

1. Statement on behalf of: Claimant
2. Witness name: A Feltham
3. Statement number: 1
4. Exhibits: Nil
5. Date of statement: 26 October 2020

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

CLAIM NO: CO/3579/2020

BETWEEN:

**THE QUEEN on the application of
CAMPAIGN AGAINST ARMS TRADE ("CAAT")**

Claimant

- and -

SECRETARY OF STATE FOR INTERNATIONAL TRADE ("SSIT")

Defendant

WITNESS STATEMENT OF ANN FELTHAM

**I, Ann Feltham, of Campaign Against Arms Trade, Unit 4, 5-7 Wells Terrace,
London N4 3JU SAY AS FOLLOWS:**

Introduction

1. I am the Parliamentary Co-ordinator of Campaign Against Arms Trade ("CAAT"). I have been employed by CAAT since 1985, having been an active supporter of the organisation since 1978. CAAT is a small organisation with three full-time and eleven part-time staff.

2. I make this statement in support of CAAT's application for judicial review of the Secretary of State's decision, taken on 7 July 2020 (the "new decision"), to continue to grant licences for the sale and export of military equipment and weaponry to the Kingdom of Saudi Arabia ("KSA").
3. My statement will address (1) CAAT's interest in these proceedings and relevant campaign; (2) CAAT's previous involvement in relevant litigation; (3) the status of CAAT's first proceedings about this issue; and (4) CAAT's concerns about the lawfulness of the new decision.
4. Where I refer to open-source documents, some hyperlinks to those documents are provided in the footnotes to my statement. Copies of each document are also contained within the bundle of documents accompanying the amended grounds for judicial review¹.

History of UK providing arms to Saudi Arabia

5. Monitoring UK arms sales to Saudi Arabia has been a major part of my work throughout my time with CAAT. Saudi Arabia has been a major buyer of UK weapons since the 1960s.
6. The majority of arms deals between the UK and Saudi Arabia are covered by government-to-government contracts. These are complemented by other contracts between the UK government and the prime contractor, BAE Systems.
7. The Al Yamamah agreements of the mid-1980s focused on Tornado and Hawk jets. The Al Salam deal for Eurofighter Typhoon aircraft was agreed in stages between 2005 and 2014. Importantly, the contracts include the servicing and maintenance of the aircraft. Much other military equipment has also been sold to Saudi Arabia, either as part of these contracts or independently of them.
8. Government support has always been made available for arms deals with Saudi Arabia, including visits by UK Prime Ministers and members of the Royal family. Saudi Arabia is a 'key market' for the Government's arms sales agency,

¹ References to the supplemental bundle of documents are in the form **SB/tab/page**

the UK Defence and Security Exports which is part of the Department for International Trade (“DIT”).

9. CAAT has for a long time campaigned against UK arms sales to KSA because of the high risk that they will be used to support repression within Saudi Arabia and breaches of international humanitarian law abroad. In the past, KSA has used UK weapons to help crush democracy protests in Bahrain. Currently, it is involved in the conflict in Yemen.
10. Since 2015, UK-made warplanes have played a central role in the offensive carried out by a coalition of states lead by KSA (“the Coalition”) against anti-state groups in Yemen. This is a core focus of CAAT’s work.
11. Respected international bodies, including UN Special Rapporteurs, UN human rights supervisory mechanisms such as the Human Rights Committee, have found that KSA routinely fails to prosecute or punish state officials responsible for torture, enforced disappearance and a range of other grave violations of human rights.
12. KSA itself is also routinely found to be responsible for a wide range of grave abuses of human rights including state-sanctioned torture, arbitrary detention and the enforced disappearance and extra-judicial killing of dissidents, political activists and others.
13. In this statement I set out some of the findings and evidence of international bodies and respected NGOs to this effect and I exhibit their reports, contained within CAAT’s claim bundle, to my statement.

The use of UK arms in the ongoing conflict in Yemen

14. There is no dispute between the parties about the fact UK arms are being used in the ongoing conflict in Yemen. For the court’s reference, however, some examples are below.

15. The UK government has confirmed that UK-supplied precision-guided weapons have been used in Yemen². In 2014, Raytheon UK secured its first export contract for 2,400 Paveway IV bombs to KSA. In March 2016 the UK government confirmed that it had accelerated delivery of Paveway precision-guided bombs in response to Saudi requests³. In 2017, a UK Ministry of Defence official revealed that the UK had trained Saudi air force personnel in the use of the Paveway IV.⁴
16. In 2019, the Yemen-based Mwatana for Human Rights linked Paveway IV bombs to attacks on civilian targets⁵.
17. CAAT is aware from our own research that UK companies MBDA and BAE have also supplied Brimstone and Storm Shadow missiles (MBDA) and ALARM (anti-radiation) missiles (BAE) to KSA⁶.

Ongoing KSA involvement in Yemen

18. The conflict in Yemen and the campaign led by the Coalition is ongoing to this day. The conflict has been characterised not only by airstrikes that repeatedly fail to comply with international humanitarian law (“IHL”) but also a ground campaign, where serious IHL violations have also been identified.

In the air

19. It has been well documented and reported by journalists and researchers on the ground in Yemen that there continue to be serious violations of IHL conducted by both sides to the Yemeni conflict, including by the Saudi-led coalition, particularly regarding coalition air strikes.
20. For example, On 14 September 2020 the UN Human Rights Council published the Advance Unedited Version of the Annual report of the UNHCHR, OHCHR and Secretary-General ‘Situation of human rights in Yemen, including violations

² Written Parliamentary Question [SB/13/164]

³ FCO Written Evidence [SB/9/60]

⁴ Daily Record article [SB/18/239]

⁵ Mwatana: Day of Judgment [SB/41/800]

⁶ FCO Written Evidence [SB/9/62]

and abuses since September 2014: Comprehensive report of the Group of Eminent International and Regional Experts on Yemen⁷, which identified the following non-exhaustive examples of incidents of concern since their last report, all of which they reported involved failures to take all necessary measures to protect civilians and civilian objects:

- a. On 11 August 2019 three airstrikes hit a house and 150m away from a house within 10 minutes of each other in the al-Sawamel region, Mustaba district, Hajjah Governorate. The Office of the Resident and Humanitarian Coordinator for Yemen reported that 12 people were killed, including six children, and 16 civilians were injured. The UN Group of Experts reported it is not aware of any military targets among either the persons or objects hit or in the immediate vicinity⁸.
 - b. On 31 August 2019 a series of airstrikes was launched on Dhamar Community College in Dhamar Governorate. The Houthis were known to be using this facility as a prison. At least 134 detainees were killed and injured. The Coalition justified this as a legitimate military target, which is in direct violation of IHL⁹.
 - c. On 24 September 2019 at least 30 civilians were killed and injured by two airstrikes in Al-Muzaimir village, Al-Fakhir town, Al-Dhale'e Governorate.
 - d. On 15 February 2020 approximately 50 civilians were killed or injured in an early-morning airstrike on a village in Al-Hayjah Area, Al-Maslub District, Al-Jawf Governorate¹⁰.
21. In these airstrikes, and others the Group of Experts documented, they identified failures relating to *'fulfilling duties to verify a target as a legitimate military target, to collect and assess intelligence relating to likely civilian impact and to cancel or suspect an attack if it becomes apparent that the target is not a lawful one or that it would be a disproportionate attack'*.

⁷ [Report of the Group of Eminent Experts](#), September 2020 [SB/50/1018-1036]

⁸ UN Group of Experts, 2020 (para 27) [SB/50/1023]

⁹ UN Group of Experts, 2020 (paragraph 28) *IBID*

¹⁰ UN Group of Experts, 2020 (paragraph 30) *IBID*

22. One of the patterns that emerges from the Coalition campaign of airstrikes is the repeated bombing of non-military targets and, in particular, medical facilities. This is obviously in direct contravention of IHL. Médecins Sans Frontiers (“MSF”) has published a number of reports detailing some of the attacks against its own facilities, for example:
- a. On 2 December 2015 an airstrike hit a MSF mother and child hospital in Taiz city. The surrounding area was ‘*populated by a high number of internally displaced people living in poor conditions*’ and there was no reported fighting in the area. MSF shared its co-ordinates with coalition forces on 29 November and again that same day. The roof of the building was marked with a 2x3-metre flag bearing the MSF logo. MSF published a detailed report¹¹ setting out the communication between it and the coalition forces following earlier airstrikes in the vicinity, in which MSF alerts the Coalition that they are striking within 1km of the medical facility. Regardless, the hospital was still hit. 9 people were injured, one of which later died from their injuries.
 - b. On 15 August 2016¹², three airstrikes were carried out in the vicinity of Abs Hospital, the co-ordinates of which were known to the Coalition forces. A civilian vehicle entered the hospital at 3.35pm carrying people in civilian clothing who had been wounded in those strikes. The vehicle appeared to be carrying no weapons. At 3.40pm a further airstrike hit the hospital compound, the impact falling on the vehicle which was by then parked in front of the hospital’s Emergency Room.
 - c. On 11 June 2018, a cholera treatment centre in Abs was hit in a Coalition airstrike. MSF reports¹³ that the compound had three distinctive logos on display and MSF had shared its location at least 12 times in writing with the Coalition authorities. There were no fatalities from this strike, but the newly constructed treatment centre was rendered non-functional as a result.
23. On 26 March 2019 a hospital supported by Save the Children in Kitah, Sa’dah, was hit by an airstrike, killing at least eight people including five children.

¹¹ [MSF](#), 2 December 2015 [SB/8/44-54]

¹² [MSF](#), 27 September 2016 [SB/12/151-163]; [MSF](#), 27 October 2016 [SB/14/165-170]

¹³ [MSF](#), 6 February 2019 [SB/31/492-493]

According to Save the Children, the parties to the conflict had been made aware that the building was a hospital and its coordinates had been placed on a no-strike list.¹⁴

24. Another worrying trend of attacks has been against vital civilian infrastructure necessary for survival of the civilian population (which is a violation of IHL).¹⁵ For example:
- a. On 31 March 2015, four separate coalition airstrikes hit the Yemany Dairy and Beverage factory outside Hudaydah city, which produced dairy goods. The strikes killed at least 31 factory employees and wounded at least 11 more¹⁶.
 - b. There have been air strikes on irrigation facilities, which are essential to Yemen's ability to produce food. I refer to a 2018 report prepared by Martha Mundy of the London School of Economics¹⁷ in which it is reported that '*on 18 (four strikes) and 24 August 2015 and again on 25 September (eleven strikes) Coalition aeroplanes repeatedly bombed the central compound of the [authority which is responsible for the management of major water structures] on the southern outskirts of the city of al-Hudayda. On 4 October 2015 irrigation structures in wadi Siham and on 6 October (three strikes) the TDA compound there were targeted. The attacks upon facilities of the Tihama Development Authority do not appear random; indeed the YDP documents that such attacks continued beyond 2015 with two incidents in late 2016 and three in early 2017, including the office in wadi Zabid.*'
 - c. On 6 January 2016 a coalition airstrike dropped two bombs on warehouses in Hudaydah, one hitting in a hangar containing food products such as rice and canned goods, the other hitting a warehouse with car parts. Remnants of a UK-manufactured Paveway IV guided bomb were found at the scene¹⁸.

¹⁴ [Save the Children](#), 27 March 2019 [SB/32/494-495]

¹⁵ Article 54 (2), Additional Protocol I to the Geneva Conventions 1949 [SB/2/6]

¹⁶ HRW '[Bombing Businesses](#)', 11 July 2016 [SB/11/83-150]

¹⁷ [Mundy](#), 9 October 2018 [SB/28/405-426]

¹⁸ HRW '[Bombing Businesses](#)', 11 July 2016 [SB/11/83-150]

- d. On 29 January 2016, an airstrike hit the al-Shihab Industrial Complex in northern Sanaa. One bomb hit a storage hangar containing tea and rice. The four additional strikes hit the same hangar again, a storage hangar for fortified milk powder, an office building and a hangar for producing deodorant. The hangars were completely destroyed by the five strikes. According to the CEO of the Shihab company, which owned the compound, the company provided 70 per cent of the baby food supply in Yemen¹⁹.
- e. On 23 July 2018 an airstrike on a UNICEF-funded water borehole facility deprived 10,500 people of access to safe drinking water despite the Coalition forces being told to put the facility on the no-strike list.²⁰
- f. Between 26-28 July 2018, daily airstrikes occurred in and around Hudaydah h near a reproductive health centre and public laboratory, hitting and damaging a sanitation facility in Zabid and a water station supplying the majority of water to Hudaydah.²¹
- g. On 24 October 2018 coalition airstrikes bombed an okra farm in Hudaydah, killing an estimate of 21 people who had been harvesting and cleaning the okra to be sold at market. The UN Group of Experts received no reports of any military target and identified a possible serious violation of IHL²².
- h. On 16 December 2018 a coalition airstrike hit a water tanker transporting fresh water for a village and crops in Al-Bayda Governorate, in a rural area with no known military targets nearby²³. A similar strike happened in the same location again on 4 April 2019, when another truck was hit on the same road, killing four people. The UN Panel received testimonies that there is no water in this area and the two trucks hit in these strikes were tankers transporting water to civilians.²⁴

¹⁹ IBID (Bombing Businesses)

²⁰ [UNICEF](#), 1 August 2018 [**SB/25/319**]

²¹ [UN Office of the Resident Coordinator and Humanitarian Coordinator for Yemen](#), 29 July 2018 [**SB/24/318**]

²² [UN Human Rights Council Report](#) of the detailed findings of the Group of Eminent International and Regional Experts on Yemen, September 2019 (para 521-522)

²³ UN Group of Experts, 2020 (para 50) [**SB/50/1026**]

²⁴ UN Panel of Experts, 2020, Appendix 1 [**SB/43/957**]

- i. Further examples of strikes on farms, factories, infrastructure and objects linked to the survival of the civilian population can also be found in the submissions made by Mwatana and the Global Legal Action Network on 24 November 2019²⁵.

On the ground

25. Violations of IHL in Yemen alleged against the Saudi Coalition and KSA specifically are not limited to airstrikes. KSA also have a military presence on the ground in Yemen. Its forces have been found by the UN Panel of Experts and respected NGOs to have committed a range of violations of IHL (and IHRL) in Yemen, including torture, arbitrary detention, incommunicado detention, enforced disappearance and the unlawful removal from Yemen of Prisoners of War or detainees. KSA is also alleged to have operated secret prisons in Yemen, which hold unregistered detainees to whom the ICRC has not been given access.
26. In its 2019 Report the Eminent Panel of Experts found [66]:

[...] Cases of incommunicado detention of up to three years, and regular torture, including through electrocutions, mock executions and forced nudity, at the unofficial joint Yemeni armed forces/Saudi Arabia Al-Tin detention facility in Seiyoun city.
27. Summarising its findings on this issue in its 2018 Report the UN Group of Eminent Experts found [73]:

The Group has reasonable grounds to believe that the Governments of Yemen, the United Arab Emirates and Saudi Arabia are responsible for human rights violations, including enforced disappearance. As most of these violations appear to be conflict related, they may amount to the following war crimes: rape, degrading and cruel treatment, torture and outrages upon personal dignity.
28. Similarly, in its 2019 Report the UN Group of Eminent Experts concluded [§ 68]:

²⁵ [SB/38/689]

The Group of Experts has reasonable grounds to believe that the Governments of Yemen, Saudi Arabia and the United Arab Emirates violated the right to liberty and security of person, namely through enforced disappearances, arbitrary arrest and detention, and torture and other ill-treatment, including sexual violence.

29. In its recent 2020 report the Group [67] “found reasonable grounds to believe that parties to the conflict are continuing to engage in enforced disappearance, arbitrary detention and torture, including sexual violence, in violation of international human rights law and, depending on the level of nexus with the conflict, international humanitarian law. Such acts may also amount to war crimes, including cruel treatment and torture, committing outrages upon personal dignity, and rape and other forms of sexual violence”.
30. In a 2020 report, HRW revealed²⁶ that KSA has been operating a secret prison from inside the al-Ghaydah Airport, from which detainees, mostly peaceful protestors from the al-Mahrah region in which the airport is located, are reported to be subject to torture and illegal transfer across the border into KSA. Operating a secret prison is itself a breach of the IHL principle that in international armed conflict the ICRC must be granted regular access to all persons deprived of their liberty in order to verify the conditions of their detention. The torture and illegal transfer of people is, again, a breach of IHL (and IHRL).
31. Families of the victims explained that their relatives had been disappeared and held incommunicado for between three and five months while they were illegally transferred to KSA. No information was provided as to their whereabouts or fate.
32. Indiscriminate attacks prohibited under IHL also prevail on the ground. The UN Group of Experts has expressed concern over forces from all sides of the conflict using indirect-fire weapon systems with wide-area impact, such as rockets and mortars, especially in populated areas.²⁷

²⁶ [Human Rights Watch](#), 25 March 2020 [SB/44/975-979]

²⁷ UN Group of Experts, 2020 (para 32) [SB/50/1023]

33. In particular, an incident on 24 December 2019, carried out by the Coalition Land Forces, has been verified by the Group of Experts and acknowledged by JIAT (see paragraph 45 below). Additional attacks on 20 and 27 November have also been established by the Group of Experts on the same market in Sa'ada Governorate, but not acknowledged by JIAT. On 24 December 2019, at least two mortar shells landed on the market. JIAT claimed the Land Forces were responding to armed elements firing at them from a location 90m from the market and that a technical failure or weather conditions could account for the shells landing on it. The Group of Experts reported that it received evidence contradicting this explanation.²⁸

From the sea

34. In addition, since 2015 a naval blockade has been in place preventing basic necessities from reaching civilians inside Yemen²⁹. This blockade is in violation of IHL. In its 2019 Report the UN Eminent Group of Experts on Yemen, appointed by the UN High Commissioner for Human Rights, found [§53]:

Access restrictions imposed on Yemen by the coalition, including the de facto naval blockade and the closure of Sana'a International Airport, drastically limited imports and impeded the delivery of relief supplies, thereby significantly contributing to the deterioration of the economy in Yemen. The Group of Experts previously established that these measures had a disproportionate impact on the civilian population, in violation of international humanitarian law. Moreover, such measures, in particular the coalition's total blockade of Yemen that followed the ballistic missile fired by the Houthis into Saudi Arabia in November 2017, may amount to collective punishment, which is prohibited by international humanitarian law.

35. This same finding that the KSA de facto blockade of Yemen's port and airport constituted a violation of IHL was reiterated in the Group's 2020 report § 46. The Report observed [57-58]:

The closure of Sana'a international airport in August 2016 by the Government of Yemen and the coalition has precluded civilians from

²⁸ UN Group of Experts, 2020 (paras 34-35) [SB/50/1024]

²⁹ [Guardian](#), 5 June 2015 [SB/7/40-43]

accessing life-saving health care and humanitarian supplies. The airport was reportedly reopened for limited humanitarian purposes from 3 February 2020, however, those exceptions have been insufficient to address the overwhelming humanitarian need.

The coalition's restrictions on imports and access to Hudaydah port have contributed to shortages of fuel and other necessities and to inflation, thereby exacerbating the economic and humanitarian crisis.

[...] All parties to the conflict have impeded humanitarian operations and the population's access to food and health care. It considers that the dire humanitarian situation in Yemen could be substantially mitigated if parties to the conflict begin to respect and comply with their obligations under international law.

36. The port at Al-Hudaydah on the west coast of Yemen was the only major port still functioning for the delivery of aid, but since 2018 that port has been the site of intense conflict and air-strikes³⁰.
37. The 2019 US State Department report on human rights stated that the Yemeni government and the KSA coalition both delayed or denied clearance permits for some humanitarian and commercial aid shipments. It was reported that the Coalition continued to place restrictions on certain cargoes and a secondary clearance process that led to uncertainty and delays experienced by vessels approved by the UN Verification and Inspection Mechanism for Yemen
38. HRW has reported that the coalition has also blocked fuel needed to power generators to hospitals and pump water to homes³¹.
39. The September 2020 UN Report noted that the coalition's restrictions on imports and access to the port at Al-Hudaydah have '*contributed to shortages of fuel and other necessities and to inflation, thereby exacerbating the economic and humanitarian crisis*'³².

³⁰ [Al-Jazeera](#), 13 June 2018 [SB/21/312-314]; [Guardian](#), 20 September 2019 [SB/37/686-688]

³¹ Human Rights Watch, [2019 World Report](#) – Yemen [SB/42/934-938]

³² UN Group of Experts, 2020 (para 58) [SB/50/1027]

40. The UN Group of Experts also found that *'the parties to the conflict continue to show no regard for international law or the lives, dignity, and rights of people in Yemen, while third states have helped to perpetuate the conflict by continuing to supply the parties with weapons'*. Their report also documents a further four coalition airstrikes, carried out between August and September 2019 attracting large numbers of civilian deaths and injuries, in which there were *'failures to take necessary means to protect civilians and civilian objects'*. Crucially, this UN Report found a *'consistent pattern of harm to civilians'* from coalition airstrikes and repeated its concern *'about third States transferring arms to parties to the conflict in Yemen in blatant disregard of the documented patterns of serious violations of IHL and human rights law in the conflict to date'*³³.
41. Between 2018-2019 Human Rights Watch documented at least five deadly attacks by the Saudi-led coalition naval forces on Yemeni fishing boats, killing at least 47 Yemeni fishermen, including seven children.³⁴
42. Similarly, the UN Panel of Eminent Experts has found KSA responsible for the arbitrary arrest, detention, torture and, in a number of incidents, enforced disappearance of a large group of Yemeni fishermen. In its 2018 Report, the Eminent Panel of Experts found [72]:

In the context of naval operations around Hudaydah Governorate, Saudi Arabian forces routinely arrested Yemeni fishermen. The Group of Experts investigated cases that occurred between October 2016 and April 2018 in which 148 fishermen were arrested by coalition forces. Victims were taken to detention facilities in Saudi Arabia and remained incommunicado. Many were beaten and interrogated and some were kept in solitary confinement for prolonged periods. Most have been released, but 18 fishermen, all held for more than one year, remain missing.

Grave violations against children

43. The UN Secretary-General's latest report on violence against children reported a number of grave violations carried out against children in the Yemen conflict

³³ UN Group of Experts, 2020 para 102 [SB/50/1033-1034]

³⁴ HRW World Report 2019 [SB/42/934-938]

between January and December 2019³⁵, carried out by all sides, but in relation to the coalition:

- a. The recruitment and use (most in combat roles) of at least 136 children was attributed to the Yemeni armed forces (who are supported by the coalition);
- b. The capture and detention by the Coalition forces of at least 25 children who were then handed over to the Government of Yemen for further detention before release into a care centre;
- c. Attribution to the Coalition forces for at least 222 child casualties, 171 of which resulted from air strikes;
- d. Four coalition attacks on schools; and
- e. At least 186 instances of Coalition forces denying humanitarian access.

Lack of Accountability / Impunity

44. The UN Panel of Experts, other UN agencies and respected NGOs identified the absence of genuine accountability in respect of events in Yemen specifically.
45. In early 2016 KSA announced the creation of the Joint Incident Assessment Team (“JIAT”). It consisted of 14 individuals from the main coalition members and its mandate was to investigate the facts, collect evidence, and produce reports and recommendations on ‘claims and accidents’ during coalition operations³⁶. However, the Panel’s work has been subject to significant criticism as lacking independence; misapplying international humanitarian law, in absolving the Saudi Coalition of responsibility; failing to result in the effective prosecution, punishment or action against those responsible for violations of international law.

³⁵ Report of the Secretary-General, [Children and armed conflict](#), 9 June 2020 [SB/45/980-986]

³⁶ HRW World Report 2019 [SB/42/934-938]

46. In its 2019 Report [§90] the UN Group of Eminent Experts raised serious concerns regarding accountability for violations of IHL perpetrated by KSA in Yemen, observing:

The Group of Experts reiterates its concerns with respect to the independence of the Joint Incidents Assessment Team set up by Saudi Arabia to review alleged violations by the coalition. Transparency is a key factor, given the lack of available information about the Team's functioning, methodology and policies, and the insufficient legal analysis presented in its public findings. A review of the Team's latest conclusions, as published in various press releases, raises concerns as to the impartiality of its investigations and the thoroughness and credibility of its analysis and findings. The assessment of the targeting process is particularly worrying, as it implies that an attack hitting a military target is legal, notwithstanding civilian casualties, hence ignoring the principle of proportionality. While the Team acknowledged human errors in the targeting process and some technical errors in a few cases, it did not expressly hold the coalition responsible for any violation.

47. In its 2020 Report [§96] the UN Group of Eminent Experts had not found the situation to have improved noting that it “*continue[d] to have concerns as to the thoroughness and credibility of [JIAT's] analysis and findings*”. The Group of Eminent Experts also found that “[*t]here remains a tendency for the Assessment Team to accept the legality of air strikes involving military targets, without taking into proper account the principles of proportionality or precaution*”.
48. Human Rights Watch has repeatedly raised similar concerns³⁷. In January 2017, HRW wrote directly to Lieutenant General Mansour Ahmed al-Mansour, KSA's legal adviser to JIAT, expressing their concern over the team's failures to meet international standards regarding transparency, impartiality and independence.³⁸ The letter pointed out that while JIAT had recommended the coalition pay reparations to victims of three attacks and take appropriate action against officers involved in two, no concrete steps had been taken to do so.

³⁷ [Human Rights Watch](#), 24 August 2018 [SB/27/361-404]

³⁸ [HRW Letter](#), January 2017 [SB/15/171-176]

49. HRW's August 2018 report details factual and legal discrepancies between findings by JIAT and HRW's own reporting and analysis of the same incidents. HRW criticised a "*general failing by JIAT – for unclear reasons – to provide credible, impartial, and transparent investigations into alleged coalition law-of-war violations.*"³⁹
50. In August 2018, HRW published a detailed report documenting the ongoing failures it had identified with JIAT. As well as the criticisms in the above paragraphs, HRW also found:
- a. Factual and legal discrepancies between JIAT's reporting and analysis, and its own;
 - b. A trend of only investigating airstrikes, but not other alleged violations of international law by coalition members;
 - c. Investigation results apparently released to response to international events such as during UN discussions on possible international investigations into violations in Yemen, and immediately preceding a meeting between the Saudi Crown Prince and Coalition Commander meeting with senior British officials in the UK.⁴⁰
51. To date, no prosecutions have been brought by KSA on the basis of JIAT findings. This is unsurprising, given the fact that on 10 July 2018, a royal pardon was issued by KSA pardoning all military men taking part in Operation Restoring Hope.⁴¹

The Murder of Jamal Khashoggi

52. On 2 October 2018, Mr Khashoggi, a Saudi dissident and journalist went missing after entering the Saudi embassy in Istanbul, from where he was never seen leaving. He had attended the embassy on 28 September to obtain a document he needed for his upcoming marriage, and was asked to return on 2 October to pick it up.⁴²

³⁹ HRW [SB/27/361-404]

⁴⁰ HRW *IBID*

⁴¹ Saudi Press Agency release [SB/22/315]; Al Araby article [SB/23/316-317]

⁴² Report of the Special Rapporteur 19 June 2019 [SB/34/498-596]

53. It is reported that as soon as Mr Khashoggi left the embassy on 28 September, messages were sent to Riyadh to alert them that he would be returning on 2 October⁴³. On 2 October, twelve men arrived in Istanbul from KSA, three on a commercial flight and nine on a private charter with diplomatic clearance⁴⁴. All of these men are named on the list of 15 Saudi state agents the UN experts found responsible for the '*premeditated execution*' of Mr Khashoggi in the KSA embassy in Istanbul⁴⁵.
54. Ten of those men were at the consulate at the same time as Mr Khashoggi. The Special Rapporteur's report found that the other five, were at the Consul General's residence at that time. Recordings, obtained by the Special Rapporteur, picked up a conversation within the consulate just before Mr Khashoggi's arrival discussing what to do with a body. An official was recorded asking if the 'sacrificial animal' had arrived, to which another person responded 'he has arrived' minutes before Mr Khashoggi entered.⁴⁶
55. KSA did not admit that Mr Khashoggi had been killed until 19 October. On 15 November, it was announced that twenty-one individuals had been detained in KSA in relation to the murder⁴⁷.
56. Eight people involved received prison sentences (some of which were first death sentences later commuted), but those closer to the crown prince who are suspected of planning and ordering the killing have escaped scrutiny. For example, at least two senior aides to the crown prince have been exonerated. The Turkish authorities have begun their own prosecution of 20 Saudi nationals they suspect to have been involved (including those already sentenced and exonerated in KSA)⁴⁸.
57. The Special Rapporteur found that the murder was the result of a planned and elaborate mission and that there was credible evidence of premeditation of murder. They found that KSA is ultimately responsible for his murder at the

⁴³ Special Rapporteur report *IBID*

⁴⁴ Special Rapporteur report *IBID*

⁴⁵ [UN Press Release](#), 19 June 2019 [SB/33/496-497]

⁴⁶ | Special Rapporteur report *IBID*

⁴⁷ Special Rapporteur report *IBID*

⁴⁸ [The Times](#), 8 September 2020 [SB/49/1016-1017]

level of state responsibility, but to date none of the individuals tried or sanctioned were senior officials.

First Claim for Judicial Review (the “first claim”)

58. In late 2015, CAAT wrote to the then Secretary of State BIS providing a comprehensive set of evidence such as investigation findings from UN agencies and reputable international NGOs detailing Saudi Arabia’s non-compliance with IHL. CAAT asked for the government to suspend licences for the export of arms and military equipment where it may be used in the conflict in Yemen. On 9 December 2015, the Secretary of State relayed to CAAT the decision to continue to grant new licences. It was this decision that was challenged in the first claim.
59. Between 7-10 February 2017, a Divisional Court of Lord Justice Burnett and Mr Justice Haddon-Cave heard the first claim. CAAT advanced three grounds of challenge criticising: (1) a failure to ask correct questions or to make sufficient inquiries; (2) a failure to apply the suspension mechanism; and (3) that it was irrational to conclude that Criterion 2C was not satisfied.
60. On 10 July 2017 the Divisional Court handed down its judgment, dismissing CAAT’s claim on all grounds.

The Court of Appeal

61. On 12 April 2018, Lord Justices Irwin and Flaux heard CAAT’s application for permission to appeal. CAAT was granted permission to appeal on three grounds: (1) that the Secretary of State and Divisional Court had erred in their approach to the open source material and findings of past breaches of IHL by Saudi Arabia (Ground 1); (2) that the Divisional Court had erred in its approach to the questions identified in the User’s Guide (Ground 2); and (3) that the Divisional Court had failed to rule on the meaning of “serious violations of IHL” (Ground 4). CAAT was refused permission on Ground 3, which argued that the Divisional Court had adopted too deferential a standard of review.

62. Between 9-11 April 2019 a Court of Appeal consisting of the Master of the Rolls and Lord Justices Irwin and Singh heard CAAT's appeal. On 20 June 2019 the Court allowed the appeal on grounds one and three.
63. In its Order, the Court of Appeal ordered the Secretary of State to retake her decision on whether to suspend extant export licences for the sale or transfer of arms and military equipment to Saudi Arabia for possible use in the conflict in Yemen and whether to continue to grant further licences, on the correct legal basis (i.e. as per their judgment). Until such time, the Secretary of State was prevented from granting any new licences.
64. Applications for permission to appeal to the Supreme Court were made to the Court of Appeal by both CAAT and the Secretary of State, both of which were granted by the Court of Appeal.

The Supreme Court

65. A Supreme Court hearing was scheduled to take place in November 2020. However, in July 2020, the Secretary of State re-took her decision on the suspension of extant licences and the granting of new licences. In a letter to CAAT on 7 July, she stated that she took this decision on the correct legal basis and applied a revised methodology taking into account the full range of information and analysis. The Secretary of State also decided to resume granting licences. It is this decision that CAAT seeks to challenge in the present claim.
66. Alongside this letter, the Secretary of State sent a second letter alerting the Supreme Court and parties to the first claim that on account of the new decision she would be withdrawing her appeal in the Supreme Court. CAAT was invited to do the same in relation to the grounds on which we appealed. CAAT will do so on terms that have been set out in correspondence.

Statement of Truth

I believe that the facts stated in this witness statement are true and are from within my own knowledge unless stated otherwise. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



Signed:

Ann Feltham, Campaign Against Arms Trade

Dated: 26 October 2020