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Dear Sirs,

Export of arms for use in the conflict in Yemen by the Saudi/UAE-led Coalition

- 1. We are instructed by Mwatana for Human Rights (“Mwatana”) and the Global Legal Action Network (“GLAN”). This letter concerns the role of the Secretary of State for International Trade (“the Secretary of State”) in granting licences for the sale or transfer of military equipment to the Kingdom of Saudi Arabia (“KSA”) that are then deployed in the ongoing conflict in Yemen.
  
- 2. Mwatana is one of the largest human rights organisations in Yemen. It employs field researchers across many governorates in Yemen who document and investigate alleged violations of human rights and humanitarian law. This work includes field visits to the sites of such incidents. Independence, accuracy, objectivity and integrity are its core values as set out in its code of conduct, which is published online. Mwatana documents violations by all parties to the conflict in Yemen, releasing detailed reports and making submissions to various United Nations bodies. Its researchers have documented about 410 airstrikes attributable to the Saudi/UAE-led coalition (“the Coalition”) since March 2015. Mwatana operates a strict policy of non-reliance on any material which it has not itself

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verified. It has published summaries of a number of its investigations. The Secretary of State's evidence in recent proceedings indicated that Mwatana's summary reports are considered by the UK Ministry of Defence ("MOD") as part of its analysis of the humanitarian situation in Yemen, on which the Secretary of State in turn relies.<sup>1</sup>

3. GLAN is a registered charity in England and Wales, which is constituted of *inter alia* an expert 'Legal Action Committee' of legal academics, solicitors, barristers, and investigative journalists, supported by full-time staff. Its specific areas of focus are War & Occupation, Environmental & Economic Justice, Migration & Border Violence, and Accountability & Supply Chains. GLAN works with groups and communities affected by alleged violations of international law to take innovative and effective legal action.
4. The Secretary of State is presently the defendant in judicial review proceedings brought by the Campaign Against the Arms Trade ("CAAT"; "the CAAT Proceedings") challenging a decision of 9 December 2015 to continue to grant new export licences to the KSA and a continuing decision not to suspend extant export licences ("the 2015 Decisions"). The Divisional Court dismissed CAAT's claim on 10 July 2017; on appeal, the Divisional Court's order was set aside in its entirety by the Court of Appeal on 20 June 2019 ("the Court of Appeal Order").<sup>2</sup> We note that, on 9 July 2019, the Court of Appeal granted permission for both parties to appeal to the Supreme Court.
5. By para.3 of the Court of Appeal Order, the 2015 Decisions were quashed and the matter remitted to the Secretary of State to be retaken on the correct legal basis. The recital to the Court of Appeal Order recorded the Secretary of State's undertaking not to grant any further licences for the export of arms or military equipment to KSA for possible use in the conflict in Yemen until he had either retaken the 2015 Decisions or applied for and obtained a stay of execution of para.3 of the Court of Appeal Order. The Court of Appeal refused the Secretary of State's application for a stay by its order of 9 July 2019.

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<sup>1</sup> See para. 58 of the Witness Statement of Peter Watkins of the Ministry of Defence 5 August 2016 in the CAAT Proceedings.

<sup>2</sup> *R(Campaign Against Arms Trade) vSecretary of State for International Trade* [2019] EWCA Civ 1020

6. It follows that the current position is that the Secretary of State is obliged to re-take the 2015 Decisions, that is to give fresh and full consideration to:
  - (i) whether to suspend all extant licenses for the sale or transfer of arms and military equipment to the Kingdom of Saudi Arabia for possible use in the conflict Yemen; and
  - (ii) whether to continue to grant new licenses for the same.
  
7. In light of that imminent decision, this letter brings to the Secretary of State's attention information in relation to the conflict in Yemen that bears directly on the decision(s) that the Secretary of State is required to retake. In particular, the purposes of this letter are twofold:
  - (i) First, to set out the nature of and basis for serious concerns of GLAN and Mwatana that a decision by the Secretary of State to continue to permit the export of arms from the UK to KSA for possible use in the conflict in Yemen and the provision of technical assistance by UK companies to the Royal Saudi Airforce (RSAF) in Riyadh would be unlawful.
  - (ii) Second, to invite the Secretary of State, in view of the foregoing, either to revoke all existing arms licences (and authorisation for the related technical assistance) between the UK and KSA where those arms or assistance are likely to be used in the Yemen conflict or, alternatively, to suspend the same, and further to undertake to grant no further similar licences while the factual situation remains materially the same.
  
8. The Secretary of State is obliged to consider new license applications individually and to suspend licenses where changing circumstances require it. Such obligations are ongoing and must always be discharged taking into account the current facts. On the basis of the information set out further below, it is the position of our clients that the government would be required to reconsider the issue even if the Court of Appeal's Order had not been made.
  
9. The specific nature of the concerns of GLAN and Mwatana and the basis for them are set out in Section II of this letter; Section I sets out the relevant background. We would highlight that many of the incidents that concern our clients pertain to events that largely postdate the judgment of the Divisional Court, which only dealt with the position as at the date of the hearing in February 2017.

This, of course, defined the factual parameters for the subsequent appellate litigation.

10. The combined body of evidence held by Mwatana and GLAN is extensive. In support of the statements made in this letter, we enclose information concerning a selection of airstrikes, which are indexed in chronological order. Given the extent of the evidence held by our clients, efforts have been made to selectively present certain incidents in detail and to relegate others which raise concerns to a “long-list” which must give rise to scrutiny and analysis by the Secretary of State. The purpose of this is to avoid placing unmanageable volumes of evidence before the Secretary of State.<sup>3</sup> In respect of the “long-list” incidents that Mwatana has investigated, more information may later be prepared for the attention of the Secretary of State.

I. **BACKGROUND: THE CONFLICT, THE UK’S ROLE, AND THE APPLICABLE LEGAL FRAMEWORK**

A. **The conflict in Yemen**

11. The current conflict in Yemen is being fought between what is the internationally recognised government of Yemen, led by President Abdu Rabu Mansour Hadi, and the forces of Ansar Allah (the “Houthi” armed group). On 24 March 2015, President Hadi requested the assistance of KSA and other states in repelling the Houthis, who had taken control of large parts of Yemeni territory (including the capital, Sana’a). A coalition of States led by the KSA, and including at the time Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Sudan and the United Arab Emirates (“UAE”), began military operations in support of the Yemeni (i.e. Hadi) government on 25 March 2015. Saudi Arabia and the UAE, in particular, have played leading roles in the Coalition’s military campaign.

12. On launching those operations, the KSA said that:

*“The operation will be limited in nature, and designed to protect the people of Yemen and its legitimate*

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<sup>3</sup> A number of strikes annexed have not been investigated by Mwatana but are included nevertheless because of their value in supporting statements made within this letter. Where this is the case, it is made clear in the tables.

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*government from a takeover by the Houthis [,] a violent extremist militia.”<sup>4</sup>*

13. The conflict is now in its fifth year. The Coalition has engaged in aerial attacks in Yemeni territory, imposed naval blockades on the main Yemeni ports and used ground forces. The Coalition controls the airspace over Yemen. The Houthis do not have an air force. Confirmed airstrikes (as opposed to ground-launched attacks) in vast swathes of Yemen are attributable to the Coalition. Attacks on civilian targets and in densely populated civilian areas have been a regular feature of the Coalition’s operations in Yemen.

#### **B. UK role**

14. The UK is a highly significant arms supplier to the KSA and to other members of the Coalition - indeed Saudi Arabia is classified as a “priority market” by the UK Government.<sup>5</sup> Since the conflict in Yemen began, the UK has licensed at least £4.7 billion of arms exports to Saudi Arabia, and £860 million to its coalition partners.<sup>6</sup> According to CAAT, the UK has licensed approximately £2.7 billion worth of ML10 licenced arms (covering aircraft, helicopters and drones) and £2.5 billion of ML4 licences (covering grenades, bombs and missiles).<sup>7</sup> The MOD and BAE Systems (a UK-based company), also provide military and civilian personnel support to Saudi Arabia.

15. It is clear that a significant proportion of the UK military equipment being sold to the KSA is being deployed in Yemen. There was a 30-fold increase in arms sales to the KSA in the first twelve months of the Yemen conflict. At the outset of the conflict, then-Foreign Secretary, Philip Hammond MP, highlighted the extent of UK support for the KSA’s operations in Yemen:

*“...we have a long-standing relationship with the Saudi armed forces, particularly the Royal Saudi Air Force. Saudis are, as I understand it, flying British-built aircraft in the campaign over Yemen and we have a significant infrastructure*

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<sup>4</sup> Statement by Saudi Ambassador to the United States, 25 March 2015, available at <https://www.saudiembassy.net/press-release/statement-saudi-ambassador-al-jubeir-military-operations-yemen> (accessed 14 April 2019).

<sup>5</sup> E.g. <https://www.middleeasteye.net/news/revealed-both-sides-gulf-crisis-listed-priority-markets-uk-arms-export-push>

<sup>6</sup> Report of the House of Lords’ Committee on International Relations, *Yemen: giving peace a chance* (6th Report, Session 2017-19, HL Paper 290), Para.26 The figures have increased since the release of this report.

<sup>7</sup> <https://www.caat.org.uk/campaigns/stop-arming-saudi/arms-sales> (accessed August 2019)

*supporting the Saudi air force generally and if we are requested to provide them with enhanced support - spare parts, maintenance, technical advice, resupply - we will seek to do so. We'll support the Saudis in every practical way short of engaging in combat".<sup>8</sup>*

16. The House of Commons Business, Innovation and Skills and International Development Committee cited the following evidence of the UK Working Group on Arms in its September 2016 report into the use of UK-manufactured arms in Yemen:

*"Since airstrikes began in Yemen in March 2015, HMG has licensed for export to Saudi Arabia equipment and components from nearly every category from the UK Military List (UKML). However, it is the scale of some of these licensed exports that is truly astounding. According to official UK reports, between 1 April and 31 September 2015, the UK issued Standard Individual Export Licences (SIELs) authorising £1.8 billion of combat aircraft and their spare parts and more than £1 billion of bombs and missiles for use by the Saudi Air Force. To put this latter figure in context, the value of munitions licensed for export to Saudi Arabia under UKML4 (bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, specially designed for military use, and specially designed components thereof) in the three month period from July to September 2015 is equivalent to the total that was licensed for export to the whole world (including Saudi Arabia) in the four-and-a-half years from January 2011 to June 2015 inclusive."<sup>9</sup>*

### C. Legal framework

<sup>8</sup> The Daily Telegraph, *UK 'will support Saudi-led assault on Yemeni rebels - but not engaging in combat'*, 27 March 2015, available at <https://www.telegraph.co.uk/news/worldnews/middleeast/yemen/11500518/UK-will-support-Saudi-led-assault-on-Yemeni-rebels-but-not-engaging-in-combat.html> (accessed 4 April 2019)

<sup>9</sup> House of Commons Business, Innovation and Skills and International Development Committees, *The use of UK-manufactured arms in Yemen*, 14 September 2016, para.65.

17. Much of the relevant legal framework pertaining to the regulation and control of the export of military equipment from the UK is set out in the judgments of the Divisional Court and Court of Appeal in the CAAT Proceedings. The key statutory material is the Export Control Act 2002 (“the 2002 Act”), and the Export Control Order 2008 (“the 2008 Order”). The 2008 Order is made in exercise of the Secretary of State’s powers under the 2002 Act. The key points are as follows:

***i) The Secretary of State’s powers***

18. The Secretary of State has the power to make provision for or in connection to the imposition of export controls for goods and technical assistance of any description: s.1(1) and 3(1), 2002 Act. Art.3 of the 2002 Order imposes a general prohibition on the export of military goods with the exception of, *inter alia*, goods exported pursuant to a licence granted by Art.26: Art.26(1). The Secretary of State has a power to amend, suspend or revoke a licence already granted: Art.32, 2008 Order.

19. It follows that the Secretary of State is also empowered to:

- (i) suspend an extant licence for the export of arms from the UK to KSA;
- (ii) refuse the grant of any such licence; and/or
- (iii) revoke an extant licence that has already been granted.

20. The power to impose controls on technical assistance may only be exercised for the purpose of imposing controls corresponding to or connected with any export or transport controls imposed under s.1 of s.2 of the 2002 Act: s.3(4), 2002 Act.

***ii) Constraints upon exercise of the Secretary’s powers***

21. Section 9(3) of the 2002 Act provides that the Secretary of State must give guidance about the general principles to be followed when exercising licensing powers to which that provision applies. The relevant guidance is the Consolidated EU and National Arms Export Licencing Criteria, (“Consolidated Criteria”, which gives effect to EU Common Position of 8 December 2008),<sup>10</sup> which have been revised and updated since they first published: see s.9(8), 2002 Act and the written statement of the Secretary of State to Parliament of 25 March 2014. For present purposes, the most relevant criterion is Criterion 2:

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<sup>10</sup> 2008/944/CFSP.

**CRITERION TWO**

*The respect for human rights and fundamental freedoms in the country of final destination as well as respect by that country for international humanitarian law.*

*Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, the Government will:*

- a) not grant a licence if there is a clear risk that the items might be used for internal repression;*
- b) exercise special caution and vigilance in granting licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the European Union;*
- c) 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.*

*For these purposes items which might be used for internal repression will include, inter alia, items where there is evidence of the use of these or similar items for internal repression by the proposed end-user, or where there is reason to believe that the items will be diverted from their stated end use or end user and used for internal repression.*

*The nature of the items to be transferred will be considered carefully, particularly if they are intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment; summary or arbitrary executions; disappearances; arbitrary detentions; and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the universal declaration on human*



*rights and the international covenant on civil and political rights.*

*In considering the risk that items might be used for internal repression or in the commission of a serious violation of international humanitarian law, the Government will also take account of the risk that the items might be used to commit gender-based violence or serious violence against women or children.*

22. While the Consolidated Criteria sound in domestic public law as policy, they refer to international law and the exercise they mandate must be understood and interpreted in the context thereof (see also Criterion 1). In particular:

- (i) Criterion 2(c) is concerned with breaches of international humanitarian law (“IHL”). Common Article 1 (CA1) to the Geneva Conventions requires state parties *“to respect and to ensure respect for the Convention in all circumstances”*. CA1 entails a duty to ensure respect by all states of the Conventions.<sup>11</sup> States may not encourage violations of IHL by parties to an armed conflict, and furthermore must exert their influence, to the degree possible, to stop violations of IHL.<sup>12</sup> In the commentaries on Conventions II and III, it is made clear that the effective functioning of the system of protection demands that the Contracting Parties should not be content simply to apply its provisions themselves, but should in addition do *“everything in their power to ensure that the humanitarian principles underlying the Conventions are applied universally”*. This includes a requirement to ensure respect by *“taking every possible measure to put an end to violations of the law by a party to a conflict, in particular by using their influence on that party”*.<sup>13</sup> The ICJ

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<sup>11</sup> Cassese, *International Law* (OUP 2005) - 18

<sup>12</sup> Rule 144, ICRC Study of Customary International Humanitarian Law, 2009

<sup>13</sup> See 'Action by the International Committee of the Red Cross in the event of violations of international humanitarian law or of other fundamental rules protecting persons in situations of violence' (2005) 87 IRRC 858, 395 (italics in original); the UN General Assembly has adopted resolutions to this effect, see UNGA Res 63/96 (18 December 2008), UN Doc A/RES/63/96; see also M Sassòli, 'State Responsibility for Violations of International Humanitarian Law' (2002) 84 IRRC 401, 421. This interpretation has been openly adopted by international organisations: see, for example, note verbale of the UN Secretary General', during the war between Iran and Iraq. The Secretary General noted that the ICRC had reminded states parties of their responsibility to ensure respect 'not only by States involved in conflicts but also by all States Parties to the Conventions'. The note was addressed to all states 'in order to underscore the vital importance of ensuring the observance of the principles embodied in the Geneva Conventions' and 'earnest hope' was expressed that all governments would 'renew their determination' to ensure respect

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has held that the duty did not derive only from the Conventions themselves, but “*from the general principles of humanitarian law to which the Conventions merely give specific expression*”.<sup>14</sup>

- (ii) The object and effect of the Arms Trade Treaty (“the ATT”) is consistent with that of the Common Position. Every EU member state has ratified the ATT. We note that Art.7(1) of the ATT emphasises, in relation to export assessment, the need for an “*objective and non-discriminatory*” assessment of the potential for arms exports to be used to commit or facilitate a serious violation of IHL, within which information provided by the importing state is but one factor; and that Art.7(4) highlights in particular the risk of items being used to commit serious acts of violence against “*women and children*”.

#### D. The CAAT Proceedings

23. In challenging the 2015 Decisions, CAAT argued that the Secretary of State:

- (i) failed to ask correct questions and make sufficient inquiries to make the risk assessment required by Criterion 2(c);
- (ii) failed to apply his policy on suspension in relation to the difficulty of making a risk assessment under Criterion 2(c); and
- (iii) irrationally concluded that there was no clear risk under Criterion 2(c).

24. The evidential basis for CAAT’s application consisted primarily of reports and resolutions by third party organisations including the United Nations Panel of Experts (established pursuant to Security Council Resolution 2140 (2014)) (“the Panel of Experts”), the Council of the European Union, the International Committee of the Red Cross, Médecins Sans Frontières (“MSF”), Amnesty International and Human Rights Watch (“HRW”), as well as reports and resolutions of the European Parliament, indicating that the Coalition had committed violations of IHL in the conflict in Yemen. The reports/resolutions referred to in the CAAT Proceedings included:

- (i) a resolution of the European Parliament of 9 July 2015 to the effect that “*on several occasions air strikes by the Saudi-led*

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for the Conventions, which are ‘indispensable instruments in the task of mitigating the effects of war’.

<sup>14</sup> *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits)* [1986] ICJ Rep 14, para 220.

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*military coalition in Yemen have killed civilians, in violation of international humanitarian law”;*<sup>15</sup>

- (ii) a Panel of Experts report of January 2016 in which it was stated that *“the coalition’s targeting of civilians through air strikes ... is a grave violation of the principles of distinction, proportionality and precaution”*.<sup>16</sup>

25. The UK Government’s case before the Divisional Court was that *“it is unlikely that the MOD’s database of allegations of IHL violations is completely comprehensive at any one time”*;<sup>17</sup> a number of allegations, for example, came to the MOD’s attention via material provided in the CAAT Proceedings.<sup>18</sup> Further, it appears clear that the Secretary of State accepted that some of the reports did indeed indicate a potential violation of IHL: for example, 39 incidents from the Panel of Experts report of 2016 were recorded as having been entered into the MOD’s ‘tracker’ and identified as *“concerning”*; the only uncertainty (at least in the open judgment) on the part of the Secretary of State appears to have been as to which member of the Coalition might have been responsible for them: [208(6)].

26. The Court of Appeal addressed the issue of NGO evidence as follows:

*“... we accept that the major NGOs, including the Interveners, and the UN Panel of Experts had a major contribution to make in recording and analysing events on the ground in the Yemen conflict. The NGOs did have the capacity to introduce representatives on the ground and to interview eye witnesses, which the Secretary of State could not do. It is the case, however, that the Secretary of State could access a great deal of information which the NGOs and the UN Panel could not see. As we have indicated, the CLOSED evidence makes that clear. In the very crudest terms, the NGO and UN Panel evidence often establishes what happened, but the further information available to the Secretary of State could assist as to why events of concern had happened. Both may of course be highly relevant to whether a violation of IHL had taken place and to the risk of future violations.”*

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<sup>15</sup> [65]

<sup>16</sup> [67]. Reference was also made to reports of parliamentary committees to substantially similar effect.

<sup>17</sup> PW1, § 41

<sup>18</sup> PW1, §72; Statement of Peter Watkins of the Ministry of Defence of 21 December 2016 (“PW2”),

27. Of particular relevance in the CAAT Proceedings was the Court of Appeal's conclusion on whether the exercise mandated by Criterion 2(c) required assessment of whether a past violation of IHL had occurred; at [141]-[144]:

*"141 ...in the early months of 2016 there was either a decision, or a change of position, so that there would be no assessment of past violation of IHL. This was followed by a later decision to remove the relevant column or box from the Tracker. ...*

*142 We cannot accept the argument from Sir James that it was in some way inappropriate for the Secretary of State to make such an assessment. That is a difficult proposition to make in the face of the Common Position, and represents something of a contradiction with the proposition that the Secretary of State was in a markedly better position to assess events than the NGOs, the UN or others.*

*143 We have in any event highlighted in CLOSED at least some evidence indicating that such assessments routinely can be and have been made in similar but different contexts.*

*144 In addition to the points already made, perhaps the most important reason for making such assessments is that, without them, how was the Secretary of State to reach a rational conclusion as to the effect of the training, support and other inputs by the UK, or the effect of any high level assurances by the Saudi authorities? If the result of historic assessments was that violations were continuing despite all such efforts, then that would unavoidably become a major consideration in looking at the "real risk" in the future. It would be likely to help determine whether Saudi Arabia had a genuine intent and, importantly, the capacity to live up to the commitments made. ..."*

28. Accordingly, the new decisions must involve an IHL assessment of some or all of the incidents referred to in this letter and their relationship with the inputs cited above.

**E. Developments subsequent to the Divisional Court hearing**

29. The position of the Foreign Secretary, as referred to in the CAAT proceedings, was that the question whether Criterion 2(c) required the revocation or suspension of licences was "*extremely finely*

*balanced*”;<sup>19</sup> the Secretary of State took a similar view,<sup>20</sup> as did the Head of the Export Control Organisation at the Department for International Trade, Mr Edward Bell, who tended to the view that, in light of the evidence of IHL violations, it might be more prudent to suspend licences.<sup>21</sup>

30. Since the Divisional Court handed down its judgment, a number of states have made decisions to inhibit or prevent the sale of arms to KSA and/or provision of support to KSA-led Coalition operations in Yemen:

- (i) On 21 October 2018, the German government announced that it would suspend all arms sales to the KSA. However, on 20 February 2019 it emerged that the United Kingdom’s Foreign Secretary had negotiated with the German authorities in order to facilitate the continued supply of components for fighter jets.<sup>22</sup>
- (ii) On 25 October 2018, the European Parliament passed a resolution calling on the European Council “to reach a common position in order to impose an EU-wide arms

<sup>19</sup> The Foreign Secretary wrote to the Secretary of State on 8 November 2016: “Based on the analysis and evidence in the update and noting the commitments the Saudi authorities had provided, particularly in relation to the 8 October airstrike on the Sana’a Great Hall which had highlighted serious failings, the Foreign Secretary confirmed his assessment that the “clear risk” threshold for refusal under Criterion 2C has not yet been reached....the Foreign Secretary noted that this was a “very finely balanced issue” and that Saudi assurances must be followed up by actions.” (Statement of Neil Crompton of the Foreign & Commonwealth Office of 21 December 2016 (“NC2”), §29);

“the Foreign Secretary... said that the issue was “extremely finely balanced” (Statement of Edward Bell of the Department for International Trade of 20 December 2016 (“EB2”), §15)

updated recommendation from the Foreign Secretary to the Secretary of State on 15 December 2016, indicating that he was: “satisfied that issue export licences for air combat aircraft and associated items which would be used by the Royal Saudi Air Force in the conflict in Yemen would be consistent with the requirements of Criterion 2c.... [there was] an encouraging positive trend, with Saudis taking substantive measures to improve and increase the reliability of practice and procedures in order to reduce the risks of Coalition action resulting in a serious breach of IHL... [the Foreign Secretary acknowledged that the] issue of export licensing to Saudi Arabia continues to be very finely balanced” (EB2, §20).

<sup>20</sup> in the Secretary of State’s reply, “he expressed his concern that the issue of export licensing continues to be finely balanced and stressed that the situation be kept under constant review” (EB2, §23)

<sup>21</sup> his advice to the Secretary of State on 10 February 2016 was that “it might be more prudent to suspend licences”; in the event, the Secretary of State, having considered the matter overnight, concluded that the decision “was finely balanced, but given in particular the advice of the Foreign Secretary and Defence Secretary, he was minded to continue exporting. He noted that the situation in Yemen was continuously evolving, and that his decision could change” (see statement of Edward Bell of the Department for International Trade of 5 August 2016 (“EB1”), §§29-30).

<sup>22</sup> E.g. <https://www.theguardian.com/world/2019/feb/20/jeremy-hunt-urges-germany-to-rethink-saudi-arms-sales-ban>

embargo on Saudi Arabia and to respect Common Position 2008/944/CFS”.<sup>23</sup>

- (iii) On 22 November 2018, the Danish government announced that it had suspended future approvals of weapons and military equipment to the KSA;<sup>24</sup>
- (iv) Norway,<sup>25</sup> Switzerland,<sup>26</sup> Finland<sup>27</sup> and Greece have also reportedly suspended arms sales to the KSA;
- (v) On 13 March 2019, the US Senate voted 54-46 directing the US President “to remove U.S. Armed Forces from hostilities in or affecting the Republic of Yemen”, with “hostilities” defined as including in-flight refuelling of non-US aircraft.<sup>28</sup> On 16 April 2019, US President Donald Trump vetoed the resolution.<sup>29</sup>

31. These actions have been taken on the basis of the concerns of the relevant states in relation to the KSA’s compliance with international standards of human rights or humanitarian law. Countries continuing to supply the KSA with arms include the UK, the US, France, Spain, Italy, and a few others.

## II. THE CONCERNS OF MWATANA AND GLAN

32. GLAN and Mwatana have serious concerns that, in light of the factual position in relation to the Saudi/UAE-led Coalition’s conduct of military operations in Yemen, the continued grant of licences/failure to suspend licences for the export of arms that could be used by the Coalition in Yemen is unlawful. The annexed information is derived from a number of distinct and identifiable sources.

<sup>23</sup> European Parliament resolution of 25 October 2018 on the killing of journalist Jamal Khashoggi in the Saudi consulate in Istanbul (2018/2885(RSP))

<sup>24</sup> <https://thedefensepost.com/2018/11/22/denmark-suspends-arms-sales-saudi-arabia/>

<sup>25</sup> Norway announced the suspension of weapons sales to the UAE in January 2018, see <https://uk.reuters.com/article/uk-yemen-security-norway-emirates/norway-suspends-arms-sales-to-uae-over-yemen-war-idUKKBN1ES1EN>, and suspended sales to the KSA in November 2018; see <https://uk.reuters.com/article/uk-britain-eu/northern-irish-kingmakers-tell-pm-may-dont-betray-the-united-kingdom-idUKKCN1NE0NG>

<sup>26</sup> <https://www.aljazeera.com/news/2018/10/switzerland-suspends-arms-export-saudi-khashoggi-case-181031174955576.html>

<sup>27</sup> <https://eu.usatoday.com/story/news/world/2018/11/24/jamal-khashoggi-finland-denmark-germany-arms-sales/2101874002/>

<sup>28</sup> <https://www.congress.gov/bill/116th-congress/senate-joint-resolution/7>

<sup>29</sup> <https://www.whitehouse.gov/presidential-actions/presidential-veto-message-senate-accompany-s-j-res-7/>

33. We rely on Mwatana’s investigations which, as highlighted above, are based on field visits to sites of alleged violations and abuses in Yemen. Mwatana’s researchers are trained to follow a specific, standardised set of procedures, which include instructions on how many interviews to conduct and what questions to ask of eye-witnesses. The information collected by field researchers is very detailed. Mwatana publishes summaries of some of its reports; its confidential evidence base is more comprehensive than what is in the public domain, both in incident numbers and depth of detail. The investigations are too numerous to translate and publish each one, but Mwatana publishes summaries of representative airstrikes as part of periodic advocacy reports.
34. In addition, GLAN combines evidence received directly from individuals who have visited the scenes of airstrikes with selected open-source evidence in order to form a picture of what has taken place during a given incident. “Open-source evidence”, as the name suggests, refers to publicly available information. This includes news articles and reports by respected organisations such as HRW, Amnesty International, MSF and the United Nations; but it also includes other online and satellite material which can be used by assessors to draw additional, important conclusions. Since mid-2017, GLAN has operated a digital evidence project which is Yemen-specific. It involves working with technicians, investigative journalists and academics to identify and remedy the obstacles to the collation of high-quality and reliable digital evidence arising out of the conflict in Yemen.
35. GLAN also uses information produced by the Yemen Data Project (“YDP”), a data collection project aimed at collecting and disseminating data on the conduct of the war in Yemen. Since it was established in 2016, it has documented certain characteristics of thousands of airstrikes, including their location, date and the status of the target before the war. As is set out on the YDP’s website:<sup>30</sup>

*“The dataset lists target category and subcategory for each incident, apart from incidents where no information on the target is available. The target category chosen for each incident refers to the original use of the target, e.g. a school hit by an airstrike is referred to as a school building, with no further assessment on its*

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<sup>30</sup> <http://yemendataproject.org/> It is stated in the YDP’s methodology that some air raids may be repeat raids on the same objects.

*use at the time of the airstrike or the circumstances that led to the airstrike.*

*As the data is collected using open sources and as there is a general lack of transparency from the parties to the conflict, as well as a lack of independent reporting on the ground, the data presented has been verified and cross-referenced to the extent possible. It is important to note, however, that due to the context of the current situation in Yemen there are significant challenges in accessing independent sources for verification of incidents. The data presents our best current understanding of the incidents included and are reported in good faith.”*

36. The output of this project is referred to further below. Neither the YDP nor GLAN makes specific IHL claims about individual recorded airstrikes in the YDP dataset (each object’s category is recorded based on its status before the war, and does not take into account change of use). The value in the YDP data is to illustrate in patterns of targeting, which can inform an assessment of the risk of future targeting along the same pattern.
37. The question for the purposes of Criterion 2(c) is whether there is a clear risk of a serious violation of IHL. As noted in the CAAT Judgment, the analysis is a ‘predictive’ one undertaken in the context of standards of conduct established by IHL.<sup>31</sup>
38. We consider that three factors in particular highlight that the threshold set by Criterion 2(c) has been crossed such that the Secretary of State is obliged to suspend or revoke existing licences and/or refuse to grant any further licences to the KSA:
- A. **Clear risk of further serious IHL violations by patterns of target of attack.** The KSA’s conduct of operations in Yemen indicate prominent patterns of attack on civilians, on residential areas and on infrastructure and economic targets which are critical for the survival of the civilian population. All of the annexed incidents have destroyed civilian property or killed or wounded civilians.
  - B. **Clear risk of further serious IHL violations by patterns of breaches of the “procedural” requirements IHL imposes,**

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<sup>31</sup> [29], CAAT Judgment.



including those relating to the obligations to take all feasible precautions. It has been asserted that the Saudi/UAE-led Coalition has established targeting procedures that ostensibly seek to minimise the risk of a violation of IHL. In repeated cases it appears these procedures have not been followed.

- C. **Clear risk of further serious IHL violations based on the response of KSA/the Coalition to reported breaches of IHL.** The UK Government relied heavily on assurances given by the KSA and its response to apparent violations of IHL to justify its decision in the CAAT Proceedings. The KSA's conduct and responses to apparent violations of IHL do not, however, justify such reliance. It was argued in the CAAT Proceedings that it might be appropriate to conclude that there was no clear risk where "*KSA ha[d] taken significant steps to learn from it, put new processes in place and try to avoid a repeat*".<sup>32</sup> Subsequent developments demonstrate that the KSA has failed to do so.

39. Criterion 2(c) entails consideration of whether there has been a serious violation of IHL. The precise meaning of the term "*serious violation of international humanitarian law*" is one of the issues under consideration in the appellate litigation arising from the CAAT Proceedings. For present purposes, it is sufficient to note that the combined body of evidence held by Mwatana and GLAN is extensive and includes documentation of numerous Coalition strikes that appear to have constituted violations of IHL, including serious violations of IHL.

40. As per the Secretary of State's position before the Divisional Court, Criterion 2(b) requires the Secretary of State in the case of exports to KSA to "*exercise special caution and vigilance in granting licences*".<sup>33</sup>

A. **Patterns that demonstrate a clear risk of further serious IHL violations**

41. The existence of patterns that demonstrate a clear risk of further serious IHL violations must, as per the Secretary of State's position in the CAAT Proceedings, give rise to serious concern. This is reflected in the User's Guide to the Common Position.<sup>34</sup> Patterns

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<sup>32</sup> Statement of Neil Crompton of the Foreign & Commonwealth Office of 5 August 2016 ("NC1"), §30(d)-(e)

<sup>33</sup> Skeleton Argument of the Secretary of State before the Divisional Court, paras.104, 118

<sup>34</sup> Secretary of State's Skeleton Argument for Judicial Review substantive hearing, para 125(c).

are indicative of a lack of regard for IHL and/or a likelihood that past behaviour will occur again and might be thought to be particularly relevant in the context of a predictive analysis. Paragraph 2.13 of the User's Guide states as follows:

*Isolated incidents of international humanitarian law violations are not necessarily indicative of the recipient country's attitude towards international humanitarian law and may not by themselves be considered to constitute a basis for denying an arms transfer. Where a certain pattern of violations can be discerned or the recipient country has not taken appropriate steps to punish violations, this should give cause for serious concern."*

42. Both of these envisaged situations of concern have come about in the present case. We highlight three particularly concerning patterns by object type: (i) attacks on civilian residential areas; (ii) attacks on civilian infrastructure and economic targets; and (iii) attacks on civilians. For the avoidance of doubt, our clients are acutely aware that not every attack resulting in civilian harm is a violation of IHL. They seek the Secretary of State's position on whether the cited incidents combine to establish a clear risk of future violations, which necessarily involves her assessment of whether past incidents, such as those annexed, violated IHL.
43. The use of bulk data to establish patterns by object type does not equate to an allegation that every single attack affecting an object in that category is by definition a violation of international humanitarian law. The purpose of categorising airstrikes by object type is twofold. First, it allows the detailed information provided by our clients to be viewed in the wider context. For example, an assessment of the lawfulness of a single attack on a factory is assisted by data describing attacks on dozens of other factories, because it can indicate the *reason* the factory was destroyed (noting that this information is often missing from NGO reporting on individual incidents). If such an attack was set against a range of attacks on factories, that could suggest that it was destroyed for its speculative value in generating revenue for the adversary, rather than a concrete and current military purpose or use. This could therefore be probative of whether the attack violated the principle of distinction. Second, in more concrete terms, it is a matter of logic that a repeated occurrence, absent any intervening factor, can be expected to continue. For example, our clients have

documented regular attacks on civilian homes in which no military objective could be found by researchers, suggesting a high risk that it will happen again. Bulk data indicating that hundreds of residential areas have been attacked are similarly indicative that this will continue.

44. Based on the combined body of evidence held by Mwatana and GLAN, it appears clear to our clients that the Coalition has repeatedly violated international humanitarian law, including repeatedly conducting indiscriminate and disproportionate attacks on civilians and civilian objects, as well as failing to take the required precautions before launching an attack, including to verify targets are in fact military objectives.

(i) *Attacks on civilian residential areas*

45. Such attacks have been widespread throughout the conflict. Mwatana has documented dozens of such attacks. Amnesty International, Human Rights Watch and the United Nations have also reported attacks on civilian residential areas. Beyond the resulting civilian harm, many such attacks on civilian residential areas appear to have violated international humanitarian law. The examples that follow were documented by our clients (references in brackets are to the enclosures provided with this letter).
46. In mid-September 2015, a residential home in the UNESCO-protected Old City of Sana'a was hit with a coalition bomb at night (52). The bomb destroyed the house and killed 13 people, including a man, his wife and their children as they ate dinner. It also caused severe damage to surrounding homes, which are also UNESCO-protected. The witnesses who spoke to Mwatana said that the man who was killed was poor and had no connection to the conflict.
47. At around 8 p.m. on Wednesday, 21 September 2016, Saudi/UAE-led coalition forces bombed Al-Hunood residential neighborhood in Hawak District, Hudaydah Governorate during a funeral for one of the neighborhood's residents (132). The attack on al-Hunood neighborhood killed about two dozen civilians, wounded about four dozen, and destroyed up to 15 homes. A remnant of what appeared to be a US-made bomb, the GBU-16 (1,000 lb bomb), was recovered at the scene of the strike. While the strike followed an attack on the Presidential Palace, no military targets were identified in the residential neighbourhood by Mwatana. Extremely extensive damage was done to the street.

48. On the evening of 24 September 2016, Coalition forces bombed a residential apartment building near Jiblah Fork in the Ibb Governorate (174). Six were killed (including three children and one woman) and one woman was injured in the attack. There were no military targets identified by Mwatana, who conducted interviews two days after the strike.
49. On 10 January 2019 at about 06.30 am in al Farash village, Hajjah, an airstrike hit a home while six members of the family were inside the *majlis*, a room for visitors, about 35 metres from the main living area, having breakfast. Two men were killed and four people were injured, including two children. (234)
50. On 16 May 2019, a densely populated area of Sana'a, al-Raqas street, was targeted with a coalition bomb, killing five children and injuring about 77 people, including almost three dozen children. The house and the surrounding buildings, also damaged or destroyed, were inhabited by civilians. (240)
51. Each of the above listed attacks by the Saudi/UAE-led coalition appears to have violated international humanitarian law, including the principles of distinction or proportionality. If the Secretary of State takes a different view, we invite her to explain the basis on which she does so.
52. Further strikes affecting residential homes documented by credible sources are listed in the annexed 'long-list,' and are too numerous to itemise here. However, the following incidents, documented by Mwatana, raise serious concerns:
53. At around 1:30 a.m. on Saturday, when residents were asleep, on February 6, 2016, Saudi/UAE-led Coalition aircraft dropped a US-made Mk-82 bomb on a home in Al-Miqsas village, At-Ta'iziyah District, Taizz Governorate. The home owner's wife and 14-year-old daughter were killed in the attack, and half the house was destroyed. The nearest identified military site was about three kilometres to the east. (261)
54. On the morning of Saturday, January 27, 2018, at about 6:30 am, coalition aircraft hit a house in the village of al-Raqab, in At Ta'iziyah District, in the Taizz Governorate. The attack killed two children and their mother, and wounded two other children, in addition to their father. (284)

55. On Monday, June 25, 2018, at about 2:30 am, coalition aircraft carried out an attack on a home in the Al Ettisalat neighborhood, in the center of Amran city, located to the north of the capital Sana'a. The attack completely destroyed the house and severely damaged five other houses. The attack killed nine people, including two women and four children, and injured 19 others, including five children and five women. (285)

56. At about 8:30pm on the evening of Saturday, March 9, 2019, Saudi/UAE-led Coalition aircraft launched two airstrikes against a home in the Kushar district of Hajjah. A group of women and children had recently entered the house, fleeing from their own home, where they feared they were unsafe as an airstrike had landed nearby. Mwatana identified 12 persons killed in the strike, 7 women and 5 children. Mwatana also identified 8 persons injured in the strike, 2 women and 6 children. (287)

57. In addition, the Coalition appears to have repeatedly struck residential areas throughout the conflict. GLAN notes that, as of August 2019, the YDP had logged 2,017 raids on "*residential areas.*"

***(ii) Attacks on infrastructure and economic targets:***

58. The extent to which infrastructure and targets including agricultural sites, factories, water infrastructure and power and fuel infrastructure have been attacked by the Saudi/UAE-led coalition is troubling, particularly given Yemen's ongoing humanitarian crisis.<sup>35</sup>

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<sup>35</sup> Yemen is one of the most water-scarce countries in the world. It is (even in peacetime) heavily reliant on irrigation structures that it has developed to maximise the use of what water does collect during rainfall. Correspondingly, attacks on such structures have a profound effect on civilians' access to water. Water shortages linked to the conflict are said to be largely responsible for the severe cholera outbreaks that have killed thousands. Attacks on wells and pumps are particularly relevant because most of Yemen's domestic water supply derives from subterranean aquifers, whose water reserves are accessed by pumping and wells: "*This requires the use of diesel-powered pumps ... which means the cost of extracting water is strongly affected by the cost and availability of diesel*". Fuel is needed to operate the water supply in Yemen and for the transportation of vital supplies. Fuel stations have also been bombed throughout the conflict. Yemen imports the majority of its food through its western ports, which are currently blockaded. Numerous reports have confirmed that, while food is available at urban markets, millions of Yemenis cannot afford to purchase basic food supplies due to the combination of the increase in prices (linked to the reduction in supply) and the withdrawal of state wages. The attacks on market places, farmland, food storage/transportation and water targets serve to exacerbate and deepen this crisis.

59. Many individual attacks examined by our clients on infrastructure and targets linked to the survival of the civilian population appear to have been in violation of the principles of distinction and proportionality. If the Secretary of State takes a different view, we invite her to explain the basis on which she does so.
60. At around 2 p.m. on Thursday, 12 November 2015, Coalition aircraft dropped a bomb—likely a US-made CBU-58 cluster bomb—on 65-year-old civilian’s farm in Al-O’saila village, Haradh District, Hajjah Governorate. A group of young men were fixing a water pump on the farm. The strike killed two of the five men instantly, injured the remaining three, and set the farm on fire. (270)
61. At around 10:30 p.m. on Thursday, 31 December 2015, three Coalition bombs struck Al-Kahlani Cosmetics Factory and Tahama Packaging Tools Company in Kilo 16, Hudaydah Governorate. The attack damaged Al-Kahlani Factory and uprooted many families living nearby. (271)
62. At about 12:30 a.m. on Wednesday, 6 January 2016, two Coalition bombs struck Al-Muqbeli Warehouse in Kilo 7, Hudaydah Governorate, setting the warehouse on fire. The attack occurred less than an hour prior to the Coalition airstrike on nearby Derhim Factory. No military target was identified by Mwatana, who visited the scene. (271)
63. In the very early hours of Wednesday, 6 January 2016—less than an hour after attacking nearby Al-Muqbeli Warehouse—Coalition aircraft dropped four bombs on Derhim Industrial Factory near Al-Maraw’a, Hudaydah Governorate, setting the factory on fire. No military target was identified by Mwatana, who visited the scene. (272)
64. Just after midnight on Monday, 12 September 2016, the Coalition dropped four bombs on Al-Senidar Factory Complex in Bani Al-Harith District, Amanat Al-Asimah Governorate. Within about five minutes, the bombs struck three different factories in the complex and damaged at least one house nearby. (275)
65. On February 22, 2017, a 10-year-old boy and a 12-year-old boy were working at their relatives’ farm at Qahza, in the al-O’albi area of northern Saada governorate, according to Human Rights Watch, when it was attacked with a cluster bomb. (277)

66. In Sana'a, in late May 2018, a gas station was destroyed by two Coalition bombs, killing four people, including a woman and a child, and wounding about a dozen others. (285)

67. A Coalition attack on 23 July 2018 struck a water project in Wadi Al Nushur, Al Safra'a in Saadah governorate: the site consisted of a well, a storage tank, a solar power network, and water pumps and pipes, and the project provided water to about twenty villages in an area in which there was significant water scarcity. A UNICEF press release said the attack resulted in "cutting off 10,500 people from safe drinking water"<sup>36</sup> and noted that the same project had been attacked in March: "*in March 2018, the Nushour water project was attacked twice in one week causing damage estimated at US\$ 20,000. UNICEF repaired this damage. The current damage to the water system is estimated at US\$ 300,000.*"<sup>37</sup> The United Nations Panel of Experts investigated this attack and was informed by a confidential source that the project was on the Coalition's no-strike list. (286)

68. Markets have also been targeted in very high numbers. Such attacks often result in high civilian casualties and are particularised elsewhere, including in the annexed documents. Attacks on transport infrastructure are also relevant, as they further increase the cost of transporting food, water and fuel. As particularised elsewhere, including in the annexed documents, the Coalition has repeatedly targeted bridges important for the transport of critical life-saving supplies.

69. Beyond those attacks examined, the YDP dataset includes strikes on "infrastructure," including strikes on sites identified as bridges, roads, civilian airports, irrigation structures and fuel pumps.<sup>38</sup> More

<sup>36</sup> <https://www.unicef.org/mena/press-releases/access-water-continues-be-jeopardized-millions-children-war-torn-yemen>

<sup>37</sup> UNICEF also reported that a sanitation centre it supported in Zabid was attacked on 28 July 2018 and that on 27 July 2018, a water station providing Hodeida with most of its water was targeted. The same press release states that on 29 July 2018, a UNICEF-supported warehouse containing water-related supplies was hit by two airstrikes. The press release said: "the past few days have seen an escalation in the targeting of systems and facilities that are essential to sustaining civilian lives." <https://www.unicef.org/press-releases/drinking-water-systems-under-repeated-attack-yemen>.

<sup>38</sup> See the YDP dataset for bulk figures. In relation to specific categories as of the website on 9<sup>th</sup> August 2019:

- 217 have targeted market places
- 64 have targeted food storage
- 129 raids hit oil & gas related targets

specifically, the YDP Dataset lists 132 attacks on “water & electricity” targets which include, *inter alia*, water stations, wells, pumps, desalination plants and irrigation canals, 649 air raids on farms and 68 air raids on “private factories.”

70. When examined together, the pattern of strikes on infrastructure and targets linked to the survival of the civilian population raises serious concerns beyond the Coalition’s failure to respect the fundamental principles of distinction and proportionality in particular attacks. We would highlight, in particular, Article 14 of Additional Protocol II, in relation to non-international armed conflicts, which provides:

*“Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.”*

**(iii) Attacks on civilians**

71. Attacks on civilians have been a persistent feature of the Coalition’s military operations in Yemen. We highlight the following examples:
72. On 12 May 2015, the coalition attacked a busy market in Zabid, Hodeidah, was attacked with three coalition bombs, one of which did not explode. About 40 civilians were killed, including 9 children, and about 45 wounded, including 7 children. The area consisted of markets stalls and restaurants. The small market stalls were visible on satellite imagery. (263)
73. On 14 September 2015, between five and six coalition bombs hit Wa’lan Agricultural Complex, a building with five residential apartments in which agricultural engineers lived with their families (93). The complex also contained an administration room, a guard room and a generator room. Eight residents were killed in the strike (including 2 children and 4 women), and twelve were injured (including 6 children and 2 women). Mwatana interviewed three witnesses to the attack, two of whom were present inside the complex and one of whom saw the attack from a distance. Our

- 
- 774 have targeted transport infrastructure



clients are unaware of any reason that Wa'lan may have lost its protection. No interviewees reported the presence of Houthi fighters in the complex. Given the use of multiple laser-guided munitions, it can be assumed that the coalition sought to strike the complex. (93)

74. At about 8am on the morning of 20 September 2016, a pick-up truck driving women and children to harvest crops on their farm in Al Qashah in Al Jawf Governorate was directly struck by a bomb. Fifteen were killed (12 children and 3 women), and three injured (all children) in the attack. The account provided by JIAT directly contradicts the evidence enclosed with this letter. JIAT states that video footage showed no civilians on the back of the truck, which was being monitored - yet Mwatana's evidence states that fifteen women and children were riding in the pick-up truck. (116)
75. On 15 March 2017, 41 people were killed or went missing when a Coalition aircraft attacked a boat carrying about 140 Somali migrants and refugees and four Yemeni crew. The attack continued over an extended period, with the aircraft returning to launch further attacks at intervals. (278)
76. On 22 April 2018, the male gathering at a wedding party was hit by an airstrike in al-Raaqah village, Hajjah governorate (179). At least 21 people were killed, and 97 were injured. Remnants of a GBU-12 bomb were found at the scene by Mwatana. The civilian gathering was attended by many young children. There were no military targets or personnel in the area identified by Mwatana. The Coalition's explanation for this strike is that three individuals (including a suspected weapons expert) and two vehicles were observed outside a house - and claims that no wedding or tent was visible. Photographs taken at the scene on 24 April 2018 depict the remains of a tent/canopy along with many other objects indicative of a wedding party. Aircraft had been flying overhead throughout the afternoon, during which time the number of guests at the wedding had reduced from around 500 to around 200, according to witnesses. Immediately before the strike, a few guests that a call was received to say the wedding would be hit.

**B. Failure to follow procedures designed to enable compliance with international humanitarian law**

77. The February 2016 statement by KSA to the UN Security Council (“the KSA Statement”) described the Coalition’s targeting procedure as follows:

*“1. Identifying the military targets undergoes several stages. It starts from choosing a target, analysing it and confirming that it’s a military target through several sources to ensure not to make any mistakes when targeting every site in the Yemen is suppose to be a civilian unless the contrary is decisively proved.*

*2. Constantly working on developing the list of sites that are prohibited from being targeted including sites of civilian presence, places of worship diplomatic quarters, international governmental and non-governmental organisations and committees, and cultural sites. The list is updated constantly and sent in a periodic basis, to all the levels of the coalition forces to insure that all the specialists are aware of it.*

...

*4. The coalition forces use precise and guided weapons, in spite of their high cost in addition to the lack of international legal commitment on the countries to use them, in order to avoid any mistakes, collateral damages and casualties.”<sup>39</sup>*

78. Para. 2 would appear to refer to a No Strike List (“NSL”).

79. It would seem to follow from para.4 that, in general, the Coalition should be taken to have intended to hit the target of its attacks.

80. The Coalition’s targeting procedure is also described in the second witness statement of Mr Watkins of the MOD in the CAAT Proceedings:

*18.1. Pre-Planned Targeting. Pre-Planned targets are those identified for action under the Saudi-led Coalition's RoE [Rules of Engagement] where the actions of the target are not immediately directly threatening Coalition forces or civilians. All the targets are authorised by the*

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<sup>39</sup> Cited at the CAAT Judgment, [130].

*Delegated Authority and subject to a Targeting Clearance Board (TCB), which assists the decision-making and should include a formal Collateral Damage Estimate (CDE)<sup>40</sup> 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 the Pre-Planned targeting cycle, and therefore have not been scheduled. These targets are subject to the same targeting process, including a TCB.”*

81. The requirement under IHL to take all feasible precautions is of central importance to compliance with the principle of distinction and includes the requirements to *verify* that targets are military objectives and, further, that once a target is verified, all feasible precautions are taken to *avoid and minimise* incidental civilian harm.<sup>41</sup> The procedure as described in the KSA’s statement and Mr Watkins’ describes a procedure that appears to have the intention of complying with IHL requirements. A proper targeting procedure designed in accordance with relevant IHL principles is a prerequisite for compliance therewith, particularly with the requirement to take all feasible precautions.
82. Unfortunately, however, the Coalition’s conduct of operations in practice is not consistent with the procedure as outlined by the KSA to the UN Security Council or as described by Mr Watkins. This is cause for serious concern.
83. First, the repeated striking of objects which would be expected to appear on the Coalition’s NSL indicates a failure to effectively incorporate the precautions generally intended through the adoption and development of an NSL. Para.2 of the KSA Statement specifically identifies “*cultural sites*” as suitable for inclusion on a

<sup>40</sup> 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.

<sup>41</sup> The obligation to take “*all feasible precautions*” to spare civilians is codified in Article 57(1) API, which is established through state practice as a norm of customary international law applicable in NIAC (rule 15). The obligation to do “*everything feasible*” to verify that targets are military objectives is set forth in Article 57(2)(a) API and is established through state practice as a norm of customary international law applicable in NIAC (rule 16).

NSL, consistent with the prohibition on directing attacks against buildings of particular cultural importance. Further, the US provided the KSA with an NSL in late 2015 in an effort to prevent continued damage to critical infrastructure, and the KSA announced in 2018 that it was operating a NSL of 40,000 locations.<sup>42</sup> Finally, NGOs consistently provide the Coalition with the coordinates of their facilities. Avoiding damage to critical, if not specially protected, objects includes refraining from bombing targets so near them as to endanger the object itself. Nevertheless, the Coalition has attacked targets that one would reasonably expect be present on any NSL, such as:

- (i) Market outside al-Hadi Mosque, Saada, in early May 2015: The factual analysis shows that an area of approximately 60 meters by 50 meters was destroyed in an air raid and that damage was sustained to the interior of the centuries-old Imam al-Hadi Mosque; (1)
- (ii) Al Feleihi Neighbourhood and Qasemi neighbourhoods in Sana'a's Old City which were UNESCO protected, in September and June 2015; (52, 264)
- (iii) Haydan Hospital, whose coordinates had been supplied to the Coalition as recently as two days before it was struck with 5-6 bombs, and had roof markings (although it is noted that JIAT found this had been targeted deliberately).<sup>43</sup>
- (iv) Main bridge between Hodeidah and Sana'a, which is reported to have been on the Coalition's NSL, 11 August 2016; (275)
- (v) Abs Hospital, which had consistently supplied its coordinates to the Coalition and had roof markings, 15 August 2016;<sup>44</sup>
- (vi) The MSF Cholera Clinic in Abs, whose coordinates were supplied twelve times to the Coalition and whose red crescents were visible from space, 11 June 2018; (213)
- (vii) Nushur water treatment plant, 23 July 2018 (286)

84. It has been said by ex-State Department advisor Larry Lewis that the NSL is not made available to aircraft pilots in the course of hostilities, which is problematic when the decision to launch a strike is being made by the pilot in response to urgent intelligence. Mr Lewis also said that calling the Command and Control Centre to check the coordinates against the NSL would take "one or two minutes", suggesting that such a precaution would be feasible in all but the most urgent circumstances.<sup>45</sup>

<sup>42</sup> <https://www.saudiembassy.net/news/coalition-investigating-claims-strike-bani-qais>

<sup>43</sup> Discussed at length in CAAT proceedings

<sup>44</sup> Discussed at length in CAAT proceedings

<sup>45</sup> <https://www.nytimes.com/2019/05/22/world/middleeast/saudi-yemen-airstrikes-civilians.html>

85. Second, the targeting of individuals and other targets which appear to be clearly civilian in nature suggest that precautions to verify the target were not taken or that, if they were, precautions to minimise harm, cancel attacks or warn civilians were not taken. For example:
- (i) the presence of civilians and children's swings and a roundabout in the al Mokha residential complex when it was hit by up to six successive airstrikes; (265)
  - (ii) the presence of roof markings on the Abs MSF cholera clinic; (213)
  - (iii) the presence of 15 civilians in the Al-Jawf pick-up truck; (116)
  - (iv) the presence of hundreds of civilians at the Bani Qais wedding before it was targeted; (179)
  - (v) the presence of large numbers of civilians at the various markets which have been attacked (and the visibility of market stalls in many of these cases), often with multiple bombs; (e.g. 32, 263, 278, 282, 283).
86. Fourthly, 'second-wave' attacks where one airstrike rapidly follows another also do not appear consistent with the targeting procedure as described above, specifically raising concerns that the coalition is failing to carry out a new, and specific, CDE ahead of second-wave attacks, when the harm analysis should incorporate the potential (and, often, likely) presence of first responders.
87. Fifthly, the striking of homes in densely populated areas with wide-area bombs indicates that certain possible precautions, like choice of an appropriate weapon, to minimise civilian harm are not being taken.
88. Further, according to Mr Lewis, so-called "dynamic" strikes are undertaken not according to the procedure set out by the Coalition above, but rather are decided upon quickly by a pilot in conversation with a source on the ground in Yemen.<sup>46</sup>
89. The fact that the KSA received targeting training and established a mechanism for investigating violations of IHL (through the Joint Incidents Assessment Team) were factors on which the Secretary of State placed significant reliance in justifying the lawfulness of the

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<sup>46</sup> <https://www.justsecurity.org/60766/grading-pompeo-certification-yemen-war-civilian-protection-time-reconsideration/> Dynamic strikes reportedly make up for high proportions of the Coalition's airstrikes.

continued grant of licences before the Divisional Court in the CAAT Proceedings. However, we note that the position does not appear to have sufficiently improved despite these developments. Many of the annexed airstrikes have taken place years into the war and after various interventions were made to improve Coalition procedure, and have continued to take place into mid-2019.

90. In our view, these incidents are not consonant with a concerted application of the targeting procedure described above, nor the taking of all feasible precautions. These cannot be excused as one-off mistakes given how often similar strikes have been carried out at the stage the conflict has reached. The delivery of training and the establishment of JIAT did not sufficiently reduce the risk of the Coalition committing serious violations of IHL.
91. We further note that the Secretary of State may be required to assess the lawfulness of the bombardment of the city of Saada in the immediate aftermath of Brigadier General Assiri's "May Declaration." In that regard, we enclose two examples of airstrikes in the Old City which struck civilian targets using multiple munitions. This information supports the general claims made at the time of the bombing that targets in the Old City were attacked on the basis of their perceived connection to the Houthi forces, rather than on the basis of concrete intelligence on the nature of the specific target at the time of attack.

### **C. The response of KSA/the Coalition to recognised or admitted breaches**

92. The Joint Incident Assessment Team (JIAT) was established in 2016 to investigate alleged violations of IHL by the Saudi/UAE-led coalition. The KSA confirmed the creation of JIAT in a letter to the UN Security Council on 1 February 2016. That letter described the purpose of JIAT as follows:<sup>47</sup>

*"The establishment of an independent high-level team (Team) of civilian and military experts to assess reported incidents of civilian casualties, investigation procedures, and mechanisms of precision targeting. The Team is expected to issue a comprehensive and objective report covering each incident individually and containing recommendations and lessons learnt."*

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<sup>47</sup> CAAT judgment in the Divisional Court, [130]

93. The following statement was published on the Saudi Press Agency's website on 4 August 2016 entitled "Joint Incidents Assessment Team (JIAT) on Yemen Responds to Claims on Coalition Forces' Violations in Decisive Storm Operations":<sup>48</sup>

*"In response to claims that the Coalition Forces have committed violations while conducting the Decisive Storm and the Hope Restoration military operations to support the legitimate government of Yemen, an independent Joint Incidents Assessment Team (JIAT) was formed to assess these claims and accidents. The JIAT consists of 14 members with experience and competence in military and legal fields. The members of the JIAT are from the Kingdom of Saudi Arabia, Kuwait, the Republic of Yemen, Qatar, Bahrain and the United Arab Emirates.*

*The JIAT investigated these claims after preparing an internal duty regulation governing its work, which includes customary procedures for assessing accidents occurring in such operations. The JIAT depended on the customary procedures for investigating the facts and collecting evidence, proofs and documents and lists of targets. It also depended on the international humanitarian law, the international norms, the rules of engagement, accident evaluation, and target mechanism. The JIAT also summoned whoever it considers to hear their statements. The JIAT exercised its full independence and impartiality.*

*The JIAT's Legal Advisor Lieutenant General Mansour Ahmed Al-Mansour from the Kingdom of Bahrain said in a news briefing held today at King Salman Air Base at the Central Sector that the JIAT's work in assessing the accidents depends on ensuring the legal aspects of target operations that are compatible with the international law, and on using the American and British mechanism to assess accidents in addition to the law of armed conflict. The JIAT prepares a report for each individual case, including the facts,*

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<sup>48</sup> <https://www.spa.gov.sa/viewstory.php?lang=en&newsid=1524799>

*circumstances surrounding each accident, backgrounds, timings, lessons learned, recommendations and future actions to be taken. For this purpose, the JIAT depended on analysing the information contained in the task report, reviewing the aerial photographs from the post-mission aircraft reports, recording videos, scheduling daily tasks and reporting to the JIAT's air control officer."*

94. JIAT received some training from US State Department advisors<sup>49</sup> and sessions from UK advisors in Saudi Arabia.<sup>50</sup>
95. In the CAAT proceedings, the Secretary of State relied upon the responses to recognised violations; and in the KSA's desire to operate in compliance with IHL including the existence and processes of JIAT. These were consistently said to be the key counterweight to those matters weighing in favour of suspension/against the grant of further licences. Neil Crompton, Director of the Middle East and North Africa Directorate at the Foreign Office, summarised these actions in the context of the FCO's concern over the MSF hospital strike as follows:<sup>51</sup>

*"The attack on the MSF hospital in Haidan was of particular concern to us ... on 31 January 2016, Brigadier Assiri announced the result of that investigation, publicly acknowledging that the hospital had been incorrectly struck due to a procedural error. Thus, as the March Update indicates, although this incident was of very real concern, in view of the response of the KSA, in carrying out an effective investigation, admitting responsibility for the attack and putting in place procedures to prevent a recurrence, our assessment remained that there was not a clear risk that Saudi forces would commit serious IHL violations."*

96. It follows that where the evidence is that KSA is not taking such steps, or is not responding to apparent violations of IHL in a manner that could rationally engender confidence in its future compliance, such reliance on the response of KSA can no longer be said rationally to justify the continued grant of licences.

<sup>49</sup> <https://www.theatlantic.com/international/archive/2018/08/yemen-saudi-airstrike-school-bus/567799/>

<sup>50</sup> <https://www.independent.co.uk/news/uk/politics/saudi-arabia-yemen-conflict-bombing-latest-uk-training-pilots-alleged-war-crimes-a7375551.html>

<sup>51</sup> NC2, §62



97. The following factors significantly undermine reliance on JIAT's existence as a factor weighing in favour of the continued grant of licences for exports of military equipment to the KSA. It should be noted that many of these JIAT conclusions were reached after the Divisional Court hearing in the CAAT proceedings and have continued to be released after the Court of Appeal judgment.
98. Firstly, there are a number of strikes in which the JIAT conclusions are inconsistent with the available evidence or irreconcilable with a logical legal analysis. We would highlight the following examples:

*Finding that no strike occurred*<sup>52</sup>

- (i) In the case of the September 2015 airstrike on a family home in the UNESCO protected al-Feleihi district of Sana'a's Old City which killed 13 civilians, JIAT found that the coalition had not carried out this airstrike. Our clients enclose photographic evidence depicting the aftermath of an airstrike, and we draw attention in particular to the large amounts of bomb fragment found at the scene. (52).
- (ii) In the case of the 24 September 2016 airstrike on a residential area in Ibb Governorate which killed at least 6 civilians, JIAT concluded that no airstrike had taken place in that vicinity on that day. Enclosed are witness accounts and a photograph of a bomb remnant which has been identified as coming from a Mk-82 general purpose bomb, which the coalition possesses. This strike was also documented by the United Nations Panel of Experts, who also found the Mk-82 remnants. (174)
- (iii) In the case of the 12 May 2015 airstrike on Zabid market which killed about 40 civilians, JIAT concluded that no airstrike took place. Witness accounts describe two bombs which detonated and a third which did not. (263)
- (iv) In the case of the 12 May 2015 airstrike on Abs prison, JIAT concluded that airstrikes carried out on that day had not targeted the prison in Abs. However, Human Rights Watch evidence demonstrates that the destroyed building was in fact the local prison, and that the strike killed and wounded people held there (see, for example, HRW interview with a local man who brought food to the prisoners daily). (262)

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<sup>52</sup> In this regard, we remind the Secretary of State that the Houthis do not have the capacity to conduct airstrikes.

- (v) In the case of the 12 June 2015 airstrike which killed five civilians and destroyed four houses in the UNESCO protected Old City of Sana'a, JIAT concluded that the coalition had not carried out this attack. Witness accounts, along with reports by Amnesty International that weapons remnants were recovered, strongly indicate that this was an air-delivered bomb which, while it did not explode, was heavy enough to cause the collapse of four detached buildings. (264)
- (vi) In the case of the 11 April 2015 attack on a home near the Amran office of education, which Human Rights Watch found killed four members of the same family, JIAT concluded that the coalition had not carried out an aerial attack. However, the damage was documented by Human Rights Watch and can be seen on satellite imagery. Further, the photographic evidence which accompanies the HRW report is indicative of the effects of an airstrike. (260)
- (vii) In relation to the 20 August 2015 attack on densely packed houses near the presidential palace in Taiz which killed about 50 civilians, JIAT concluded that no airstrike had taken place. However, Mwatana collected witness accounts which described repeated airstrikes landing one after another on the crowded area. (267)
- (viii) In relation to the 28 August 2015 attack on a residential home in Al Dhihar, Hodeidah, which killed an entire family of five, JIAT concluded that no airstrike took place. However, Mwatana collected witness accounts and recovered the remains of a US weapon. (267)
- (ix) In the case of the bombing of al Hunood market in Hodeidah city on 21 September 2016, JIAT concluded that the damage was not the result of an airstrike. Our clients enclose photographic evidence of bomb remnants which have been identified as those of a Coalition munition. (132)
- (x) In the case of the 16 March 2017 attack that killed and wounded dozens of civilians after the Coalition attacked a boat carrying about 140 mostly Somali migrants and refugees, JIAT found that the Coalition's aircraft had not attacked the boat. (278)
- (xi) In the case of the 10 March 2017 airstrike on a qat market in al-Khokha roundabout, witnesses told Mwatana that two

bombs had hit a nearby military camp, followed by a third which hit the market, killing 21 civilians. JIAT concluded that the nearest airstrike on that date was 10km from the market. (278)

- (xii) In the case of the 3 April 2018 airstrike on a residential complex for internally displaced persons investigated by the United Nations Group of Eminent Experts and Panel of Experts, JIAT concluded that the nearest targeted location was 3500 metres away. (284)

*JIAT concluding that targets were legitimate*

- (i) In the case of the 7 October 2015 Sanaban wedding strike which killed about 40 civilians, JIAT found that a convoy of armed vehicles had been targeted at specific coordinates on an asphalt road. HRW researchers did not find indication of an armed convoy - only a bridal party. (269)
- (ii) In the case of the 20 September 2016 attack on a civilian vehicle in Al Jawf governorate, JIAT concluded that the targeted vehicle did not contain any civilians. Mwatana collected witness accounts which confirmed that all of the occupants were women and children. In this case, JIAT stated that video footage had been reviewed showing no persons on the truck in question, but the targeted vehicle was an open-backed pick-up truck carrying only women and children. (116)
- (iii) In relation to a 25 May 2016 attack on a house in Al Mahala, Lahj which killed 6 occupants of the house, JIAT found that the house contained a gathering of Houthi leaders and that no civilians were present. The United Nations account of this strike suggests that the house contained many civilians and stated that more civilians would have survived had it not been for a second airstrike. Reconnaissance capabilities, if used properly, may have allowed the coalition to view the civilians in the aftermath of the first strike. (273)
- (iv) In relation to the 2 September 2017 strike on a residential building in Farah village, Hajjah, which killed two women and a child and injured 13 others including one woman and 10 young children, JIAT concluded that the target was a “command centre” and was therefore legitimate. The UN found no evidence to support this. Additionally, the evidence set out by the United Nations Panel of Experts states that it

was the second of two strikes, landing while women and children were fleeing, which killed most of the victims. Fleeing women and children would be visible using modern reconnaissance technology. Furthermore, the coalition appears to have used the largest bomb possible, the Mark-84 2,000 lb bomb. JIAT made no comment about the civilian casualties sustained. (281)

99. Secondly, many JIAT analyses do not appear to engage with the issue of precautions or proportionality, or those that do engage do so in a plainly erroneous way. For example:

- (i) In relation to the 29 October 2016 attack on Al Zaidia prison, Hodeidah, which killed around 63 male civilians (most of whom were detainees at the prison), JIAT concluded that the Houthis had stationed armed personnel and vehicles at the location, rendering it a military target. However, it made no comment about the proportionality considerations in attacking such personnel and vehicles when stationed next to around 100 detainees. (276)

100. JIAT occasionally employs the language of “errors”, “mistakes” and “unintentional” conduct. Such language overlooks the fact that a failure to take precautions or conduct military operations in a proportionate manner constitutes a violation of IHL irrespective of intentionality. Failing to acknowledge civilian harm (even to then conclude that it was proportionate) is a common feature of JIAT investigations when it declares it found a military target was present.

101. Thirdly, JIAT’s recommendations do not appear to be followed through. After JIAT recommended compensation be provided to victims of three separate attacks,<sup>53</sup> Mwatana contacted the families. They confirmed that no information had ever been provided, nor any contact made, by the Coalition concerning compensation. This relates to the concerns of Larry Lewis, a US State Department Advisor who was tasked with advising the Coalition on how to reduce civilian casualties and assisted in establishing the JIAT: *“The JIAT was responsible for identifying deficiencies - and ideally, patterns that increased risk to civilians - but these insights needed to be accepted by the Coalition, which*

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<sup>53</sup> <https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure-credibly-investigate-and-provide-redress-unlawful>

*needed to then make operational adjustments to reduce the identified risks. In my early work with the JIAT, they were not perfect by any means, but they were able to identify some risk factors. However, they lamented the Coalition's lack of receptivity to operationalize solutions to these deficiencies.”*<sup>54</sup>

102. Fourthly, there are a number of more general aspects of the operation and personnel of JIAT that give cause for serious concern as to JIAT and its independence:

- (i) HRW has addressed JIAT's approach to 17 specific strikes and found that its conclusions were characterised by legal and factual discrepancies. Further, HRW reviewed JIAT's statements in respect of 75 incidents and found that JIAT absolved the coalition of responsibility in the “*vast majority*” of cases.<sup>55</sup>
- (ii) The United Nations Group of Eminent Experts Report also analysed 71 of JIAT's reported investigations. They made requests of JIAT as to its terms of reference, appointments process and reporting structure, but received no response. The Experts also found that of all of the attacks, JIAT explained the majority on one of three grounds: 1) accident or technical fault; 2) the coalition was not responsible for the attack; and 3) the object was a military objective.
- (iii) The UN Group of Eminent Experts received “*reliable information*” suggesting that “*at times, JIAT findings were substantially altered by the Saudi Ministry of Foreign Affairs.*”<sup>56</sup>
- (iv) JIAT's legal advisor and spokesperson, Mansour Al-Mansour, was the presiding judge over Bahrain's Court of National Safety, a military tribunal which prosecuted at least 300 individuals for protest-related activity in 2011. Some individuals were tortured whilst in this tribunal's custody,<sup>57</sup> including five who died from their injuries<sup>58</sup> and showed clear signs of having been beaten when they were taking part in their legal proceedings. Others complained of mistreatment

<sup>54</sup> <https://www.justsecurity.org/60766/grading-pompeo-certification-yemen-war-civilian-protection-time-reconsideration/>

<sup>55</sup> <https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure-credibly-investigate-and-provide-redress-unlawful>

<sup>56</sup> [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/39/43](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/43)

<sup>57</sup> <https://www.hrw.org/report/2012/02/28/no-justice-bahrain/unfair-trials-military-and-civilian-courts>

<sup>58</sup> BICI Report, para. 873.

in court, and were hooded whilst being taken into the courtroom.

103. The above points indicate that JIAT cannot reasonably be said to be having the effect of sufficiently reducing the risk of the Coalition committing serious violations of IHL. Even where JIAT does make recommendations, it is not at all clear that the Coalition takes appropriate action as a result. Our clients are troubled by the indications that the reality of JIAT's supposed discharge of its duties sits uneasily with the weight placed by the Secretary of State on its existence in deciding to continue to grant new licences and/or failing to revoke/suspend extant licences.

#### **The inadequacy of KSA assurances**

104. The Secretary of State has made clear in the CAAT Proceedings his heavy reliance upon assurances given by the KSA. The then-Foreign Secretary, Boris Johnson MP, who, before the House of Lords Committee on International Relations on 26 January 2017, said that the Government had *“received sufficient assurances from the Saudis about the incidents that have taken place so far to think that we are still narrowly on the right side of that threshold”*. Further, according to Peter Watkins of the MOD, the fact that the KSA *“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”* was relevant to Criterion 2(c) because, as a result, *“we [the UK] have increased confidence that the RSAF operate in a manner compliant with the standards demanded by the Law of Armed Conflict”*.<sup>59</sup>

105. The actual steps taken by the KSA both in terms of targeting procedure and in terms of responding to incidents where apparent violations of IHL have taken place are, therefore, of very significant importance, particularly in light of the *“extremely finely balanced”* position on the legality of continued grant of licences even on the basis of the Secretary of State's understanding of the position on the ground in the CAAT Proceedings. In our view, the balance, already delicate as at the CAAT Proceedings, can now be considered to have decisively swung in favour of the course of action advised as *“prudent”* by the lead export control official in 2016, namely suspension or revocation of extant licences.

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<sup>59</sup> PW2, §39

106. We highlight two further points of broader significance which should also inform the Secretary of State's exercise of discretion.
107. First, a relevant consideration in the context of the KSA's attitude to IHL compliance that the Secretary of State will need to consider is that, on 10 July 2018, the Saudi King Salman bin Abdulaziz Al Saud issued a pardon to "*all military men, who have taken part in the Operation Restoring Hope of their respective military and disciplinary penalties, in regard of some rules and disciplines*".<sup>60</sup> This would hardly appear to support the confidence expressed by the UK Government in the CAAT Proceedings in the KSA's desire to operate in compliance with IHL.
108. Secondly, also relevant to the general question of the reliability of Saudi assurances is the broader conduct of the KSA and its consistence or otherwise with standards of international law. In this connection, we note that, on 2 October 2018, Jamal Khashoggi, a prominent Saudi journalist and dissident, was murdered in the Saudi consulate in Istanbul by agents of the KSA. The US Government's intelligence services have been described as having "*medium to high confidence*" that the killing of Khashoggi was ordered by Mohammed bin Salman bin Abdulaziz Al-Saud, the Crown Prince, Deputy Prime Minister and Minister of Defence of the KSA.<sup>61</sup> This is a matter that is relevant to the weight to be granted to assurances given by the KSA generally on compliance with international law, particularly in light of the persistent and changing (that is to say, inconsistent) denials coming from the KSA after Khashoggi's murder.
109. Saudi responses to allegations of airstrikes causing harm have also often been self-contradictory or later turned out to be false. Notably in relation to the Haydan Hospital strike which the Coalition had claimed was the result of a procedural error, JIAT concluded that the Coalition had deliberately targeted the hospital but found that it had lost its protected status and that, in any event, "no human damage" took place (something which MSF and HRW dispute). JIAT's recommendation was that the Coalition should have warned the hospital's occupants before striking it.<sup>62</sup> Putting aside the quality of the JIAT decision, the relevance of this example is

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<sup>60</sup> <https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=1783696>

<sup>61</sup> *Intercepts Solidify C.I.A. Assessment That Saudi Prince Ordered Khashoggi Killing*, New York Times, 2 December 2018, <https://www.nytimes.com/2018/12/02/us/politics/crown-prince-mohammed-qahtani-intercepts.html?module=inline> (accessed 19 March 2019)

<sup>62</sup> <https://www.hrw.org/news/2017/01/16/letter-saudi-led-coalition-joint-incidents-assessment-team-regarding-yemen>

that the Coalition's responses and explanation of the same strike contradicted one another. These internal contradictions serve to highlight the irrationality of relying on coalition assurances or explanations, which have been repeatedly proven false.

110. Saudi responses to engagement on the issue of IHL compliance were described by counsel for the Secretary of State at the CAAT appeal hearing as being an "absolutely critical" part of an iterative process. That the Coalition is still directing airstrikes in the manner described in this letter even after years of engagement from the UK is indicative that the Coalition's attitude to engagement is unsatisfactory.

### *The United Arab Emirates*

111. It is common ground that the KSA leads the Coalition and that the evaluation of the conduct of the KSA is interpreted as having a bearing on the risk of all Coalition states using military material in the commission of serious violations of international humanitarian law. The Criterion 2(c) risk assessment is to be undertaken in relation to the Coalition as a whole, and the KSA in particular, given its leadership role.<sup>63</sup> In addition, the United Arab Emirates is a major contributor to the Coalition's operations in Yemen.<sup>64</sup> Its aircraft carry out aerial attacks, its naval vessels patrol the seas and help enforce the blockade and its ground forces, as well as Yemeni proxy forces it supports, are deployed in Yemen and involved in military operations, notably on the Western Coast. UAE or UAE proxy forces are also reportedly responsible for a number of

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<sup>63</sup> This was acknowledged in the Court of Appeal's judgment at para. 138

<sup>64</sup> Human Rights Watch, *Hiding Behind the Coalition: Failure to Credibly Investigate and Provide Redress for Unlawful Attacks* (2018), p. 59-64, <https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure-credibly-investigate-and-provide-redress-unlawful>; e.g. "In March 2015, the UAE state news agency reported that the UAE had deployed 30 fighter jets to take part in coalition operations in Yemen, and that these forces had carried out airstrikes. The UAE has also deployed ships in the Red Sea to help impose the coalition's maritime blockade and led coalition strategy for a planned attack on Hodeida port. In March 2017, after a helicopter attacked a boat carrying Somali migrants and refugees off the coast of Hodeida, killing and wounding dozens, a member of the UAE armed forces said UAE forces were operating in the area but denied the UAE carried out the attack. In 2017 and 2018, the UAE led coalition operations to retake areas on the western coast, including Hodeida.... In November 2017, [Air Force Commander Maj. Gen.] al-Alawi confirmed that UAE troops were deployed in six locations in Saudi Arabia and Yemen and claimed UAE air force pilots were following "well-defined and restrictive rules of engagement.... The UAE leads coalition efforts in southern and eastern Yemen and has led counterterrorism efforts against Al-Qaeda in the Arabian Peninsula (AQAP) and the Islamic State's (also known as ISIS) local affiliate the Islamic State in Yemen (IS-Y), including by supporting Yemeni forces carrying out security campaigns."



detention facilities, with NGOs and the UN having documented a number of serious violations in these facilities, including forced disappearance and torture.<sup>65</sup> It is the policy position of our clients to refer to the Coalition as “Saudi/UAE-led”, and indeed this is the terminology used by other actors familiar with the situation on the ground.<sup>66</sup> We note that between March 2015 and the present, licenses to the value of £665 million have been granted for sales to the UAE, in addition to 61 open licenses of unlimited value. The highest value by category, at £246 million, is the ML10 category, which includes aircraft, helicopters and drones. In 2019 alone, the UK has licensed the sale of military equipment to the UAE in the form of:<sup>67</sup>

- (i) mortars
- (ii) components and technology for aircraft carriers
- (iii) components and technology for combat naval vessels
- (iv) machine guns
- (v) gun mountings
- (vi) military infrared/thermal imaging equipment
- (vii) components for military helicopters
- (viii) components for naval communications equipment
- (ix) components and technology for combat aircraft
- (x) technology for naval vessels
- (xi) general military vehicle components
- (xii) technology for information security equipment
- (xiii) intelligence software

112. In light of that, our clients request that the Secretary of State set out her position on further grants of military materiel to the UAE for use in Yemen, and ask that the Secretary of State also consider whether extant authorisations for weapons transfers to the UAE for

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<sup>65</sup> “Yemen: UAE Backs Abusive Local Forces,” Human Rights Watch news release; UN Security Council Committee Established Pursuant to Resolution 2140, “Final report of the Panel of Experts on Yemen,” S/2018/68, pp.34-36; Amnesty International, “Yemen: ‘God Only Knows if He’s Alive’: Enforced Disappearance and Detention Violations in Southern Yemen,” July 12, 2018, <https://www.amnesty.org/en/documents/mde31/8682/2018/en/>.

<sup>66</sup> See, e.g. <https://www.msf.org.uk/article/yemen-msf-dismayed-findings-investigation-bombing-medical-facility>

<sup>67</sup> <https://www.caat.org.uk/resources/countries/united-arab-emirates>

use in Yemen should be suspended or revoked. A number of questions arise out of the continued granting of such licenses. For example, does the UK rely on its relationship with the KSA in order to assess the risk attached to weapons sales to the UAE? Is the UK aware of which attacks have been conducted by which Coalition member's military? In anticipation of the Secretary of State's response, the body of this letter does not integrate a request for the suspension of arms sales to the UAE and the remaining Coalition members. However, the Secretary of State is on notice that GLAN and Mwatana consider that, under the circumstances, licenses for weapons transferred to the UAE and all Coalition states for use in Yemen are in breach of Criterion 2(c).

### **CONCLUSION / REQUEST**

113. In light of the foregoing material, we invite the Secretary of State:

(i) to confirm whether or not the matters raised above have been considered in the assessment of whether the grant of licences to KSA is consistent with the Consolidated Criteria, and in particular Criterion 2(c);

(ii) if the answer to (i) is positive and the Secretary of State decides to make no change, explain why licenses have not been suspended or revoked;

if the answer to (i) is negative, immediately to suspend all extant licences and undertake not to grant any further licences until a further assessment is carried out taking into account the information set out in this letter;

(iii) in the course of addressing points (i)-(iii) above, come to a determination on whether the airstrikes referred to within this letter have represented serious violations of international humanitarian law;

(iv) to set out her reasoning on the authorisation of technical assistance to KSA, and whether she applies the Consolidated Criteria in considering whether or not to grant such assistance and the scope thereof.

We look forward to hearing from you.

Yours faithfully,

**Bindmans LLP**