

Claim No: CO/1306/2016

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

SECOND 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. This statement is supplementary to my statement dated 5 August 2016 and is made pursuant to the terms of the order of Mr Justice Cranston sealed on the 23 November 2016. I remain Director General Security Policy in the Ministry of Defence ("MOD").
2. I am duly authorised to make this statement on behalf of the Secretary of State for Defence. In making this statement I am drawing on my own knowledge of the matters in issue as well as matters that I am aware of having read the documents exhibited.

Summary of what the statement will address

3. This statement covers the period from 1 August 2016 to 19 December 2016.

II. OPERATIONAL CONTEXT

4. The conflict in Yemen remains a combination of four ongoing and concurrent campaigns: (1) the fighting on the ground to remove Houthi/Saleh occupation of Sanaa and North Yemen in order to restore a legitimate Government, (2) the air campaign to support the Government of Yemen (GoY) and defend the Saudi border, (3) the border war which has seen significant fighting and escalating costs for the Saudis, and (4) the international counter terrorism campaign to deny extremists (Al Qaeda in the Arabian Peninsula (AQAP) and Daesh) filling the void left by the wider conflict. The conflict has been ongoing now lasted for over 21 months.
5. Politically, the concessions offered by the Saudi-led Coalition have not been accepted by the Houthi-Saleh side, who seem determined to continue fighting. Two Cessations of Hostilities (CoH) have either not taken hold or, when they have, proved sufficiently enduring to support productive peace talks. The third and last round of peace talks in Kuwait, under the current United Nations Special Envoy (UNSE), ended in August. They proved the most productive in achieving face-to-face negotiations, but stalled on agreeing the security and political arrangements necessary to return a government to Sana'a. Since

then, the UNSE has significantly reworked the UN Roadmap improving the sequencing of security and political concessions in order to achieve the return of 'a' government to the capital and resume political progression through the National Dialogue Council Outcomes (NDC-O) and Gulf Co-operation Council Initiatives (GCC-I), while delivering on UN Security Council Resolution 2216. Reaching agreement remains hard going.

6. Since August and the end of peace talks, the Coalition air campaign has restarted with its aims of supporting GoY forces inside Yemen, interdicting Houthi resupply on the border and attempting to prevent ballistic missile attacks inside the Kingdom of Saudi Arabia (KSA). There have been further incidents of concern, notably the Great Hall strike of 8 October. However, since that strike, there has been a downward trend in daily airstrikes and an increase in pre-planned targeting generally.
7. A significant proportion of air operations are on the KSA/Yemen border, where the Houthis have continued to attack Saudi Arabia with cross border raids, missiles and rockets, creating a persistent threat on KSA's southern border, which has resulted in at least 90 Saudi civilian deaths. SCUD missiles have landed, which potentially brings Riyadh and Mecca in range of attack. Indeed, on 27 October a Ballistic Missile was intercepted by Saudi missile defence systems 40km from Mecca, with the intended target assessed as being Jeddah international airport.
8. A further CoH ran from 19-22 October. It saw a significant reduction in Coalition airstrikes, although ground fighting continued throughout the period. The Coalition claimed around 900 Houthi/Saleh violations, with over 200 against the Saudi border. Since the end of the CoH, fighting has continued across a broad front particularly in the main contested areas (on the Saudi border, Sa'dah, Ta'iz, Western Al Jawf and Mar'ib). Since the end of the CoH the tempo of Coalition airstrikes has slowed. This slowdown could be the result of a number of different factors.
9. Another CoH ran from 19-21 November. Again, there was a reduction in Coalition airstrikes but both sides accused each other of violations throughout. On 21 November the Coalition spokesman, Maj Gen Assiri, announced that there would be no extension.
10. The Houthis have mounted attacks on shipping in the Southern Red Sea, opening up another dimension to the conflict. On 1 October, a UAE maritime vessel was hit north of

the Bab El Mendeib strait as a result of a Houthis attack. In response, the US – supported for a time by the UK's HMS DARING – increased US naval presence in the region to further understand the situation and reassure commercial shipping to support freedom of navigation.

III. HMG UNDERSTANDING OF KSA MILITARY PROCESSES AND PROCEDURES

a. INSIGHT INTO KSA PROCESSES

11. My last statement set out our insight into KSA processes. Here I will set out how this insight has developed since 1 August 2016.
12. Chief of the Air Staff Liaison Officer (CASLO) supported a further Joint Incident Assessment Team (JIAT) workshop that took place in Saudi Arabia on 18-22 September 2016.
13. In October, the Assistant Chief of the Air Staff (ACAS) visited Saudi Arabia for routine staff talks.
14. In late November, the MOD worked up proposals to offer the Saudis a workshop to help develop their operational documentation, in particular their orders to aircrew, known as Special Instructions (SPINS). This was proposed as part of ongoing efforts to improve the Saudi-led Coalition's compliance with IHL. The Operations Directorate (Ops Dir) submitted to the Defence Secretary seeking approval for the workshop (PW42), on the basis that UK trainers would provide generic advice on improving Coalition documentation, but they would be careful not to directly contribute or approve them, or provide any direct advice on how to conduct the campaign in Yemen.
15. Since 1 August, there have been a number of senior visits to the SAOC (by Deputy National Security Adviser, Her Majesty's Ambassador Riyadh, and Defence Attaché Riyadh).

b. MOD'S SENIOR ENGAGEMENT WITH SAUDI ARABIA

16. As I set out in my previous statement (paragraphs 35 – 38) there has continued to be 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. In addition, there have also been phone calls and letters exchanged.
17. Meetings and exchanges have continued to centre on offers of UK support such as training teams, the provision of precision guided munitions, the establishment and progress of the Saudi investigatory process, and specific allegations of IHL breaches. And there has been considerable engagement on topics such as alleged use of Cluster Munitions.

c. OBSERVATIONS OF KSA PROCESSES

18. I would like to further explain our understanding of the differences between the various types of targeting that the Saudi-led Coalition have been operating. It should be noted that, although similar in design, these processes are not exactly the same as UK doctrine.

18.1. Pre-Planned Targeting. Pre-Planned targets are those identified for action under the Saudi-led Coalition's RoE where the actions of the target are not immediately directly threatening Coalition forces or civilians. All the targets are authorised by the Delegated Authority and subject to a Targeting Clearance Board¹ (TCB), which assists the decision-making and should include a formal Collateral Damage Estimate² (CDE) in the Saudi MOD or SAOC. The Delegated Authority is an identified suitably experienced and authoritative senior military officer. Targets are planned and prepared in accordance with the Air Tasking Order (ATO). It means that the target is agreed before the aircraft takes off, although the pilot may still check the target before he conducts the strike.

18.2. Dynamic Targeting. Dynamic targeting prosecutes targets that have been identified too late for the routine ATO cycle, or not selected for action in time to be included in

¹ A TCB is a panel of suitable qualified military personnel that assists the Delegated Authority with the approval of analysed targets and ensures that there are not circumstances that would lead to a conclusion that a target is no longer valid.

² A CDE provides a formal process which allows appropriately qualified military personnel to assist the commander as he considers risks against a target in terms of military necessity and proportionality.

the Pre-Planned targeting cycle, and therefore have not been scheduled. These targets are subject to the same targeting process, including a TCB. This allows less time for target development, including intelligence collection and verification, which increases the risk of mistakes. In my previous Witness Statement, the term dynamic targeting has also encapsulated Time Sensitive Targets, which are those targets requiring immediate response because they represent a serious and imminent threat to Coalition forces, or are fleeting targets of opportunity that could have a significant military advantage if struck. Again, these strikes should be subject to the same target clearance processes and CDE.

18.3. Combat Engagement. Combat engagements are those where the target is identified for prosecution under the Saudi-led Coalition's RoE, where the target is committing a hostile act (that does not constitute an actual attack) or demonstrates hostile intent (which does not constitute an imminent attack) against Coalition Forces. This situation is different from 'Self Defence' and the target was not anticipated during the planning for the mission and can be engaged without a formal TCB or CDE. However, a pilot would be required to assess a target against the RoE profile and conduct a CDE assessment.

19. Throughout the Saudi-led Coalition campaign the proportion of different types of targeting has changed. It is assessed that this has been in response to the changing nature and location of the fighting on the ground and, in some cases, due to periods of CoH. In particular the proportion of dynamic targeting has been subject to comment in previous evidence.

IV. ANALYSIS OF IHL ALLEGATIONS CONDUCTED BY MOD

20. Since August, PJHQ has continued to refine the Tracker and develop improvements to it. An additional column has been added for internal procedural reasons. This allows PJHQ officials to be more explicit about any changes they have made to the Tracker and outstanding requests for information, and as a result better manage the flow of information between officials in DI and avoid any confusion.

21. In my last witness statement I explained that PJHQ had added a confidence column to reflect the level of confidence officials had in the analysis provided that the Coalition undertook a strike; the scale ranged from 'Very Probable or Highly Likely' through to

'Remote or Highly Unlikely'. However, this confidence scale proved unhelpful in that it conflated confidence and likelihood. This confusion has now been addressed and rectified. This has offered greater clarity and ensured greater consistency in the analysis.

22. PJHQ and Defence Intelligence (DI) have also continued to review analysis on incidents when new, or additional, information has been identified.

a. WHO CONDUCTS THE ANALYSIS OF IHL ALLEGATIONS WITHIN THE MOD

23. My previous statement explained that three teams contribute to the analysis of IHL incidents within the MOD. I would like to expand on how DI and PJHQ contributed to the process during this period. On two occasions the MOD has directed a surge of DI resources to conduct analysis on the Incident of Concern recorded on the Tracker. This was part of our professional approach to continuously reviewing the Tracker to ensure that we are taking into account all the information available to us. On 8 August 2016, the MOD directed PJHQ and DI to review the incidents that were recorded as "Not Known" on the 1 August 2016 Tracker. This was to ensure that, in these incidents, the MOD had incorporated all sources and, within the allocated resources, completed the possible analysis. On 11 November 2016, the MOD again directed a surge of DI resources as part of the Ops Dir's ongoing activity and to ensure that advice was as comprehensive as possible in the FCO's December IHL Update.

24. The MOD also cross referenced the claimant's annexes with the Incidents of Concern Tracker. Six incidents were identified in the UNHCR report titled: Situation of Human Rights in Yemen (dated 4 August 2016), which were not recorded on the Tracker and the Ops Dir subsequently added them as Serials 247 – 252.

25. My previous statement explained that as part of our analysis of allegations we sought to verify whether a legitimate military object could be identified and cited two examples where this had been possible. I would like to further clarify the methodology PJHQ use when attempting to identify military objects and, in particular, how the total figures could present a misleading picture if considered out of context.

26. For the avoidance of doubt, and as explained in my last statement (para 57), when the MOD analyses alleged breaches of IHL no view is expressed on the alleged consequences of a strike, including the reported civilian casualties.
27. This assessment is made after a strike has been assessed as "Likely Coalition" and is therefore not conducted on incidents recorded as "Not Known" or "Unlikely Coalition". Facilities, structures and buildings that could be dual use (for example bridges or communication towers), and therefore legitimate targets, are not recorded as military objects. The MOD's inability to identify a military object should not, therefore, be interpreted as the absence of a legitimate target at the time of the strike.

b. HOW ALLEGATIONS COME TO THE ATTENTION OF THE MOD

28. Further to my original witness statement, I would like to provide an additional example of how allegations come to the attention of the MOD. On 16 September, the Guardian reported that a survey completed by the Yemen Data Project (exhibited by the claimant with Anne Feltham's second statement at AF 18), a data collection project concerned with collecting and disseminating data on the conduct of the war in Yemen, had recorded more than 8,600 "air attacks" by the Saudi-led Coalition in Yemen between March 2015 and the end of August 2016, with 3,577 of these "air attacks" listed as having hit military sites, and 3,158 having hit non-military sites.
29. Having considered the Guardian article as part of its routine monitoring of media and NGO reporting on alleged violations of IHL, the Ops Dir approached the Yemen Data Project and requested the full dataset in an attempt to understand the detail gathered by the organisation and potentially use it as an additional source of information to support the MOD's analysis of alleged IHL breaches. The request was submitted by email on 30 September 2016 (PW43) in accordance with the instructions on the organisation's website. The organisation responded to the request on 9 October (PW44), explaining that it was currently dealing with a large number of requests and would respond as soon as possible. The response also noted that priority was given to media, human rights organizations and humanitarian and development organizations. No substantive response has been received to date and analysis of the data reportedly collected has not been possible.

30. It is also important to consider the methodology employed by the Yemen Data Project. The second Witness Statement of Ann Feltham, at paragraph 26, states that the Yemen Data Project has cross referenced the data collected with sources from opposing sides to the conflict to ensure that reporting was as accurate and impartial as possible. However, the organisation's website also notes that "there is a general lack of transparency from the parties to the conflict as well as a lack of independent reporting on the ground" and that "due to the context of the current situation in Yemen there are significant challenges in accessing independent sources for verification of incidents"(PW45).

31. As at 15 December 2016 MOD is tracking a total of 238 allegations from a number of sources. Of the 42 new allegations since 1 August:

31.1. Five allegations have been reported directly to the UK Government,

31.2. Four allegations have been raised by NGO reporting. This has included Human Rights Watch, Medecins Sans Frontieres (MSF) and Mwatana Organization For Human Rights.

31.3. 21 allegations reported in the press or on social media.

31.4. 12 allegations have been reported by other international organisations. This number includes allegations made by the UN Panel of Experts, UN Children's Fund (UNICEF) and the Office of the High Commissioner Human Rights (OHCHR). This includes 6 allegations brought to our attention by the claimant. This is addressed in further detail at paragraph 30.

c. MOD SUMMARY OF INCIDENTS OF CONCERN

32. Since August, the Ops Dir have continued to provide consolidated lists of the incidents of concern to the FCO who have in turn passed this information to the Coalition to facilitate and expedite further JIAT investigations.

33. On 4 August the JIAT published the findings of eight investigations. The reports were published on an official Saudi Government.

34. On 6 December the JIAT published a further five reports. The published reports included investigations into the alleged strike on Lahij Livestock market on 6 July 2015, Fadhel School on 13 August 2015, Asmaa School on 24 August 2015, Elaghil Complex on 9 August 2016, Jomaa bin and Abs hospital on 15 August 2016.
35. The MOD was asked by the FCO to provide a summary of our analysis on four particular incidents of concern relevant to their December IHL update. These incidents are as follows:
- 35.1. Strike on MSF Hospital (Haydan), 26 October 2015;
 - 35.2. Strike on Abs hospital (Hajjah Governorate), 15 August 2016;
 - 35.3. Strike on the Great Hall, Sana'a, 8 October 2016; and
 - 35.4. Strike on Al-Hudaydah 'Security Complex', 28 October 2016.
36. IHL Updates have focused on the increase in the cumulative number of incidents of concern between IHL Updates. This approach does not explain that, although the total number of incidents on the Tracker may have increased between updates, this is a reflection of when new incidents have been identified by the MOD, rather than a reflection of whether the events have occurred in the reporting period. This is because, in some cases, there is a delay between the alleged incident taking place and it being reported by the media and NGOs. The number of incidents decreases during CoH periods and, even in periods of fighting, the overall trend is a significant reduction in the number of alleged incidents per month. These graphs were shared with the FCO and included in the MOD analysis for the IHL Update in December 2016.

c. CLUSTER MUNITIONS

37. An ITV News report on 26 October made further allegations of BL-755 use in Yemen.
38. The Foreign Secretary visited Riyadh on 11 December and met with MbS (amongst others). On 19 December, Maj Gen Assiri made a statement on behalf of the Coalition, published on the Saudi Press Agency website (PW46). The statement confirmed that there had been limited use of UK manufactured BL-755 cluster munitions by Coalition aircraft, that they had been used against legitimate military targets, and that Saudi Arabia had decided to cease use of these cluster munitions. The Defence Secretary made an oral

statement to the House of Commons that evening welcoming the Coalition statement (PW47).

V. MOD'S OVERALL VIEW OF KSA APPROACH AND CAPABILITY

39. In previous witness statement I commented on the attitude, ability and direction of travel of the Saudi Armed Forces. The Saudis continue to seek to improve their processes and increase the professionalism of their Armed Forces and continue to be receptive to UK offers to provide training and advice , as demonstrated by the JIAT workshop (para 12) and SPINS / TD workshop (para 14). The Saudis have been receptive to high-level military visits from the UK including into the SAOC, and have shown a willingness to learn from UK experience and take on-board UK advice. I assess that our engagement since August has further helped the RSAF develop their capabilities and practices, and we have increased confidence that the RSAF operate in a manner compliant with the standards demanded by the Law of Armed Conflict.

I believe that the facts in this statement are true.

SIGNED

DATED

