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16 February 2016

Dear Ms Curling

In the proposed proceedings R (Campaign Against Arms Trade) v Secretary of State for Business, Innovation & Skills

A. Introduction

1. I refer to your letter dated 8 January 2016 sent on behalf of your client, Campaign Against Arms Trade ("Your Letter") in accordance with the Judicial Review-Pre-Action Protocol.
2. As explained in our letters of 15 January 2016 and 2 February 2016, three departments of HM Government ("the Government") are concerned with the decision making your client has threatened to challenge and consequently we have required additional time to reply in full.
3. We set out below our substantive response to Your Letter, in accordance with the Judicial Review Pre-Action Protocol. In particular:
 - a. The three grounds of challenge are addressed in turn at section C below;
 - b. Each of the questions at pp. 17 to 19 of Your Letter are addressed in turn at section D below.
4. In preparing this response, the Secretary of State for Business, Innovation and Skills (the Secretary of State) has sought advice from the Foreign and Commonwealth Office ("FCO") as well as the Ministry of Defence ("MOD").

B. Background

5. The coalition of nine states (including the Kingdom of Saudi Arabia¹) ("KSA") ("the Coalition") commenced military operations in Yemen in March 2015 following the express request of the Yemen President (President Hadi):

¹ The other States forming the Coalition are Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Sudan and the United Arab Emirates.

Sarah Goom - Head of Division
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“to immediately provide support, by all necessary means and measures, including military intervention, to protect Yemen and its people from the continuing aggression by the Houthis”.²

6. The Export Control Organisation has continued to grant licences for the supply to the KSA of arms and military equipment that might be used in the conflict in Yemen. Each licence application is assessed on a case by case basis against the Consolidated EU and National Arms Export Licensing Criteria (“the Criteria”).³ A licence will not be issued for any country if to do so would be inconsistent with any provision of the mandatory Criteria (i.e. the first four Criteria), including where we assess there is a clear risk that the items to be licensed might be used in the commission of a serious violation of international humanitarian law (“IHL”). The Government’s commitment to adhering to the Criteria was most recently confirmed by the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs in reply to a question in the House of Commons on 28 January 2016.⁴

7. The Government takes their arms export responsibilities very seriously and remains confident that the UK operates one of the most thorough and robust export control and licensing systems in the world. It is a system that was subject to parliamentary scrutiny (including by way of the Committee on Arms Export Controls (CAEC)⁵) before the general election in May 2015 and which will soon be subject to such scrutiny again when the CAEC re-forms (it met on 10 February to elect its membership and appoint a chair). As Collins J observed in *R (oao Hasan) v Secretary of State for Trade and Industry* [2007] EWHC 2630 (Admin), which was a challenge to the failure to publish reasons for arms exports license decision making:

“In principle, judicial review is a remedy of last resort and is only needed if appropriate redress cannot be obtained by another route. Parliament has set out the means whereby the lawfulness of licensing decisions such as those with which the claimant is concerned should be monitored. Thus there is in my judgment the necessary transparency and insofar as the defendant fails to comply with it, the Committee will comment and the ultimate judge will be Parliament.”

8. The Government takes allegations of breaches of IHL by the Coalition very seriously. In particular:

- a. The MOD monitors all incidents of alleged IHL violations by the Coalition in Yemen that come to its attention. It monitors a range of information from Government sources, foreign governments, the media, NGOs, open source and classified reports in order to identify such incidents. The incidents monitored include all of the specific allegations raised in Your Letter.
- b. The available information is assessed to identify whether the alleged event occurred as reported, who was responsible for the event, and whether the responsible party’s actions are assessed as compliant with IHL or not. In particular, when MOD learn of a new incident, MOD investigate to determine whether they can verify the incident as being a likely coalition strike, and if so then whether they can identify a legitimate military target in the area. MOD also tries to determine, so far as is possible, whether the strike was carried out using an item that was licensed under a UK export licence.
- c. The situation is kept under continued review. The vigilant monitoring of this conflict and the resulting risk assessment for arms exports purposes is an ongoing task.

² UN Security Council Resolution 2216 (2015), citing the letter dated 24 March 2015 from the Permanent Representative of Yemen, to the United Nations, transmitting a letter from the President of Yemen ([http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2216\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2216(2015)))

³ The Criteria are set out in the written statement of the Secretary of State for Business, Innovation and Skills, 25 March 2014 (Hansard, 25 March 2014, Col 9WS):

<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140325/wmstext/140325m0001.htm>

⁴ <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160128/debtext/160128-0001.htm#1601284100000>

⁵ Previous reports of CAEC and the Government response are available online: see the Response (Cm8935) to the Committees Conclusions and Recommendations in its latest Report on the Scrutiny of Arms Exports and Arms Controls (2014) (HC 186) (dated October 2014) at <http://www.parliament.uk/documents/commons-committees/Arms-export-controls/2014-15-Cm8935.pdf> The last CAEC Report was published in March 2015 and the Government’s response was presented in July 2015.

- d. Regular updates are provided to the Foreign Secretary on this matter.
- e. The Government regularly raises the importance of compliance with IHL with representatives of the KSA and other members of the Coalition. There has been extensive engagement with the KSA with respect to the conduct of operations in Yemen, in particular by Her Majesty's Ambassador to the KSA and the Defence Attaché to the UK Embassy in the KSA. Further detail of visits, telephone calls and written communications is provided below.

9. Most recently:

- a. The alleged violations of IHL by the Coalition have been raised with senior representatives of the government of the KSA at discussions. Most recent examples include:
 - i. A visit by the Defence Senior Adviser Middle East (DSAME) to KSA on 3-4 February 2016 during which he met Assistant Defence Minister Ayeesh and Chief of Staff Saudi Armed Forces General Al Banyan and at which assurances were made on IHL compliance;
 - ii. A meeting chaired by a senior Saudi diplomat on 29 January 2016;
 - iii. A meeting on 25 January 2016 between the Parliamentary Under Secretary of State at the Foreign and Commonwealth Office and the Deputy Foreign Minister for the KSA;
 - iv. A set of meetings on 22-23 January 2016 between the Vice Chief of the Defence Staff and the Deputy Crown Prince, Assistant Defence Minister, Chief of Staff Saudi Armed Forces, Deputy Chief of Staff and the Commander of the Royal Saudi Air Force;
 - v. A meeting between Parliamentary Under Secretary of State at the Foreign and Commonwealth Office and Minister of Foreign Affairs on 14 January 2016;
 - vi. A set of meetings during the week of 11 January 2016 between senior HMG officials including the National Security Advisor and the Saudi Arabian Deputy Crown Prince (Defence Minister).
- b. The Coalition Spokesman Brigadier General Assiri has held a Press Conference (on 31 January 2016) at which he confirmed the investigation mechanism in place, providing specific details of the investigation conducted by the KSA into the strike of a hospital on 25 October 2015, including lessons learned.⁶ He stated, inter alia, that

"investigations were carried out on all the allegations which were provided to the investigation points.... There are no ignored cases".
- c. On 1 February 2016, the Coalition issued a statement reaffirming its respect, commitment and compliance with the rules of IHL, reaffirming that "*all possible measures*" are taken to protect all civilians in Yemen, and noting the establishment of an independent high level team of civilian and military experts to assess reported incidents of civilian casualties, investigation procedures and mechanisms of precision targeting.⁷
- d. As indicated above, the Secretary of State has consulted with officials in the FCO as well as the MOD. He has received detailed information from the MOD in relation to their tracking of the incidents of potential concern (see further below).

⁶ A transcript of the statement is enclosed. This is a British Embassy Riyadh translation.

⁷ UN/2016/301. A copy of this statement is enclosed.

C. Response to the proposed claim

Summary of response to claim

10. Your Letter states that:

- a. *“your refusal to suspend extant licences for the supply of arms and military equipment to Saudi Arabia, where such material may be used in the conflict in Yemen, is unlawful”* (p.14).
- b. *“your decision, as set out in your letter of 9 December 2015, to continue to grant new licences for the transfer of arms or military equipment to Saudi Arabia where such material may be used in the conflict in Yemen is also unlawful”* (p.14).

11. Our position is that:

- a. The Secretary of State is, and has been throughout the period of the conflict, satisfied, after having consulted the FCO and the MOD, that extant licences for KSA are and have been compliant with the Criteria.
- b. The Secretary of State will continue to assess each licence application on a case by case basis, taking into account the prevailing circumstances at the time of the application, and in consultation with the FCO and MOD.
- c. The Secretary of State is satisfied that, in respect of exports to KSA, the conditions that trigger the suspension of extant licences and the suspension of licensing have not been met.

12. The three grounds relied upon in Your Letter are now addressed in turn.

Ground 1: Irrationality/misdirection

13. Your Letter states (at p.14):

- a. There is no reasonable basis for the government’s conclusion that the extant licences for Saudi Arabia are lawful and, in particular, remain compliant with the Criteria;
- b. Alternatively, we have misdirected ourselves in the application of the relevant framework of law and policy and/or as to the evidence before us.

14. The principal point relied upon in support of that claim is that there are reports from various international bodies, officials and NGOs which state that the Coalition in Yemen has violated IHL, and that in light of the evidence of violations of IHL and the position adopted by those entities, there is no reasonable basis to conclude that there is not a “real risk” (the phrase used in Your Letter) that items might be used in violation of IHL (i.e. Criterion 2(c) of the Criteria which provides *“Having assessed the recipient country’s attitude towards relevant principles established by international human rights instruments, the Government will not grant a licence if there is a clear risk that the items might be used in the commission of a serious violation of international humanitarian law”*).

15. As noted above, each licence application is assessed on a case by case basis against the Criteria.

16. In line with the EU’s User’s Guide,⁸ an assessment for ‘clear risk’ here is identified as including an inquiry into the KSA’s past and present record of respect for IHL, intentions as expressed through formal commitments, and capacity to ensure that the equipment or technology transferred is used in a manner consistent with IHL.

⁸ Council of the European Union, User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, dated 20 July 2015.

17. This includes an assessment pursuant to Criterion 2(c) which states that there must be a clear risk that UK licensed items might be used in the commission of a serious violation of IHL.
18. In making that assessment, account is taken of all relevant information available at the time the licence application is assessed. This includes all reports cited in Your Letter at pp. 14-15, as well as those of international bodies, officials and NGOs. The Secretary of State also takes into account information available to the Government as to the military processes adopted by the KSA.
19. We note that NGOs and other bodies do not have access to the same type of information on which to base their conclusions as is available to the Government. In particular the Government is able to call upon UK and other government sources, including a number of liaison officers in Saudi Headquarters. These liaison officers are not part of the targeting process but provide us with a higher degree of insight into Coalition processes than would otherwise be the case by opening a dialogue with the KSA. Whilst the Government's understanding is not complete, because of the Saudi need to protect sensitive national security information, this insight allows us to better understand the Saudi targeting processes.
20. All allegations that come to the attention of the MOD are tracked and assessed to identify whether the alleged event occurred as reported, who was responsible for the event, and whether the responsible party's actions are assessed as compliant with IHL or not. In particular, when MOD learns of a new incident, MOD investigates to determine whether they can verify the incident as being a likely coalition strike, and if so whether they can verify a legitimate military target in the area. Civilian casualties, whilst deeply regrettable, are not in themselves determinative of whether or not there has been a breach of IHL. All relevant factors need to be considered. We should stress that MOD considers all reports of allegations or violations, or potential violations, of IHL, including those made by NGOs, which come to the MOD's attention, and make an assessment of the facts so far as possible, including where possible identifying alternative causes.
21. With respect to assurances from the KSA that it is complying with IHL, as noted below such assurances have been given and are taken into account, in conjunction with a series of other factors. For example, we are aware of coalition strikes being aborted due to IHL concerns about civilian casualties.
22. This engagement and assurances has been given by many senior members of the Saudi Arabian government, including, but not limited to, the Deputy Crown Prince, the Assistant Defence Minister, the Deputy Foreign Minister and the Chief of Staff Saudi Armed Forces.
23. Having taken into account all of the foregoing and on the basis of the available information, we consider that the Saudi-led Coalition is seeking to comply with IHL given: our current understanding of their processes; the efforts they have made to apply the necessary checks to their targeting; evidence of strikes being called off when concerns are raised; and recent changes being implemented to restrict the release of weapons under certain circumstances.
24. The incidents of potential concern may be suggestive that there is a risk that the items might be used in the commission of a serious violation of IHL. However, these incidents of potential concern are just that – of *potential* concern, within a very large scale military operation. These are not established violations of IHL, indeed we do not have a single established violation of IHL by the coalition in the conflict in Yemen. These incidents are being tracked by MOD as part of our due diligence in remaining as informed as possible of relevant developments, which may impact on our consolidated criteria risk assessment. We have therefore reached the view that there is not a “clear risk”, particularly when assessing for a qualified risk, as required by the Criterion 2(c) test, of whether the UK licensed items might be used in any incidents of potential concern, and whether those incidents of potential concern involve not just a violation, but a serious violation of IHL.

Ground 2: impermissible reliance on assurances

25. Your Letter states (at p. 15) that the reliance placed on the assurances by the KSA in reaching the decision to grant new licences and/or in deciding not to suspend extant licences is unlawful, in particular that the Government has failed to make sufficient inquiries as to the basis for these assurances to enable it lawfully

to conclude that there is not a clear risk that the UK licensed items might be used in the commission of a serious⁹ violation of IHL.

26. This ground of challenge is misplaced.
27. In making its assessment that there is not a clear risk that the UK licensed items might be used in the commission of a serious violation of IHL, account has been taken of a series of assurances provided by senior KSA officials at regular intervals. We are confident that assurances provided have been given by those with sufficient seniority to follow through on those assurances and ensure the desired behaviour takes place.
28. However, reliance is not placed solely on the verbal or written assurances given but also on the following practical steps.
29. First, as noted above, when an incident of potential concern comes to MOD's attention, they add it to their list of incidents to track and look into further.
30. Secondly, the KSA has permitted a small number of UK staff to be located in Saudi headquarters in a liaison capacity to increase the flow of information between our governments and to give the UK a better degree of insight into their processes.
31. Third, the KSA has invited UK and US targeting experts to their military headquarters to better understand its targeting processes. Officers from the KSA military have subsequently worked with the UK and the US to implement the recommendations of our reports.
32. Fourth, the KSA has personnel on places on three UK training courses as part of a programme of professional development, including training on targeting and the importance of IHL compliance. The RAF has run three courses on targeting for Royal Saudi Air Force ("RSAF") personnel and a fourth will soon follow.
33. Fifth, the access that we have been given to KSA processes and activity generally is in excess of what we would expect to be provided with as non-members of the military coalition in question. With respect to investigations into incidents of concern,¹⁰ the KSA does carry out investigations into specific allegations of IHL violations.¹¹ We refer to:
 - a. The statement issued by the Permanent Representative of the KSA to the United Nations on 4 December 2015 with respect to a strike of a Médecins Sans Frontières ("MSF") clinic on 2 December 2015 which stated, inter alia,

"Immediately upon learning of this news, the Coalition command established a fact-finding committee to determine the truth and accuracy of what had been reported".¹²
 - b. The recent press conference of 31 January 2015, at which it was confirmed that

"investigations were carried out on all the allegations which were provided to the investigation points.... There are no ignored cases".
 - c. The results of one the investigation into the strike on an MSF clinic on 26 October 2015 which was announced at that press conference, including the lessons identified.¹³

⁹ It is noted that Your Letter here omits the term "serious" which appears in Criterion 2(c).

¹⁰ Cf to p. 16 of Your Letter which states "Publicly available information indicates that Saudi Arabia has not investigated, adequately or at all, the allegations of violations of IHL by its forces in Yemen, nor, it appears, has the outcome of any investigation been published".

¹¹ As confirmed below, we are not aware of any disciplinary or criminal initiatives or other measures by the KSA Arabia nor compensation paid with respect to alleged IHL violations (cf final para. on p.16 of Your Letter).

¹² A copy of the statement is enclosed.

¹³ See statement of the press conference of 31 January 2015 enclosed.

- d. The additional investigation team currently being established to liaise with the Yemeni National Committee, as detailed in the statement of the Saudi Permanent Mission to the UN on 1 February 2016.

34. The factors outlined above reflect the special caution and vigilance exercised in granting licences to the KSA.

35. It is therefore clear that a number of different factors are considered when assessing the risks of non-compliance with IHL, of which assurances are only one. Moreover the assurances reflect a deeper level of cooperation and understanding concerning IHL compliance that was followed up regularly between the UK and Saudi Governments and defence personnel.

Ground 3: insufficient basis for a risk assessment

36. Your Letter claims (at p.17) that there is currently a lack of reliable evidence on which to reasonably conclude that the Criteria are satisfied, and that the Government should suspend licences for the export of military equipment for possible use in Yemen forthwith.

37. Suspension, amendment and revocation of extant licences is provided for in Article 32 of the Export Control Order 2008. The power set out there is not limited to use in particular circumstances. Use of this power is appropriate when there are extant licences in respect of which the position has changed since the initial decision on the licence was taken, and which now meet the mandatory refusal criteria. Extant licences would be revoked if we considered that any of the thresholds for refusal in the Consolidated Criteria were met. As set out above, we do not consider this to be the case here.

38. The suspension mechanism to which you refer in Your Letter was set out in Parliament on 7 February 2012¹⁴ as follows:

“The new suspension mechanism will allow the Government to quickly suspend the processing of pending licence applications to countries experiencing a sharp deterioration in security or stability. Suspension will not be invoked automatically or lightly, but triggered for example when conflict or crisis conditions change the risk suddenly or make conducting a proper risk assessment difficult.”¹⁵

39. We note the circumstances in which this mechanism was introduced¹⁶, as a means of addressing concern around UK licensed items being used in internal repression in countries in the Middle East and North Africa at the time of the Arab Spring.

40. Whilst it is accepted that there are some gaps in the Government’s knowledge, as is normal in a conflict to which we are not a party, the Government is currently of the view that it is in possession of sufficient information to conduct the requisite evidence-based risk assessment pursuant to the Criteria.

41. A regular flow of information is received from within Government, through the Embassy in Riyadh, ministerial engagement, foreign governments, as well as open sources including NGOs and international organisations and the media. This information has thus far provided, and continues to provide, adequate detail and context to make an informed assessment against the Criteria.

¹⁴ The 2014 extension of the suspension mechanism to extant licences and not just pending licence applications was noted in the report referenced at footnote 5 of this letter, paragraph 126.

¹⁵ The relevant link to this statement is at fn 50 of Your Letter.

¹⁶ On 16 March 2011, the Foreign Secretary announced that the Government would commission a thorough review of the UK’s policy and practice with regard to the export of equipment that might be used for internal repression, in particular crowd control goods, in light of events in the Arab Spring. On 13 October 2011 the Foreign Secretary made a written ministerial statement announcing the outcome of that review which included the introduction of the suspension mechanism.

42. Your Letter also refers (at p.17) to the “*absence of the publication of the conclusions of independent and effective investigations into incidents in which the Saudi Coalition are alleged to have violated IHL*”. In this regard:

- a. It is noted that the MOD conducts independent assessment of all incidents brought to its attention.
- b. As noted above, the KSA conducts investigations into allegations of violations of IHL.

D. Further questions posed

44. At pp. 17 to 19 of Your Letter a series of questions are set out (numbered (a) to (l)). They are addressed in turn below.

(a) In our letter of 9 November 2015, we asked you to confirm whether the Government remains of the view, as stated to Parliament on 20 July 2015, that there is no ‘credible evidence’ that Saudi / Coalition air strikes in Yemen have violated IHL. You have not answered this question. You state that reports of civilian casualties do not lack credibility. Please confirm the Government’s position.

45. As noted above, the MOD monitors incidents of alleged IHL violations using available information, which in turn informs the overall assessment of whether there is a clear risk that the UK licensed items might be used in the commission of a serious violation of IHL. Civilian casualties, whilst deeply regrettable, are not in themselves determinative of whether there has been a violation of IHL. All relevant factors need to be considered.

46. The information taken into account includes the incidents described in the UN Panel of Experts’ (‘PoE’) report.¹⁷ MOD are looking into specific allegations raised in the PoE report and have added those to their list of potential incidents of concern. We are not in a position to go into any greater detail at this point because the PoE report is a confidential UN document.

47. At this stage, based on the information available, it is assessed that there is not a clear risk that the UK licensed items might be used in the commission of a serious violation of IHL by Saudi Arabia in the conflict in Yemen.

48. We continue to monitor the situation closely, seeking further information where appropriate.

(b) Please confirm whether you accept as credible the allegations by international organisations, including UN agencies, that Saudi Arabia has violated IHL in its conduct of hostilities in Yemen.

49. We consider some of the reports of civilian casualties and damage to be credible. We note that whilst civilian casualties and damage are always regrettable, they are not in and of themselves determinative of a violation of IHL. We accept that many allegations made by international agencies are of sufficient concern to warrant further enquiry and those enquiries are ongoing, however, we have not seen sufficient information to verify any allegation as a violation of IHL. On the other hand, we have been able to cast serious doubt on several allegations with artillery fire, including that of Houthi/Saleh forces, a more likely explanation for several of them than a Coalition air strike.

50. Accordingly, MOD are tracking those alleged incidents (and many others), with a view to assessing those alleged incidents. That assessment then informs our assessment of the overall situation as noted above.

(c) Please provide information as to the assurances given by Saudi Arabia in respect of compliance with IHL in Yemen. Please explain in particular:

(i) Whether any of these assurances concerned specific incidents alleged to constitute violations of IHL.

¹⁷ This report has not yet been published. However, a copy has been provided by the UN Panel Secretariat to UK Mission to UN and has been considered by the FCO and MOD.

(ii) Whether, prior to any new licenses being granted in June 2015, Saudi Arabia offered an assurance that allegations of violations of IHL would be investigated independently and effectively.

51. Specific written assurances were provided by letter along with verbal assurances in meetings before June 2015.

52. No export licences for the export to the KSA of arms and military equipment that might be used in the conflict in Yemen were granted in June 2015.

(d) Please explain when assurances were sought and received.

53. In line with the Government's arms export policy the government has been diligent in ensuring that exports to the KSA satisfy Arms Export Licensing Criteria. Assurances have been sought and given as the result of continuing engagement with KSA over the duration of the conflict.

54. Ministerial and senior Officials engagement since the commencement of the Yemen conflict has included visits to the KSA telephone calls between senior officials and written communications.

(e) Please specifically provide confirmation that assurances from Saudi Arabia were sought and received before new licences were granted from June.

55. Specific assurances were provided and this was raised in meetings before June 2015.

(f) Please confirm whether the government has sought and obtained information and/or assurances from Saudi Arabia in respect of the following:

Whether Saudi Arabia has in fact conducted independent investigations into any of the alleged violations of IHL in Yemen by the Saudi Coalition.

56. We can confirm that the KSA has conducted investigations into alleged IHL violations in Yemen by the Saudi Coalition.

57. We refer in particular to the information provided by the Coalition Spokesman, Brigadier General Assiri, at the press conference of 31 January 2016.¹⁸

If so, what incidents have been investigated? What conclusions have been reached as a result of these investigations?

58. The KSA announced at a press conference on 31 January 2016 the results of its investigation into the strike on a MSF clinic on 26 October 2015. We refer to the attached transcript of that press conference. It should be noted here, as above, that whilst it is normal practice for states to investigate incidents of concern involving their forces, it would not be normal for states to make the full detail of those investigations public.

59. We are aware of other investigations currently underway, for example into the alleged strike on a MSF mobile clinic on 2 December 2015 but have not yet seen their conclusions.

Whether Saudi Arabia has instigated any criminal, administrative or disciplinary steps as part of these investigations.

60. The Secretary of State is unaware of any disciplinary proceedings stemming from these investigations. This does not preclude the possibility that these have taken place and we would not ordinarily expect another state to share this information with us.

Whether Saudi Arabia has prosecuted, disciplined or punished any service personal (sic) in respect of violations of IHL in Yemen.

¹⁸ A transcript of that press conference is attached. This is a British Embassy Riyadh translation.

61. The Secretary of State is unaware of any disciplinary proceedings stemming from these investigations. Again, this does not preclude the possibility that these have taken place and we would not ordinarily expect another state to share this information with us.

Whether Saudi Arabia has provided compensation, on any occasion, in respect of persons killed or injured in violation of IHL in Yemen or in respect of civilian property unlawfully destroyed.

62. The Secretary of State is unaware of any such instance, though reference here is made to the public statement in the press conference of 31 January which covers the KSA's general approach to such matters.

(g) Please confirm that the government accepts that special caution is required in respect of issuing export licences to Saudi Arabia for military equipment which may be used in Yemen, in accordance with Article 2, Criterion 2(b) of the Common Position.

(h) Please further confirm whether, in assessing licence applications for sale of arms of equipment to Saudi Arabia or in deciding whether to suspend extant licences, special caution has been applied in deciding whether to grant all new licences issued since June 2015 and in respect of any decision to suspend any extant licences.

63. In answering these questions we set out the relevant part of Criterion 2 as follows:

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

.....

(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.”

64. We confirm that special caution and vigilance is exercised in granting licences to the KSA, on a case by case basis and taking account of the nature of the relevant items to be licensed. In these particular circumstances, the relevant items are those which could be used in the conflict in Yemen.

(i) Confirm whether Saudi Arabia has in place legislation which enables the prosecution and, if appropriate, punishment of persons suspected of perpetrating violations of IHL. Please provide details of this legislation.

65. We are not in a position to advise on the domestic legislation of the KSA.

(j) Please confirm whether Saudi Arabia has ever prosecuted or punished a member of its armed forces for perpetration of a war crime pursuant to this or other legislation.

66. We are not aware of any such initiatives from the KSA. This does not preclude the possibility that these have taken place. We would not ordinarily expect another state to share this information with us.

(k) Please confirm whether Saudi Arabia has instigated any form of criminal or disciplinary investigation into any allegation that a member of Coalition forces violated IHL in Yemen.

67. We are not aware of any such initiatives by the KSA. This does not preclude the possibility that these have taken place. We would not ordinarily expect another state to share this information with us.

(l) Please confirm whether or not the “logistical and technical support” described by the Foreign Secretary as being provided to the Saudi Arabian forces (see above) was provided in support of any of the specific instances of IHL violations detailed in pages 3-6 of this letter or in any other alleged breached of IHL by the Saudi Coalition.

68. The UK provides the KSA with Defence capability development rather than directly supporting a specific operation. British personnel are not involved in carrying out strikes, directing or conducting operations in Yemen or selecting targets and are not involved in the Saudi targeting decision-making process.

69. By "logistical and technical support", the Foreign Secretary was referring to UK personnel working for:

- a. The Ministry of Defence Saudi Armed Forces Project team (MODSAP) who support the United Kingdom's commitment to the defence of the KSA through the supply of modern military aircraft, naval vessels, weapons and associated support services to the Saudi Armed Forces; and
- b. The Saudi Arabian National Guard Communications Project team who acquire and support, modern communications capabilities for the Saudi Arabian National Guard.

70. In addition to this logistical and technical support there are three main elements of UK support to Saudi operations in Yemen.

71. First, the UK has a very small number of staff located in Saudi headquarters in a liaison capacity only. These liaison officers are not involved in the targeting process – whether it be the selection, decision making or directing.

72. Second, there is the UK's ongoing defence engagement relationship with the KSA. As part of this the UK has provided training courses and advice and guidance in the UK and the KSA. This is part of the UK's longstanding relationship with the KSA and supports continued compliance of Saudi officers with IHL.

73. Third, the UK continues to provide munitions to the Saudi Air Force under existing arrangements. These exports have been assessed against the Consolidated EU and National Arms Exports Licensing Criteria: one of the most robust arms export control regimes in the world.

E. Reference details

74. Any further correspondence should be addressed to Simon Ramsden on behalf of the Treasury Solicitor via the contact details set out in the letterhead and citing the case reference Z160555.

75. Service of court documents may be effected by post and DX. Service of process by e-mail or fax is subject to prior arrangement through Susanna McGibbon, Head of Litigation.

Yours sincerely



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Encs.