

Secretary of State for Business, Innovation and Skills
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Your Ref: Fol: 2015/26633
Our Ref: REC/ADE/00065492/8
Date: 8 January 2016

By secure DX

Dear Sirs,

In the proposed proceedings R (Campaign Against Arms Trade) v Secretary of State for Business Innovation & Skills

We act for the Campaign Against Arms Trade of Unit 4, 5-7 Wells Terrace, London, N4 3JU. This is a letter written in accordance with the Judicial Review Pre-Action Protocol.

CAAT is a UK-based non-governmental organisation which campaigns to end the international arms trade. CAAT seeks to: (1) stop the procurement or export of arms where they might: exacerbate conflict, support aggression, or increase tension; support an oppressive regime or undermine democracy; or threaten social welfare through the level of military spending, (2) end all government political and financial support for arms exports; and (3) promote progressive demilitarisation within arms-producing countries. CAAT is gravely concerned about the supply of military technology and equipment, manufactured or produced in the United Kingdom, to states involved in conflict around the world. CAAT is particularly concerned about the continued trade of military technology, weapons and equipment from the United Kingdom to Saudi Arabia, in light of allegations of breaches of international humanitarian law (IHL) and international human rights law (IHRL) by the Saudi-led coalition through its actions in Yemen.

We write, following on from your letter of 9 December 2015. We note that in the preparation of this letter the Department of Business, Innovation and Skills, took advice from other government departments, which we presume includes the Foreign and Commonwealth Office and the Ministry of Defence. In your letter you refused to provide assurances that no new licences will be granted in respect of the sale or transfer of Paveway Missiles or any other military equipment to Saudi Arabia which could be used in the conflict in Yemen and you refuse to suspend existing licences in respect of equipment which may be used by Saudi Arabia in the conflict in Yemen. You claim that these arrangements are compatible with the legal framework for arms exports. As explained below, we do not agree. We note that a number of the answers provided in your letter of 9 December 2015 fail, in important respects, to address the questions posed in our letter of 9 November 2015 (see below) and, furthermore, that a number of your responses raise additional issues going to the legality of present licensing arrangements in respect of Saudi Arabia. In view of this, we seek further information in the present letter and raise a number of further questions. We reserve the right, in light of your response, to supplement this letter before claim should this be necessary.

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Background:

In March 2015, hostilities in Yemen escalated when the Saudi Arabia-led coalition ("the Saudi Coalition") commenced a military campaign, targeting Houthis and allied rebel groups backing the former president of Yemen, Ali Abdullah Saleh. This military campaign has involved substantial numbers of air strikes against a wide variety of targets. The campaign is on-going.

The conflict in Yemen has caused enormous loss of civilian life and a humanitarian crisis, in a country already wracked by poverty. The United Nations (UN) Commissioner for Human Rights reported that as of September 2015 there had been over 7,000 civilian casualties in the preceding six months in the conflict in Yemen, including 2,355 killed and 4,862 wounded.¹ According to the U N Office for Coordination of Humanitarian Affairs (UNOCHA), there was an average of 21 civilian casualties per day in Yemen in 2015 and 4 casualties of non-state actors. 93% of casualties caused by the use of air-launched explosive weapons in populated areas are reported to be civilian.² UNOCHA data shows that 14.4 million people in Yemen face food insecurity and 2.51 million have been internally displaced.³ UNOCHA's partner organisations 'estimate that 21.2 million people – 82 per cent of the population – require some form of humanitarian or protection assistance' and 'more than 2.2 million children are suffering or at risk of malnutrition'.⁴

Against this background, grave concerns have arisen as regards the manner in which Saudi Arabia and its coalition partners have conducted hostilities in Yemen. As set out below, international organizations, their senior human rights officials, the European Parliament and many humanitarian and human rights NGOs have condemned Saudi Arabian airstrikes in Yemen as involving grave violations of international humanitarian law. Matters of particular concern include the following:

1. The targeting of civilians and those not directly participating in hostilities in contravention of international humanitarian law (IHL) and applicable international human rights law;
2. The apparent targeting of civilian objects in Saudi air strikes, including facilities necessary to meet basic humanitarian needs such as electricity and water-processing plants. As set out below, these air strikes have given rise to concerns that Saudi Coalition targeting has failed to adhere to the principle of distinction and/or failed to take precautions in attack to prevent civilian casualties insofar as possible, as required by international humanitarian law;
3. The disproportionate scale of civilian casualties resulting from specific attacks (at times on civilian objects), and the apparent failure to adhere to the principle of proportionality and to the prohibition on indiscriminate targeting;

¹ Press briefing notes on Yemen, Central African Republic and Escalating tensions in East Jerusalem and West Bank, Spokesperson for the UN High Commissioner for Human Rights: Rupert Colville, 29 September 2015

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

² State of Crisis: Explosive Weapons in Yemen, UNOCHA and Action on Armed Violence, 22 September 2015

<http://reliefweb.int/sites/reliefweb.int/files/resources/State-of-Crisis.pdf>

³ 'Yemen', UNOCHA <http://www.unocha.org/yemen>

⁴ 'Crisis Overview', UNOCHA <http://www.unocha.org/yemen/crisis-overview>

Leigh Day

4. Failure to take precautions in attack, to prevent or minimize the incidental loss of civilian life or the infliction of harm or unnecessary suffering on civilians;
5. The destruction of Cultural Property contrary to the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954 and its Protocols and/or a failure to adhere to the immunity to be afforded to such property during armed conflict;
6. A naval blockade contrary to international humanitarian law enforced by Saudi Arabia, preventing goods from entering the country including essential foodstuffs and medicine, resulting in a humanitarian crisis.

Many reports from Yemen, including those considered by UN human rights supervisory agencies to be credible, indicate that, on a significant number of occasions, airstrikes by the Saudi Arabia and its coalition partners have violated international humanitarian law.

The Position of UN, the EU and the International Committee of the Red Cross

In a statement to the UN Human Rights Council delivered on 15 June 2015, the UN High Commissioner for Human Rights, expressed grave concern 'about the high number of civilian casualties' in Yemen, observing that, 'my office has received information suggesting that indiscriminate and disproportionate attacks are being used on densely populated areas, including the attack on *Al Mazraq* camp'. At least 40 people were killed on 30 March 2015, when a camp of internally displaced civilians was attacked. The Commissioner went on to explain that 'well over 20 million people' are in need of humanitarian assistance, and that conditions in Yemen are characterised as 'catastrophic' by UNOCHA.⁵ On 19 August 2015, Stephen O'Brien, the Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator of the OCHA, reported to the UN Security Council, that the 'scale of human suffering [in Yemen] is almost incomprehensible'. O'Brien specifically condemned 'attacks on residential areas and civilian infrastructure'. He stated: 'these attacks are in clear contravention of international humanitarian law and are unacceptable'.⁶

On 28 September 2015, the UN Secretary General condemned a Coalition airstrike which hit a wedding party, killing 135 people in Wahijdah, a Yemeni village. The Secretary General recalled that "[a]ny intentional attack against civilians is considered a serious violation of international humanitarian law. Violations of international law should be investigated through prompt, effective, independent and impartial mechanisms to ensure accountability".⁷ Recently, on 2 December 2015, the office of the UN Secretary General issued the following statement:

The Secretary-General condemns the airstrikes today by the Saudi-led Coalition on a mobile health clinic run by Médecins Sans Frontières (MSF) in Taiz city, Yemen.

⁵ 'Opening Statement to the 29th Session of the Human Rights Council by the High Commissioner for Human Rights' Office of the High Commissioner for Human Rights, 15 June 2015

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16074&LangID=E>

⁶ Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Stephen O'Brien 'Statement to the Security Council on Yemen', United Nations Office for the Coordination of Humanitarian Affairs, 19 August 2015

<http://reliefweb.int/sites/reliefweb.int/files/resources/YEMEN%20USG%20Stephen%20O'Brien%20Statement%20SecCo%2019Aug2015%20as%20delivered.pdf>

⁷ Statement attributable to the Spokesman for the Secretary-General on Yemen, 28 September 2015
<http://www.un.org/sg/statements/index.asp?nid=9053>

Leigh Day

According to MSF, the strikes resulted in injuries to seven people and destroyed the clinic. **He had condemned an earlier incident on 27 October during which a hospital run by MSF in Sa'ada province was hit by airstrikes.**

The Secretary-General underscores that medical facilities and medical personnel are explicitly protected under international humanitarian law. He calls for a prompt, effective and impartial investigation into today's incident.⁸

The Saudi coalition had been given the coordinates of the clinic, according to MSF.⁹ Similarly, speaking to the BBC, Johannes Van der Klaauw, the UN Humanitarian Coordinator in Yemen has condemned the shelling of schools and hospitals by the Saudi Coalition.¹⁰

Air strikes by the Saudi Coalition have damaged or destroyed important sites of cultural property. These attacks have been condemned by UN Educational, Scientific and Cultural Organisation (UNESCO) (which, again, has specific expertise and responsibilities in this area) as a violation of IHL. On 12 June 2015, UNESCO condemned the destruction of a world heritage site in Yemen – specifically parts of the old city in Sena'a, as a result of a Coalition air strike.¹¹ On 17 September 2015, UNESCO "deplored" the destruction of parts of the ancient city of Baraqish by Coalition bombing. The Director General of UNESCO stated that she was "grieved by the senseless destruction of one of the richest cultures in the Arab region" and "again urge[d] all parties to refrain from any military use or targeting of cultural heritage sites and monuments, in respect of their obligations under international humanitarian law, notably the 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols".¹²

Significantly, the European Parliament has also condemned airstrikes by the Saudi-led Coalition in Yemen. In Resolution 2015/2760(RSP), passed on 8 July 2015, the EU Parliament:

Condemn[ed] the air strikes by the Saudi-led coalition and the naval blockade it has imposed on Yemen, which have led to thousands of deaths, have further destabilised Yemen, have created conditions more conducive to the expansion of terrorist and extremist organisations such as ISIS/Da'esh and AQAP, and have exacerbated an already critical humanitarian situation".

The European Parliament further noted:

[O]n several occasions air strikes by the Saudi-led military coalition in Yemen have killed

⁸ UN Secretary General, Ban Ki-Moon, Statement attributable to the Spokesman for the Secretary-General on Yemen, 2 December 2015 <http://www.un.org/sg/statements/index.asp?nid=9306>

⁹ Yemen conflict: MSF hospital destroyed by airstrikes, BBC News, 27 October 2015 <http://www.bbc.co.uk/news/world-middle-east-34645469>

¹⁰ Gabriel Gatehouse, 'Inside Yemen's Forgotten War' BBC Newsnight, 11 September 2015 <http://www.bbc.co.uk/news/world-middle-east-34211979>

¹¹ Director, Irina Borokova, 'The Director General of UNESCO condemns the destruction of historic buildings in the Old City of Sana'a, Yemen', UNESCO, 12 June 2015 <http://www.unesco.org/new/en/media-services/singleview/news/the-director-general-of-unesco-condemns-the-destruction-of-historic-buildings-in-the-old-city-of-sanaa-yemen/#.VjDiC-knxes>

¹² Director, Irina Borokova, 'UNESCO Director-General deplores destruction of parts of ancient city of Baraqish, calls for protection of Yemen's heritage' UNESCO, 17 September 2015 <http://www.unesco.org/new/en/unesco/about-us/who-we-are/director-general/singleview-dg/news/unesco-director-general-deplores-destruction-of-parts-of-ancient-city-of-baraqish-calls-for-protection-of-yemens-heritage/#.VjDifuknxes>

Leigh Day

civilians, in violation of international humanitarian law, which requires all possible steps to be taken to prevent or minimise civilian casualties" (emphasis added).¹³

The International Committee of the Red Cross (ICRC), which as you know has a specific international mandate and expertise on questions of international humanitarian law, also condemned the airstrikes in Yemen by the Saudi Coalition. On 30 September 2015, the ICRC condemned the airstrike on in which two of its workers were killed, observing that "[i]ndiscriminate air strikes and shelling have been going on in many parts of Yemen for more than six months, causing huge suffering to the civilian population".¹⁴

The Findings of Non-Governmental Organisations (NGOs)

Detailed reports based on empirical evidence gathered by reputable NGOs including Amnesty International and Human Rights Watch allege that targeting has been indiscriminate and/or disproportionate. On 27 July 2015, Human Rights Watch reported that Saudi-Arabia led strikes on the city of Mokha on 24 July 2015, in which 65 civilians were killed, appears to be a war crime. They highlighted the bombing of two residential compounds, where no evidence could be found that they were being used for military purposes.¹⁵

On 17 August 2015, a report by Amnesty International commented: "[c]oalition strikes which killed and injured civilians and destroyed civilian property and infrastructure investigated by Amnesty International have been found to be frequently disproportionate or indiscriminate."¹⁶ Amnesty International identified a pattern of apparent targeting of civilians and civilian objects. A further report, published on 7 October 2015 found that the majority of civilian casualties have been caused by Saudi Coalition air strikes and identified 'a pattern of appalling disregard for civilian lives displayed by the Saudi Arabia-led military coalition which declared the entire cities of Saada and nearby Marran - where tens of thousands of civilians live - military targets in violation of international law.'¹⁷ This report is based on field research conducted in June and July 2015.

A Human Rights Watch report entitled '*What military target was in my brother's house? Unlawful Coalition Airstrikes in Yemen*' was published on 26 November 2015. It details

¹³ Joint Motion for a Resolution on the situation in Yemen (2015/2760(RSP)), 27 July 2015 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P8-RC-2015-0680+0+DOC+XML+V0//EN>

¹⁴ Yemen: Two volunteers of the International Red Cross and Red Crescent Movement killed in airstrike, ICRC, 30 September 2015 <https://www.icrc.org/en/document/yemen-two-volunteers-international-red-cross-and-red-crescent-movement-killed-airstrike>

¹⁵ Yemen: Coalition Strikes on Residence Apparent War Crime, Human Rights Watch, 27 July 2015 <https://www.hrw.org/news/2015/07/27/yemen-coalition-strikes-residence-apparent-war-crime>

¹⁶ Yemen: 'Nowhere safe for civilians': Airstrikes and ground attacks in Yemen, Amnesty International, 17 August 2015, Index number: MDE 31/2291/2015. p12 The NGO examined eight air strikes by Coalition forces in Southern Yemen, including the targeted bombing of a residential compound on 24 July, 'killing at least 63 civilians and injuring 50 others'. In all of the airstrikes they investigated, including those on a school and a mosque, no legitimate targets could be identified. <https://www.amnesty.org/en/documents/mde31/2291/2015/en/>

¹⁷ Bombs Fall from the Sky Day and Night - Civilian under Fire in Northern Yemen, Amnesty International, 6 October 2015 https://www.amnesty.org.uk/sites/default/files/bombs_fall_from_the_sky_day_and_night_-_civilians_under_fire_in_northern_yemen.pdf

Leigh Day

investigations into coalition airstrikes on 10 civilian objects, which killed at least 309 civilians. In all cases Human Rights Watch found serious violations of fundamental principles of IHL, including the principles of distinction, proportionality, precautions in attack and the selection of means and methods of warfare so as to minimise civilian casualties.¹⁸ In relation to the latter, the coordinator for the UNOCHA in Yemen commented that 'the indiscriminate bombing of populated areas, with or without prior warning, is in contravention of international humanitarian law'.¹⁹

On 11 December 2015, Amnesty International published its field investigations into attacks on 5 schools between August and October 2015, in which at least 4 children were injured and the school buildings were destroyed or severely damaged. The Senior Crisis Advisor at Amnesty International described the attacks as 'a series of unlawful air strikes on schools being used for educational – not for military – purposes, a flagrant violation of the laws of war'.²⁰

Investigations

Reports by independent human rights NGO's indicate that Saudi Arabia has failed to launch any, or any effective, independent investigation into alleged violations of international humanitarian law in Yemen, as required by both international humanitarian law and applicable international human rights law. Saudi Arabia has further failed to prosecute or punish violations of IHL or to provide compensation in respect of deaths or injuries caused by such violations. In this regard, Human Rights Watch concluded its report of 26 November 2015, "*What Military Target was My Brother's House: Unlawful Coalition Airstrikes in Yemen*": that it "has seen no indication that the Saudi Arabia-led coalition has conducted any meaningful investigations into alleged laws-of-war violations".²² For its part, the Saudi Coalition does not appear to have published the findings and recommendations of any investigation (if any has, in fact, been conducted) into alleged breach of IHL in Yemen.

The UK's Position: Parliamentary Statements

¹⁸ "What Military Target Was in My Brother's House" Unlawful Coalition Airstrikes in Yemen https://www.hrw.org/sites/default/files/report_pdf/yemen1115_4up.pdf. Examples of alleged violations include attacks on markets at Muthalith Ahim and Amran in civilian-dense areas where investigators could not identify any military objective, the use of wide-area explosive weaponry in residential areas, and the treatment of entire cities of Marran and Sa'ada as military objectives.

¹⁹ Yemen conflict is taking 'dreadful toll' on civilians – UN top relief official, UN Centre, 10 May 2015 <http://www.un.org/apps/news/story.asp?NewsID=50813#.VmXBuknxet>

²⁰ Yemen: 'Our kids are bombed': Schools under attack in Yemen, Amnesty International, 11 December 2015 <https://www.amnesty.org/en/documents/mde31/3026/2015/en/> and Bombing of schools by Saudi Arabia-led coalition a flagrant attack on future of Yemen's children, Amnesty International, 11 December 2015 <https://www.amnesty.org/en/latest/news/2015/12/bombing-of-schools-by-saudi-arabia-led-coalition-in-yemen/>

²¹ Opening Debate on Children's Rights, Officials Warn Third Committee of Disturbing Spike in Targeted Abductions, Recruitment by Armed Groups, Shuttered Schools, Seventieth Session, 12th & 13th Meetings General Assembly, 14 October 2015, GA/SHC/4135 <http://www.un.org/press/en/2015/gashc4135.doc.htm>

²² *What Military Target was My Brother's House: Unlawful Coalition Airstrikes in Yemen*, at p. 5, available at: https://www.hrw.org/sites/default/files/report_pdf/yemen1115_4up.pdf

Leigh Day

Concerns regarding the export of arms to Saudi Arabia have also been raised in Parliament. On 13 July 2015, the Secretary of State for Foreign and Commonwealth Affairs was asked: "what assessment his Department has made of whether Saudi Arabia is adhering to the laws of war in the context of its military action in Yemen". On 20 July 2015, Mr. Tobias Ellwood, replying on behalf of the Secretary of State, stated:

We support the Saudi Arabian-led military intervention in Yemen following the request of the legitimate President Hadi's request for support by 'all means and measures to protect Yemen and deter Houthi aggression'. We have received explicit assurances from the Saudi Arabian authorities that they are complying with International Humanitarian Law. **We have not seen any credible evidence that suggests that the coalition has breached the law.** We continue to engage with the Saudi Arabian authorities on their assurances and urge all parties to the conflict to adhere to international humanitarian law.

Similar statements have been made by government ministers on a number of occasions since maintaining that the government has seen no evidence or no credible evidence of violations of IHL in Yemen. For instance, during a debate in parliament on 22 October 2015, Mr Ellwood remarked:

If there are human rights violations, they must absolutely be looked into, but I am not aware of any such evidence at the moment. We need to be careful about hearsay. If NGOs have evidence, they must bring it forward.²³

Please confirm if you now accept that there is "credible" evidence that Saudi Arabia has violated international humanitarian law in its conduct in Yemen.

We understand the UK provides a range of military equipment to Saudi Arabia, and components for military equipment, including (but not limited to) Paveway Precision Guided Missiles and Eurofighter Typhoon aircraft and that this equipment is being used in Yemen. Foreign Secretary Philip Hammond was quoted by the Daily Telegraph on 27 March 2015, remarking that Britain has "a significant infrastructure supporting the Saudi air force generally and if we are requested to provide them with enhanced support – spare parts, maintenance, technical advice, resupply – we will seek to do so....We'll support the Saudis in every practical way short of engaging in combat"²⁴. Agence France-Presse quoted Hammond on the same day saying that Britain was supplying "logistical and technical support" to the Saudi-led operation²⁵.

The Legal Framework:

International Humanitarian Law

²³ Also, the statements of Baroness Evans of Bowes Park, 30 September 2015; Minister of State for the FCO, Baroness Anelay, 19 October 2015; and the response of Tobias Ellwood on 20 October 2015

²⁴ P.Foster, L.Loveluck & A.Mojalli, 'UK 'will support Saudi-led assault on Yemeni rebels - but not engaging in combat'', *Daily Telegraph*, 27 March 2015

<http://www.telegraph.co.uk/news/worldnews/middleeast/yemen/11500518/UK-will-support-Saudi-led-assault-on-Yemeni-rebels-but-not-engaging-in-combat.html>

²⁵ Agence France Press, 'British Technical Support for Saudi Op in Yemen', 27 March 2015

http://news.yahoo.com/british-technical-support-saudi-op-yemen-hammond-210205762.html?soc_src=mail&soc_trk=ma

Leigh Day

A number of rules and prohibitions provided for by international humanitarian law are of particular relevance to the alleged breaches of IHL by the Saudi-led coalition in Yemen. In particular, international humanitarian law prohibits the following acts and omissions in both international and non-international armed conflicts:

- (a) **Attacks directed against civilian objects and/or the civilian population** including buildings directed to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives²⁶
- (b) **Indiscriminate attacks** that fail to distinguish between military objectives and civilians or civilian objects, that employ a method or means of combat which cannot be directed at a specific military objective or that have effects which cannot be limited, as required by IHL²⁷
- (c) **Disproportionate attacks** launched in the knowledge that they will cause incidental harm to civilians or civilian objects that is excessive in relation to the anticipated concrete and direct military advantage²⁸
- (d) **Attacks launched without feasible precautions** having been taken to avoid and/or minimize incidental loss of civilian life, injury to civilians and/or damage civilian objects.²⁹ This requires a States armed forces to take all reasonable steps to safeguard against incidental harm to civilians or civilian objects, including, by for example, keeping up-to-date records as to the locations of civilian hospitals or the locations of centres for the distribution of relief aid.

In addition, international humanitarian law imposes an obligation on States to take steps to **prevent and suppress** violations of international humanitarian law, including through criminal, disciplinary and administrative processes. States must have in place legislation which enables the investigation, prosecution and punishment of violations of international humanitarian law. This obligation is set out in each of the four Geneva Conventions of 1949³⁰ and is now an obligation under customary international law applicable in both international and non-international armed conflict.³¹ In addition, international humanitarian law imposes an obligation on States which violate international humanitarian law to provide compensation in respect of deaths or injury caused by violation of international humanitarian law.³² Failure to do so constitutes a further breach of IHL.

The Arms Trade Treaty

²⁶ See ICRC, *Customary International Humanitarian Law Study*, Vol I, ("CIHL Study"), Rules 1 and 7.

²⁷ *Ibid.* Rule 11-12, see also Rule 13.

²⁸ *Ibid.* Rule 14.

²⁹ *Ibid.* Rule 15-19.

³⁰ Article 146, Fourth Geneva Convention ("GC") 1949; Article 50 GC I; Article 51, GC II; Article 130, GC III.

³¹ See *Ibid.* Rule 149 and 158.

³² Article 3, Hague Convention (IV) Respecting the Laws and Customs of War on Land; Article 91, Additional Protocol I to the Geneva Conventions of 1949. See also Rule 150, CIHL Study.

Leigh Day

The Arms Trade Treaty (hereinafter '*the ATT*') was ratified by the UK on 2 April 2014 and entered into force on 24 December 2014.³³ It promotes respect for IHL and International Human Rights Law.³⁴ Article 6.3 prohibits the transfer of arms when the exporting state has 'knowledge at the time of authorisation that the arms or items would be used in the commission of [...] grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party'. Article 7.1 sets out the obligation to conduct a risk assessment of the '*potential*' that the conventional arms or items:

- (a) would contribute to or undermine peace and security;
- (b) could be used to:
 - (i) commit or facilitate a serious violation of international humanitarian law;
 - (ii) commit or facilitate a serious violation of international human rights law.'

Paragraph 3 continues that if the exporting State identifies an 'overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export'. However, Article 7.7 goes further:

7. If, after an authorization has been granted, an exporting State Party ***becomes aware of new relevant information, it is encouraged to reassess the authorization*** after consultations, if appropriate, with the importing State."

Therefore, as new information regarding apparent breaches of IHL and international human rights law in Yemen becomes available, the ATT advises the UK as an exporting state, to conduct re-assessments of risk in relation to extant licences.

European Union Law

The EU Council common position 2008/944/CFSP of 8 December 2008 ("the Common Position") defining common rules governing control of exports of military technology and equipment, sets out the general EU rules on in respect of the export of military equipment.³⁵ Article 1 of the Common Position gives rise to the obligation to assess applications for arms export licenses case by case, on the basis of the criteria set out in Article 2. Article 2 compels the UK to deny an export licence if there is "a clear risk" that the military equipment "might" be used in a violation of international humanitarian law or international human rights law.

In making this assessment, the exporting state must take into account 'the recipient country's attitude towards relevant principles established by instruments of international human rights law' and IHL. Article 2, Criterion 2 (b) stipulates that exporting States must:

- '(b) exercise special caution and vigilance in issuing licences [...] to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe'

³³ The Arms Trade Treaty, United Nations <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>

³⁴ *Ibid.* See also the Export Control (Amendment) Order 2014

³⁵ Acts Adopted Under Title V Of The EU Treaty Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, OJEU 13 December 2008
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:En:PDF>

Leigh Day

Saudi Arabia undoubtedly falls into the category of States in respect of which “special caution” is required. UN Human Rights supervisory bodies, including the Committee Against Torture, have found violations of international human right law by Saudi Arabia on numerous occasions, including through failure to investigate alleged violations of the Convention Against Torture. In general, Saudi Arabia has a poor record of compliance with international human rights obligations, in light of the findings of a range of international human rights bodies.³⁶

Furthermore, as noted above, the European Parliament has specifically condemned Saudi Arabian airstrikes in Yemen in Resolution 2015/2760(RSP, in which it “**condemn[ed] the air strikes by the Saudi-led coalition and the naval blockade it has imposed on Yemen which have led to thousands of deaths, have further destabilised Yemen**”. The European Parliament has, more generally, strongly condemned Saudi Arabia’s failure to adhere to human rights obligations imposed by international human rights treaties on a number of other occasions.³⁷ For example, in European Parliament Resolution (2013/2147(INI), of 11 March 2014 on Saudi Arabia, its relations with the EU and its role in the Middle East and North Africa, the European Parliament stated [at 21 and 23]:

[The European Parliament] Deplores the fact that, despite ratification of the International Convention against Torture, confessions obtained under duress or as a result of torture are common; urges the KSA authorities to ensure the complete eradication of torture from the Saudi justice and prison system;

Regrets that the KSA authorities have not extended an invitation to the UN Special Rapporteur on Torture and the UN Special Rapporteur on Human Rights Defenders, despite the recommendation of the UN Office of the High Commissioner for Human Rights (OHCHR) for all states to extend official invitations to UN Special Rapporteurs;

Saudi Arabia’s record of non-compliance with fundamental human rights guarantees has been criticized in similarly strong terms in a number of other resolutions of the European Parliament. “Special caution” is therefore required when issuing export licences to Saudi Arabia in accordance with Article 2, Criterion 2 (b) of the EU Common Position.

Article 5 of the EU Common Position provides in material part as follows:

Export licences shall be granted only on the basis of **reliable prior knowledge** of end use in the country of final destination. This will generally require a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorization issued by the country of final destination (emphasis added).

³⁶ See, e.g., UNOCHA, “Saudi Arabia must immediately halt execution of children – UN rights expertsurge”, 22 September 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16487&LangID=E>; Committee on the Rights of the Child, Forty- First Session, “Concluding Observations: Saudi Arabia”, 17 March 2006, CRC/C/SAU/CO/2, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/SAU/CO/2&Lang=En:=and UNHRC, Twenty---seventh session, “Report of the Working Group on Arbitrary Detention”, 30 June 2014, UN Doc. A/HRC/27/48, www.ohchr.org/EN/HRBodies/HRC/.../A_HRC_27_48_ENG.doc.

³⁷ See e.g. EP Resolution (2013/2147(INI), 11 March 2014. “deploring” systematic practices of torture in Saudi Arabia. <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0207>

Leigh Day

In light of Article 5, it is incumbent on the United Kingdom to ensure, in respect of each export licence granted, that it equips itself with reliable information as to the intended end use of the licensed military equipment in question.

Guidance on the Application of the EU Legislation:

The 'User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment' (hereinafter '*the Guidance*') is regularly updated by the Working Party on Conventional Arms Exports. The latest version was published by General Secretariat of the Council to the EU in July 2015.³⁸ At paragraph 2.11, the document provides guidance on how to assess serious violations of IHL, which include but appear not to be limited to: grave breaches as defined in the Geneva Conventions of 1949 and Articles 11 and 85 of Additional Protocol I, and war crimes as defined by The Rome Statute of the International Criminal Court. Exporting states are advised to consider the answers to the following questions:

- 'Have violations been committed by any actor for which the State is responsible?
- Has the recipient country failed to take action to prevent and suppress violations committed by its nationals or on its territory?
- Has the recipient country failed to investigate violations allegedly committed by its nationals or on its territory?
- Has the recipient country failed to search for and prosecute (or extradite) its nationals or those on its territory responsible for violations of international humanitarian law?
- Has the recipient country failed to cooperate with other states, ad hoc tribunals or the International Criminal Court in connection with criminal proceedings relating to violations of international humanitarian law?

At paragraph 2.13, the document includes guidance on the interpretation of the concept of 'clear risk' which must be subject to 'thorough assessment', and 'should include:

'an inquiry into the recipient's past and present record of respect for international humanitarian law, the recipient's intentions as expressed through formal commitments and the recipient's capacity to ensure that the equipment or technology transferred is used in a manner consistent with international humanitarian law [...].'

It continues, 'Where a certain pattern of violations can be discerned or the recipient country has not taken appropriate steps to punish violations, this should give cause for serious concern.' The Guide highlights the legal responsibility conferred upon third party states by Common Article 1 of the 1949 Geneva Conventions, not to 'take action that would assist in [violations of IHL] and to take appropriate steps to cause such violations to cease'. It continues:

'[States] have a particular responsibility to intervene with states or armed groups over which they might have some influence. Arms producing and exporting states can be considered particularly influential in "ensuring respect" for international humanitarian

³⁸ General Secretariat of the Council of the European Union, 'User's Guide to Council Common Position' 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment Brussels, 20 July 2015 COARM 172 CFSP/PESC 393 (hereinafter *The Guidance*) <http://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf>

Leigh Day

law due to their ability to provide or withhold the means by which certain serious violations are carried out.’³⁹

To assist exporting states in conducting thorough risk assessments, they are advised to consider an extensive list of questions including:

- Has the recipient country ratified the Rome Statute of the International Criminal Court?
- Has international humanitarian law been incorporated in military doctrine and military manuals, rules of engagement, instructions and orders?
- Have mechanisms been put in place to ensure accountability for violations of international humanitarian law committed by the armed forces and other arms bearers, including disciplinary and penal sanctions?⁴⁰

Specifically as regards international humanitarian law indicators of risk include:

- Whether the buyer country has made a formal commitment to apply the rules of international humanitarian law and taken appropriate measures for their implementation;
- Whether the buyer country has in place the legal, judicial and administrative measures necessary for the repression of serious violations of international humanitarian law;
- Whether a buyer country which is, or has been, engaged in an armed conflict, has committed serious violations of international humanitarian law;
- Whether a buyer country, which is or has been engaged in an armed conflict, has failed to take all feasible measures to prevent serious violations of international humanitarian law.⁴¹

In paragraph 6.6 exporting nations are also advised to consider the importing State’s compliance with its other international commitments, including under ‘norms of international law’ as opposed to instruments only.⁴²

Domestic Legal Framework

Consolidated EU and National Arms Export Licensing Criteria:

The Consolidated EU and National Arms Export Licensing Criteria incorporates the EU Common Position into domestic legislation in the UK, including the prohibitions of granting licences when there is a clear risk that they might be used for internal repression or in the commission of serious violations of IHL, and the obligation to ‘exercise special caution and vigilance’ when ‘serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU.’⁴³ The UK Government Guidance on the assessment of export

³⁹ The Guidance p.51

⁴⁰ The Guidance pp. 54-56

⁴¹ The Guidance, p. 111.

⁴² The Guidance pp.110-111

⁴³ Hansard WS Col 9WS, 25 March 2015

<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140325/wmstext/140325m0001.htm#14032566000018>

licence applications notes that the criteria for consideration include 'whether the proposed export would:

- be used for [...] the abuse of human rights,
- provoke or prolong armed conflicts,
- go to a destination where the behaviour of the buyer country raises concerns with regard to its [...] respect for international law.

The Guidance also notes that 'if the proposed export fails to meet one or more of the criteria [...] then a licence will be refused.⁴⁴

Suspension of Licences

Article 32 of the Export Control Order empowers the Export Control Order to "amend, suspend or revoke a licence" previously authorised. The UK Government has clarified that circumstances giving rise to amendment, suspension and/or revocation include:

- (a) "[w]here there has been a change in circumstances in the destination country or region such that the proposed export is no longer consistent with the Consolidated Criteria or with other relevant, announced, policies";

and

- (b) "[w]here new information has come to light about a particular export which indicates that the proposed export is no longer consistent with the Consolidated Criteria or with other relevant, announced, policies"⁴⁵

Although the Consolidated Criteria reflects the obligation to undertake case-by-case assessments, it appears it was intended to facilitate a broad and rapid response where necessary. On 13 October 2011, the Foreign Secretary, responded to controversy about arms exports to the Middle East in light of increased regional instability, by saying that the Government would introduce:

[...] a mechanism to allow **immediate licensing suspension** to countries experiencing a sharp deterioration in security or stability. Applications in the pipeline would be stopped and no further licences issued, pending ministerial or departmental review.⁴⁶

On 7 February 2012, the then Secretary of State for Business, Innovation and Skills, Vince Cable, provided further details:

We have worked closely in developing the suspension mechanism, and are pleased to report that this suspension mechanism is now in place. As a result of this change the Government have ensured that export-licensing policy is now more responsive to rapidly changing circumstances overseas.

⁴⁴ 'Assessment of export licence applications: criteria and policy' 12 December 2012

<https://www.gov.uk/guidance/assessment-of-export-licence-applications-criteria-and-policy>

⁴⁵ UK Parliamentary Committee on Arms Exports Controls, *Scrutiny of Arms Exports and Arms Controls (2015)* Volume II, 9 March 2015, p. 177

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmquad/608/608ii.pdf>

⁴⁶ 'Foreign Office review of export policy' 13 October 2011

<https://www.gov.uk/government/news/foreign-office-review-of-export-policy>

Leigh Day

The new suspension mechanism will ***allow the Government to quickly suspend the processing of pending licence applications*** to countries experiencing a sharp deterioration in security or stability. Suspension will not be invoked automatically or lightly, ***but triggered for example when conflict or crisis conditions change the risk suddenly, or make conducting a proper risk assessment difficult.***⁴⁷

Indeed, during the last parliament, the Committees on Arms Export Control raised concerns regarding the inefficacy of suspending licences only after 'the bullets have bolted and are in the hands of an authoritarian regime'⁴⁸ and the new mechanism has been implemented in the case of Egypt.⁴⁹

The Claim:

On the basis of information in the public domain, including answers to parliamentary questions identified above, and in light of your responses to our letter of 9 November 2015, your refusal to suspend extant licences for the supply of arms and military equipment to Saudi Arabia, where such materiel may be used in the conflict in Yemen, is unlawful. Furthermore your decision, as set out in your letter of 9 December 2015, to continue to grant new licences for the transfer of arms or military equipment to Saudi Arabia where such materiel may be used in the conflict in Yemen is also unlawful.

In your letter of 9 December 2015 you state that "[t]he Government is satisfied that extant licences for Saudi Arabia are compliant with the UK's export licensing criteria" and confirm that, since 30 June 2015, new licences have been granted for the sale of military equipment to Saudi Arabia which may be used in the conflict in Yemen. You further state that the government has not carried out investigations into the alleged violations of IHL by the Saudi Coalition forces in Yemen but has instead emphasised to Saudi Arabia the importance of carrying out a "transparent" investigation into allegations. You state that concerns have been raised with Saudi Arabia in respect of the allegations raised but that Saudi Arabia has "given us assurances that they are complying with international humanitarian law, and we have offered advice and training to demonstrate best practice and to help ensure continued compliance with international humanitarian law". The approach adopted is unlawful.

A. Irrationality/Misdirection

First, your letter of 9 December 2015 offers no reasonable basis for the government's conclusion that the extant licences for Saudi Arabia are lawful and, in particular, remain compliant with the UK's export licensing criteria. Further, or alternatively, you have misdirected yourself in the application of the relevant framework of law and policy and/or as to the evidence before you.

As set out above, numerous multilateral organizations with an international mandate for human rights protection (and senior officials from those organizations) have alleged that airstrikes by

⁴⁷ Hansard WS 7 Feb 2012 : Column 7WS

<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120207/wmstext/120207m0001.htm>

⁴⁸ Lunn, Jon, 'UK arms export control policy', Briefing Paper 'UK arms export control policy', Briefing Paper Number 02729, 8 May 2015 p.12

<http://researchbriefings.files.parliament.uk/documents/SN02729/SN02729.pdf>

⁴⁹ 'Egypt', The Campaign Against Arms Trade

See <https://www.caat.org.uk/resources/countries/egypt>

Leigh Day

the Saudi -led coalition in Yemen have *in fact* violated IHL (not merely that they “may” have done so). This position has been adopted by, *inter alia*: the Secretary General of the United Nations (on several occasions); the UN Under Secretary General for Humanitarian Affairs; the Director General of UNESCO; the European Parliament; and the International Committee of the Red Cross. The UN High Commissioner for Human Rights (the UN’s most senior human rights official) has also expressed “grave concern” “about the high number of civilian casualties” in Yemen, noting that, ‘my office has received information suggesting that indiscriminate and disproportionate attacks’ have occurred. Moreover, Amnesty International and Human Rights Watch have both conducted extensive, recent fieldwork in Yemen speaking to witnesses and survivors of alleged violations of IHL and each has concluded that grave violations of IHL are likely to have occurred.

You do not suggest that any of the above allegations of violations of IHL are “not credible” in your letter of 9 December 2015 (if you do seek to challenge their credibility, we invite you to make this expressly clear in your letter of response, including the basis on which you do so).

Notwithstanding evidence of violations of IHL and the position adopted by these organizations and officials with an international mandate for the protection of human rights, you have concluded that the sale or transfer of military equipment to Saudi Arabia for use in Yemen (including, for instance, missiles for use in airstrikes) does not give rise to a “real risk” that such equipment “might” be used in violation of IHL.

However, you offer no reasonable basis for rejecting the conclusions of UN agencies and senior UN officials (with specific expertise and competence in this area) or the views of the European Parliament. You refer merely to having received “assurances” from Saudi Arabia that it is complying with international humanitarian law. You point to no evidence indicating that the allegations made by any of the above officials or agencies were, in fact, erroneous or incorrect. Indeed, nowhere do you indicate that the government has formed the view that the assessment of these agencies is incorrect. Moreover, it is unclear whether the assurances offered by Saudi Arabia, such as they are, specifically address incidents of violations of IHL, much less provide a sufficient basis for allaying concerns that IHL has been violated. The assurances you refer to appear to be of a general character. Again, if, contrary to the impression given in your letter of 9 December 2015, Saudi Arabia has in fact offered assurances which specifically address the incidents of violations of international humanitarian law and allay concerns that violations of IHL occurred in these incidents, we request that you urgently clarify this **and** explain the basis on which Saudi Arabia has concluded that the allegations are erroneous.

B. Impermissible Reliance on Assurances

Further, or alternatively, the reliance placed on the assurances by Saudi Arabia in reaching the decision to grant new licences for the sale of military equipment for possible use in Yemen and/or in deciding not to suspend extant licences in respect of the sale of such equipment, is unlawful. In particular, the UK government has failed to make sufficient inquiries as to the basis for these assurances to enable it lawfully to conclude that, notwithstanding the evidence to the contrary, there is not a “clear risk” that military equipment “may” be used in violations of international humanitarian law.

As noted above, Article 2, Criterion 2 (b) of the EU Common Position stipulates that exporting States must:

Leigh Day

'(b) exercise special caution and vigilance in issuing licences [...] to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe'

The European Parliament has specifically condemned Saudi Coalition airstrikes in Yemen as involving violations of international humanitarian law (Resolution 2015/2760(RSP)) and has, more generally, condemned other serious violations of IHRL by Saudi Arabia in other contexts in recent years, as explained above. For its part, the competent bodies of the United Nations have also found Saudi Arabia to have violated IHL specifically in Yemen (for instance, UNESCO) and to have failed to comply with IHRL more generally (i.e. the Committee Against Torture, Committee on the Rights of the Child, Working Group on Arbitrary Detention and others as set out above). In considering assurances offered by Saudi Arabia, the starting point must therefore be to treat such assurances with "special caution and vigilance" in application of Article 2, Criterion 2(b) of the Common Position.

Public authorities are under a duty, in reaching a decision within a particular statutory or policy framework, to make such enquiries as are necessary to reach that decision lawfully. In *Secretary of State for Education and Science v Tameside MBC* [1977] A.C. 1014, Lord Diplock held "the question for the court is, did the Secretary of State ask himself the right question **and take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly?**" These obligations of enquiry together form an "elementary duty" of public authority decision makers (*R (Atkinson) v. Lincolnshire County Council and Wealden District Council* (1996) 8 Admin LR 529, 543C. Moreover, it is also settled law that the *Tameside* duty of enquiry may require a decision-maker to elicit views or seek further evidence in order to call his attention to matters relevant to his decision (e.g. *R v. Secretary of State for Education ex p. London Borough of Southwark* [1995] ELR 308, 323C, per Laws J). Relatedly, the Consolidated Arms Export Licensing Criteria the government states that "[i]n the application of the above criteria, account will be taken of **reliable evidence**, including for example, reporting from diplomatic posts, relevant reports by international bodies, intelligence and information from open sources and non-governmental organizations".

Insofar as the UK government relies on Saudi Arabian assurances of compliance, the government is therefore under a public law duty to make reasonable and sufficient enquiries into the basis on which those assurances have been given to determine whether the criteria set out in the EU Common Position and the Consolidated Criteria have been satisfied and whether the information and assurances provided by Saudi Arabia are "reliable". This obligation is all the more important in the present context where the government is required by the legal framework pursuant to which it is acting, to "exercise special caution and vigilance" when granting arms licenses to Saudi Arabia for reasons set out above. The government has failed to discharge its obligations in this regard.

Publicly available information indicates that Saudi Arabia has not investigated, adequately or at all, the allegations of violations of IHL by its forces in Yemen nor, it appears, has the outcome of any investigation been published. Furthermore, according to publicly available information, there is no indication that measures have been taken to instigate disciplinary or criminal proceedings against those suspected of involvement in breaches of IHL (as required by IHL/IHRL), nor that any further measures (administrative, disciplinary or procedural) have been taken to prevent or suppress further such violations. No compensation has been paid in respect of persons found to have been killed or injured by airstrikes in Yemen in violation of international humanitarian law. Again, the latter are requirements of applicable international humanitarian law as earlier explained.

Leigh Day

You make clear in your response that government has not investigated the allegations of violations of IHL itself. Absent independent, effective and transparent investigation into the allegations of violations of IHL and in the absence of steps to "prevent and repress" further such violations (as required by applicable IHL), the government cannot reasonably be satisfied that violations of IHL are not occurring in Yemen and that there is no "clear risk" that such violations may not re-occur in the future.

C. *Insufficient Basis for a Risk Assessment*

Further or alternatively, there is presently a lack of reliable evidence based on which the government can reasonably conclude that the Consolidated Criteria are satisfied in accordance with its policy. According to the government's policy on export control licensing, as set out in Parliament on 7 February 2012, the license suspension mechanism will be "**triggered for example when conflict or crisis conditions change the risk suddenly, or make conducting a proper risk assessment difficult**".⁵⁰ At present there is insufficient reliable evidence that Saudi airstrikes do not infringe international humanitarian law for the government safely to conclude that the export licensing criteria are being met in accordance with its policy. You indicate that you have not investigated the alleged violations of international humanitarian law occurring in Yemen. In the absence of the publication of the conclusions of independent and effective investigations into incidents in which the Saudi Coalition are alleged to have violated IHL, there is no proper basis the government to conclude that the Consolidated Criteria and/or the Common Position Criteria are presently satisfied. In line with its policy, the UK government should suspend licences for the export of military equipment for possible use in Yemen forthwith.

Further Questions Arising from your Letter of 9 December 2015:

Your letter of 9 December 2015 gives rise to a number of further issues in respect of which we request clarification:

- (a) In our letter of 9 November 2015, we asked you to confirm whether the Government remains of the view, as stated to Parliament on 20 July 2015; that there is no "credible evidence" that Saudi/Coalition air strikes in Yemen have **violated international humanitarian law**. You have not answered this question. You state that reports of civilian casualties do not lack credibility. Please confirm the government's position.
- (b) Please confirm whether you accept as credible the allegations by international organizations, including UN agencies (described above), that Saudi Arabia has violated international humanitarian law in its conduct of hostilities in Yemen.
- (c) Please provide information as to the assurances given by Saudi Arabia in respect of compliance with in IHL in Yemen. Please explain, in particular
 - (i) Whether any of these assurances concerned specific incidents alleged to constitute violations of IHL
 - (ii) Whether, prior to any new licenses being granted in June 2015, Saudi Arabia offered an assurance that allegations of violations of IHL would be investigated independently and effectively.
- (d) Please explain when assurances were sought and received

⁵⁰ Hansard WS 7 Feb 2012 : Column 7WS

<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120207/wmstext/120207m0001.htm>

Leigh Day

- (e) Please specifically provide confirmation that assurances from Saudi Arabia were sought and received before new licences were granted from June.
- (f) Please confirm whether the government has sought and obtained information and/or assurances from Saudi Arabia in respect of the following:
 - a. Whether Saudi Arabia has, in fact, conducted independent investigations into any of the alleged violations of IHL in Yemen by the Saudi Coalition.
 - b. If so, what incidents have been investigated? What conclusions have been reached as a result of these investigations?
 - c. Whether Saudi Arabia has instigated any criminal, administrative or disciplinary steps as part of these investigations.
 - d. Whether Saudi Arabia has prosecuted, disciplined or punished any service personal in respect of violations of IHL in Yemen.
 - e. Whether Saudi Arabia has provided compensation, on any occasion, in respect of persons killed or injured in violation of IHL in Yemen or in respect of civilian property unlawfully destroyed.
- (g) Please confirm that the government accepts that "special caution" is required in respect of issuing export licences to Saudi Arabia for military equipment which may be used in Yemen, in accordance with Article 2, Criterion 2(b) of the Common Position.
- (h) Please further confirm whether, in assessing licence applications for sale of arms or equipment to Saudi Arabia or in deciding whether to suspend extant licences, "special caution" has been applied in deciding whether to grant all new licences issued since June 2015 and in respect of any decision to suspend any extant licences.
- (i) Confirm whether Saudi Arabia has in place legislation which enables the prosecution and, if appropriate, punishment of persons suspected of perpetrating violations of international humanitarian law. Please provide details of this legislation.
- (j) Please confirm whether Saudi Arabia has ever prosecuted or punished a member of its armed forces for perpetration of a war crime pursuant to this or other legislation.
- (k) Please confirm whether Saudi Arabia has instigated any form of criminal or disciplinary investigation into any allegation that a member of Coalition forces violated IHL in Yemen
- (l) Please confirm whether or not the "logistical and technical support" described by the Foreign Secretary as being provided to the Saudi Arabian forces (see above) was provided in support of any of the specific instances of IHL violations detailed in pages 3 to 6 of this letter or in any other alleged breaches of IHL by the Saudi Coalition.

Details of the action that the defendant is expected to take:

In light of the above, we ask that you confirm **within 14** days that the Secretary of State will:

- (1) Agree to suspend extant licences for the export of military equipment and technology to Saudi Arabia for possible use in Yemen pending the outcome of a full review as to whether the export

Leigh Day

of military equipment pursuant to such licences is compatible with the requirements of the EU Common Position and the Consolidated Arms Export Licensing Criteria

- (2) Agree not to grant further licences for the export of military equipment to Saudi Arabia pending the completion of such a review

And,

- (3) In addition, agree not to grant further licences (and to suspend existing licences) until you are in possession of sufficiently clear information to enable a proper assessment as to whether such licences can be granted lawfully.

Yours faithfully,

Leigh Day

Leigh Day

Cc:

B5 General Public Law and Planning Litigation, Litigation Group, Government Legal Department (FAO Ellen Richardson)

Export Control Organisation, Department for Business, Innovation and Skills (FAO Edward Bell)

UK National Contact Point for the OECD guidelines for multinational enterprises
Department for Business, Innovation and Skills