

IN THE HIGH COURT OF JUSTICE

Claim No: CO/1306/2016

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:-

THE QUEEN

on the application of

CAMPAIGN AGAINST ARMS TRADE

Claimant

-and-

THE SECRETARY OF STATE FOR INTERNATIONAL TRADE

Defendant

SECOND WITNESS STATEMENT OF

NEIL CROMPTON

ON BEHALF OF THE DEFENDANT

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I. INTRODUCTION

1. I am the same Neil Crompton who provided a witness statement on behalf of the Defendant in these proceedings dated 5 August 2016 and a "closed" witness statement dated 27 September 2016.
2. I make this further witness statement pursuant to the Order of Mr Justice Cranston dated 23 November 2016. This statement addresses the developments which have occurred between 6 August 2016 and 16 December 2016.
3. The information contained in this statement is either based on my own knowledge of the matters described or on information which has been provided to me by my colleagues in the Foreign and Commonwealth Office ("FCO") and is true to the best of my knowledge and belief.

A. The sensitivity of the material on which this Witness Statement is based.

4. Much of the information on which the FCO's input and advice in relation to the export of arms and military equipment to Saudi Arabia is based and which informs its assessment under Criterion 2C is sensitive for national security reasons and consequently cannot be referred to in detail in open court.

II. THE PEACE PROCESS/CESSATION OF HOSTILITIES

5. Around the time that my first witness statement was filed, UN facilitated peace talks were taking place between the Government of Yemen and the Houthi-Saleh alliance in Kuwait. Unfortunately, on 6 August 2016, those talks concluded with little progress. The UN Special Envoy consequently adjourned the talks since when it has not proved possible to restart the process.
6. On 25 August, a meeting of "Quad" – that is the UK, US, KSA and UAE – took place in Jeddah. The UN presented a new comprehensive Road Map for endorsement, designed to achieve a more gradual development of security and political measures.
7. The breakdown of the Kuwait talks resulted in a stepping up of military activity in Yemen including an increase in Coalition air strikes. MOD reporting indicates that the number of air strikes increased.
8. Subsequently, on 21 September, the UK hosted a further Quad meeting followed by a meeting of Quad plus Gulf Cooperation Council (GCC) Foreign Ministers, with the aim of getting the peace process back on track. It was emphasised at these meetings that a CoH needed to be reinstated. It was agreed that the UN should present a plan for the Houthi/Saleh side to engage with on security withdrawals and weapon handovers in Sana'a – a crucial first step in the Road Map. A joint communiqué agreed between Quad Foreign Ministers called for a complete CoH
9. On 1 October, there was a worrying escalation of the Yemen conflict when a missile attack was launched in the Bab al Mandeb Strait against the MV Swift, a vessel belonging to Coalition member UAE. Houthi rebels claimed responsibility for this attack.
10. A further meeting of the Quad was held in London on 16 October. This meeting took place in the context of a worrying escalation in military tensions

and, in particular the airstrike on a funeral gathering in Sana'a, to which I will refer in more detail below. The Sana'a attack appeared to provide the necessary impetus for movement, however, and an agreement was reached to reinstate a CoH. A 72 hour CoH came into effect on 20 October based on the same terms as the CoH which had held from April to August. Despite the CoH, the ground war continued during this period. There was still a significant reduction in air strikes during this 72 hour window.

11. Unfortunately, the October CoH did not hold. There was a significant increase in Coalition air strikes in the week following the CoH. A further brief CoH took effect between 19-21 November, but both sides accused each other of violations and it was not extended. However, the overall trend in the number of air strikes since 7 August is still downward.
12. It needs always to be kept in mind that the conflict in Yemen poses a real military threat to Saudi Arabia. There are numerous cross border incursions and a number of Saudis have been killed on the KSA side of the border. Missile attacks against Saudi territory are frequent. At the end of October, in a worrying escalation, the Houthi-Saleh forces fired a SCUD missile aimed, according to a Houthi/Saleh spokesman, at Jeddah International airport, although the Saudis say it was aimed at Mecca, which lies on a very similar trajectory.
13. Diplomatic efforts continued at a high level over the period of this update, with the Foreign Secretary and Mr Ellwood actively engaged with GoY, the UN Envoy and Gulf partners. US Secretary of State Kerry has been spending a large proportion of his remaining time in office working for a settlement. The UN Special Envoy and the Quad continue to push for a reintroduction of the CoH and engagement with the Road Map, though neither side has seriously engaged with it. Despite earlier Houthi-Saleh promises to accept the Road Map, they have not engaged with the detail, and in particular the vital Sana'a security plan. President Hadi wrote to the UN Security Council setting out his rejection of the Road Map.

III. INCIDENTS OF CONCERN SINCE EARLY AUGUST

14. The MOD continues to track all allegations of incidents of concern of which it becomes aware. The number of such incidents alleged to have occurred has, overall, reduced steadily since the summer of 2015. There was a short-term increase in the number of alleged incidents following the collapse of the CoH

in August 2016. In particular there were a number of allegations arising from air strikes in which significant numbers of civilian casualties have been reported. These incidents have raised concerns about the Coalition's ability to comply with IHL principles.

15. I will summarise briefly the details of four of the most concerning of these allegations. I will then explain in Section IV and Annex A the engagements we have had with the Saudis in relation to IHL compliance and these incidents in particular. In Section V, I will outline the Coalition response to those requests.
16. The first such incident was an airstrike against a Medecins Sans Frontières (MSF) hospital in Abs in Hajja Governorate, which allegedly killed 19 people and injured 24.
17. The second, and perhaps the most concerning, incident was the air strike on 8 October 2016, on a community hall in Sana'a. At the time of the attack, a funeral gathering was being held in the hall. Initial press reports indicated that 140 people had been killed and over 500 wounded. Coalition spokesman General Assiri spoke to the media the following day promising an urgent investigation and the Joint Incidents Assessment Team (JIAT) released a press statement a week later accepting Coalition responsibility and indicating that "a party affiliated to the Yemeni Presidency Chief of Staff" had wrongly passed information that there was a gathering of armed Houthi leaders in a known location and insisted that the location be targeted immediately as a legitimate military target. They added that the Air Operations Centre in Yemen had authorised the strike without the approval of the Coalition Command and in contravention of the rules of engagement.
18. Thirdly, it was reported that, on 28 October 2016, 60 people were killed in an airstrike on the Al-Zaydiya "security headquarters" in Al-Huydaydah province. Media coverage reported that the building was a prison, although General Assiri stated, during a visit to the UK on 1 November, that the buildings were a Houthi/Saleh security headquarters and were therefore a legitimate military target.
19. In addition to the above allegations, on 26 October 2016, an ITV News Report repeated allegations of the use of BL-755 cluster munitions in Yemen. This represents a continuation of a troubling issue to which I referred in my first witness statement. This issue is discussed in depth in Peter Watkins' second Witness Statement.

IV. ENGAGEMENT WITH THE KINGDOM OF SAUDI ARABIA (KSA)

20. In the light of the very real concern which has been generated by the incidents I have described above, there has, since August, been intensive and high level engagement with the KSA. The full range of this engagement is set out in Annex A. Peter Watkins describes, in his second witness statement, the communications which have occurred on the defence side.
21. While this engagement was maintained at a high pace throughout the period from early August, it entered a particularly intensive phase in early December. This was followed by a meeting between the Prime Minister and the King of Saudi Arabia in Bahrain on 6 December. Most recently, the Foreign Secretary visited Saudi Arabia on 11 December 2016.

V. RESULTS OF THESE ENGAGEMENTS

22. As a result of these engagements, there has been considerable positive progress across most areas of concern. In relation to the four incidents of particular concern which I have discussed above, our engagements with the Saudis have resulted in the following further developments.
- A. Abs Hospital: On 6 December 2016, the JIAT released the results of its investigation into this incident. Its assessment is that the Coalition were targeting a military vehicle and this caused collateral damage to the hospital. The JIAT recommended that the Coalition should issue an apology and make reparations to the victims' families.
 - B. Great Hall Incident:
 - C. Al-Zaydiya Incident (Hodeidah Prison): It appears to be accepted that there was an air strike in this area, but General Assiri has consistently rejected media accounts suggesting that the compound was a prison and has maintained that the buildings were a Houthi/Saleh security headquarters and therefore a legitimate military target.
 - D. Cluster Munitions: Peter Watkins' second witness statement examines this issue in greater detail.

VI. JIAT INVESTIGATIONS

23. The Chronology of JIAT investigations is as follows:

- A. 4 August 2016 announcement: JIAT held a press conference at which the summary results of 8 investigations were given. These included 2 of the 7 priority investigations that the UK had raised with the Coalition in January 2016. Copies of public JIAT reports are exhibited at NC15. In relation to one incident, the allegation from Human Rights Watch that a residential complex in Mocha had been bombed in July 2015, JIAT concluded that the complex had been targeted in error and recommended that compensation should be paid to the victims' families. In relation to the other 7 incidents, JIAT concluded that the procedures followed were consistent with international law.
- B. MSF Hospital Haydan:
- C. 6 December 2016 announcement: A further press conference was held by the JIAT at which the results of a further 5 investigations were released. This included the investigation into the Abs Hospital strike, as discussed above, for which the JIAT concluded the Coalition should accept responsibility. In relation to the other four incidents, the JIAT concluded either that there was a legitimate military target or that any strikes conducted at the relevant time were some distance away. A table showing what investigation reports have been received from JIAT exhibited at NC15.
- D. MOD analysis: MOD has carried out its own analysis on a number of the incidents on which the JIAT has reported. The results of the MOD's analysis are exhibited to Peter Watkins' second witness statement.

VII. PROCESS OF UPDATING THE FOREIGN SECRETARY

24. We have continued to provide comprehensive IHL Updates to the Foreign Secretary, in accordance with the process which I described in my first witness statement, on 18 October 2016 and 7 December 2016. I have already discussed many of the matters which are covered in these IHL Updates in the above paragraphs of this witness statement and copies of the two IHL Updates which have been produced since my last witness statement are exhibited at NC16, in closed. I will therefore not attempt to provide a further summary of these documents, but would simply highlight the approach to the Criterion 2C assessment in October and December respectively.

- A. October 2016 IHL Update: This update recorded that, before the Great Hall incident the assessment had been that, despite the resumption of hostilities and the increased risk of further incidents of concern due to the high level of air operations, the assessment was that the "clear risk" threshold had not been met. It was noted that the KSA authorities and military appeared to be increasingly engaged with the importance of IHL compliance and were making efforts to decrease the risk of IHL violations. They had initiated urgent investigations. It was noted that the complexity of the circumstances were unprecedented.
- B. December 2016 IHL update: This recorded a number of areas of progress as indicated elsewhere in this statement, while noting that there were still a number of areas of concern. Advice from the FCO Arms Export Policy Team was that, although the assessment remained finely balanced, that the FCO assessment was that the 2C Criterion threshold had not been reached and that he could advise the SSDIT to continue to license arms exports to Saudi Arabia.
- C. Ad Hoc updates: In addition to the IHL Updates, MENAD has also continued to provide ad hoc updates to the Foreign Secretary. Copies of the relevant ad hoc updates provided since 5 August 2016 are exhibited at NC17. In addition, the Foreign Secretary received oral updates from officials in relation to a number of the developments to which I have referred, and was briefed regularly on these issues in relation to phone calls, meetings and visits relating to the conflict in Yemen. Ministers are updated when we learn of new major incidents of concern. When we first learned about the Great Hall incident, we updated the Foreign Secretary's office orally and agreed that we should include the latest information in the October IHL update which was just about to go to him. In the case of the alleged air strike on the Al-Zaydiya security compound/alleged prison, the facts were uncertain at the time and the Coalition had informed us that it was a security compound used by the Houthi-Saleh forces and was a legitimate military target. We did not therefore update the Foreign Secretary immediately while we attempted to clarify the status of the incident, but we did update Minister Ellwood on the limited information we had at the time.

VIII. EXPORT LICENSING RECOMMENDATIONS

26. At the time of the last Witness Statement the FCO Export Policy Team (EPT) (previously called AEPT, now referred to as EPT) had received six applications relating to air munitions for Saudi Arabia which had been put aside for separate consideration. EPT concluded that two of these six applications should be referred to the Foreign Secretary. They had been received between 27 June and 5 August 2016. This was based on the considerations and process that I described in my First Witness Statement at Paragraphs 25 to 27. A further two had earlier been referred to the Foreign Secretary on 27 July 2016 making four in total. Copies of those four recommendations are contained in a closed exhibit. The remaining four were assessed at official level as they did not fulfil the criteria for referral to the Foreign Secretary.
27. On 10 August, EPT wrote to the Private Secretary to seek the Foreign Secretary's views on whether he was content for officials to advise DIT to Approve the four referred export license applications, taking into account the recent IHL update and EPT assessment. EPT received confirmation of 12 August that the Foreign Secretary was content to approve those four licenses and EPT made the necessary recommendations to DIT. The Foreign Secretary also wrote to the Secretary of State for International Trade on 8 November recommending that these licenses be issued.
28. Similarly, ten applications for exports to Saudi Arabia received in three batches between 23 August and 22 September 2016 and 8 and 21 November 2016 were put aside for separate consideration. These have not yet been referred to the Foreign Secretary primarily due to normal work processes and, most recently, due to the proximity of the recent IHL update and assessment.

IX. ENGAGEMENT WITH DIT

29. The Foreign Secretary wrote to the Secretary of State for Trade on 8 November, following his consideration of the latest IHL update. Based on the analysis and evidence in the update and noting the commitments the Saudi authorities had provided, particularly in response to the 8 October airstrike on the Sana'a Great Hall which had highlighted serious failings, the Foreign Secretary confirmed his assessment that the "clear risk" threshold for refusal under Criterion 2C has not yet been reached. In his letter to the Secretary of State for International Trade, the Foreign Secretary noted that this was a "very finely balanced" issue and that Saudi assurances must be followed up by actions. The Foreign Secretary confirmed that the situation would be kept under close and careful review and that we would continue.

30. On 17 November, DIT responded to the Foreign Secretary's letter, accepting his advice and reiterating that there should be another assessment carried out at the end of November ensuring that we are able to respond quickly in the event of a rapid deterioration in circumstances.

31. On 15 December, following his visit to Riyadh during which he had the opportunity to discuss Saudi Arabia's compliance with IHL in detail, the Foreign Secretary wrote again to the Secretary of State for International Trade, to advise him that having considered the latest IHL Update, he was satisfied that issuing export licenses for air combat platforms and associated items which could be used in the conflict in Yemen would be compatible with the requirements of Criterion 2C of the Consolidated Criteria.

X. US GOVERNMENT DECISION TO SUSPEND SALES OF CERTAIN PRECISION MUNITIONS

32. On the evening of 13 December, media reports circulated that the US had decided not to go ahead with some foreign military sales (FMS) cases for precision guided munitions for Saudi Arabia. It was apparent from the reports that the decision had not been announced officially by the US Government. The decision to limit supply related to one single direct commercial sale of precision guided munitions (PGMs) from Raytheon.

I believe that the facts stated in this statement are true

SIGNED: *Neil* *GF*

DATED: *21 Dec 2016*

Annex A

UK ENGAGEMENT WITH THE KINGDOM OF SAUDI ARABIA (KSA) ON
INTERNATIONAL HUMANITARIAN LAW ISSUES

Date	Engagement	Detail
	Defence Attaché (DA) meeting with Commander, Royal Saudi Air Force (RSAF) General Al Otaibi	
	Mr Ellwood phone call with Saudi Ambassador in London	
	Phone call between FS – Adel Al Jubeir, Saudi Foreign Minister	
	FS phone call with Al Jubeir	

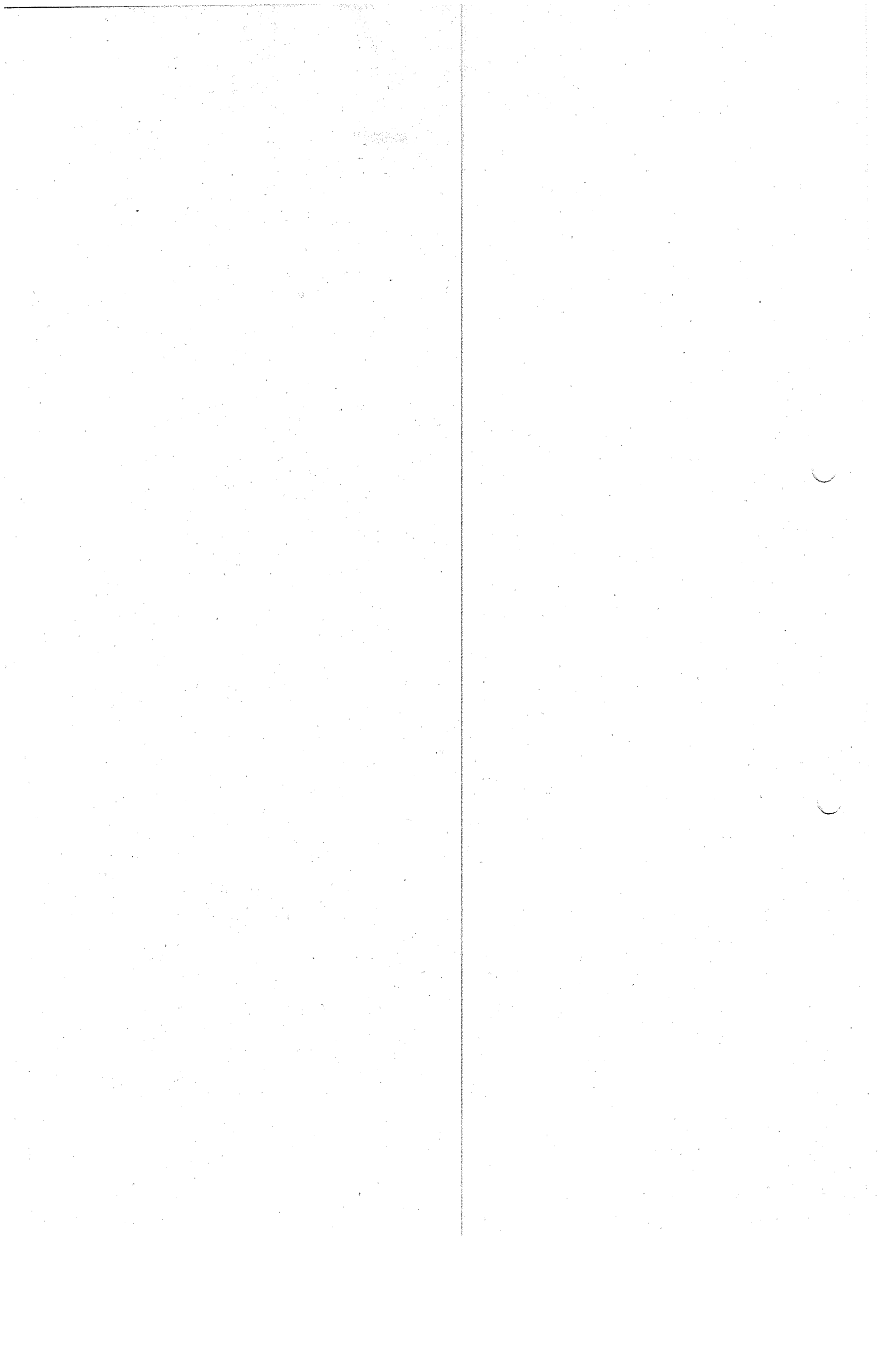
	DA Riyadh letter to Chief of Staff General Al Banyan	
	Mr Ellwood hosted Al Jubeir in Parliament for Q & A session with MPs and Lords.	
	Defence & Security Adviser – Middle East (DSAME) visit to KSA. Meeting with Al Ayeesh and COS Banyan	
	Mr Ellwood phone call to Saudi Ambassador in London	
	HMA Riyadh meeting with Deputy Crown Prince/ Defence Minister Mohammed Bin Salman (MbS)	

Defence Sec call to
MbS

FS phone call with Al
Jubeir

FS phone call with Al
Jubeir

	Deputy National Security Adviser (DNSA) visit to KSA. Meetings with Al Sabhan, Deputy Cdr RSAF Al Ghamdi and Assiri plus visit to CAOC	
	Letter from DA Riyadh to Ayeesh	
	Letter from Mr Ellwood to Assiri	
	HMA USA lunch with Al Jubeir	
	Defence Secretary meeting with Al Ayeesh	
	Christian Turner letter to Saudi Ambassador	
	DNSA meetings in Riyadh with General Humaidan, Head of	



	GID, Mohamed bin Naif (MbN), Crown Prince, and MbS	
	PM-King Salman meeting in Manama	
	FS meetings in Riyadh with King Salman, MbN, MbS and Saudi FM Al Jubeir	
	FS phone call with MbS	

