, family separation, children being taken away, cultural destruction, and so on. We have a huge amount of evidence gathered by the Uyghur tribunal, yet we have not really seen the UK take active policy decisions on trade or anything else.

It really pains me to see this kind of inactivity from the politicians because of the UK's economic dependency on China and its diplomatic relationship. Our Foreign Secretary visited China only last week, after which I penned two op-eds: one was in *The Spectator*, in which I said that this is a betrayal of the Uyghurs; the other was in *The Guardian*. I recommend that you read them if you have time. I laid out the reasons why this is so unfair and why it just does not really align with the human rights that we believe the UK upholds.

In this kind of situation, I do believe that local authorities and other bodies should have those powers. We campaign, for example, about solar panels, an area that is heavily tainted by Uyghur slave labour. We know that local authorities make decisions on buying those products, and we believe that if we can convince the local authorities, they can decide not to buy solar panels tainted by slave labour.

Q66 Felicity Buchan: I am very sorry to hear what has happened to your sister and brother, and I appreciate your passion. The upcoming procurement legislation will further strengthen our approach to exclude suppliers where there is clear evidence of the involvement of forced labour and other modern slavery practices, such as in Xinjiang. Given that, and given that this Bill will sit in harmony with the Procurement Bill, so there will be the ability to exclude suppliers on modern slavery and labour misconduct grounds, are you more comfortable with the situation with this Bill?

Rahima Mahmut: No. For example, we are also campaigning against Hikvision cameras, which are made in China. Hikvision is one of the biggest CCTV companies, and its cameras cover internment camps and the entire Uyghur region. I always call this genocide against my people the first high-tech genocide. We are campaigning against Hikvision because it is complicit in this genocide, but we cannot necessarily prove that Hikvision cameras are made using slave labour. If the Government do not recognise this as genocide, then local governments and public bodies cannot make the decision to boycott or to stop such products coming into this country.

Felicity Buchan: There will be the ability to exclude on modern slavery and labour misconduct grounds under the Procurement Bill and in this Bill, but perhaps, in the interest of time, I should allow colleagues to come in.

Q67 Wayne David (Caerphilly) (Lab): We have a great deal of sympathy with what you have expressed to us this afternoon. One problem that many people have with the Bill is that although it was billed as a Bill to prevent BDS against Israel, it is not country-specific. It applies to all countries, including Myanmar and China, and will have a direct impact on the solidarity that is capable of being shown to the Uyghur minority. It is ironic, really, that although one of the impressive things we have seen over the last couple of years is the solidarity from the Jewish community in Britain with the Uyghur minority, we have this Bill that some would suggest actually prevents local authorities from expressing that collective, community, material solidarity with people who are oppressed in China. Do you think that is a fair characterisation of your concerns?

Rahima Mahmut: First, thank you for that question. I thank the Jewish community from the bottom of my heart for the support we have received—Stop Uyghur Genocide received its first fund from the Pears Foundation. As people who have experienced this absolute horror in the past, the Jewish community can relate and understand the pain.

When it comes to the legislation, I am not a lawyer. I only look at whether a piece of legislation will benefit my community. So far, from my own understanding of this Bill, I do not see that it will have any kind of positive outcome. As I have explained, this is because of the power that China has due to the economic dependency that this country and many others have on it, which is why we could not really mobilise Governments to recognise it and take any meaningful action. Therefore, I strongly oppose this Bill. This is not just me; I represent the Uyghur community, which also opposes this Bill. We do not want this Bill to one day prevent our campaign from being successful.

Wayne David: That was very clear, thank you.

The Chair: I am afraid that this will probably have to be the last question to the witness. I call Chris Stephens.

Q68 Chris Stephens: Thank you for your testimony today, Rahima. I have Uyghur constituents, and I have heard a lot about what is going on from them.

I have just got a simple question for you. George Peretz KC observed that the Bill would prohibit public bodies and local authorities from imposing their own bans on, for example, products and services imported from China, based on boycotting unethical production chains that use Uyghur forced labour. Is your opinion the same as that of George Peretz KC? Is there anything else you would like to add before we close?

Rahima Mahmut: We hear a lot about Uyghur forced labour at the moment, from cotton products to solar panels, and much more. But one thing is very clear: no one can go inside the region to carry out any kind of meaningful due diligence. The Chinese Government always have their own ways of manipulating these processes of examination, such as changing goods made in so-called Xinjiang to say, more broadly, "made in China".

This is a very uphill battle. We have over 300 organisations united as End Uyghur Forced Labour, but we are not really achieving the goal that we would like to achieve. I believe that the most powerful and important outcome would be for the UK Government to bring in a ban on imports from the region, and to spare some resources to control and sanction China. We know that Russia has been sanctioned, and we know the reasons—you can see the bombardment and the people dying. You can see the visual sights. Although you do not see the scenes, my people are dying in camps in large numbers, and there is no investigation or action. I therefore believe that action should not just be limited to certain Bills—we would like to see accountability overall.

The Chair: That brings us to the end of the time allotted for the Committee to ask questions on this. I would like to thank our witness very warmly on behalf of the Committee.

Examination of Witness

Stephen Cragg KC gave evidence.

2.45 pm

The Chair: We will now hear from Stephen Cragg KC. We have until 3 pm for this session. Would the witness introduce himself?

Stephen Cragg: I am Stephen Cragg KC. I am a barrister at Doughty Street Chambers specialising in public and human rights law.

Q69 Felicity Buchan: The Government's assessment is that the Bill does not breach anyone's rights under article 10 of the ECHR. The ban applies only to the public functions of bodies defined as public authorities, so it would not affect individuals or private companies. It would not affect a councillor acting in an individual capacity—only a councillor who was speaking on behalf of his council as a local authority. Given this, do you agree with that assessment, and that the Bill is compatible with the ECHR?

Stephen Cragg: First of all, it is unclear whether that is the case or not.

That is something which needs to be clarified—if that is the intention, it should be spelt out. The concern is that the right to freedom of speech of councillors speaking about matters in council chambers, for example, might be affected—that is unclear from the Bill at the moment. In article 10, the right to freedom of speech also involves the right of the public to receive information. It is interesting that local councillors, for example, might feel restrictions on saying things in debates in council chambers because they are afraid of falling foul of some of the provisions in this Bill. Michael Gove said in a statement that it does not apply to individuals—on the face of it, I can see that argument, but I think it is very unclear and needs to be clarified if that is the intention.

Q70 Felicity Buchan: Thank you. The Bill provides powers for enforcement authorities to issue compliance notices and investigate and fine public bodies where there is a breach of the ban. These powers are based on existing powers for regulators of public bodies. Do you think the powers given to enforcement authorities are reasonable and proportionate?

Stephen Cragg: I recognise that these are the kinds of powers regulatory authorities often have. There is concern about the fact that there are also judicial and quasi-judicial review remedies in the measure and about the effects of the regulatory provisions, which involve possibly preventing someone from making a statement in advance. There is also concern about the information notices provision in clause 7. I was in the room when the question about legal professional privilege was asked. I cannot see anything in clause 7(8) which provides any protection for legal professional privilege. It was also said that it gives people the power to provide that information, but that is not right either because clause 7 is all about complying with a notice—people do not have any discretion as to whether they disclose the information or not. There are concerns about the provisions in clauses 6 to 10.

I also note that there is no clue at all about the kind of monetary penalty that might be imposed as well—whether it will be something like the Information Commissioner has, which can go to hundreds of thousands of pounds, if it will be £100 or if it will be a rap on the knuckles and being told, "Don't do it again." All that needs to be clarified, and it is not clear at the moment.

Q71 Felicity Buchan: On the legally privileged point, the Government's view is that the information power does not extend to legally privileged information, on the back of the fact that that is a fundamental common law right and would need specific words to override.

Stephen Cragg: In my view, those specific words are there in clause 7(8):

"A person providing information in compliance with an information notice does not breach any obligation of confidence owed by the person in respect of the information, or any other restriction on the disclosure of information (however imposed)."

I do not see how you can get much clearer than that.

Q72 Felicity Buchan: Just to summarise, you would want clarification on that point and on councillors acting in their own capacity.

Stephen Cragg: If that is the intention—that legal professional privilege is excluded—it needs to say that.

The Chair: Thank you, Minister.

Q73 Ms Anum Qaisar (Airdrie and Shotts) (SNP): Thank you for joining us this afternoon, Stephen. Can you clarify how the Bill will impact the UK's long-standing position on illegal settlements? Will the Bill stop public bodies from adopting a stance of not buying and trading goods from illegal settlements, bearing in mind that those settlements are illegal under international law?

Stephen Cragg: I think the position is that advisory opinions are provided by international courts that say that providing support for settlements etc is something that should not be done. One of the concerns is that this is something that might get fought out in the courts under the Bill—councils thinking that they can take things into account that mean that they are not breaching the UK's international human rights and law obligations but being unsure about that and seeking clarification from the courts, and individuals and bodies thinking that there will not be a breach of the UK's international law obligations fighting that case or raising their points of view in the courts and the courts having to resolve those issues. One can see that that is something that might happen quite quickly.

Q74 Ms Qaisar: Is that a concern that you have? Richard Hermer KC has raised concerns that UK courts would potentially have to rule on the legality of Israeli settlements in the Palestinian territories.

Stephen Cragg: Yes, because there are competing views on that. If there are competing views, local authorities might want to seek a view from the courts on whether their view is correct. It is then all up for grabs in the High Court and beyond after that—something that the courts have tried to avoid getting embroiled in.

Q75 Alex Norris: You mentioned the use of regulations for setting the fining regime. That is a common theme of this Bill. It also allows the Secretary of State to vary the schedule that sets out the important exceptions to the Bill and to vary enforcement authorities. That is a theme of the Bill. Do you think that those things and that degree of reserved power for the Secretary of State should be on the face of the Bill, or are they proportionate and necessary for the effectiveness of the Bill?

Stephen Cragg: What the Bill does is give very wide powers to the Secretary of State to change lots of aspects of this—which countries are involved, which conditions and the like. The concern when you have secondary legislation powers is always, "All right, this Government might not use them in a way that you would not agree with, but Governments down the line may use the powers they have here to mould a system where countries that they agree with are excluded under the Bill, and countries and issues that they do not agree with are the ones that things will be focused on." There is always a concern about that. In something as important as this, it seems to me that that should be on the face of the Bill; it would give me a lot more reassurance as a lawyer if it were on the face of the Bill.

Q76 Alex Norris: Secondly, to finish the points you made in a fulsome way on clause 7, for my own clarity. You are saying that you would have greater confidence in the provisions in clause 7 if it was on the face of the Bill that privileged information between clients and their legal representation was exempted from that information-gathering power?

Stephen Cragg: Yes. I read out the terms of clause 7(8) and it seems to say that there is no restriction on the information which can be requested, as far as I can see. If that is not the Government's intention, it is simple to put that right.

The Chair: Thank you very much. If there are no further questions from Members, I thank the witness and we will move on to the next panel.

Examination of Witnesses

Francis Hoar, Professor Andrew Tettenborn and Professor Adam Tomkins gave evidence.

2.56 pm

The Chair: We will now hear from Francis Hoar, of Field Court Chambers, Professor Andrew Tettenborn of the University of Swansea and Professor Adam Tomkins of Glasgow University, who joins us via Zoom. We have until 3.45 pm for this session. Can the witnesses please introduce themselves, for the record, starting with Mr Hoar?

Francis Hoar: Good afternoon, I am Francis Hoar. I am a barrister from Field Court Chambers and specialise in public law.

Professor Tettenborn: Good afternoon, I am Andrew Tettenborn. I am a professor of law at Swansea University and also a member of the Free Speech Union.

Professor Tomkins: Good afternoon, I am Adam Tomkins. I hold the John Millar chair of public law at the University of Glasgow. I am a specialist in constitutional law with a longstanding interest in the issues of the Bill. I am also a former elected member of the Scottish Parliament.

The Chair: I call the Minister to ask the first question.

Q77 Felicity Buchan: One of the motivations for the Bill was to have one reserved foreign policy. Given that, do you agree that it is vital that this ban applies to the devolved Administrations and devolved public bodies? Adam, since you are sitting in Scotland, may I go to you first?

Professor Tomkins: Yes, absolutely. I agree strongly that the Bill should have UK-wide extent and application and should apply to all public bodies throughout the

United Kingdom, including devolved Administrations—arguably, perhaps especially devolved Administrations. The Bill has two fundamentally important policy motivations. One is with regard to community cohesion. Community cohesion is a responsibility of the United Kingdom Government and, indeed, of the United Kingdom Parliament throughout the whole of the United Kingdom. The other is of course to safeguard the integrity and singularity of the UK's established foreign policy, which is set exclusively for the whole of the United Kingdom by the United Kingdom Government, accountable as it is to the United Kingdom Parliament. The devolution settlement sits on top of those constitutional fundamentals and is not an exception to those constitutional fundamentals. For all those reasons, it is vital that the Bill applies and extends to all four nations of the United Kingdom.

Felicity Buchan: Andrew or Francis, do you want to come in?

Professor Tettenborn: I certainly back what Adam Tomkins has said. If we put the boot on the other foot, imagine that we are negotiating with the State Department over something very delicate, and the answer comes back from the State Department, "We will give you support—we will put pressure on this country—but we can't answer for California or Colorado, who might have a different official view." I do not think we would be very happy about that. Again, we could ask the German Government and they could say, "We are of this view, but the Government of Bavaria or Baden-Württemberg think differently." We owe it to our foreign partners to speak with one voice, in the same way as we might expect them to.

Francis Hoar: In principle, I agree with that. I do have concerns about the Bill on which I shall extend later, but in principle yes, the United Kingdom should speak with one voice. I think it is fair for Her Majesty's Government to deprecate and to attempt to restrict, within their powers and within the devolutionary settlement, as I think they are, the attempt by the Scottish Government in particular to have a separate and independent foreign policy through having missions abroad and making statements and, perhaps, investment decisions.

It is also appropriate to remember that there used to be a convention that when speaking abroad, Her Majesty's Opposition would not contradict the foreign policy of the day. That is not to say that they did not, as they of course did, object to foreign policy in Parliament, when legislation was proposed and also in the sense of Government decisions. That was something that Clement Attlee and others were extremely keen on furthering. I regret that in the past 20 years in particular, and perhaps particularly since 2016, that has not been something with which Her Majesty's Opposition have complied. They frequently negotiated with representatives of foreign states in the Brexit process, which I think is regrettable. That goes well beyond the scope of the Bill, but I think the policy objective of ensuring that the UK speaks with one voice is an appropriate one.

Q78 Felicity Buchan: Do you agree that in order to ensure that the ban operates effectively, it needs to cover a wide range of public institutions, including universities?

Professor Tettenborn: I am probably in the firing line here as I come from a university.

Felicity Buchan: Yes, absolutely.

Professor Tettenborn: I think it probably should, but perhaps for reasons different from those for other public authorities. The issue of free speech in universities is very much an issue of free speech for individual scholars within those universities. It seems to me rather inappropriate that a university should have a corporate view on a particular matter of foreign policy. It should, if you like, hold the ring between individual academics. So when it comes to universities I think there is a specific justification.

When it comes to public authorities, I simply go back to the idea that public authorities should regard it as off limits—ultra vires, if you like—to have their own foreign policy and their own views on what individual foreign Governments should be doing. That is particularly because, as was mentioned earlier, if you have, for example, large numbers of people from India and Pakistan in a particular local authority area, there is nothing that is going to make dissension worse than a public authority that is seen to favour Pakistan, say, over Kashmir.

Felicity Buchan: Francis or Adam, do you want to come in on that point?

Francis Hoar: Maybe I will let Adam conclude on this, and I will be much more brief. I am ambivalent about universities, to be honest, for the reasons that Dr Harris, whose evidence I heard, set out. I appreciate your point, Minister, which is that the legislation applies only when the university is acting as a public body. I appreciate that distinction, which can perhaps be fine. That is the kind of issue that might be teased out in the courts, but I suppose that is part of the nature of such a Bill. I sympathise and agree, to a certain extent, with Professor Tettenborn's point about it not really being appropriate for universities to have corporate identities, but whether that should be in public legislation is a different matter.

Professor Tomkins: I agree with what Andrew Tettenborn just said. I should probably have said at the beginning that I am also a member of the Free Speech Union; indeed, I am on its Scotland advisory panel. I do not like disagreeing with Bryn Harris, but I am afraid I disagree with quite a lot of what he had to say about the Bill this afternoon, not only with regard to the universities question, but with regard to clause 4 more generally.

In the law of the United Kingdom, we do not have a single definition of the public sector or the public sphere, but we do have a very workable template that has been used for more than 20 years now in the Human Rights Act, which is what the Bill validly seeks to borrow from. That brings within its scope hybrid authorities such as universities when they are acting in a public capacity. It is a way of understanding the scope of the public sphere or public sector that has not caused particularly difficult problems in litigation at the High Court or at a higher level in the more than 20 years during which the Human Rights Act has been in force. That is not to say that it has not been litigated at all—of course it has—but it has not caused particular problems.

I think it eminently sensible that the Bill seeks to use that template in this context. I am very relaxed about universities and other public authorities being captured within the scope of the Bill in the same way as local authorities and devolved Administrations. I do not have any issues or concerns in that regard.

Q79 Felicity Buchan: So you are happy with how the Bill is drafted to apply only to public institutions, not to private individuals.

Professor Tomkins: Absolutely, yes.

Q80 Felicity Buchan: Does anyone on the panel have a view as to how the Bill compares with other examples of anti-BDS legislation in other jurisdictions across the world?

Professor Tomkins: Perhaps I can address that question, Minister; I have done quite a lot of work on how the Bill would compare with the position in France and in a number of the states of the United States.

The Bill is very modest indeed in comparison with what has been happening in France and in the United States. French authorities, for example, are seeking to criminalise various forms of BDS activity, which the Bill emphatically does not. In the United States, where I think the states that have enacted anti-BDS legislation are now in the majority, that legislation varies from state to state but its general tenor is that public authorities are prevented by force of law from contracting at all with American companies unless those American companies declare that they do not boycott either Israel or the occupied territories. Again, that is going much further than the Bill will go in the UK. When understood comparatively in terms of the way in which our closest friends and allies are taking legal action to clamp down on very counterproductive and unhelpful BDS campaigns, the Bill is very modest, but it is not without importance and is not ineffective.

It is worth remembering—I listened to the exchanges with other witnesses earlier—that of the boycott campaigns that have been targeted against a foreign power by public authorities in the United Kingdom, every single one has been targeted at Israel, so analogies with what happened 30 years ago or more with regard to South Africa are perhaps a little inapt. It is true that the Bill is of general application and is not specifically about Israel, but the facts on the ground are that, as matters stand, every single one of the publicly funded anti-BDS campaigns in the United Kingdom has been targeted at Israel.

The Bill is very important and I unqualifiedly support it, but in comparison with what our closest friends and allies are doing elsewhere in the world, it is a rather modest measure. It could—some would say should—have gone a lot further in clamping down on BDS activities, which have the effect not only of undermining the cohesion of UK foreign policy, but of significantly undermining community relations.

Q81 Felicity Buchan: Does the rest of the panel want to come in, either on the comparative point or on the point about ECHR article 10?

Professor Tettenborn: I might have something to say about ECHR article 10. I am not as much of a human rights expert as the gentleman from Doughty Street Chambers—I give way to him pretty willingly—but I do not think that there is a strong article 10 right in public authorities speaking as public authorities. Public authorities are normally the people who get sued for breaking article 10, rather than the people who sue because somebody has stopped them saying what they want. As I read the Bill, it is very carefully drafted to say that if a councillor or a Scottish Minister says, "I think this is a rotten piece of legislation and I think Israel, in any decent society, ought to be made a pariah," and makes it clear that they are speaking in a private capacity and not officially on behalf of the council, they are in no danger at all.

Francis Hoar: I defer to Professor Tomkins on the international comparisons. In respect of article 10 of the ECHR, there are three stages: first, whether it is engaged; secondly, whether the Bill contravenes article 10, paragraph 1, which concerns whether or not it is a legally enforceable prohibition; and, thirdly, whether the Bill is proportionate.

In some respects, in my view, the Bill does not engage article 10. I do not believe that the power to make investment decisions is engaged by that. On the other hand, statements clearly are. Clearly, the Bill in itself would prohibit the conduct, and it is sufficiently clear for it to be very unlikely that the courts would be forced to interpret the legislation in such a way that was compatible, even if it strained the usual interpretative norms.

So article 10, paragraph 1 does not apply; the question is whether the Bill is proportionate. Dr Harris referred to one recent Strasbourg court decision, Baldassi, which concerned a non-public body. In that case, it was found that prohibitions by the French state on that non-public body were disproportionate. But in the earlier case of Willem *v.* France, which concerned a mayor, there was no violation. In other words, the criminalisation—the legislation went much further, as Professor Tomkins said, even back in 2009—was found to be proportionate because of the community cohesion point.

That said, I agree with Dr Harris about clause 4. I do not see the need for it. The mischief the Bill is designed to address is divestment, procurement decisions and so on. I do not see why it is necessary to prohibit councils from saying that they would like to divest if they were lawfully able to do so, and even that they intend to do so. As Dr Harris said, if a council passes a resolution that has effect, that is ultra vires. I agree, as I said at the outset, that it is desirable that the United Kingdom speaks with one voice and that public bodies that do not have foreign policy powers do not contravene that, but I do not see the necessity of clause 4.

I do not think the clause would necessarily be disproportionate. The Willem *v.* France decision in the Strasbourg court suggests that it would be found to be proportionate, and in any event the background fact speaks against disproportionality—if it were to come to a challenge, the background fact is that this is a public body that has no powers in respect of foreign policy—but I do not see the need for clause 4, and I would advise the House to reject it.

Q82 Felicity Buchan: Do you not think it is needed for community cohesion? These statements can be very inflammatory.

Francis Hoar: Yes, of course they can, but as Professor Tettenborn said, that does not stop councillors making them on the campaign stump, and it does not stop the Mayor making them in a personal capacity. I am afraid I do not find that a convincing argument at all.

Q83 Alex Norris: I want to follow that point through, with all three panellists, if possible. You have all indicated support for the Bill in generality, and in particular for what clause 1 tries to achieve. Do you think you have to have clause 4 for the Bill to be effective?

Francis Hoar: I have answered that.

Alex Norris: Yes, I think you have addressed that point, but what about the two professors?

Professor Tettenborn: I must admit that I am a little more friendly to clause 4. I will tell you why. It comes out in the old saying that a nod is as good as a wink to a blind horse. Sorry, that was a bit flippant, but if you have a statement by a large number of councillors, "We really don't like it. We're not saying that we might disinvest from it, and we're not saying that this is going to influence what we do, but you realise what our views are," that is going to come across to a lot of other people as being very much the same thing. I gather that that was what this particular clause was getting at. I confess that I am a little less happy about conditional statements, but if a person says, "We would like to do it—okay, it's illegal, but we would like to do it—but we are not saying we are going to do it," I think there is a strong case for saying that they should not say that.

One always has to remember that, as Professor Tomkins pointed out, this is not something that criminalises a statement. Basically, something can only happen to you when you make a statement once you have been warned—once you have received a notice: "Oi, don't say that again." Now, you might want to challenge the notice or whatever, but that is a relevant feature of the legislation. It is a feature that I find attractive, as against the rather fierce legislation that they have in quite a lot of American states.

Q84 Alex Norris: Professor Tomkins, could you address that point?

Professor Tomkins: I will make two quick points about clause 4, if I may. First, in my career I suppose I have worn two hats: one as an academic lawyer and the second as a practising politician. What you have heard from the other two witnesses on this panel are legal responses to clause 4, and there is nothing wrong with that at all—I do not mean that as anything other than a compliment—but perhaps a political response to it would be to remind this room of politicians that, in these matters, it is not just what happens that matters: it is also about the optics of what happens, particularly with regard to the undermining of community cohesion.

The Jewish community in Scotland—which happens to be a community that I know rather well, for personal reasons—is a very small community. It is a community that is very easily frightened, not necessarily by things that are done, but by things that are said. If we are serious about protecting community cohesion, and I think the Government are serious about that, and they are right to be, and if we are also serious about maintaining the integrity of British foreign policy, we need to be careful about what is said by people in their official capacities—not as private citizens but in their official capacities. For those reasons I am much more enthusiastic about clause 4 than most of your other witnesses have been.

With my legal hat on, I am certain that there is not an article 10 problem here, because clause 4 is targeted at speech that is uttered only by officials in their official capacity and, moreover, is targeted only at a very narrow range of potential statements, which are statements with regard to procurement decisions and/or investment decisions, rather than, as we heard in earlier sessions, statements that are in their generality critical of Israeli policy or, indeed, of British policy with regard to the middle east. For all those reasons, there is not a legal problem with regard to clause 4, but there is a political imperative behind clause 4, and if I had a vote on the matter, which I do not, I would vote for it enthusiastically.

Q85 Alex Norris: On multiple occasions on the face of the Bill, the Secretary of State has reserved powers to change provisions in the Bill by regulations. Do you think that approach has been used too liberally? Has it been used appropriately? Are you comfortable with that degree of ability for the Secretary of State to vary things later down the line?

Professor Tomkins: I think I am. It is always a delicate balance between what goes into primary legislation—what goes on the face of the Bill, as we say—and what can be done after an enactment by Secretaries of State or Ministers, using the various powers that are crafted by the Bill. The balance that has been struck in the Bill is appropriate and reasonable—yes, I think it is.

Francis Hoar: I think it goes too far in some respects. Generally speaking, Parliament has been too ready—this goes back over many decades and is certainly not just the case under this Government and in this Parliament—to give the Government powers to give devolved legislation, particularly with Henry VIII powers, which the Government accepts there are in this case. I think Mr Cragg KC mentioned the unlimited power of the Minister to order the maximum financial penalty, and there is good reason for the House of Commons to restrict that to a particular maximum.

The particular concern I had was that although, wisely, the Bill does require advance scrutiny of the regulations, there is an exception in clause 3(2) and (5). The Government have given a good explanation as to why they may wish to add a country or territory to the list—the approved list or the disapproved list, whichever way you want to look at it—because, of course, Russia might invade Ukraine, and that is an obvious example. But they have not provided any explanation—certainly not a credible explanation—as to why we need clause 3(2), which includes adding, removing or amending a description of a type of consideration that can be taken into account by a local authority. There is absolutely no reason why that would ever be so urgent as to be needed without the advance scrutiny of the House of Commons. So clause 3(2), in my view, should not have an emergency provision. In clause 3(5), there is a very good reason for that; if the Bill is passed, one accepts the principle, and if one accepts the principle, these things should be able to happen.

Professor Tettenborn: I am entirely with Francis on that one. Certainly, the power to add countries actually is, again, quite skilfully guarded. I think people around this table will have noticed that it is subject to affirmative resolution—that is, it cannot pass merely by everybody not noticing when it is placed on the Table and not objecting to it; it cannot pass by inertia. I think that is a very sound part of the Bill indeed.

Q86 Ms Qaisar: Thank you to the panel for joining us today. I want to stick to clause 4, because I was really interested in the discussions on it. Some stakeholders

have called it a gagging clause. I am really interested to learn what other options the Government could bring forward to achieve the clause's aims. It is my understanding that if a Scottish Government Minister, for example, wanted to speak out against it, they would be unable to do so. They would have to turn around and say, "I'm not speaking on behalf of the Scottish Government, I'm speaking as an individual," even if they were stood in the Scottish Parliament.

Francis Hoar: I have answered this fairly fully, but I think that that encapsulates why I am not convinced about clause 4, although I agree with both my colleagues on the panel that it is not likely to be disproportionate, because it falls within the earlier Strasbourg/French authority. These are public bodies, and there is a good reason why it would be proportionate to restrict them, but you have encapsulated why the provision is pretty useless: because all the Minister needs to say is, "I'm not going to speak on behalf of the Scottish Government."

Now, I can absolutely see the logical reason why it is a good prohibition, because it is right, on the view of the Bill on this panel—although not among all your other witnesses—which is that the general objective is a sound objective. If that is right, it is fair enough to prevent Ministers in Scotland or Wales from making those sorts of pronouncements. But, in reality, what is it going to do? It is just going to mean that, basically, I will say that I am going to speak in a personal capacity.

Incidentally, on the drafting of the Bill, I am not entirely clear—I agree, again, with Mr Cragg on this—as to the relationship between clauses 4 and 1. Purely from a drafting point of view, that needs to be made clear. If the Government are suggesting that that should not apply to an individual speaking in an individual capacity, there is no reason why the Bill cannot say so. I am just not clear. The wording of clause 4(1) is that

"the person intends to act in a way that would contravene section 1".

I am not convinced that it applies only if that person has been given a notice. As Andrew said, I do not read that from the Bill. I am not entirely clear what that means. It needs to be clarified as a matter of drafting if clause 4 is to stay.

Professor Tettenborn: I would like a clarification there as well, I must admit. It seems to me that there may be quite an important difference between someone who makes a pronouncement and someone who says something and adds, "but I am speaking personally." That concerns how we are viewed abroad. It is very good for the conduct of the foreign relations of this country that people abroad know that they can deal with the UK Government as a UK Government. They obviously know that there will be people who disagree with the Government's foreign policy, but I see nothing wrong in saying that if an official is going to do that, it might be a good idea if they said, "I am speaking in a private capacity."

Ms Qaisar: Professor Tomkins, do you want to come in?

Professor Tomkins: Yes, thank you. First, this is not a gagging clause. Anybody who thinks it is does not know what a gagging clause looks like. Nothing in clause 4 prevents the current First Minister of Scotland, or any Minister or councillor, from saying whatever they want about the appropriateness of foreign policy, or indeed the appropriateness of policy in a foreign state. The prohibition is simply and narrowly focused on making statements that proclaim that a Minister or a councillor would have decided to do something unlawful if they had been able to do so, which they cannot do anyway. The idea that this is a gagging clause needs to be firmly scotched, if I can put it that way.

Beyond that, I do not have much more to say, except to repeat a point that was made in an earlier session. Councillors should not be wasting their time opining about foreign policy, because it is not their job. Neither should Ministers of devolved Administrations, because it is not theirs either.

Q87 Ms Qaisar: Thank you so much for that, Professor Tomkins. I have a couple more questions. We are under time pressure, so if you could all stick to short contributions, that would be appreciated.

The people of Scotland have a strong history of being at the forefront of political campaigns. As was said earlier, Glasgow proudly stood against South Africa's apartheid in the 1980s. In 2014, the University of Glasgow became the first university in Europe to divest from the fossil fuel industry. Given that public bodies such as universities would now be prevented from taking such a stance, is the Bill compatible with the free speech protections in the European convention on human rights?

Professor Tettenborn: I am sorry; I did not hear what Glasgow University had divested from.

Ms Qaisar: The fossil fuel industry.

Professor Tettenborn: Well, that would not be affected. That is not what the Bill is about. It is far worse, if I may say so, for a public authority in this country to have a foreign policy than for it to have an environmental policy. I know that it probably will not go down very well north of the border in Shotts, but I do not think it is the business either of the Scottish devolved Government or of Scottish local authorities to engage in foreign policy. I have no enormous objection to any public body saying, "We will not invest in fossil fuels."

Q88 Ms Qaisar: Does anybody else want to come in? If not, I will move on to my last question.

Okay. Professor Tomkins, you have spoken about the fact that you were a Member of the Scottish Parliament, and I understand that you are a former adviser to a Secretary of State for Scotland. Constitutional law is your area of expertise, and you have said that you are keen to see this legislation implemented across all four nations of the UK. I am interested in learning a little bit more about what impact the Bill will have on the independence of Scotland's Parliament and, by extension, our Government in Holyrood.

Professor Tomkins: I do not think that it will have any impact on that at all. The Scottish Parliament is democratically elected to pursue policy objectives within its legislative competence. That legislative competence is set by the United Kingdom Parliament in the Scotland Acts, as amended. It is absolutely clear that that legislative competence does not extend to foreign policy. The Bill has no impact at all on the powers and competences of the democratically elected Scottish Parliament—none at all.

Q89 Dr Luke Evans (Bosworth) (Con): Professor Tomkins, you talked about the different comparisons out there. Which country has the best example of this type of legislation and why?

Professor Tomkins: The states in the United States that have pursued anti-BDS legislation have probably gone further than anybody else I am aware of, although perhaps there are jurisdictions that I am not aware of; my research has been restricted to the United States, France and the UK. There would be, I think, significant human rights implications for the United Kingdom, given its commitments under the ECHR, were the UK to pursue the sort of anti-BDS policy that we see in some of those states. I think some significant article 10 issues would arise in relation to that sort of policy. I cannot speak for the Government, but that might very well be why the UK Government have elected not to proceed with that sort of policy.

The approach that the French authorities have been taking is very different, again, from what the present Bill envisages. The French seem to have seen the issue much more as one of public order and freedom of assembly, and are going directly after those who engage in anti-BDS demonstrations and protests in France. What we have in front of us is a Bill that is much more carefully—certainly much more narrowly—targeted on the two specific areas where public authorities in the UK, unfortunately in my view, have engaged in anti-BDS campaigning targeted at Israel and the occupied territories with regard to investment and procurement decisions.

This is not a general "Let's ban BDS" Bill, or even a specific one with regard to public authorities. It is specifically and carefully targeted at the two core areas where, historically in the UK, public bodies have engaged in anti-BDS activities with regard to Israel when it comes to procurement and investment. Because it is carefully targeted for the UK, my answer to your question is that for the UK this is the best Bill.

Q90 Dr Evans: That is very useful. Thank you.

I have a wider question for the whole panel. This is written in the negative, in the sense that it indicates political or moral disapproval for foreign states. Do the panel have any thoughts about writing it neutrally, so that neither the pro nor the anti side fit in? In other words, a public body should not get involved in these kinds of arguments at all. Is that a position you agree with, Professor Tettenborn?

Professor Tettenborn: That is a very good question. Speaking as a professor in an ivory tower, I would immediately agree with you; speaking as a practical man, I would say that you are making a rod for your back if you start imposing abstract legal obligations of neutrality. I think it makes enforcement far easier and life far more difficult for clever lawyers if you do what is done in this Bill: "Thou shalt not say that you disapprove of a particular regime." I do not think there is a problem of local authorities saying, "We think Venezuela is the best thing since sliced bread, and we will do whatever." The Bill does answer the mischief.

Q91 Dr Evans: That is very useful. Mr Hoar, what do you think? The civil servant is supposed to be neutral, for example. We have already discussed the realms of where this body goes and who is actually in charge. All the panellists stated that they were not sure where the role of Ministers went. For the likes of the NHS or the police, is there not an argument for saying that there should be neutrality when it comes to foreign policy that deals with issues such as those in front of us?

Francis Hoar: There is an argument, and you have made it, but I do not think that it is a good enough argument for legislating, because you need to be very careful when you are legislating in respect of what is enforceable. Adam has given some examples of quite extreme—I think very extreme—classically American approaches that go very far down the line in terms of enforcement in another direction, in respect of companies that have or do not have dealings with Israel. To require and enforce neutrality would go far further than is needed. The mischief that the Bill addresses is the divestment campaign, based on political objectives that are potentially contrary to UK foreign policy, and that is where it should lie.

I just want to put down a marker that—if you will allow me, Dame Caroline—I have something to say about legal professional privilege.

The Chair: Yes, but do keep an eye on the clock, because there are two more Members who have indicated that they want to ask a question, and we have only 10 more minutes.

Francis Hoar: Thank you. On legal professional privilege, the answer is not quite as straightforward as has perhaps been represented. I think that the Government's line is that the answer is in clause 7(9), which is to defer to the data protection legislation. The Data Protection Act 2018 has various provisions that restrict the requirement to provide legally professionally privileged information. For example, schedule 11 has a tailor-made restrictive provision:

> "The listed provisions do not apply to personal data that consists of…information in respect of which a claim to legal professional privilege…could be maintained".

I think legal professional privilege is extremely important; I entirely agree with Mr Norris about that. Obviously local authorities and other public bodies will be receiving advice on what could be quite complicated circumstances. I think it would be far more straightforward, though, to mirror that legislation in clause 7: you could just add a provision copied straight from paragraph 9 of schedule 11 to the 2018 Act. That is what I suggest that Parliament should do.

Professor Tettenborn: You will get exactly the same answer from me—he has taken the words out of my mouth.

Dr Evans: I have no further questions.

Q92 Kim Leadbeater: Almost reluctantly, I return to clause 4. I have been thinking about the practical repercussions of the Bill, and I have to say that my feeling this afternoon is that this is going to be pretty messy. If we are asking elected officials in council chambers up and down the country to say, "Now I am speaking in a personal capacity, and now I am speaking in my capacity as an elected official," it feels like that would be very messy. Surely, as advocates of freedom of speech—as a number of members of the panel have said—that can only have a worrying effect in shutting down debate and discussion. That can only have an undemocratic outcome.

Professor Tettenborn: That is a very interesting point, if I may say so. There might be a simple way around it: we could have an extra subsection in clause 4 that said, "Nothing in this Act affects the right of any member of a public authority to speak in a private capacity." Just saying it out loud provides a safe harbour; it means that people do not have to go to a lawyer to look up a law, or at least they do not have to go to so many lawyers. I think that might be helpful.

Professor Tomkins: I share everybody's concern that we must take freedom of speech very seriously—I think that that is a very important set of concerns to raise—but there are two things to say.

First, what Professor Tettenborn has just described is already the state of the law. The way in which we approach rights under the Human Rights Act is that rights are stated generally, and any exceptions to those rights must be narrowly tailored and stated specifically. If there is doubt or ambiguity, it falls on the side of the right, not on the side of the exception. That is already, in broad terms, the legal position through the United Kingdom—as it should be, in my view. Adding extra words to clause 4 to deliver that effect will not have any effect, because it is already the legal position.

I remind the Committee that clause 4 is very narrow in scope: all it says is that somebody who is subject to section 1 may not say that they would have made a procurement decision or an investment decision different from the procurement decision or investment decision that they have made, by force of this legislation. It seems to me that all the members of this panel are of the view that that is perfectly compatible with article 10 of the ECHR, for all the reasons that we have rehearsed; and if it is compatible with article 10 of the ECHR, it is also compatible, I think, with our domestic standards with regard to free speech. For all those reasons, and notwithstanding the fact that I take free speech incredibly seriously, I genuinely do not think that there is a free speech issue with regard to this Bill.

Q93 Wayne David: Partly because our two professors are from Wales and Scotland, I want to ask about devolution. Most of would agree, I think, that foreign policy is exclusively a reserved matter, but we are not just talking about foreign policy now; we are talking about procurement responsibilities and public service pension schemes, the responsibility for which is, to a large extent, in different ways, devolved to the devolved Governments. I am mindful of a statement in the House of Commons Library brief that the Bill as it stands will modify

"the executive competence of devolved ministers",

and because of that the devolved institutions will need to pass a legislative consent motion. That might be politically contentious; therefore, the Act might not automatically apply to the three parts of the United Kingdom we are talking about. Also, in Northern Ireland, public services pension schemes are exclusively in the hands of the Northern Ireland Assembly, which is not currently meeting. How will it agree a legislative competence order? Presumably, unless the Secretary of State takes powers that are not prescribed in the Bill, this legislation will not apply to Northern Ireland. Would you care to comment on that?

Professor Tomkins: With your permission, I will jump in on that. First, I have to say that the question of legislative consent has got a long way out of control. By that I mean this: absolutely, the United Kingdom Parliament should seek and obtain the legislative consent of the devolved Administrations and devolved Parliaments if the United Kingdom is seeking to legislate on matters which it has chosen to devolve to democratically elected legislatures away from Westminster, but that is not what is happening here—

Q94 Wayne David: The House of Commons Library disagrees with you.

Professor Tomkins: No it doesn't.

Wayne David: I just read it out.

Professor Tomkins: No, what you said is that this legislation trespasses on executive competence of Ministers, not on legislative competence of the Scottish Parliament. There is not a single aspect of devolved competence on which this legislation touches or trespasses. I do not think there is any question of legislative consent—but it is an unfashionable view these days that this has got out of control in that the United Kingdom Parliament now thinks it needs to seek legislative consent on a whole range of issues that are not actually devolved to Scotland, Wales or Northern Ireland. In my view, on a proper understanding of the scope of the Sewel convention—that is to say, as Lord Sewel would have understood it when he introduced the convention in the House of Lords back in 1999—there is no question of legislative consent on this legislation.

The Chair: We do not have time for another question in the time allotted for this panel. Let me say on behalf of the Committee that we are grateful to our witnesses for their evidence.

Examination of Witness

Andrew Whitley gave evidence.

3.45 pm

The Chair: We will now hear from Andrew Whitley, chair of the Balfour Project. We have until 4 pm. Would you introduce yourself for the record, Mr Whitley?

Andrew Whitley: My name is Andrew Whitley. I am the chair of the Balfour Project, a Scottish registered charity that advocates for peace, justice and equal rights in Israel and Palestine. We have a particular focus on Britain's responsibility, historically and currently, for the situation Israel and Palestine. I myself have followed the situation for almost 40 years now, in different professional capacities, including living in the region—in Gaza and Jerusalem—for seven years.

Q95 Felicity Buchan: In your written evidence, you raise concerns that the Bill could prevent ethical procurement or divestment decisions. Do you acknowledge that there are exemptions for the likes of labour-related misconduct and environmental misconduct, and that the Bill relates only to moral or political disapproval of countries and territories, so it would not in any way prevent, for instance, divestment from fossil fuels?

Andrew Whitley: Yes, that is the case, but I think it is difficult to draw a distinction between divestment in certain areas and not others. It is possible to have divestment from Russia over its invasion of Ukraine,

for example, and we can refer to aspects of boycotts and divestments that go back to the time of the slave trade. There is a long and distinguished record of being able to use these tools. I am not saying that our organisation advocates for BDS to be applied in this particular case, but we do advocate for the right of others to speak and to say that this is a legitimate tool. What concerns us as an organisation is that this Bill singles out Israel and the Palestinian territories as the sole area in which it applies, and our concern relates in particular to the conflation of Israel proper with the occupied territories in the Golan Heights, the west bank, Gaza and east Jerusalem.

Q96 Felicity Buchan: The Bill will apply to all countries; the only reference to Israel is that if in future you want to exempt countries, that can be done by secondary legislation except in the case of Israel, which requires primary legislation. The reason for that is that we want greater parliamentary scrutiny, because, as we have heard from other witnesses, Israel has been the sole focus of so many BDS campaigns. Given the fact that these campaigns are targeted against Israel, we think that greater level of parliamentary scrutiny is required. In the light of that, do you feel more comfortable?

Andrew Whitley: I would not advocate in favour of BDS against Israel per se. I would argue that BDS is a legitimate tool to make a distinction between Israel and the occupied territories. I think that is an important distinction that always has to be maintained. In our view, this is the central flaw in the way the Bill is drafted.

Q97 Felicity Buchan: So that I understand your position, do you think that BDS is additive in the middle east? Every witness we have heard so far says that BDS does not add anything to the situation regarding peace in the middle east, and that actually its effect is negative because it leads to problems with community cohesion in the UK.

Andrew Whitley: I am not sure that I agree that it creates community friction in this country. I recognise fully that there are those who are concerned about anything that could lead to antisemitism, and that is a scourge that must be utterly condemned, but I am not sure that advocating for BDS does that. It is a legitimate tool of non-violent action to influence a Government's behaviour when they are committing illegal acts, and the occupation of a foreign country or a foreign territory is an illegal act, whether it is in Ukraine or Palestine.

Q98 Felicity Buchan: The Government's view is that the settlements are illegal; however, we do not support boycotts and divestments against Israel because we do not think that they contribute towards peace in the middle east. Do you disagree?

Andrew Whitley: I would not advocate for boycotts against Israel.

Q99 Wayne David: Andrew, you will have heard the last question in the last session, which touched on foreign policy. I made a statement that foreign policy is a non-devolved matter, but human rights is an issue that belongs to central Government, local government and devolved Government—it belongs to all citizens in a sense. Is that your view as well, and if it is, would you care to elaborate to say why you have fundamental concerns about this piece of legislation?

Andrew Whitley: Human rights are universal, and they need to be applied even-handedly and in a systematic fashion; there can be no quarrel or disagreement over that. Any attempt to try to make distinctions over how human rights should apply in one territory or another undermines the authority of those who are attempting to enforce them, and it makes a mockery of the application of human rights if they are applied selectively. I believe it is the responsibility of all citizens, as well as public bodies, to be able to apply ethical, moral human rights considerations in their decisions, and those can apply to political matters and they can apply to other matters. Human rights also cover the provision of shelter, the provision of water supplies or adequate education; these are all basic fundamental human rights. I think it is the responsibility of all bodies in this country to take human rights considerations into account and to apply them in a consistent manner.

Q100 Ms Qaisar: Thank you so much for joining us today, Andrew. You have spoken about the historical influence of Britain, so I am interested to learn a little bit about what impact you think the Bill will have on the UK's relationship with the occupied territories, and with Palestinians across all four nations here who wish to exercise their freedom of expression so that the Israeli Government can be held to account for their actions?

Andrew Whitley: I think the impact of the Bill will be to hearten the most extreme nationalistic, racist Government that have ever been in place in Israel. I think that it will cheer Bibi Netanyahu and his Ministers and will provoke divisions within Israel. I should put it on the record here that a large number of sensible, middle-of-the-road Israelis are deeply troubled by the situation in the occupied territories and by their own Government's actions, including the expansion of the settlements. We should be supporting those people, not the extremist Government, who are inflaming hatred in the country. As far as the Palestinians are concerned, I regret to say this, but I am afraid they will see the passage of this Bill as yet another act of betrayal on the part of Britain.

Q101 Ms Qaisar: The UK Government have a long-standing position on illegal settlements. Would the Bill stop a public body from taking a stance of not buying and trading goods from illegal settlements, bearing in mind these settlements are of course illegal under international law?

Andrew Whitley: I am sorry; would you mind repeating the question? I am having a little difficulty hearing.

Ms Qaisar: That is fine; I will also speak more slowly, just in case it is my accent. I was asking if you could clarify how the Bill will impact the UK's long-standing position on illegal settlements. Would the Bill stop a public body from taking a stance of not buying and trading goods from illegal settlements within the OPT, bearing in mind the settlements are legal under international law?

Andrew Whitley: Members of this Committee will be well aware that the United Kingdom played an important role in the passage of UN Security Council resolution 2334 in December 2016. That is the last and most important resolution that refers to the absolute prohibition

on the building of settlements in the occupied territories. As the UK supported that law, I would hope that it would take action to be able to continue to defend its implementation, which has been sadly lacking. Certain forms of pressure, I believe, are appropriate to encourage changes of behaviour, because there are many, including many Israeli friends of mine, who would argue that only through the exercise of meaningful pressure by Governments who can have influence over Israel is it likely to rethink its direction. I think that would certainly apply to the continued expansion of settlements, which are making a two-state solution impossible.

Q102 Ms Qaisar: Finally, what impact will the Bill have on your organisation's work out in Israel and the occupied territories?

Andrew Whitley: It will not have a direct impact on our work. Our focus, as I said at the beginning, is on educating the British public and encouraging the British Government and decision makers in the United Kingdom, including Members of Parliament, to act in a way that upholds Britain's historical responsibility. We believe that Britain has an important responsibility, not just as a legacy from the past, but today. We think that the passage of the Bill, if it has the effect that many argue it will have—to chill free speech and to prevent arguments that there are legitimate non-violent tools that can be used to encourage a change of behaviour on the part of Israel—would be deleterious to our work.

The Chair: I am mindful of the fact that we have to conclude this part of the session at 4 pm.

Q103 Wayne David: My question follows on from what you have just said, Andrew. The Government say they are committed to a two-state solution. We as the Opposition, and I think the British Parliament, are strongly in favour of that. However, there is great deal of concern about the conflation of Israel and the occupied territories and the Golan Heights. I believe I am correct in saying that this is the first time that has ever happened in a piece of British legislation. It does, perhaps not legally, but it certainly sends out the message that somehow the Government's commitment to a two-state solution is not as firm as they say it is. Do you think that is the case?

Andrew Whitley: The lip service to a two-state solution continues, but I think there is a great deal of make-believe—or perhaps deliberate pretence—on the part of those who say that a two-state solution is still viable. It is looking increasingly impractical. If I can quote the words from the UN resolution—I was a senior UN official in the region for many years—the UN calls for "a sovereign, contiguous" Palestinian state. That is not the case at the moment and it is highly unlikely to be the case. The difficulty is in facing up to the alternatives, which are considered unpalatable. Members of the Elders delegation, Ban Ki-moon and Mary Robinson, who visited two months ago said that, to date, we are living in "a one-state reality"—not a one-state solution, but a one-state reality. That is what needs to be addressed.

It may be that the Government are privately edging away from their commitment while maintaining the rhetoric of support for a two-state solution. There are certainly hard choices to be made. However, from my personal perspective as someone who has followed the spread of these settlements for 40 years and seen the number of settlers grow from 50,000 to 700,000 in that period, it is increasingly difficult to see that it will actually transpire in that way.

The Chair: Order. I am afraid that that brings us to the end of the time allotted for the Committee to ask questions. May I thank our witness on behalf of the Committee? We will now move on to the next and final panel.

Examination of Witnesses

Mark Beacon and Rozanne Foyer gave evidence.

4 pm

The Chair: We have until 4.30 pm for this session. Could the witnesses start by introducing themselves for the record?

Mark Beacon: My name is Mark Beacon. I am an international officer at Unison. Unison is the largest trade union in the UK, representing 1.3 million workers working in public services. Although our members are UK-based, we take a very keen interest in and recognise the importance and value of working collectively internationally to uphold human rights and workers' rights. That is one of the key reasons why the Bill is of interest to us.

Rozanne Foyer: My name is Rozanne Foyer. I am general secretary of the Scottish Trades Union Congress. STUC is Scotland's federation for trade unions. We have over 600,000 members in Scotland.

Q104 Felicity Buchan: First, can I ask whether you support the BDS movement?

Mark Beacon: Unison has consistently advocated for a two-state solution—for a viable Palestinian state alongside Israel. We support boycott, divestment and sanctions as a method to put pressure on the Israeli Government to bring about peace and a viable two-state solution. In terms of the work we are talking about here around pension fund engagement and investment, we have been calling for the local government pension scheme to begin the process of divestment from companies on the United Nations list of business enterprises involved in and with the illegal settlements, and to begin the process of time-limited engagement with other companies that are contributing to violations of human rights. Of course, our focus is very much on the Occupied Palestinian Territories and upholding human rights and international law within that context.

Q105 Felicity Buchan: We have heard an awful lot of evidence today that the BDS movement has not contributed to peace in the middle east, but that it has simply targeted Israel and led to community friction in the UK. Do you agree with those sentiments that have been expressed very broadly today?

Mark Beacon: If you look specifically at our work on this, it is very much targeted at the Occupied Palestinian Territories. We are focusing on companies that are contributing to a grave violation of international law and breach of the Geneva conventions. It is also worth adding that BDS is not something we have used exclusively in the context of Palestine and the Occupied Palestinian Territories. You can look to examples such Myanmar

and Western Sahara and, historically, countries such as South Africa. It has played a big role. Trade unions throughout the world use it. When it comes to boycott, divestment and sanctions—mainly divestment in this case—what we do is listen to the calls of our trade union partners around the world and ensure that what we are doing is reflecting their demands in these areas.

Q106 Felicity Buchan: Rozanne, can I bring you in on those points?

Rozanne Foyer: The STUC has a long-standing policy of support for a peaceful two-state solution to the Israel-Palestine conflict. We also have, since 2009, supported BDS as a policy and a campaigning method. Basically that has been part of our international campaigning for decades, not just in relation to Israel. Fifty years ago we supported Rolls-Royce workers who refused to repair the aeroplane engine—*[Inaudible.]*

The Chair: Rozanne, I do apologise. We are struggling to hear you. Do you have a microphone available that you could plug in?

Rozanne Foyer: No, I do not.

The Chair: It is quite difficult to pick up what you are saying. You do not have a headset?

Rozanne Foyer: No, sorry, I do not.

The Chair: As long as the Committee is content to carry on. Sorry, I apologise for interrupting you; I just wanted to see whether we could improve the sound quality.

Rozanne Foyer: I will try to speak closer to the monitor to use the microphone in there.

The Chair: That is a bit better.

Rozanne Foyer: Through the 1980s, we played a key role in the anti-apartheid movement. Boycott, divestment and sanctions also played a key role in that movement. The trade union movement in Scotland was quite instrumental in encouraging local authorities such as Strathclyde and Glasgow City to take steps to support Nelson Mandela. That was at a time when he was still considered a terrorist by the UK Government. I just want to make the point that, generally, support of that type of activity is something that our movement has been involved in.

In 2009, we sent a factfinding delegation to Palestine. It talked to all parties—Israeli trade unionists and Palestinian trade unionists—and produced a report. On the back of that report, we agreed a policy of boycott, divestments and sanctions against the Israeli state. The aim was to create pressure to end Israel's illegal occupation and establishment of settlements classed as illegal under international law. It was also to campaign against the violation of the human rights of Palestinians by the Israeli state as defined by the United Nations. We worked with our affiliates to support BDS strategy and we produced guidance on it in 2019. Our BDS policy is fully supported by the Palestinian General Federation of Trade Unions.

In 2022, the STUC supported a delegation from Dundee Trades Council to Palestine, which met again with both Palestinian and Israeli trade unionists. Following the reports received from that delegation about the situation on the ground for workers, and the continued human rights violations of Palestinian workers, the STUC Congress reaffirmed its policy to support BDS in 2023. We are not formally affiliated with any BDS movement, as you described it, and we do not wish our support for BDS to be interpreted as blanket support for any of the policies or views of other bodies or organisations that might identify with the wider BDS movement.

Q107 Felicity Buchan: Thank you. I understand that one of Unison's concerns is freedom of expression for elected officials. The Government's view, which I think has been backed up by most of the legal witnesses we have heard today, is that the Bill does not apply to private individuals or private companies, so it does not apply to elected councillors if they are operating in a private capacity. In the light of that, do you not think that councillors should be focused on running their local authorities as opposed to making foreign policy statements?

Mark Beacon: We do not see this as an issue about foreign policy or local authorities having a jurisdiction over any form of foreign policy. What it is about is public bodies upholding internationally recognised norms regarding human rights, labour rights and international law.

Q108 Felicity Buchan: Do you think that the BDS movement has contributed towards peace in the middle east?

Mark Beacon: If you look at the situation now and how it has eroded and if you look at the plans of the current Government—the coalition agreement, for example, has a section in it that focuses on annexation of huge swathes of the west bank—Palestinian society is in a very difficult position at the moment, because the prospects for peace and a viable two-state solution sadly seem to be diminishing. We hope that international pressure and voices from the trade union movement and other civil society organisations will raise that up the international agenda and bring about more realistic prospects of a viable two-state solution.

Q109 Felicity Buchan: Do you think that one local authority in the UK can raise that up the public agenda? We have seen with Russia and Ukraine that we need concerted international action at a Government level.

Mark Beacon: Of course, it takes many small steps. In local authorities, we are talking generally about a response to the requests or concerns of members of pension schemes. Local authorities and pension committees take on those legitimate concerns of members on how investments are made, and act on those. A single local authority will of course not make a massive difference, but if that is taking place across the UK and internationally, it will add to pressure and encourage the UK Government to take a stronger position on some of the issues.

The Chair: Five Members have indicated that they would like to ask questions, and we need to conclude by 4.30 pm—just so everyone is aware.

Q110 Ms Qaisar: Thank you for joining us. Mark, I have to be honest, I am a member of Unite, not Unison—do not hold that against me. Scotland has a proud history

of promoting social justice, human rights and respect for international law on the world stage. In 1981, Glasgow City Council decided to award Nelson Mandela freedom of the city. It was the first city in the world to do so. In 1986, St George's Place in the city centre was renamed Nelson Mandela Place. Had this Bill been introduced in the 1980s, the legislation would have stopped Glasgow City Council from taking those steps. Why is that so concerning?

Rozanne Foyer: It is really concerning. Based on what some of the other expert panellists have said today, I have to say that I fundamentally disagree with some of them, particularly Mr Tomkins's assessment of devolution. We need to understand the point of view. This is not about local authorities or devolved Government setting foreign policy; this is about procurement policy, democracy and taxpayers' money. It is arguable that with the anti-apartheid movement, Glasgow City Council started a wave that the UK Government and the rest of the world eventually had to listen to and go with. I believe strongly that democracy starts on the ground with the people and moves up from them. The Bill centralises reserved powers. It does the opposite of devolution and of giving power to the people. That is really concerning. With the Bill, we would certainly not have got to that position, and that important work that happened in the '80s would not have been able to take place.

My member is a member of the pension scheme, and has a democratic right in workplace democracy to have a say on what happens to their reserved pay. It is their money that sits in the pension scheme. They have a right to have a say in how that money is spent and to ensure that it is spent ethically. My members are citizens of local authorities and pay their taxes to local authorities and to the Government. They have a right to demand that their local authority and Government adhere to human rights policy, and adhere to the best standards of employment policy and of policy on procurement. Procurement is devolved, and so are human rights, so are things like economic development. It is not as simple as saying that these devolved authorities cannot talk about, or make policies that relate to, foreign policy. What we are talking about here is procurement policy and how citizens' taxes and pension moneys are spent. As far as I am concerned, the Westminster Government and the Secretary of State have no business in telling us how to do that.

The Chair: Just to interrupt very quickly, Rozanne, we are struggling to hear you and *Hansard* is struggling to pick up what you are saying for the record. Please can you do whatever you can to speak as loudly as possible into the microphone to try to help us?

Rozanne Foyer: I will do what I can.

Q111 Ms Qaisar: Mark, do you want to add anything?

Mark Beacon: Not really, apart from the fact that I do not think many people would look back now on the actions that local authorities took around the anti-apartheid movement—their involvement in action against apartheid—and the investment and procurement decisions they took and say that that was wrong. Of course, we are now in a situation in which procurement is far greater; in the UK, we are talking about public bodies procuring up to £380 billion of goods and services. It is amazing to think of the positive impact that that procurement could have internationally if public bodies were to utilise it to encourage companies to uphold the UN guiding principles on business and human rights, for example.

Q112 Ms Qaisar: A final question from me: unions have historically been at the forefront of political causes, so will the Bill impact the ability of members of trade unions to take a stand on issues such as human rights abuses? Mark, would you like to start?

Mark Beacon: Yes, it will. If you look at Unison's international work, we work as a key part of Public Services International, which is the global trade union federation for public service workers, and we campaign on a wide range of international issues. Palestine is one of our priorities at the moment, but there are also Turkey, Brazil, Colombia, and business and human rights. We work on Zimbabwe and a range of other issues. As public service workers, that is really important. Our members will be very concerned about, first, how their pensions are invested and, secondly, procurement decisions and the impact that they have internationally. For example, uniforms and PPE—those kinds of issues—and where resources are acquired are major issues. It is the same for members of the public, who will share some of those concerns. The Bill prevents us from acting on those where there is a potential for political or moral disapproval of the policy or conduct of a public authority in a foreign state. It is extremely far reaching and will infringe on quite a lot of our work.

Q113 Ms Qaisar: Thank you. Roz, do you have anything to add to that?

Rozanne Foyer: Trade unions have been using these policies, as I said, for quite some time in a range of situations. I think that we would want to be able to continue to operate in that way. It is an important part of our democracy that our members and citizens are able to influence public bodies and elected officials at all sorts of levels. It is very important. One of the things for which trade union members in Scotland campaigned for a long time was a Scottish Parliament, and another big concern for us is the way that devolution to that Parliament is being potentially undermined by this piece of legislation. That is another area where we have some key concerns about this Bill.

Wayne David: I apologise if the speakers have already touched on this; I did not pick up everything that was said from Scotland. Mark, you have written a very detailed paper, and I thank you for it. One of the very important points you make in that paper is the fact that public bodies in Wales and Scotland are already obliged to follow ethical practices with regard to employment, for example, and need to take into account human rights considerations. My concern is that the Government have perhaps not fully appreciated that fact. This legislation, which will apply—so they tell us—to all parts of the United Kingdom, does not take into account what already exists, and it might inadvertently cut across or undermine existing regulations. Is that your view? If it is, can you say a bit more?

Mark Beacon: Yes, we share those concerns. Some positive work is taking place in Wales around procurement, primarily focusing on labour rights but branching out

into other areas. Again, there is some positive work in Scotland and, I believe, in Northern Ireland. We are deeply concerned about the impact that the Bill will have on that work in devolved nations, particularly considering that both investment and procurement are devolved responsibilities. When we look at areas such as labour rights, which are obviously fundamental to us, and at exceptions in the schedule, they are very narrowly defined. They are primarily focused on areas around modern slavery and so forth, and there are references to the minimum wage as well, but they do not go anywhere near meeting the International Labour Organisation core conventions. Areas such as child labour, equal remuneration, the right to collective bargaining, freedom of association and so forth are not referred to at all in there, so it will undermine that work.

Rozanne Foyer: We have a range of devolved policies in Scotland that relate to our Fair Work First approach to commissioning and contracting. We do not have devolved employment law, but we have an extensive range of guidance and benchmarks that we expect all contractors who want to get public money to adhere to. The Scottish Government also has a vision for trade that sets out fair work indicators as well. Although we cannot implement laws, because employment law is not devolved, we fully use our right to implement and use the money as leverage. I believe that is a very legitimate way to create a landscape of better employment rights and good practice, both domestically and internationally, and that work would be severely undermined by the current proposals.

In terms of the other area I think could be really undermined, we must remember that in Scotland we have a Parliament where just over half of the representatives—the majority of representatives—support full independence. It would be legitimate and in the public interest for citizens and members of the public to know and understand what the Scottish Government might choose to do in the context of independence if they had the power to have particular international procurement policies. It is very disturbing to me that clause 4 of the Bill might well prevent that sort of debate or announcement from taking place. At the moment, the Scottish Government are producing a series of papers that look at the detail of what an independent Scotland might look like. The STUC does not have a policy on independence, but you can bet your bottom dollar that we are looking very closely at what the potential proposals might be and thinking about how they might impact our members. I would not like the Bill to preclude the Scottish Government from making us aware of what their intentions might be.

Q114 Chris Stephens: I refer to the declaration that I made this morning: I am a member of Unison, as Mark knows, and I think I am not the only one. You touched on this in answer to my colleague Wayne David's question, but do you believe that the exceptions that this Bill allows to consider elements of human rights, labour rights and environmental misconduct would grant public bodies and their representatives enough leeway to effectively make ethical decisions?

Mark Beacon: Absolutely not. It is phenomenally weak in terms of the exceptions. If we start with international law, there is a requirement in it that basically violates the UK's obligations under international law rather than considering, for example, that the activity of a company might be contributing to a violation of international law, so that section is extremely weak. There is a total absence of any reference to human rights within the exceptions there, which is of deep concern, particularly as you do not have labour rights without human rights. Then, for the reasons I have mentioned, the section on labour rights is extremely weak—not meeting those ILO core conventions, which are the absolute basic minimum enabling rights for workers.

The Committee might want to look at areas around procurement and the activities of organisations like Electronics Watch, which I believe Crown Commercial Services is affiliated to, that look at areas like electronics and mining and how you can get better practice in procurement in those areas. On environmental concerns, again, we are concerned that there is that double threshold there: not only must it be environmental misconduct, but it has to violate the law as well. There are plenty of exceptions to that, such as in issues around the pollution of watercourses or around logging or deforestation, where the conduct or policy of a public authority permits that to go on.

Rozanne Foyer: I will not say too much on this. I think that the points were very well made there. The ILO conventions missing is the most disturbing feature here for any sort of credible nod to good employment standards. The fact that they are not there is incredibly disturbing. It is not going to help us take forward environmental agendas. It is not going to help us take forward ethical or human rights agendas or labour rights agendas on an international basis. It is a travesty if we cannot use all of our public bodies to help us push that agenda forward.

The Chair: This will have to be the last question as we need to conclude at 4.30 pm.

Q115 Nicola Richards (West Bromwich East) (Con): We heard in earlier evidence that when one BDS campaign against SodaStream was successful, about 500 Palestinians lost their jobs. I was just wondering whether that was the sort of outcome that you would count as positive. What proportion of your members see that as a priority from their union?

Mark Beacon: When it comes to workers' rights or the situation of workers within the illegal settlements, it is an area we have done substantial work on. We support and provide funding for a trade union called Ma'an, an Israeli trade union, to help them organise workers within the illegal industrial zones. It highlights phenomenal challenges there. Workers are paying extraordinary fees to labour brokers. They are being paid beneath the Israeli minimum wage. They are consistently not getting their labour rights under Israeli law. Health and safety is appalling and so forth.

We also support Kav LaOved, the workers hotline—again, an Israeli NGO—to support and educate workers and campaign for them in the illegal agricultural areas in the occupied west bank. Again, we see the same labour problems there, major health and safety problems, particularly involving people picking dates and the injuries they face, being dumped at checkpoints with injuries and so forth, and major problems with child labour.

The quality of that work is not amazing by any means, and there are major problems, but the other issue is the impact that those settlements have on the prospects of a viable—

The Chair: Order. I am sorry to cut you off mid-flow, but that brings us to the end of the allotted time for the Committee to ask questions. On the Committee's behalf, I thank all our witnesses today, particularly the last two, for all their evidence.

Ordered, That further consideration be now adjourned. *—(Jacob Young.)*

4.30 pm

Adjourned till Thursday 7 September at half-past Eleven o'clock.

Written evidence reported to the House

EAPBB01 UK Lawyers for Israel (UKLFI)

EAPBB02 We Believe in Israel

EAPBB03 Amnesty International UK

EAPBB04 Ethical Consumer Research Association (ECRA)

EAPBB05 Universities UK (UUK)

EAPBB06 Pensions and Lifetime Savings Association (PLSA)

EAPBB07 Anti-Slavery International

EAPBB08 City of London Corporation

EAPBB09 Balfour Project

EAPBB10 Jews for Justice for Palestinians

EAPBB11 Council for Arab-British Understanding (Caabu)

EAPBB12 Quakers in Britain

EAPBB13 Diaspora Alliance UK

EAPBB14 Liberty

EAPBB15 Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC)

EAPBB16 The Methodist Church in Britain and the United Reformed Church

EAPBB17 Labour Friends of Israel

EAPBB18 Palestine Solidarity Campaign

EAPBB19 Jewish Leadership Council

EAPBB20 Independent Jewish Voices, Jewish Network for Palestine, and Jewish Voice for Labour (joint submission)

EAPBB21 Institute of Race Relations

EAPBB22 International Centre of Justice for Palestinians

EAPBB23 Conservative Friends of Israel

EAPBB24 Scottish Palestine Solidarity Campaign

EAPBB25 UK Israel Business

EAPBB26 Board of Deputies of British Jews

EAPBB27 Muslim Association of Britain

EAPBB28 Corporate Justice Coalition

EAPBB29 Brunel Pension Partnership Limited and London LGPS CIV Ltd

EAPBB30 War on Want