



Government Legal Department

Leigh Day Solicitors
Priory House
25 St John's Lane
LONDON
EC1M 4LB

Litigation Group
102 Petty France
Westminster
London
SW1H 9GL

T 020 7210 3000

DX 123243, Westminster 12 www.gov.uk/gld

Your ref: REC/EAK/00065492/9
Our ref: Z1601555/SAW/DS4

12 October 2020

Dear Sir/Madam

Campaign Against Arms Trade

1. We refer to your letters of 31 August 2020 and 16 September 2020 and your pre-action letter dated 18 September 2020.
2. We have explained the Secretary of State's position regarding the concept of serious violations of IHL in this context on numerous occasions, both in the previous proceedings in the Divisional Court and Court of Appeal (including in correspondence regarding the Supreme Court appeal) and in correspondence relating to this decision. Your client is therefore perfectly well able to decide whether there is a valid basis for challenging the new decision on this basis. As you have not included any such challenge in your proposed grounds, we assume that you have rightly concluded that there is no valid basis to do so.
3. As to your client's proposed consent order for the withdrawal of the Supreme Court appeal, the Secretary of State considers that it would be inappropriate to add to this order the recital you suggest. The intention of this recital is clearly to achieve, by the back door, the abstract definition of "serious violations of IHL" which your client sought in the Court of Appeal and which was roundly dismissed.¹ As the Court of Appeal stated:
 - a. An abstract definition of "serious violations of IHL" would not be appropriate given that so much depends on the precise facts;
 - b. The function of judicial review is to assess the lawfulness of past executive action, not to give advice for the future;
 - c. The context which arises here is not one in which the Secretary of State is sitting like a court, adjudicating on alleged past violations: the context is a prospective and predictive exercise.
4. As we have explained in our previous correspondence, your client's appeal on Grounds 2 and 4 was expressly stated to be parasitic on the Secretary of State's appeal on Ground 1. It follows that it should be withdrawn or dismissed in light of the withdrawal of the Secretary of State's appeal. Your client does not appear to dispute this and we therefore invite you to agree the draft consent order attached.

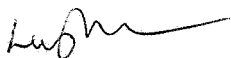
¹ At § 165 of its OPEN judgment.

Emma Robinson - Head of Division

Elizabeth Mackie - Deputy Director, Team Leader Defence, Security & General Public Law



Yours faithfully

A handwritten signature in black ink, appearing to read 'Lucy Marsh', with a long horizontal flourish extending to the right.

Lucy Marsh
For the Treasury Solicitor

D 0207 210 4539

E Lucy.Marsh@governmentlegal.gov.uk