

FAO: Sarah Waller
Government Legal Department

BY EMAIL ONLY

Direct Dial: 020 7650 1297

Email: rcurling@leighday.co.uk;
ealcock@leighday.co.uk

Your Ref: **Z1601555/SAW/DS4**

Our Ref: REC/EAK/00065492/10

Date: 22 July 2020

Dear Sirs

**Re: Campaign Against Arms Trade
Licences for the Sale or Transfer of Arms or Military Equipment to the
Kingdom of Saudi Arabia**

We write further to your letter dated 7 July 2020 in which you explain your new decision (a) not to suspend extant export licences for the sale or transfer of arms and military equipment to Saudi Arabia; and (b) to grant licences for the sale or transfer of arms and military equipment to Saudi Arabia for possible use in the conflict in Yemen (**“the Decision”**).

In your letter you articulate the new approach you have adopted in making this decision, following the judgment of the Court of Appeal in *Campaign Against Arms Trade v. Secretary of State for International Trade* [2019] 1 W.L.R. 5765.

In order to understand the Decision, and the basis on which it has been taken, we request that the Secretary of State clarify a number of matters.

- (1) How many incidents were considered as part of the IHL assessment you outline at paragraph 18 of your letter?
- (2) Of the incidents examined, how many incidents were identified as “possible” breaches of IHL and how many were identified as “unlikely” to constitute breaches of IHL.
- (3) Please confirm whether the following specific incidents were identified as “possible” breaches of IHL.

Leigh Day postbox@leighday.co.uk - www.leighday.co.uk

Priory House, 25 St John's Lane, London EC1M 4LB

T 0207 650 1200 - F 0207 253 4433

DX 53326 Clerkenwell

Central Park, Northampton Road, Manchester M40 5BP

T 0161 393 3600 - F 0207 253 4433

- a. The “May Declaration” on 8 May 2015 in which Brigadier General Assiri declared the entirety of the city of Sa’dah and the area of Maran to be military targets.
- b. The 8 October 2016 “Great Hall Strike” attack on a large funeral ceremony at the Salah al-Kubra community hall in Sana’a during which around 140 civilians were killed, an attack which was “strongly condemned” by the UK ambassador to the UN and which was one of 10 incidents listed in the UN Panel of Experts on Yemen 2017 report as potential violations of IHL.
- c. Strikes on a Medecins Sans Frontieres hospital in Haidan repeatedly over a 24-hour period between 25-26 October 2015¹, when GPS coordinates had been regularly shared with the coalition forces.
- d. The 9 other incidents taking place in 2016, identified by the UN Panel of Experts on Yemen 2017 report:
 - i. 15 March airstrike on a civilian market in Hajjah causing 106 civilian deaths and 41 injuries;
 - ii. 25 March airstrike on a civilian residence in Ta’izz killing ten civilians;
 - iii. 25 May airstrike on a civilian residence in Lahij killing 6 civilians and injuring 3;
 - iv. 25 May airstrike on water bottling plant in Lahij resulting in complete or partial destruction to the plant;
 - v. 9 August “repeat” airstrike on a food production facility in Sana’a killing 10 civilians and injuring 13;
 - vi. 15 August airstrike on a MSF run hospital in Hajjah killing 19 civilians and injuring 24;
 - vii. 13 September airstrike on a water pump factory in Sana’a, repeated again on 22 September;
 - viii. 24 September airstrike on a residential complex in Ibb causing 9 civilians deaths and at least 7 injuries.
- e. The airstrike attack on al-Thawra Hospital, Hodeidah, on 2 August 2018² that killed at least 55 people and wounded at least 124 others, and an earlier strike at the fishing market by the port, which led to wounded civilians being transported to the hospital only to be killed in the later strike.

¹ See Claimant’s Chronology of Incidents

² See Annex to our letter dated 9 September 2019

- f. The airstrike carried out on 9 August 2018 against a bus carrying approximately 50 children in a busy marketplace in Sa'dah Governorate, killing at least 11 children with the total number of civilian casualties estimated to exceed 40 dead and 60 injured³.
- g. The 26 March 2019 airstrike on a hospital in Kitaf, Sa'dah⁴, supported by Save the Children and whose coordinates were known to the coalition forces, killing at least 8 people, 5 of whom were children, and injuring a further 9 people including 2 children.
- h. Two airstrikes within 15 minutes of one another on 28 June 2019 against a residential home in Ta'iz governorate killing 6 people, including a woman and 3 children⁵.
- i. The 31 August 2019 airstrike on Dhamar community college⁶, reportedly being used as a prison where the International Committee of the Red Cross estimated about 170 detainees were held. The strike killed approximately 100 people and injured another 40.
- j. The 7 other incidents highlighted by the UN Panel of Experts on Yemen in their January 2020 report, taking place between December 2018 and September 2019:
 - i. 16 December airstrike on a car in Bayda killing 2 children;
 - ii. 23 March airstrike on a gas station and hospital, killing 7 people including 4 children, and injuring another 6 people;
 - iii. 4 April airstrike on another car in Bayda, killing 4 people;
 - iv. 16 May airstrike on houses in Raqqas, Sana'a where approximately 5 children were killed and 78 people injured including 30 children;
 - v. 24 May airstrike on a gas station in Ta'izz killing 7 people, 5 of whom were children, and injuring 2 more;
 - vi. 28 June airstrike on a house in Ta'izz killing 7 people, 4 of whom were children, and injuring 2 adults and 2 children;
 - vii. 24 September airstrike on a house in Ad Dali' killing 14 people, 7 of whom were children, and injuring 3 more people.

³ See August 2019 Report of the Group of Eminent International and Regional Experts submitted to UNHCHR

⁴ See Annex to our letter dated 9 September 2019

⁵ See Annex to our letter dated 9 September 2019

⁶ See UN Panel of Experts on Yemen, January 2020

- k. The killing of 31 civilians and injuring of 12 others in air strikes on the Al Hayjah area of Al Maslub District in Al Jawf Governorate on 15 February 2020⁷.
- (4) As regards “possible” breaches please confirm whether each of the following was used to determine whether the incident constituted a possible breach of IHL
- a. Reports from UN agencies, NGO reports or other sources as to the number of casualties in those incidents
 - b. Reports from UN agencies, NGOs or other sources as to the identity of the casualties (e.g. whether civilians, medical workers, humanitarian relief workers or military personnel).
 - c. Reports from UN agencies, NGOs or other sources as to the presence or absence of an apparent target of an attack and as to the presence (or absence) of any legitimate military target in the vicinity of an incident.
 - d. Reports from UN agencies, NGOs or other sources as to the existence (or absence) or precautions taken to avoid civilian casualties and to ensure the target was a military objective.
- (5) As regards possible violations of international humanitarian law, please confirm whether (and, if so, how) the Secretary of State considered, as regards each incident, whether:
- a. It was, or may have been, perpetrated deliberately;
 - b. It was, or may have been, perpetrated recklessly;
- (6) Did the Secretary of State assess whether an incident may still have constituted a violation of IHL despite any apparent intent, recklessness (or some other mental element) on the part of KSA in respect of the breach (for example, because of a failure to take all feasible precautions in attack). If so, how many such instances were included as “possible” breaches of IHL in the Secretary of State’s assessment?

⁷ <https://yemen.un.org/en/45127-strikes-kill-scores-civilians-al-jawf-governorate>

- (7) As regards “possible” violations of international humanitarian law, please confirm whether (and, if so, how) the Secretary of State considered, as regards each incident, whether on the information available KSA:
- a. “did everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects”;⁸
 - b. took “all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects”.⁹
- (8) We understand from your description of the analysis of individual incidents in your letter §§ 18-22, that in respect of individual incidents the Secretary of State did not form a view as to the degree of likelihood that an individual incident constituted a violation of IHL in any individual case (beyond a finding that a violation was “possible”). Please confirm if this understanding is correct.
- (9) Paragraph 21 of your letter explains the Secretary of State’s conclusion that the possible violations of IHL identified do not constitute a “pattern” of violations but constitute “isolated incidents”.
- a. Please explain, in this context, how the Secretary of State determines whether incidents form part of a “pattern” of violations.
 - b. What factors does the Secretary of State consider in assessing whether the incidents in question are merely “isolated incidents”?
- (10) In relation to those incidents which are assessed to be “isolated”, has the Secretary of State considered the seriousness of those incidents? If so, how has this been assessed and what factors have been taken into account?

“Serious violation” of IHL

- (11) We have written to you separately, by letter of 14 July 2020 on the question of the concept of a “serious violation” of IHL. For convenience we reiterate those questions here.

⁸ See Article 57, Additional Protocol I to the Geneva Conventions of 1949.

⁹ *Ibid.*

- (12) Does the Secretary of State accept that the concept of “serious violation” of international humanitarian law is to be interpreted and applied in the manner identified by the Claimant, in particular that it encompasses every “breach of a rule protecting important values” where “the breach involves grave consequences for the victim”¹⁰ in line with the position adopted by the Claimant in these proceedings.¹¹
- (13) In particular, does the Secretary of State accept that a single violation of international humanitarian law may be a “serious violation”, where it meets the above criteria, and that intent, recklessness or some mental element is not necessarily required (*Cf* position of Secretary of State before Divisional Court).
- (14) Can the Secretary of State confirm that any new decision as regards the granting of licences for the transfer of arms or military equipment to KSA for possible use in Yemen has been taken, and will be taken, in accordance with the approach outlined at points (12) and (13) above?
- (15) As regards the “possible” past breaches of IHL identified by the Secretary of State in his Decision:
- a. Did the Secretary of State specifically assess whether these incidents were “serious”?
 - b. If so, how did the Secretary of State reach a view on this?

We look forward to hearing from you **within 14 days**.

Yours faithfully


Leigh Day

¹⁰ See, *inter alia*, *Prosecutor v. Tadic*, Appeals Chamber, IT-94-1 Decision on Interlocutory Appeal on Jurisdiction [91]-[94] and *Prosecutor v. Galic*, Trial Chamber, Judgment, IT-98-29-T [106]-[108]).

¹¹ See further Claimant’s Amended Appeal Skeleton [55 and 57 – 58] and by the Claimant’s Reply to the Respondent’s Updated Statement [12 – 13 (a) –(c)] See further Claimant’s email to Secretary of State, dated 12 June 2018 on this issue (attached).