



MOD-137-0000023-A

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To: PS/Secretary of State

From: Freddie Munday, MENE APL Pol, Ops Dir

12 February 2016

MENE Crisis Ops/Op CROSSWAYS/Policy

YEMEN: UK ARMS EXPORTS TO SAUDI ARABIA AND SAUDI INTERNATIONAL HUMANITARIAN LAW COMPLIANCE

Issue

1. Update on prospective litigation on UK arms exports to Saudi Arabia and the Saudi-led Coalition's compliance with International Humanitarian Law (IHL) in relation to operations in Yemen.

Recommendation

2. The Defence Secretary is invited to note:
 - a. MOD is responsible for monitoring allegations of IHL violations in Yemen. As part of our assessment of the Saudi-led Coalition's air campaign we cannot confirm a military target for the majority of strikes assessed to have been carried out by the Coalition, but there is insufficient evidence to conclude there has been a breach of IHL;
 - b. we believe that Saudi deliberate targeting processes are broadly compliant with IHL but we have less insight into Saudi dynamic targeting processes
 - c. we need to have a better understanding of why civilian casualties have occurred, including seeing the results of Saudi investigations into incidents of concern;
 - d. the Saudis announced plans for greater transparency on investigations, engagement with NGOs, the International Committee of the Red Cross and the UN;
 - e. we will provide further legal, intelligence and targeting training to support Saudi IHL compliance, and intend to work with a joint investigations committee with the Saudis;
 - f. Leigh Day have written a Pre Action Protocol letter to the Business Secretary threatening to bring a Judicial Review over the UK's arms export licencing to Saudi Arabia, due to IHL concerns in Yemen;
 - g. [REDACTED]
 - h. the Business Secretary is therefore minded not to suspend arms export licences. However he has asked for agreement from the Foreign Secretary, senior Government lawyers and the Defence Secretary that this is the right course of action; and
 - i. if the Business Secretary does not suspend licences it is highly likely this will lead to an application for a Judicial Review. [REDACTED]
3. And agree:
 - j. To respond to the Business Secretary, supporting his decision, as set out at Annex A.

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Timing

4. **Urgent.** The Business Secretary has indicated that he will suspend exports if he does not have cross government agreement by the end of 12 February.

Background

5. Leigh Day solicitors initially wrote to the Business Secretary on 9 November 2015 outlining their concerns over the Saudi campaign in Yemen and the UK's decision not to suspend arms exports licences to the Saudis as a result of it. They followed up with a Pre Action Protocol letter on 8 January, on behalf of the Campaign Against the Arms Trade (CAAT), threatening to bring a Judicial Review if arms export licences to Saudi Arabia were not suspended pending a full review into the compatibility of existing licences with the UK's international and domestic legal obligations.

6. The Saudi-led Coalition has now been conducting an air campaign in Yemen for ten months. [REDACTED]

There have been repeated allegations of violations of IHL during these operations, with reports published by a number of NGOs. On 16 December 2015, Matrix Chambers published a legal opinion, sponsored by Saferworld and Amnesty, which concluded that the UK was in breach of its obligations under arms exports legislation and should cease all exports to Saudi Arabia. A UN Panel of Experts report, leaked on 27 January, concluded that all parties in the conflict had acted in breach of IHL.

7. Given the allegations of non-compliance with IHL, we have been involved in continued discussions with the Saudis [REDACTED]

UK analysis

8. We have currently registered 156 allegations of civilian casualties/breaches of IHL in Yemen (see table at Annex C). [REDACTED]

9. [REDACTED]

10. [REDACTED]

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10.

[REDACTED]

[REDACTED]

[REDACTED] We believe we can offer additional places for Saudi personnel on intelligence and legal training courses and continue to provide targeting training via the RAF. On 31 January, the Saudis held a major press conference describing their processes; admitting for the first time to responsibility for an incident; announcing the formation of a joint investigations committee and setting out better engagement with NGOs. They have also written to the UN promising to work with the Sanctions Committee and the Panel of Experts. [REDACTED] targeting processes. [REDACTED]

11.

[REDACTED]

Arms Exports and Legal Situation

12.

[REDACTED]

13. Following the advice of [REDACTED] senior Government lawyers and the Foreign Secretary the Business Secretary is prepared not to suspend export licences to Saudi Arabia and a response to that effect will be sent to Leigh Day, expected on 15 February. However the Business Secretary has asked for [REDACTED] senior Government lawyers, the Foreign Secretary and the Defence Secretary to endorse his view. We recommend that the Defence Secretary supports his decision, as the threshold to suspend arms exports has not been met, and a letter to that effect is attached at Annex A. The Business Secretary has further asked for weekly updates on the situation in Yemen and we will coordinate with the FCO and the CO to provide a regular cross Government update, which will provide an update to NSC members in the round rather than a bespoke product for the Business Secretary, which would be unusual for such a narrow purpose.

14.

[REDACTED]

[REDACTED] The Business Secretary is considering suspending all export licenses related to the campaign in Yemen. However in the result of an unfavourable judgement in a Judicial Review it is not clear which export licenses would be suspended, this could just be a subset particularly relevant to the campaign, for example munition shipments. In addition the judgement will reflect the situation on the ground at the time and this allows more time for the UN led peace process to reach fruition, which would defuse the situation. Direction has already

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gone out to preserve correspondence on the issue. Separately, we are revising the OSJA we have in place which covers Saudi Arabia.

Parliamentary Interest

15. Parliamentary interest has increased substantially since Christmas, with both the FCO and MOD receiving an increase in Parliamentary correspondence, questions raised in the Commons, and an urgent question accepted on 28 January. The International Development Committee is currently conducting an inquiry into 'The Crisis in Yemen', and wrote to the Development Secretary expressing concerns on 3 February. There was a backbench debate on Yemen on 4 February and the Leader of the Opposition and Shadow Foreign Secretary have written to the Prime Minister seeking more information on the UK's support for Saudi Arabia. We will continue to support other government departments with factual information on UK military activity, and lines to take.

Presentational and media issues

16. Increased Parliamentary interest, has been matched by substantial media coverage, which is also being promoted by the campaigns being run by NGOs to keep Yemen and Saudi Arabia in the public eye. Much of the coverage has been about the UK's relationship with Saudi Arabia, including military support, where there has been some confusion over the level of UK involvement in the Saudi-led Coalition. There is also criticism of the perceived contradiction between DFID's humanitarian work in Yemen and FCO and MOD support for a campaign which has undermined the delivery of humanitarian aid, as well as inconsistency between UK criticism of the air campaign being run by Russia and the Syrian Government inside Syria as opposed to alleged silence over Saudi activity in Yemen – the Russians have used this argument to deflect criticism of them at the UN. We will continue to explore options to explain the UK position, including supporting FCO and DFID discussions with NGOs,

17. DDC will continue to liaise with the Ops Directorate and cross-Government colleagues to generate lines to take.

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MA/DG MODSAP
MA/DSAME
MA/ACDS (DE)
MA/ACDS (Nuc CB)
MA/ACDS (Ops)
EA/D CLS
EA/D DC
PS/D Op Pol

MA/COS(Ops) PJHQ
PS/COS(Pol & Fin) PJHQ
Head of ACP
Head of IPP Civ
Head of Ops Mil
Head of Ops Pol
Head of [REDACTED] Legal Policy
Special Advisers

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**Annex A to
Yemen: UK Activity on Saudi-led Coalition International Humanitarian Law Compliance
Dated 12 February 2016**

DRAFT LETTER FROM THE DEFENCE SECRETARY TO THE BUSINESS SECRETARY

ARMS EXPORTS TO SAUDI ARABIA

Thank you for your letter of the 11 February setting out your current thinking on the issue of arms exports to Saudi Arabia. [REDACTED]

[REDACTED] I am firmly of the view that a decision to suspend licensing now is neither necessary nor appropriate.

You suggest that this decision will expose the Government to vocal public criticism. In response, we must robustly and concertedly defend our position, explaining the sound basis for it and that we keep the situation under constant review. As and when a judicial review takes place I would expect the Government's case to be advanced strongly; you would receive my full support.

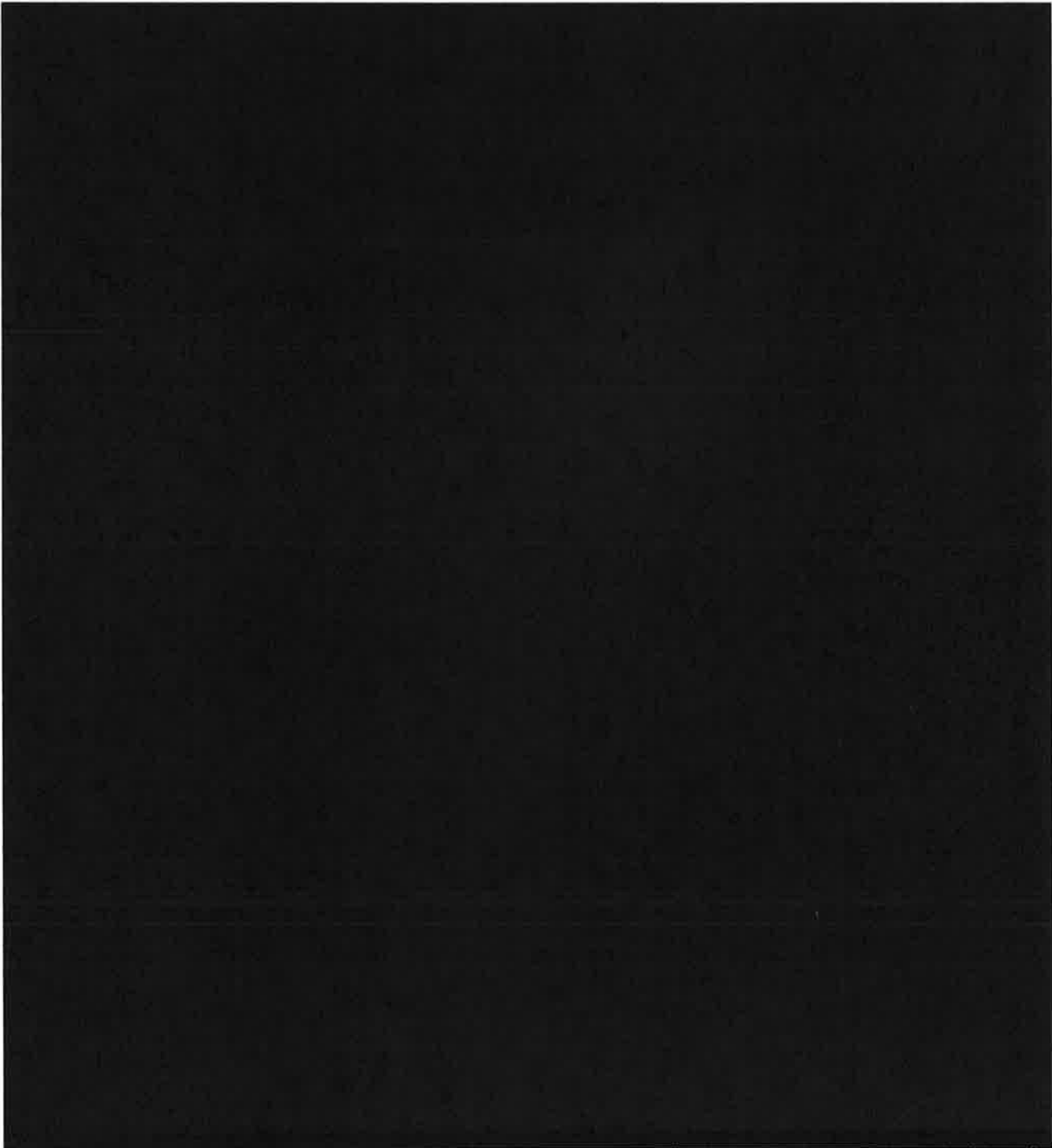
Meanwhile the Ministry of Defence will continue to do everything possible to ensure that the Government is in the strongest position possible in the face of any judicial scrutiny. My officials are continuing to play an active role in monitoring allegations made about Coalition and Saudi air strikes in Yemen and we engage closely with the Saudis on these issues. We have had a pattern of regular engagement with the Saudis. I have raised it with my Saudi counterpart, Deputy Crown Prince HRH Mohammed bin Salman, and other senior Saudis on a number of occasions. There have been several high level visits to Saudi Arabia including from the Vice Chief of the Defence Staff and the Director General Security Policy. It is clear that the Saudis understand our concerns about International Humanitarian Law and have taken action to address them, including through their offer to the UN to set up an investigatory committee and the start of a more transparent investigations process. We will continue to push them to go further and I emphasized the importance of this at my most recent meeting with the Deputy Crown Prince in Brussels on Thursday.

With regard to the potential future suspension of export licences to Saudi Arabia, given the significant Defence equities in the UK-Saudi relationship, I would expect to be consulted, along with the Foreign Secretary, before any decision was taken.

I am copying this letter to the Prime Minister, the Foreign Secretary, senior Government lawyers, Cabinet Secretary and National Security Adviser.

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**Annex B to
Yemen: UK Activity on Saudi-led Coalition International Humanitarian Law Compliance
Dated 12 February 2016**



22 to 23 January	Visit	Vice Chief of the Defence Staff (Air Chief Marshal Sir Stuart Peach) Director General of Security Policy (Peter Watkins)	Defence Minister (HRH Prince Mohammed bin Salman) Assistant Defence Minister (HE Gen (Retd) Ayeesh)
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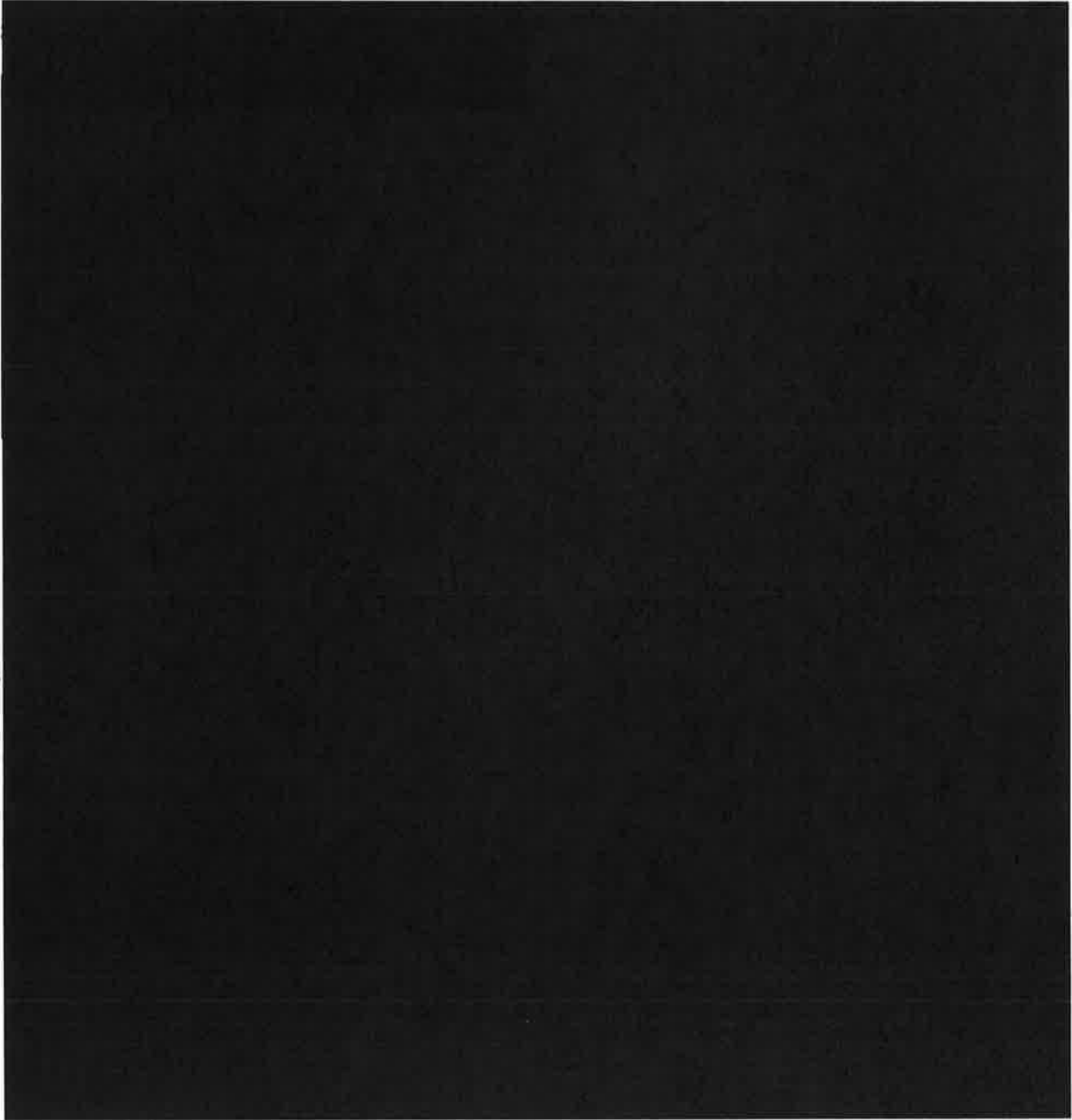
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**Annex C to
Yemen: UK Activity on Saudi-led Coalition International Humanitarian Law Compliance
Dated 12 February 2016**



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