

1. Statement on behalf of: Claimant
2. Witness name: A Feltham
3. Statement number: 2
4. Exhibits: 'AF1' – 'AF34'
5. Date of statement: 10 October 2016

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

CLAIM NO: CO/1306/2016

BETWEEN:

CAMPAIGN AGAINST ARMS TRADE ("CAAT")

Claimant

- and -

SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS ("BIS")

Defendant

SECOND WITNESS STATEMENT OF ANN FELTHAM

I, Ann Feltham, of Unit 4, 5-7 Wells Terrace, London N4 3JU WILL 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 has a small non-hierarchical staff and my current job title is Parliamentary Co-ordinator.

2. I make this statement in support of the Claimant's application for Judicial Review and to submit further evidence, by way of update, since the date of the Permission Hearing, 30 June 2016. This statement replies to the further evidence submitted by the Defendant on 5 August 2016
3. 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. The main 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. 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. Much other military equipment has also been sold to Saudi Arabia, either as part of these contracts or independently of them.
4. Top-level backing has always been made available to support the UK's arms deals with Saudi Arabia, including visits by UK Prime Ministers and members of the Royal family. Saudi Arabia is a "priority market" for the Government's arms sales agency, the Defence and Security Organisation which is now in the Department for International Trade (DIT).
5. The witness statement of Peter Watkins from the Ministry of Defence (MOD) describes how the UK government provides on-going support for the arms deals through the Ministry of Defence Saudi Armed Forces Projects. The cost of this support, which includes military personnel and civil servants based in the UK and Saudi Arabia, is reimbursed by Saudi Arabia (exhibit 'AF1'). BAE's 2015 Annual Report (exhibit 'AF2') said that the company had 5,700 employees in Saudi Arabia. Many of them are UK expatriates. The Report highlights that their work includes supporting the operational capabilities of the Royal Saudi Air Force.
6. The Defendant has not disputed the use of UK-produced equipment by Saudi Arabia in its campaign in Yemen. (see Parliamentary Written Answer, 17 March 2016, exhibit 'AF3') The Written Evidence (paragraph 29, exhibit 'AF4') from the Foreign and Commonwealth Office (FCO) to the Committees on Arms Export Control's inquiry into the use of UK-manufactured arms in Yemen says that the UK has "*accelerated delivery of Paveway precision-guided bombs*".

7. Criterion 2 c) of the Consolidated EU and National Arms Export Licensing Criteria says that the UK government will "not grant a licence if there is a clear risk that the items might be used in the commission of a serious violation of international humanitarian law." (see Parliamentary Written Statements, exhibit **'AF5'**).
8. In the light of the continuing and credible reports of violations of IHL by the Saudi-led coalition in Yemen, it is difficult to understand how the Defendant made the decision to continue to issue licences for the export of military equipment to Saudi Arabia and not to suspend extant licences.
9. For a "clear risk" to be present, it is not necessary to prove that every reported violation of IHL is true, or that the equipment used in reported violations has come from the UK. If bombing attacks by military aircraft are frequently reported by credible sources as being in violation of IHL, the Criteria demand that the UK government stops issuing export licences and suspends those that are extant.
10. The case timetable as set out in the Order of Mr Justice Gilbert dated 11 July 2016 requires the Claimant to file and serve further evidence by 3 October 2016. Through the Claimant Solicitors, CAAT have sought answers to questions on a number of factual issues from the Defendant pertinent to the case. I exhibit letters from Leigh Day to the Government Legal Department as **'AF6'**.
11. To date no substantive responses have been received. I exhibit letters and emails from the Government Legal Department to Leigh Day as **'AF7'**.
12. It is impossible for the Claimant to submit a full set of further evidence in the absence of any substantive response from the Defendant to the questions asked. CAAT may therefore apply for permission to submit further evidence at a later date should the need arise in light of any forthcoming response from the Defendant.

My Statement

13. This statement will cover and update as to the on-going and serious violations of IHL in Yemen, predominantly those by the Saudi-led coalition, including attacks on civilians which have increased over the months of August and September 2016, the position of international organisations and the UK government and parliamentary committees regarding arms transfer licences and exports to Saudi Arabia and the situation in Yemen generally, cluster munitions, Saudi Arabian investigations into violations of IHL, the credibility of assurances being relied on by the Defendant from the Saudi Arabian government and Saudi-led coalition in Yemen, and the corrections made to statements made by Ministers in UK Parliament regarding the assessment of IHL in Yemen and the risk of UK manufactured arms being used in any such violations.
14. The exhibits to my statement are comprised of interparty correspondence, reports by media outlets, non-governmental organisations, UN bodies, and reports and statements from politicians and political bodies in both the UK and Saudi Arabia. A full index of exhibits can be found at the back of this statement.

On-going Serious Violations of International Humanitarian Law (“IHL”)

15. It has been well documented and reported by journalists and researchers on the ground in Yemen that there continues to be compelling evidence of serious violations of IHL conducted by both sides to the Yemeni conflict, including by the Saudi-led coalition, particularly regarding the coalition air strikes. For example, as addressed in the Oral Evidence given to the International Development Committee on 27 January 2016 (exhibit ‘**AF8**’).
16. Giving some recent examples, on the weekend of 13-14 August 2016, an airstrike was carried out on a school in northern Yemen, killing at least 10 children. A report from the UN News Centre, emphasising the United Nations Secretary General Ban Ki-moon's condemnation of this attack is exhibited as ‘**AF9**’.
17. On 15 August 2016 the Médecins Sans Frontières/Doctors Without Borders (MSF) Abs Hospital in Hajjah was bombed; the organisation has now started to

pull out of the conflict zone, citing neither satisfaction nor reassurance from statements by the Saudi-led coalition that the attack was a mistake.

18. MSF systematically shares the GPS coordinates of the hospitals where they are working with the Saudi coalition to avoid being targeted, yet continue to be struck by Saudi coalition airstrikes, in direct contravention of the Geneva Conventions. A statement released by MSF on this particular incident is exhibited as **'AF10'**.
19. The findings of a MSF internal investigation into the incident is exhibited as **'AF11'**. The investigation found that there had been no change in the normal functioning of the hospital activities and in the town of Abs and that the neutrality of the hospital had not been compromised, meaning that the protected status of the hospital had not been lost. Amnesty International has found that the weapon used in this attack was a US-made precision-guided Paveway-series aerial bomb. A report of Amnesty's findings is exhibited as **'AF12'**.
20. In addition to targeting of civilian institutions such as schools and hospitals, documented strikes by the Saudi coalition have been on ports, warehouses and other civilian economic infrastructure, significantly affecting the ability of the Yemeni population to obtain enough food to eat. A statement by Oxfam is exhibited as **'AF13'**.
21. Investigations carried out by Human Rights Watch show that Saudi planes dropped sophisticated ordnance on civilian infrastructure. Some of the weaponry used was, according to HRW, manufactured in the UK as is only to be expected given the size of UK exports to Saudi Arabia. A copy of the detailed HRW report is exhibited as **'AF14'**.
22. Saudi coalition airstrikes have also destroyed fishing boats and infrastructure in the port city of Hodeidah, depriving the locals of livelihoods and rendering the children at risk of severe malnutrition. A report from the Kuwait Times is exhibited as **'AF15'**.
23. On 10 September 2016 Saudi-led coalition airstrikes targeted a water well in Beit Saadan, hitting workers drilling for water, and civilian bystanders, killing 30

people. A BBC article based on a report provided by a UN humanitarian coordinator is exhibited as **'AF16'**.

24. On 21 September 2016, multiple airstrikes by the Saudi-led Coalition in the port city of Hodeidah killed and injured women and children, receiving public condemnation from the UN Secretary-General, who reminded parties to the conflict that they must fully response their obligations under IHL. A UN press statement is exhibited as **'AF17'**.
25. In September 2016, a survey conducted by the Yemen Data Project claimed that one in three air raids carried out by the Saudi coalition in Yemen hit civilian sites. The findings of this survey were reported on by The Guardian on 16 September 2016. I exhibit a copy of this report as **'AF18'**. A summary of the evidence including graphs and charts indicating the extent of civilian targeting as set out in The Guardian's 'explainer' is exhibited as **'AF19'**. The data shows a significant increase in airstrikes against civilians since the beginning of August 2016.
26. The Yemen Data Project data has been collected through open sources and cross-referenced from sources such as local and international news agencies and media reports; social media accounts; reports from international and national NGOs; official records from local authorities; and reports by international human rights groups. Where independent reporting is not available, The Yemen Data Project have cross referenced the data with sources from opposing sides to the conflict as to ensure the reporting is as accurate and impartial as possible.
27. The UN's overall casualty figures from March 2015 to 30 September 2016 total 10,963 civilians, including 4,014 killed. I attach a report from the UN News Centre as exhibit **'AF20'**.
28. On 23 September 2016 the spokesperson for the UN High Commissioner for Human Rights reported a 40% increase in civilian casualties since the suspension of peace talks. A copy of this report is exhibited as **'AF21'**.
29. As recently as 8 October 2016 airstrikes killed 140 people and injured hundreds more, attending a funeral for the father of a Houthi political figure. Reports on the incident, a statement from UN OCHA condemning the attack, and a tweet

from the UK Foreign Secretary regarding concerns raised over the incident are exhibited as **'AF22'**.

International Concerns

30. The Office of the High Commissioner for Human Rights (OHCHR), on 4 August 2016, released a report on the situation of human rights in Yemen. A copy of this report is exhibited as **'AF23'**. OHCHR notes that in *'several of the documented attacks [in Yemen], OHCHR was unable to identify the presence of possible military objectives. In numerous situations where military targets could be identified there remain serious concerns as to whether the incidental loss of civilian life, injury to civilians and damage to civilian objects that could be expected from the attack were not excessive in relation to the anticipated concrete and direct military advantage apparently sought'* (paragraph 18).
31. OHCHR further found (paragraph 24) that *'air strikes by the coalition forces had an impact on localities with a high concentration of civilians, including markets and residential areas ... frequently incurring high casualties and causing substantial infrastructural damage. The cases monitored by the Office indicate that air strikes were the single largest cause of casualties, resulting in approximately one third of the deaths and injuries recorded by OHCHR'*.
32. On 25 August 2016 the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein called on the international community to establish an international, independent body to carry out comprehensive investigations in Yemen. A copy of the page from the OHCHR is exhibited as **'AF24'**.
33. The UN Secretary-General, Ban Ki-moon has also been openly critical of the Saudi coalition's conduct in the conflict, condemning specific attacks on civilians and supporting reports that found the coalition killed hundreds of children in the course of the war. A Foreign Policy report on the UN Secretary-General's push to censure the Saudi-led coalition is exhibited as **'AF25'**.
34. On 4 October 2016 the UN Under-Secretary for Humanitarian Affairs and Emergency Relief Coordinator reported his concerns with violence against aid workers and civilians, citing an incident on 3 October 2016 in which 10 civilians were killed. The report, exhibited as **'AF26'** condemns the attacks on medical facilities which, since March 2015, have killed 13 health workers.

Saudi assurances and investigations into violations of IHL

35. The UK government continues to rely on assurances from Saudi Arabia that it has not committed violations of IHL in Yemen. However, there is no evidence to suggest that assurances made by Saudi Arabia can be relied upon.
36. Paragraphs 38-41 of the Witness Statement of Edward Bell of the Department for International Trade (DIT [formerly BIS]) addresses the risk of diversion assessments carried out in the granting of export licences. The criterion for refusing licences due to risk of diversion include assessing the credibility of the end-user's claims on the stated use of the weaponry, whether the 'story' told by the application is consistent, and of corruption in the destination country.
37. Mr Bell notes that *'[i]n March 2016, 7 individual trade control licences ("SITCLs") to supply ammunitions and arms to KSA were refused'* [paragraph 40b]
38. Mr Bell states (paragraph 40) that these licences were refused because of the risk of diversion. This would suggest that the UK government deemed that the stated end-use of these weapons by the end-user (KSA) was not considered credible. However, elsewhere in the evidence, the Defendant relies heavily on what the UK government has been told by Saudi Arabia, frequently discounting evidence from other organisations as detailed above.
39. Neil Crompton's Witness Statement (paragraphs 50--55) discusses commitments and investigations by Saudi Arabia. It provides evidence of one statement, 14 months into the conflict, as noteworthy in terms of the overall assessment. It is unclear how many other such statements were made and what the follow up to them was. The fact that (paragraph 52) the UK government had to repeatedly press the Saudi government to investigate incidents does not inspire confidence in this respect.
40. To date, the only evidence we have seen of any investigation by the Saudis into airstrikes against civilians is set out in the published conclusions of what is claimed to be an assessment by a Joint Incidents Assessment Team (JIAT). A copy of the conclusions as published is exhibited as **'AF27'**.

41. The JIAT consists of members from the Kingdom of Saudi Arabia, Kuwait, the Republic of Yemen, Qatar, Bahrain and the United Arab Emirates.
42. The incidences assessed by the JIAT are attacks on (1) Haidan Hospital; (2) a compound in the Directorate of Mocha, (3) a MSF mobile clinic in Taiz; (4) Naham Market; (5) Khamis Mustaba'a Market; (6) a wedding party in Dhamar Governorate; (7) four World Food Programme trucks travelling in November 2015; and (8) the Republican Hospital in Sa'da. JIAT reported unintentional errors in two of the cases, and will pay compensation in one. It is unclear why these 8 particular incidents were selected for investigation given that even the UK MOD, according to Peter Watkins' Witness Statement (paragraph 42) was tracking over 200 allegations.
43. These investigations are very limited in scope and wholly inadequate, with some key alleged atrocities, such as the use of cluster munitions in built up areas or strikes on schools, not covered.
44. The UN and rights groups such as Human Rights Watch have called for independent investigations, arguing the internal investigation is not good enough. For example, in the market bombing, Human Rights Watch and the UN reported between 97 and 107 civilian deaths, yet the JIAT found there to be none. A report by the Integrated Regional Information Networks, which compares some of the figures, is exhibited as '**AF28**'.
45. Investigations being carried out by the Yemen National Commission of Inquiry into allegations of human rights abuses in the Yemen conflict have been questioned by UN officials on their impartiality. An extract from the address of the UN Deputy High Commissioner for Human Rights on this issue is exhibited as '**AF29**'.

Parliamentary Corrections

46. On 21 July 2016, the Foreign and Commonwealth Office (FCO) issued corrections to four statements made in parliament over the course of 2016 in

relation to the UK's knowledge and assessment of violations of IHL by the Saudi coalition in Yemen.

47. These corrections appeared to substantially alter the government's previous, publicly stated position on the matter, and the Defendant's pleaded claim in this case. A copy of these corrections forms exhibit '**AF30**'. The corrections include a change of the UK government's position from "our judgement is that there is no evidence that IHL has been breached", to "we have been unable to assess that there has been a breach of IHL", and "the MOD assessment is that the Saudi-led coalition is not targeting civilians", to "the MOD has not assessed that the Saudi-led coalition is targeting civilians".
48. The note of the Department of Business, Innovation and Skills meeting of 11 February 2016 (included as an exhibit to Edward Bell's Witness Statement) says that the Defendant *"summarised that the decision to continue exporting to Saudi Arabia was finely balance, but given the discussions he had had and the advice he had read from (redacted), Foreign Secretary and Defence Secretary he was minded to continue exporting. He noted that situation was continuously evolving, and that this decision could easily change."* The Defendant asked his Permanent Secretary to write to the Foreign Secretary, the Defence Secretary, the Prime Minister and [name redacted] noting that: *"this decision was finely balanced ..."*
49. An email from Edward Bell to the Defendant on 7 April 2016 said that the *"Key test of continued arms exports is whether there is "a clear risk that those weapons might be used in a serious violation of IHL" - the continuing FCO assessment agreed by the Foreign Secretary is that, "having regard to all information available, is that this test has not been met .."*
50. These notes were written long before the Parliamentary Corrections of 21 July 2016 and beg the question as to whether the Defendant's decision would have been the same had he been aware that the FCO and Ministry of Defence (MOD) had "been unable to assess that there has been a breach of IHL".
51. The Claimant Solicitors were not alerted by the Defendant Solicitors to these corrections, nor has the Defendant sought to amend its pleaded claim. The Defendant has confirmed its continued reliance on the Summary Grounds of

Resistance already before the Court in this case rather than filing any Detailed Grounds of Resistance.

52. Clarification of this position and of the Defendant's pleaded claim was sought in a letter dated 8 August 2016 (see paragraph 10 above) but, to date, no substantive response has been provided. A short response which did not address the questions raised in the letter of 8 August was received from the Government Legal Department on 17 August 2016 and is exhibited as 'AF31'.
53. Despite the corrections made to parliamentary statements in relation to the Yemen conflict, the position regarding UK assessments on violations of IHL by the Saudi-led coalition in Yemen remains worryingly unclear and now even contradictory.
54. Unfortunately, in absence of any answers or clarification sought, it is impossible for the Claimant to know what the true position is.

Inadequate Assessment of Alleged Violations of IHL in Yemen by the UK Government

55. The Witness Statement of Peter Watkins on behalf of the Defendant outlines (paragraphs 39-67) the way in which the MOD tracks alleged IHL violations in Yemen by the Saudi Coalition. This matter was also dealt with by the Defendant in pre-action correspondence. In the Defendant's pre-action response letter, dated 16 February 2016, it was stated:
 - (a) *'The MOD monitors all incidents of alleged IHL violations by the Coalition in Yemen that come to its attention. It monitors a range of information from Government sources, foreign governments, the media, NGOs, open source and classified reports in order to identify such incidents. The incidents monitored include all of the specific allegations raised in Your Letter.'*
 - (b) *The available information is assessed to identify whether the alleged event occurred as reported, who was responsible for the event, and whether the responsible party's actions are assessed as compliant*

with IHL or not. In particular, when the MOD learn of a new incident, MOD investigate to determine whether they can verify the incident as being a likely coalition strike, and if so then whether they can identify a legitimate military target in the area. MOD also tries to determine, so far as possible, whether the strike was carried out using an item that was licensed under a UK export licence.'

56. The corrections document published by the Defendant (exhibit 'AF30') sought to "clarify" statements previously made in Parliament. These "clarifications" appear to indicate that neither the FCO nor the MOD (or, for that matter any other government department) has ever undertaken any assessment of whether there has been a breach of IHL by the Saudi-led Coalition in particular incidents. This seems to fundamentally contradict information provided to the Claimant in the Defendant's response to the Claimant's letter before action.
57. The information the Defendant has placed in front of the Court on this crucial issue is therefore wholly unclear.
58. Furthermore, while there is considerable detail in Peter Watkin's Witness Statement as to how the MOD monitors reports of violations of IHL, there is no description as to how such reports are investigated. Neither his, nor the Witness Statements of Edward Bell nor Neil Crompton explain how or by whom the risk assessment process against the export licensing criteria is undertaken, nor it is clear what level of risk would trigger the refusal of a licence.
59. Edward Bell, in his Witness Statement (paragraph 31) provides the text of the letter to be sent on 11 February 2016 by the Permanent Secretary of the Department for Business, Innovation and Skills to the Foreign and Defence Secretaries. This letter acknowledges the "*uncertainty and gaps in information available*" and goes on to say that: "*should new evidence that the 'clear risk' threshold has been breached come to light I will suspend licensing.*" This stands the concept of "clear risk" on its head - in the light of the many credible reports of violations of IHL, if the Secretary of State did not have the information to the contrary, he should have suspended the licences.
60. This is supported by the Head of the Export Control Organisation Edward Bell's email of 11 February 2016 in which he says: "*To be honest - and I was very*

direct and honest with the SoS - my gut tells me we should suspend. This would be prudent and cautious given the acknowledged gaps in knowledge about Saudi operations."

61. The Witness Statement of Peter Watkins (paragraph 57) says that as the MoD is not involved in the Saudi process of identifying targets and making decisions about them, it is not in a position to interpret whether a target was legitimate or not from a Mission Report. If the MoD is unable to determine that the target was a "legitimate military object" then that increases the clear risk that equipment might be used in serious violation of IHL, indicating that the export licence should be refused.

Cluster Bombs

62. Reports, most notably by Amnesty International (see pages B(AI)112-114 of the application hearing bundle) have documented the use of cluster bombs, including UK-manufactured cluster bombs, by the Saudi-led coalition in Yemen.
63. The recently released annual report of the United Nations High Commissioner for Human Rights ('**AF23**') assesses reports of the use of cluster bombs by the Saudi-led coalition and notes that although neither Saudi Arabia nor Yemen are party to treaties banning the use of such weapons, *'their use in civilian residential areas, particularly in the absence of precautionary measures, may amount to violations of international humanitarian law, in the light of the inherently indiscriminate nature of such weapons'*.
64. The Claimant wrote to the Defendant on 8 June and 22 August 2016 (see paragraph 10 above) with a series of questions regarding cluster munitions. As previously stated, a substantive reply has not been provided.
65. On 7 July 2016 an email from the Defendant Solicitors to the Claimant Solicitors, exhibited as '**AF32**' indicated that answers to the questions regarding cluster munitions would be addressed within the evidence due to be disclosed by the Defendant on 5 August 2016.
66. Only two references to cluster munitions are made in the evidence disclosed on 5 August 2016. The Witness Statement of Neil Crompton refers to a specific

assessment on allegations regarding the use of cluster munitions (paragraph 26), yet neither copy of this assessment nor analysis of its findings is provided. The Witness Statement of Peter Watkins addresses cluster munitions at paragraphs 75-76, yet these paragraphs do not answer the Claimant's questions, simply deferring to a report by Amnesty International and confirming the UK Government is seeking clarification from the Saudi-led coalition on the cluster munitions incidents, which the Defence Secretary has been doing since June 2016, some 3 months ago.

UK Parliamentarians

67. The House of Commons Committees on Arms Export Controls (CAEC) conducted an inquiry into the use of UK-manufactured arms in Yemen. The CAEC is comprised of MPs from four Select Committees - Business, Innovation and Skills, Defence, Foreign Affairs and International Development. The four Committees failed to agree on a combined report. However, the Business, Innovation and Skills and International Development Committees did issue a report which is exhibited as '**AF33**'.
68. The Foreign Affairs Committee issued a separate report, exhibited as '**AF34**', which suggests leaving the legality of the weapons sales to the Court to decide.
69. In the absence of the clarification of the Secretary of State's case sought (see paragraphs 49-51 above), it is not possible to say at this stage which parts of those reports may be relevant and admissible. But they are exhibited so that such parts of them as are both relevant and admissible can be relied upon in due course as appropriate.

Statement of Truth / Declaration

70. I believe that the facts stated in this witness statement are true to the best of my own knowledge, unless stated otherwise.

Signed: Ann Feltham, Campaign Against Arms Trade



A handwritten signature in black ink, appearing to read "Ann Feltham". The signature is written in a cursive style with a large initial "A".

Dated: 10 October 2016