

IN THE HIGH COURT OF JUSTICE  
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*

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WITNESS STATEMENT OF  
PETER WATKINS  
ON BEHALF OF THE DEFENDANT

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**I, PETER WATKINS, of Main Building, Ministry of Defence, Whitehall, London, SW1A 2HB SAY AS FOLLOWS:**

## **I. INTRODUCTION**

1. I am making this statement on behalf of the Defendant in these judicial review proceedings. I explain in this statement the work of the Ministry of Defence in advising the Defendant in relation to the decisions made by him which have been impugned in these proceedings.
2. The information contained in this statement is either based on my own direct knowledge of the matters concerned or what I have been told by colleagues in the Ministry of Defence. I am duly authorised by the Ministry of Defence to make this statement.
3. I have been the Director General Security Policy at the Ministry of Defence (MOD) since 9 April 2014. I am responsible for advising the Secretary of State for Defence ('the Defence Secretary') on all aspects of the defence contribution to security policy, including multilateral and bilateral defence relations and nuclear policy.



4. Within the Security Policy & Operations area of the MOD, I work alongside the Deputy Chief of Defence Staff for Military Strategy and Operations, leading on the development of: security policy; strategic relations and planning with allies, other nations and international organisations.
5. As part of this I have responsibility for the defence relationship with the Kingdom of Saudi Arabia (KSA) and oversight of the UK's support to the KSA's operations in Yemen.

*Summary of what the statement will address*

6. My witness statement addresses the advice that the MOD provides to the Secretary of State for Foreign and Commonwealth Affairs (Foreign Secretary) to enable him to assess and advise the Defendant whether the test set out in criterion 2(c) of the Consolidated EU and National Arms Export Licensing Criteria ('the Criteria') is met with respect to UK export licences. Specifically this advice:

6.1. includes the analysis that the MOD conducts of alleged violations of International Humanitarian Law (IHL) by the Coalition in Yemen;

6.2. reflects HMG's understanding of and insight into KSA military processes and procedures; and

6.3. is informed by MOD's engagement with Saudi authorities.

7. The statement also explains how we have brought allegations of concern to the attention of the Saudis, and assisted in the development of their capability to continue to conduct operations consistent with IHL.
8. My witness statement covers the period from the start of operations on 25 March 2015 to 1 August 2016. However, it focuses on the period from 9 December 2015 onwards which commences with the first decision that has been challenged in these proceedings.



9. My witness statement sets out the MOD's overall analysis of the KSA's approach to IHL compliance; explains how the MOD's analysis has been used to update Ministers, including in responding to the Claimant on 9 December 2015 and the continuing decisions in relation to licensing of exports of arms to KSA; and provides a short update on the current situation on the ground in Yemen, the Cessation of Hostilities (CoH), agreed on 10 April 2016, and the status of the Saudi 'Coalition Incident Assessment Committee' (CIAC).
10. It will set out how the MOD has assisted the FCO to fulfil their obligations to assess IHL under criterion 2(c), in particular by an extensive process of monitoring individual allegations of IHL breaches.

*The sensitivity of the material upon which MOD advice is based*

11. Much of the information on which the MOD bases its analysis of IHL allegations, and which informs its understanding of KSA military processes is sensitive and necessarily cannot be referred to in detail in open court for national security and/or foreign relations reasons.

## II. OPERATIONAL CONTEXT

12. The conflict in Yemen falls into three categories:

- 12.1 the fight between forces loyal to the legitimate Government of Yemen (GoY) and those loyal to the Houthi/Former President Saleh;
- 12.2 the counter terrorism battle against Al Qaeda/Daesh; and
- 12.3 fighting between KSA and Houthi/Saleh forces along the KSA/Yemen border.

13. Under UN Security Council Resolution 2216, the Saudi-led Coalition aims to restore the legitimate government under President Hadi to power. They are also defending their southern border and deterring Houthi/Saleh attacks and acts of aggression. Like any modern conflict, the fighting in Yemen has been plagued by misinformation. Media reporting has often been inaccurate. The Saudis, for



instance, have been falsely accused of bombing the Iranian Embassy in Sana'a. The limited (by Western norms for high profile conflicts) public response by the Saudi-led Coalition to such allegations has left an unbalanced public impression, in particular about the military threats to the Saudis' military and civilian population at home.

14. In terms of the fighting on the ground, forces loyal to the GoY provide most of the troops with some Coalition ground troops, but Saudi aircraft, along with other Coalition aircraft, have been providing the air cover to deter Houthi aggression as well as to defend Yemeni and Coalition forces against attacks from Houthi forces and their allies.

15. There are also a number of terrorist groups operating in Yemen with an interest in attacking countries both in the region, and in the West; the most prominent such groups are Al-Qaeda in the Arabian Peninsula and a new Daesh grouping. As well as its activities in support of President Hadi, Saudi Arabia has allied with other regional states, most significantly the United Arab Emirates, to conduct counter-terrorist activity in areas where extremism is the main threat, mostly in the south and east of the country.

16. In attempting to secure its Southern border and protect its territorial integrity from acts of aggression, Saudi Arabia currently has forces on its side of the southern border in a defensive posture. Throughout the conflict, KSA has been struck by ballistic missiles, small arms, artillery and rockets. These have caused both military and civilian casualties in border areas, particularly in the Jizan, Asir and Najran sectors. Estimates of KSA military and civilian deaths reportedly exceed 350 over the 16 months of the conflict. Destroying identified missile stocks and launchers has been a priority target for the Royal Saudi Air Force (RSAF). These missile attacks have continued throughout the CoH. Houthi land forces have exploited advantageous terrain (some 4000 feet of elevation on the Yemeni side of the border) to conduct harassing artillery (field and rocket) and sniper fire targeting KSA Armed Forces and Border Guards. They have also conducted a number of cross-border raids. These have included: capture of security personnel; sniper fire; laying of mines and Improvised Explosive Devices



(resulting in security personnel and civilian casualties); and destruction or theft/seizure of military equipment. In more extreme cases Houthis have held territory, including civilian settlements, inside KSA for protracted periods. Fighting has been constant, and at times the majority of the Saudi/Coalition air strikes have been attributed to the direct defence of its troops along the border. We assess they have been restrained in not conducting cross-border attacks to interdict their enemy or deny ground or routes by which they have been attacked.

17. While there has been a recent increase in strikes, the current rate remains below that seen before the CoH was implemented. A small percentage of strikes have resulted in allegations of IHL breaches. There has also been a sustained decrease in allegations of civilian casualties as the campaign has progressed from an initial average of around 20 a month to around 5 allegations a month.

### III. HMG UNDERSTANDING OF KSA MILITARY PROCESSES AND PROCEDURES

18. The Defendant's assessment of the Criteria is informed not only by MOD's analysis of the allegations of IHL violations by the Coalition in Yemen but also by our understanding and knowledge of KSA military processes and procedures. This is in large part due to the longstanding defence relationship with KSA based upon strategic Government-to-Government arrangements between successive UK and Saudi governments since the 1980s under which the UK has responsibly and reliably exported a broad range of defence equipment to the Saudi Armed Forces. This framework of co-operation has enabled the provision of related support, sharing of operational expertise, and training together. As a result, the UK has insight into the systems, processes and procedures that the KSA has in place, as well as established relationships throughout the Saudi Armed Forces at all levels. It should be noted that this degree of insight is higher than it would be normal to expect the UK to have into another country's Armed Forces given that we are not a member of the Coalition or a party to this conflict.



19. Our understanding of KSA processes and procedures comes from the considerable number of UK officials and Service personnel working in Saudi Arabia and with the Saudis. These personnel include: Defence staff working at the British Embassy Riyadh; liaison officers (LOs) working in Saudi operational headquarters; UK Service personnel providing logistical and technical support to projects for the Royal Saudi Armed Forces; and trainers working to improve the capability of the Saudi Armed Forces. I address each in turn in the sections below. This understanding is supplemented by our regular high level engagement by Ministers and senior officials.

#### **A. Insight into KSA processes**

##### ***British Embassy Riyadh***

20. The Defence Attaché (DA) Riyadh is supported by a small permanent staff at the British Embassy Riyadh. He holds regular meetings with senior Saudi Military leaders, raises certain requests for information directly with the Saudi authorities, visits Saudi operational headquarters to monitor Saudi processes and helps coordinate British defence engagement activity in the country. He is able to contribute to achieving a number of HMG objectives: maintaining stability in the region, developing the security (counter terrorism) bilateral relationship and building contributions to support Saudi operations, training and capability.

21. The DA is in constant contact with the Saudi authorities in support of HMG policy priorities: this allows us to understand capabilities and Saudi intent and swiftly raise any concerns over IHL allegations at senior levels when there is the need to escalate the response to an incident. DA Riyadh regularly provides updates to officials in the MOD (notably in the Operations Directorate – see para 40.1) and the FCO and about the actions he has taken in-country. For example, he has produced and circulated meeting reports following discussions with senior members of the Saudi military and civilian leadership about specific allegations and has relayed Saudi responses to questions about the likely timeframe for the release of Saudi investigations into allegations to MOD and FCO officials.



### *DA Sana'a and his team – understanding Yemen perspectives*

22. The Defence Attaché Sana'a (DA) and his Defence Section are temporarily co-located in the British Embassy Riyadh. His team provide valuable intelligence and atmospherics from a network of contacts in Yemen. These sources can provide ground truth on military activity.
23. The DA has a network of contacts in Yemen, of varied political and socio-economic backgrounds. Information can be made available in near real time and can help to corroborate reported events; Yemeni media reporting of such events is widely accessible on the internet and provides another means of cross-referencing. Liaison with the De-Escalation and Coordination Committee, set up by the UN to monitor the CoH, allows for cross-referencing of reported violations, if required.

### *UK Liaison Officers*

24. There are a small number of UK LOs in Saudi Arabia: Maritime LOs based in Jeddah and Riyadh providing access to the Royal Saudi Naval Force and LOs based in the Saudi Air Operations Centre (SAOC) with access to Coalition fast jet post Mission Reporting data and access to Saudi operational headquarters, and senior RSAF commanders. They are able to build working relationships, gaining insight into how the Saudis both work and think.
25. The Maritime LOs, supported by the Maritime Coalition Co-ordination cell in Bahrain, support the work of the UN Verification and Inspection Mechanism for Yemen, which helps maintain maritime access into Yemen and enforce the UN arms embargo imposed on Abdul Malik al-Houthi and Ahmed Ali Abdullah Saleh after the UN Security Council adopted resolution 2216 on 14 April 2015.

### *The Chief of the Air Staff Liaison Officer (CASLO)*

26. The Royal Air Force (RAF) has a permanent liaison officer (Group Captain rank) within the RSAF Headquarters in Riyadh. The Chief of the Air Staff Liaison Officer (CASLO) is personally appointed to the Commander of the RSAF in order



to maintain the very strong relationship between the RAF and the RSAF. The current incumbent has been in post since 2014.

27. Through the relationships established with the senior generals of the RSAF, CASLO is able to provide an understanding of the intent of the RSAF as well as facilitate external engagement. CASLO focuses on maintaining and strengthening the relationship between the RAF and RSAF. A recent example of this was arranging targeting courses for the RSAF in the UK (see para 34).

#### *Equipment Delivery and Support*

28. The MOD Saudi Armed Forces Project (MODSAP) team currently consists of 207 UK armed forces and MOD civilian personnel, with 103 located in Saudi Arabia and 104 based in the UK. It is responsible for fulfilling the UK Government's obligations under arrangements signed between the UK and Saudi Arabian Governments over many years covering the supply, by the prime contractor, BAE Systems, of defence equipment and services to the Saudi armed forces.
29. Service and civilian members of MODSAP fulfil broader HMG commitments to brief the RSAF on developments in RAF equipment and operational doctrine and to ensure that the military capability delivered under the government-to-government Arrangements first signed in 1986 best meets Saudi Arabia's defence needs. The enduring nature of the relationship, and the punctilious way in which the MOD has met its obligations within the framework of the Agreements, has facilitated access and influence that might otherwise not have been possible.
30. MODSAP personnel support RSAF capabilities from the early stages of design, through buying and introduction into service and including maintenance provided by BAE Systems whilst the capabilities are in service. UK advice and best practices are therefore embedded into the delivered capabilities and the associated operating procedures.
31. This position is reinforced by the close relationship between the RSAF and RAF, which is underpinned by regular joint exercises and UK-based aircrew and



technician training provided to RSAF personnel, alongside the RAF, in support of the introduction of new platforms under these long-standing arrangements.

32. MODSAP personnel also monitor, assure and report on the progress and performance of BAE Systems in delivering contracted equipment and services, including Saudi-based training, which provides further insight into RSAF practices and procedures.

33. By working closely with the Saudis on a day to day basis we have been able to gain understanding of their capabilities, capacities and needs and this enables us to discover, test and help improve gaps in their processes. Further, this longstanding engagement has built ties between our two countries which supports our diplomatic relationship and gives extra weight to our requests.

### *Training*

34. The UK has provided training to the RSAF both in the UK and in Saudi Arabia. In the context of their air operations this has included training them in the use of specific precision guided munitions, such as Paveway IV and Storm Shadow, and aircraft. In addition, the RAF have provided four International Targeting courses for RSAF pilots, analysts and other personnel involved in targeting, to improve their targeting processes and support IHL compliance. The three week long courses included introductions to Targeting, the Law of Armed Conflict, Collateral Damage Estimation, Battle Damage Assessment (BDA) and exercises to test their learning. Four of these courses have taken place: 27 July–14 August 2015 with 6 Saudi students, 10–27 October 2015 with 12 students, 11–29 January 2016 with 20 students and 18 July–5 August 2016 with 20 students. And the RAF have arranged training for Saudi legal advisors and for the membership of the CIAC.

### **B. MOD's senior engagement with Saudi Arabia**

35. Ministers and senior officials from the MOD have had substantial engagement with senior members of the Saudi military and civilian leadership since the start



of the conflict, and have consistently made clear the importance of continuing Saudi compliance with IHL. This engagement enables us to reinforce our key messages and make offers of support and has led to formal commitments from the Saudis of their compliance to IHL. Additionally, it has helped increase our understanding of Saudi processes and procedures.

36. There have been a number of high level (Ministerial or Director General-level and above official) meetings between MOD and their counterparts in the Saudi military and civilian leadership since the start of the conflict.
37. In addition to these engagements in the UK, KSA or at international gatherings, senior Saudi and UK officials have spoken by phone, and exchanged letters. Senior MOD officials most frequently involved in such engagement include the Secretary of State for Defence, the then Minister of State for Defence Procurement (Philip Dunne MP), the Defence Senior Advisor Middle East (Lt Gen Tom Beckett), and me. These are in addition to the many day to day exchanges through MODSAP, the DA and LOs.
38. Meetings and exchanges have centred on offers of UK support such as training teams, the provision of munitions, the establishment and progress of the Saudi investigatory process, and specific allegations of IHL breaches.

#### **IV. ANALYSIS OF IHL ALLEGATIONS CONDUCTED BY MOD**

##### **A. Who conducts the analysis of IHL allegations within the MOD**

39. The MOD has been monitoring and analysing allegations of IHL violations brought to its attention, predominantly arising from fast jet air strikes in Yemen conducted by the Coalition. The emphasis on fast jet air strikes reflects both the fact that the majority of allegations of IHL violations relate to such air strikes and their relevance to the UK's export to Saudi Arabia of precision air to ground munitions.
40. There are three teams which contribute to this process:



40.1. The Operations Directorate (Ops Dir) – are responsible for recording allegations, updating Ministers and senior officials within MOD, and liaising with other Government Departments (these are Cabinet Office (CO), the Foreign and Commonwealth Office (FCO), the Department for Business, Innovation and Skills and since July 2016 the Department for International Trade (DIT), and the Department for International Development (DfID));

40.2. Permanent Joint Headquarters (PJHQ) Current Operations – are responsible for collating information pertaining to the allegations and establishing the facts of each allegation as far as they can be determined; and

40.3. Central Legal Services (CLS) – Government Legal Department lawyers based in MOD are responsible for providing specialist advice on IHL to Ministers and officials within MOD.

## **B. How allegations come to the attention of the MOD**

41. In regard to the conflict in Yemen, MOD monitors media and NGO reporting for allegations of violations of IHL. It is reliant upon this monitoring, or other parties bringing IHL allegations to its attention, before using its own resources to analyse the allegations. Given the confused situation in Yemen and the partial nature of NGO and media coverage, it is unlikely that the MOD's database of allegations of IHL violations is completely comprehensive at any one time. Nonetheless, the monitoring process is extensive and MOD is currently tracking a considerable number of allegations that have not been raised by the Claimant.

42. As at 1 August 2016 MOD is tracking a total of 208 allegations from a number of sources many of which record the same incident:

42.1. 24 allegations have been reported directly to the UK Government, either through the FCO (including the British Embassies in Riyadh and Muscat) or through DfID. This consists of direct reporting to UK authorities of alleged strikes by those affected and reports of strikes from foreign governments.



42.2. 109 allegations have been raised by NGO reporting. This has included a significant number of reports by Amnesty International, the Mwatana Organisation, Human Rights Watch, Save the Children Fund and Médecins Sans Frontières (MSF).

42.3. 62 allegations reported in the press or on social media. In addition to responding to high profile allegations that receive significant media attention, Ops Dir officials have regularly carried out searches for press reporting of IHL allegations in Yemen. This has usually been done on a weekly basis. The search includes the Middle East Eye, Press TV, Twitter, Sky News, the Intercept, the BBC, Reuters and the Independent.

42.4. 45 allegations have been reported by other international organisations. This number includes allegations raised by the UN, particularly the UN Panel of Experts report, dated 26 January 2016, Office of the High Commissioner for Human Rights (OHCHR), the UN High Commissioner for Refugees (UNHCR), UN International Children's Emergency Fund (UNICEF) and the World Health Organisation (WHO).

42.5. 3 allegations were brought to our attention by the claimant (as listed in the Annexes to their Detailed Statement of Grounds). This is addressed in further detail at paragraph 72.

#### **The MOD Database, "the Tracker"**

43. All allegations that come to MOD's attention are recorded by Ops Dir officials in a central database known as "the Tracker" which is shared with PJHQ. This database records:

43.1. the details of the allegation;

43.2. the progress with our analysis; and

43.3. the analysis that has been made.



44. FCO officials can see the full background at any time on request, and aspects have been shared with them when the regular IHL updates are prepared for the Foreign Secretary.

**C. The recording of an allegation that comes to the attention of the MOD**

45. When adding a new incident to the Tracker, Ops Dir will first assign a serial number to the allegation, based on the order each incident has been logged in, and will then record any relevant details, as far as they are available including: time; date; location; casualties; any reported Houthi/Saleh activity; and the source of the allegation. Incidents are added to the Tracker in the order that Ops Dir officials become aware of them but can be sorted by any of the data points.

**D. The issues addressed by the MOD as part of its analysis**

46. PJHQ, and in certain circumstances Defence Intelligence, will then analyse the allegation to try and verify the substance of the allegation. Officials will determine whether:

46.1. it is possible to identify a specific incident;

46.2. the incident was likely to have been caused by a Coalition strike;

46.3. it is possible to identify the Coalition nation involved;

46.4. a legitimate military object is identified; and

46.5. the strike was carried out using an item that was licensed under a UK export licence.

47. The UK necessarily prioritises additional inquiries based on the seriousness of incident and related level of international concern and attention.



*Whether it is possible to identify a specific incident*

48. The first question that is addressed is whether it is possible to identify a specific incident from an allegation. This requires us to accurately establish a date and a precise location for the alleged strike in order to enquire further.
49. In addition to the Government sources referred to below, PJHQ use the internet to cross reference multiple allegations relating to the same incident to gather further information and to look up and locate place names mentioned to establish a rough location from a reported allegation. They then use commercial and military mapping tools to identify a precise location.
50. Some allegations may be so imprecise that they are impossible to investigate further. For example, it may be alleged that an airstrike was carried out "during the past two months" or "somewhere in Hajjah governorate" or "in the vicinity of Sana'a". It is impractical to investigate such imprecise allegations further and so these will be recorded in the Tracker as "not known" and not investigated further unless new information comes to light.

*Whether the incident was likely to have been caused by a Coalition airstrike*

51. A key question addressed as part of MOD's analysis is whether it is likely that the incident resulted from a Coalition strike or not. This requires consideration of whether:
- 51.1. it is possible to verify the substantive facts of the allegation; and
- 51.2. there was damage, and if so the incident can be linked to Coalition activity.
52. It is important to note that while MOD does try to determine if the incident was caused by an airstrike, and the Tracker does record reported number of casualties, we are generally unable to verify the number of civilian casualties or perform in-depth BDA.



53. As set out in the Defendant's Summary Grounds, PJHQ is able to base its analysis on a wide range of information to which NGOs do not have access. This includes:

53.1. Coalition fast jet operational reporting data passed to the UK Liaison Officers;

53.2. Sensitive MOD sourced imagery which can represent a more comprehensive and immediate picture than that provided by third party commercial imagery; and

53.3. Other reports and assessments, including UK Defence Intelligence reports and some BDA.

54. Based on this information PJHQ tries to establish if the incident can be linked to Coalition activity. If this is the case the incident will be recorded as a "likely Coalition" strike. If there is no evidence of Coalition fast jet activity, or it can be established that the incident did not occur, or had another cause, then the alleged incident is recorded as "unlikely / not Coalition". However, PJHQ has no insight into incidents caused by artillery attacks or attack helicopters as we have almost no visibility of Coalition ground force operations — we do not have access to post-Mission Reporting for artillery and imagery cannot always determine if damage was specifically caused by artillery or other means. Even if a reasonable determination could be made that an artillery strike was the likely cause, it is not possible to distinguish between Coalition and Houthi artillery. If the information is inconclusive then it will be recorded as "not known".

55. Mission Reports are the first piece of sensitive information to which the UK Government has access but NGOs do not. If there is a Mission Report that matches an allegation then it suggests that it is very likely that the allegation was the result of Coalition fast jet activity. If there is no reported Coalition activity in the vicinity of an allegation it is less likely that Coalition aircraft were responsible, although as stated the access has some limitations. As a result if there is no Mission Report covering a strike we continue to look for other



evidence, but consider the lack of a Mission Report as evidence to suggest that a Coalition airstrike was not responsible.

*Whether it is possible to identify the Coalition nation involved*

56. If the incident can be linked to a Mission Report then the Mission Report will list the nation that conducted the strike.

*Whether a legitimate military object is identified*

57. As the MOD is not involved in the Saudi process of identifying targets and making decisions about which ones to target, we do not have access to any of the operational intelligence which the Coalition use. As a result, PJHQ must rely on imagery or the original account of the allegation to ascertain if a legitimate military target can be identified. Certain reports may include eyewitness testimonies that refer to the presence of Houthi/Saleh forces, or list such forces as casualties. For example, Human Rights Watch have reported that cluster munitions were used at Al-Hayma Port, Hodaida on 12 December 2015 and the report also states that Houthi forces occupied parts of the port. In some instances, sensitive MOD sourced imagery not available to the Claimant, may be able to identify the presence of Houthi/Saleh troops or equipment which would, of themselves, represent a legitimate military target. All strikes that are reported to the UK LOs in the Saudi Air Operations Centre are reported as being within the extant Rules Of Engagement for the operation. However, without being directly inside the RSAF targeting process and understanding the rationale and the specific situation on the ground at the time of a strike, we are not in a position to interpret whether a target was legitimate or not from a Mission Report.

*Revisiting of analysis*

58. PJHQ revisits their analysis of an allegation if fresh information comes to light. This may involve new reports providing further information on an allegation that allows further investigation of an incident. For example, the Claimant's allegation 53 first came to MOD's attention via an October 2015 Amnesty



International report, and allegation 12 came to MOD's attention via the Claimant's Detailed Grounds, but neither source provided a specific enough location for a further analysis to be completed. However, a December 2015 report from the Mwatana Organisation (examined in April 2016 as its original publication had been low-profile) provided further detail on both incidents and enquiries were reopened.

59. The Air Liaison Officers within SAOC have been continually working with PJHQ to refine and enhance the data contained within the Tracker to ensure all possible data is captured. A recent review of all of the existing allegations of IHL violations added more detail to the supporting evidence and assessments, for example, through the use of better open source mapping tools. These tools, for example [viamichelin.com](http://viamichelin.com) provide far more detailed location data and display a higher resolution of village/town names. It is this higher resolution which improves our open source search procedures.

60. The regular updates sent to the FCO summarise the MOD's analysis of incidents of potential concern. If new information changes the MOD's analysis, this would be updated on the Tracker and included in the summary of incidents sent to the FCO. In general, a change in the MOD's analysis of a particular incident would not be specifically flagged (e.g. if an incident was initially recorded as "Likely Coalition" but was changed to "Unlikely Coalition" this would not be highlighted on an individual basis, instead the total number of incidents attributed to the Coalition would be altered in the next update). However, if PJHQ or DI discovered information of particular significance, they would alert Ops Dir as quickly as possible so that it could be acted on; such as by alerting Ministers, informing the FCO or to direct further analysis.

61. The Tracker is a functional document and has changed as Ops Dir and PJHQ officials have developed ways to improve it. For example, in July 2016 additional columns ("Source 2" and "Additional Sources") were added to record and display cross reporting of allegations linked to multiple sources more



effectively. PJHQ has added a column to better reflect the level of confidence officials have in the analysis provided that a Coalition undertook a strike.

***UN Panel of Experts Report, dated 26 January 2016***

62. How MOD analysed the UN Panel of Experts Report provides an example of how our processes work.

63. Ops Dir received an official advance copy of the UN Panel of Experts Report and used the information provided to record the allegations on the Tracker for analysis. The report was revisited in July 2016 as part of a routine review of analysis by officials. The report does not clearly set out the number of allegations it is documenting. At paragraph 138, it states that *"the panel documented 119 coalition sorties relating to violations of international humanitarian law"* and that *"the Panel identified 146 targeted objects"*, referring the reader to Annex 47. However, Annex 47 attributes 53 alleged IHL violations to the Coalition. Furthermore, many of the alleged violations included in the report are not set out in *any* detail and consequently could not be recorded on the Tracker. For example, Annex 54 states that the Panel documented *"3 cases of attacks on fishing vessels and dhows, and 2 cases of attacks upon fishing markets and their communities"* but only goes on to provide information about 2 of these attacks: alleged airstrikes on an Indian Fishing Vessel on 8 September 2015 and alleged airstrikes on Ogbaan and Kadmaan islands in the Red Sea on 22 and 23 October 2015.

64. Ops Dir officials were able to use Annexes 52-56 and Annexes 61-62 of the report to identify and record specific allegations on the Tracker. Only allegations raised by the report that were not already recorded on the Tracker were added. However, the Tracker has now been developed to reflect the cross reporting of allegations. As such, 39 allegations on the Tracker can now be linked to the UN Panel of Experts Report.



#### **E. MOD summary on incidents of concern**

65. Regarding those incidents of concern where it is not known if it was a Coalition airstrike, and where there was not enough evidence to identify a legitimate military target, it is important to appreciate that an allegation simply needs to be reported in English-language NGO reporting or media for it to be included on the Tracker. The threshold for inclusion on the Tracker for analysis is therefore very low.
66. We have passed on the details of incidents of concern to the Saudis because the MOD process to analyse investigations could never be exhaustive. The KSA is best placed to hold investigations into allegations made against their armed forces as they have the best insight into their own military procedures and will be able to conduct the most thorough and conclusive investigations; only they will be able to access and know how to explain the most sensitive intelligence and other information which informed their decisions, as well as interrogate sensitive operational data, interview pilots and personnel and explain what happens in the closed decision-making bodies where external observers are not present.
67. As examples of the incidents of concern, the UK Government has approached the Saudis for information on their use of cluster munitions. I discuss this issue below at paragraphs 75 to 76.

#### **F. General comments on the allegations listed in the Claimant's annexes**

68. I am aware of 72 separate allegations raised by the Claimant in annexes to their claim form.
69. Of these 1, 10, 17, 21, 23, 25, 26, 27, 29, 30, 31, 32, 33 and 40 make general allegations rather than of a strike on a particular place at a particular time. These allegations include allegations of ineffective warning (e.g. 10), general damage to infrastructure or civilian damage (e.g. 21). They also include allegations that, even if proved, would not amount to a breach of IHL such as the use of



mercenaries (e.g. 29) or the banning of UN officials from Yemen (e.g. 23) or that the UK has not lobbied hard enough to stop the airstrikes (e.g. 31).

70. There is also a degree of cross reporting. Allegations 4 and 64 refer to the same incident. Allegations 10, 43 and 62 also refer to the same incident. Allegations 19, 20, 34, 35, 36, 37, 39 and 41 all refer to the same three incidents. 57 and 69 refer to the same incident.

71. When the Defendant received the claim for judicial review on the 8 March 2016 MOD was aware of all but three specific incidents.

#### **G. The three allegations from the Claimant's annexes omitted by MOD**

72. The three allegations of which the MOD was not already aware were allegations 6, 11 and 13. These are three allegations of specific strikes: on Al Dhaleel bridge; on Duaij village (spelt Duaij in the claim); and on a car travelling from Al Jawf to Sana'a.

73. These allegations were contained in a September 2015 UN High Commissioner for Human Rights report on the broader humanitarian situation in Yemen, and had not previously been widely reported elsewhere. These allegations had not come to MOD's attention as officials have been looking for NGO reporting on IHL allegations specifically rather than at all NGO reporting on Yemen in general. Allegation 13 was also recorded in a December report by the Mwatana Organisation, but this did not come to MOD's attention until after MOD had received the claim for a judicial review.

74. These three allegations have subsequently been added to the MOD database. However, there is still insufficient information available on the location of these allegations for further analysis of to be completed.



## H. Cluster Munitions

75. The UK has approached the Saudis for information on their use of cluster munitions, in particular following a May 2016 allegation by Amnesty International. The UK asked for clarification following a letter from Amnesty International to the Prime Minister dated 23 May 2016 alleging that the Saudi-led coalition had used UK manufactured BL-755 cluster munitions in Yemen. Amnesty International provided significantly more information about the alleged incident in a further letter on 3 June (exhibits PW1 and PW2). The Defence Secretary provided a response on 26 June (exhibit PW3) which explained that the UK Government has taken this allegation very seriously and is in the process of thoroughly analysing the case using all information available, and is seeking clarification on the alleged incident from the Saudi-led Coalition.

76. The Saudis have confirmed using US-manufactured CBU-105 cluster munitions on one occasion against fielded forces in April 2016.

## V. MOD OVERALL VIEW OF KSA APPROACH AND CAPABILITY

78. The Saudis have produced a long statement directly from the Coalition leadership; explaining their targeting processes and their approach to investigations. This statement was formally shared with the Defence Secretary to provide assurance over all ongoing processes and then also released publicly (Saudi Press Agency) as a document to demonstrate how they were holding themselves to account over their ongoing compliance with IHL. This is exhibited to the FCO statement at NC4.

79. The Saudis have always been receptive to UK offers to provide training and advice to help them improve their processes and they have changed their approach. Examples include: sending more personnel on targeting training (see para 35); being more transparent with NGOs and hosting visits; establishing the investigations committee using UK-provided advice on standards; and preparing investigation reports with the intent of publicly identifying lessons. They have accepted offers to help train their legal advisors and allowed legal advisors to



visit from the UK. They have allowed UK liaison officers access to their systems from the start of the campaign, reflecting the confidence developed through our longstanding relationship.

## **VI. SHARING THE ANALYSIS**

80. The Secretary of State for International Trade is responsible for authorising arms export licences following advice from the Foreign Secretary and Defence Secretary.

### **Criterion 5 (national security) and criterion 7 (risk of diversion)**

81. The MOD routinely advises the Department for International Trade on licensing decisions against criterion 5 (national security) and criterion 7 (risk of diversion). Over the period, MOD Ministers have been directly involved in a small number of routine individual licensing recommendations relating to his responsibilities under criterion 5 and criterion 7 of the Criteria.
82. For example, in March 2016, 7 individual trade control licences (SITCL) to supply ammunition and arms to KSA were refused.

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### **Criterion 2**

83. Of particular relevance to these proceedings, the MOD's role has also been to provide factual information to the FCO to support their recommendation to the Department for International Trade on IHL (criterion 2c).
84. Ops Dir has shared information and been responsive to requests, both within MOD and across Government in order to assist this process.
85. Ops Dir's and PJHQ's analysis, including a slide containing statistics on the number and categorisation of IHL allegations, in total and by month of the alleged strike, has been frequently shared at weekly meetings across MOD for



both Ministers and senior officials since near the beginning of the conflict. These meetings are: the Strategy and Operations Coordination Meeting; the Defence Strategy and Operational Coordination Meeting; the Chief of Defence Staff Operational Update; Ministerial Operations Update (attended by the Defence Secretary and MOD junior Ministers); and the Chiefs Of Staff Committee. These ensure that military and civilian staff at all levels have a shared understanding of the situation, to better inform decisions.

86. Furthermore, Ops Dir and CLS have liaised with FCO officials on an almost daily basis since near the beginning of the conflict and worked together to determine an understanding of the situation in Yemen.
87. The principal product which the MOD has contributed to, in order to update FCO Ministers, has been a regular update on Saudi Arabian compliance with IHL, which the Foreign Secretary has received since October 2015 in the current format. This reviews the state of the conflict, addresses Saudi targeting processes, investigations and application of lessons learnt, summarises analysis of incidents of potential concern, including more detail on particular incidents as required, and action taken by the UK to date, including senior level engagement and training provided. The MOD provides a statistical summary of all incidents of potential concern that it is tracking and provides the date, location and a brief description of the incidents reported since the last update. The Foreign Secretary received updates in May and August 2015. Although the MOD contributed to these updates, the Tracker was not provided at this stage.
88. In addition to the MOD contribution to the drafting of the IHL advice to the Foreign Secretary, FCO officials have been updated at the fortnightly cross-Government meetings on Saudi Arabia and Yemen that they chair which MOD officials have attended to provide Defence Intelligence updates on the status of the conflict in Yemen and the progress of MOD's monitoring of allegations of IHL violations.
89. In addition to the Ministerial briefing outlined above, MOD officials have updated the Defence Secretary in writing as the situation has developed. These updates have informed his advice to the International Trade Secretary, allowed



him to prepare for his conversations with Senior Saudis, and informed his decisions on whether to authorise new assistance to KSA.

90. The Secretary of State has received written submissions seeking permission: to offer additional training to the Royal Saudi Land Force and Royal Saudi Air Force; for the deployment of military liaison staff to Saudi Arabia; and for the sale of precision guided bombs to Saudi Arabia. The Defence Secretary has also received written submissions on Saudi military processes and procedures and on specific incidents of concern. Updates on these subjects have also been provided less formally by email.

## **VII. THE DECISION OF DEFENDANT**

### **A. The decision process**

91. As noted above, the Defence Secretary routinely advises the International Trade Secretary directly against criteria 5 (national security) and 7 (risk of diversion) of the Criteria and, of particular relevance to these proceedings, the MOD's role has also been to provide factual information to the FCO to support their recommendation to DIT on criteria 2c.

92. This information consists of the analysis that the MOD conducts of alleged violations of IHL by the Coalition in Yemen; and the MOD's understanding and knowledge of KSA military processes and procedures set out at Sections III and IV above.

### **B. The decision communicated on 9 December 2015**

93. In responding to the Claimant's letter the MOD contributed to a cross-Government response with BIS and FCO. Officials from BIS, FCO and MOD met on 16 November to coordinate the response to the letter. The majority of the questions needed to be addressed by either the MOD or the FCO; MOD was responsible for agreeing a joint answer with the FCO for questions 4, 6, 8, 9 & 10 raised by the Claimant.



94. MOD officials had been closely monitoring developments in Yemen since the start of the conflict in March 2015 through the range of mechanisms that I have outlined, notably the Tracker, and through contributions to the regular updates to the Foreign Secretary. Our contribution to BIS therefore conveyed the position as it stood at that point: that the clear risk analysis had been conducted on an ongoing basis, responding to new information as it came to the Government's attention.

### **C. The continuing decisions**

95. On 8 January 2016 the Claimant submitted a letter before claim to the Defendant. In responding to the Claimant's letter the MOD contributed to a cross-Government draft response with BIS and FCO.

96. On 11 February, the Defence Secretary received a letter from the Business Secretary stating that he was minded not to suspend licensing of arms exports to Saudi Arabia and requesting weekly updates on the situation in Yemen (exhibited by the DIT). These issues were discussed at a meeting at the Cabinet Office on 12 February attended by MOD officials.

97. Ops Dir submitted to the Defence Secretary on 12 February, outlining the circumstances and providing a draft letter to be sent to the Business Secretary. The submission is exhibited at PW 4. The Defence Secretary wrote to the Business Secretary on 14 February (exhibited by the DIT).

98. BIS officials informed the MOD on 16 February of the decision of the Business Secretary and shared their reply to the Claimant that had been sent earlier that day.



### *Subsequent review*

99. The Secretary of State has been kept up to date on the situation in Yemen in the intervening period. The MOD continues to maintain and add incidents to the Tracker, bring to the attention of colleagues across Government particular issues of concern or interest regarding the Coalition-led campaign and provide updates on the situation on the ground, including on the CoH.

## **VIII. THE RECENT SITUATION ON THE GROUND**

100. In closing I would like to note recent developments on the ground, including Saudi restraint during the CoH, the UN peace process, and further improvements in the Saudi investigatory processes.

101. After long negotiations and considerable UK diplomatic effort in support of the UN-led process the Saudis and Houthis announced a "de-escalation" or "calming" (an Islamic "tahdiya") of military activity at the border from 4 March 2016. This saw a sharp decline in fighting with the number of airstrikes approximately being halved in number. Over the following month further confidence building measures were announced including prisoner exchanges and the sharing of information to help de-mining efforts. This decrease in Coalition activity resulted in a commensurate decrease in allegations of civilian casualties with MOD being aware of only one allegation in March (16 March, Hajja Market) and one in April (3 April, Ma'rib).

102. The de-escalation was followed with a formal CoH being declared on 10 April ahead of UN peace talks that began on 22 April. The CoH saw a virtual halt in Coalition air activity, with no pre-planned missions and Coalition aircraft only striking in self-defence of forces on the ground. There was a ten day period with no air strikes at all but increasing Houthi provocation, especially around Taiz and to the north of Sana'a, culminating in the attack on Saudi Arabia by several ballistic missiles, led to a slow increase in strikes. While there has been a steady



increase in strikes recently, the current rate of strikes remains far below that seen before the CoH was implemented.

I believe that the facts in this statement are true.

SIGNED

P. D. Watt

DATED

5<sup>th</sup> August 2016