



Fourth Report of the Foreign Affairs Committee Session 2016–17

The use of UK-manufactured arms in Yemen

Response of the Secretaries of State for International Trade, Defence, Foreign and Commonwealth Affairs, and International Development

Presented to Parliament

by the Secretaries of State for International Trade, Defence, Foreign and Commonwealth Affairs, and International Development

by Command of Her Majesty

November 2016



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GOVERNMENT RESPONSE TO THE HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE'S REPORT HC 688, ON THE USE OF UK-MANUFACTURED ARMS IN YEMEN

The Government welcomes the report from the Foreign Affairs Committee on the inquiry into the use of UK-manufactured arms in Yemen, which was published on 15 September 2016. The Government appreciates the detailed work the Committee has undertaken.

This Command Paper sets out the Government's response to each of the Committee's conclusions and recommendations in the report. The Committee's text is in plain text and the Government's response is in bold. Paragraph numbers refer to those in the Committee's report.

THE SAUDI-LED COALITION'S INTERVENTION

1. There is a legal basis for the Saudi-led intervention in Yemen and a legitimate need to quell the armed uprising of the Houthi rebels. The UK has an interest in preventing the further deterioration of the humanitarian situation in Yemen that would accompany Houthi expansion in the country. There is also a security interest in denying extremist militant groups such as al-Qa'eda in the Arabian Peninsula (AQAP) further space to operate in Yemen. We agree with Sir Simon Mayall that we should be grateful for the Saudi-led intervention. However, the fact that the UN Security Council has conferred legitimacy on the military intervention does not automatically endorse the conduct of the coalition, as we explore below. (Paragraph 16)

THE CONDUCT OF THE CONFLICT

2. We have heard evidence of potential breaches of international humanitarian law by both sides of the conflict. The warring parties have potentially not adequately distinguished between civilian and military targets, which has caused enormous suffering; civilians account for half of those killed, and nearly three million people have fled their homes. The UK Government has not responded to allegations of breaches of international humanitarian law by the Saudi-led coalition. *We recommend that the Government press all parties to the conflict to comply with international humanitarian law to minimise harm to civilians and protect civilian infrastructure and continue to monitor the situation.* (Paragraph 27)

We are aware of reports of alleged violations of International Humanitarian Law (IHL) by actors in the conflict and take these very seriously. It is important that all parties to a conflict conduct thorough and conclusive investigations into all incidents where it is alleged that IHL has been breached.

We regularly raise the importance of compliance with IHL with the Saudi Arabian Government and other members of the military Coalition. The Foreign Secretary raised IHL with his counterpart, Foreign Minister Al Jubeir, on 9 October. Mr Ellwood subsequently visited Saudi Arabia on 13 October to underline the UK strength of feeling on this issue. Ministers have continued to raise our concerns, most recently on 3 November when the Foreign Secretary spoke to Foreign Minister Al Jubeir. Saudi Arabia has publicly stated that it is

investigating reports of alleged violations of IHL, and that lessons identified will be acted upon. The Saudis have their own internal procedures for investigations and they announced more detail of how they investigate such incidents of concern on 31 January.

The Coalition's Joint Incident Assessment Team (JIAT) announced the outcome of eight investigations on 4 August. On 15 October, the JIAT also announced the outcome of an initial investigation into reports of an airstrike hitting a funeral hall in the Yemeni capital Sana'a on 8 October.

We welcome the recommendation of the JIAT that the Coalition commits to take action against those who caused the incident and to review rules of engagement and update their procedures to ensure adherence in future.

The MOD monitors incidents of alleged IHL violations using all available information. Its analysis includes matters which might give rise to concerns about Saudi Arabia's approach to IHL, such as the equipment used and whether a military target has been identified. This analysis, together with other information about Saudi processes and attitudes, is used to form an overall view on the approach and attitude of Saudi Arabia to IHL, for the purposes of the assessment made under the Consolidated EU and National Arms Export licensing Criteria, whether there is a clear risk that items might be used in the commission of a serious IHL violation.

3. Both Amnesty International and Human Rights Watch have documented evidence of the Saudi-led coalition's use of cluster munitions in Yemen. Cluster munitions are banned under the Convention on Cluster Munitions, to which the UK is a signatory, although Saudi Arabia is not. That notwithstanding, Saudi Arabia's reported use of cluster munitions in Yemen could contravene international humanitarian law and calls into question the coalition's wider respect for the rules of war. Evidence of a UK-supplied cluster munition dropped by the coalition in Yemen means this is a matter which the UK Government must address. (Paragraph 32)

4. We do not believe that the UK Government can meet its obligations under the Convention on Cluster Munitions by relying on assurances from the Saudis. We recommend that the Ministry of Defence carry out its own investigation into the evidence of a UK-supplied cluster bomb found in Yemen. We also recommend that the Government, as a signatory to the Convention on Cluster Munitions, set out the steps it has taken not only to make sure UK-supplied aircraft and UK personnel are not in any way implicated in the use or deployment of these weapons, which is prohibited under the Convention, but also the steps it has taken to stop Saudi Arabia from using cluster munitions. (Paragraph 33)

The Government takes allegations of the use of UK-supplied cluster munitions in the Saudi-led Coalition campaign in Yemen very seriously.

Following the allegation by Amnesty International relating to the potential use of UK-supplied BL-755 cluster munitions in Yemen, the Ministry of Defence has analysed the allegation carefully using all available information, considering all

possibilities, and raised the issue with the Saudi-led Coalition. The Government has not relied solely on Saudi assurances.

The MOD is also aware of reports from an ITV documentary on 26 October in relation to alleged use of BL-755 cluster munitions.

The UK has not supplied cluster munitions to Saudi Arabia since the 1980s. The final delivery of UK-supplied BL-755 cluster munitions to Saudi Arabia took place in 1989. The UK withdrew support for the Saudi stock of BL-755 munitions at the end of 2008. Responsibility for the maintenance of the delivered munitions has always rested with the Royal Saudi Air Force (RSAF), but contractor manpower support for the handling and storage of BL-755 munitions was withdrawn at the same time. UK personnel have not loaded weapons of any type for Saudi-led Coalition operational sorties in Yemen. In line with our obligations under the Convention on Cluster Munitions, we continue to actively discourage all states not party to the Convention from using cluster munitions and encourage them to accede to it without delay. We have raised ratification of the Convention at Ministerial level with Saudi Arabia.

INVESTIGATIONS INTO REPORTS OF VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

5. The reports of violations of international humanitarian law in Yemen since September 2014 have been widespread, with all parties to the conflict being accused of failing to meet their respective obligations under international humanitarian law. We welcome the progress that has been made to date by the Saudi-led coalition to establish the mechanisms to investigate allegations of violations of international humanitarian law. We agree with the Government that it is appropriate for the Saudi-led coalition to investigate these allegations in the first instance. *However, further progress is needed to ensure that the Joint Incidents Assessment Team is transparent, credible, and publishes its investigations in a timely manner. We recommend that the UK Government offer its support to the Joint Incidents Assessment Team where appropriate so that it can meet these ends. We also believe that an independent, United Nations-led investigation of alleged violations by all parties to the conflict is necessary to supplement the internal investigations of the Saudi-led coalition. We recommend that the UK Government support calls for the establishment of such an investigation as a matter of urgency.* (Paragraph 45)

The Government is not opposing calls for an international independent investigation, but, first and foremost, we want to see the Saudi-led Coalition investigate allegations of breaches of International Humanitarian Law (IHL) which are attributed to them; and for their investigations to be thorough and conclusive. Saudi Arabia has publicly stated that it is investigating reports of alleged violations of IHL, and that any lessons learned will be acted upon.

The Coalition members have the best insight into their own military procedures and will be able to conduct the most thorough and conclusive investigations. It will also allow the countries to really understand whether anything went wrong, apply lessons learned and take any follow up action.

When the Coalition announced the composition and investigation process of the Joint Incident Assessment Team (JIAT) on 4 August they stated that the Team would comprise representation from six Coalition countries, would operate with independence and neutrality, and conduct investigations in accordance with international processes. The MOD has supported the development of the JIAT and delivered two training sessions in Saudi Arabia on the process for investigating alleged IHL violations. However, the UK has not been directly involved in investigations undertaken by the JIAT, has not provided any specific operational advice to the Kingdom of Saudi Arabia for operations in Yemen and has not provided training on political authorisation of military operations.

We welcome the release by the JIAT of the outcome of eight investigations into incidents of alleged breaches of IHL in Yemen.

On 15 October, the JIAT also announced the outcome of an initial investigation into reports of an airstrike hitting a funeral hall in the Yemeni capital Sana'a on 8 October. We look forward to their completion of this investigation and welcome the recommendation of the JIAT that the Coalition commits to take action against those who caused the incident and to review rules of engagement and update their procedures to ensure adherence in future.

Our consideration of the JIAT reports will be used to contribute to our overall view on the approach and attitude of Saudi Arabia to IHL, as part of all the information available to us. This, in turn, informs the risk assessment made against the Consolidated EU and National Arms Export licensing Criteria. The situation is kept under careful and continual review.

UK INTERESTS IN THE GULF

6. The Gulf is a region where the UK's security and prosperity agendas overlap. It is in the UK's strategic interests to support a secure, prosperous and politically stable Gulf and we recognise that military support and arms sales play a key role in that. However, there is a perception that our relationships in the region, particularly in terms of arms sales can counterpose our interests—understood as security, stability, jobs, and prosperity—against our values of respect for international law. There are also pragmatic judgements to be made about how to advance our values in a region where revolutionary or imposed changes of government have usually had catastrophic practical consequences and seriously reversed progress towards our values. (Paragraph 51)

7. A strong and durable relationship with Saudi Arabia has enhanced the United Kingdom's work in advancing many of our shared and vital strategic interests. These include military action against ISIL in Syria and Iraq, combating manifestations of violent extremism and radicalisation, countering terrorist financing, confronting Iranian subversions of the existing state systems across the region, and providing immediate relief and long-term solutions for Syrian refugees. Furthermore, Saudi Arabia is a crucial and indispensable partner of the United Kingdom in our shared objective of reaching a political resolution to the conflict in Yemen, which was precipitated by the armed Houthi aggression. Our common security and economic interests run deep. Saudi Arabia's willingness to bear a greater share of the regional security burden, notably leading the coalition acting under the authority of the

United Nations Security Council Resolution 2216 to restore legal authority in Yemen is a particularly welcome development. (Paragraph 55)

8. The UK defence industry is hugely successful and an important part of our export portfolio. Globally, the UK is one of the top three exporters of defence equipment with the US and France. While domestic budgets have faced reductions, exports have been essential in sustaining the industry in the UK, its manufacturing expertise and maintaining economies of scale to ensure value for money for our own armed forces and the taxpayer. It is an industry which has a value beyond the purely economic: defence exports build international relationships and ensure interoperability of equipment with our allies, and they underpin long-term alliances which help deliver our wider foreign policy objectives. They are vital both for our security and our prosperity. (Paragraph 64)

9. The Gulf is a crucial market for defence exports, in particular Saudi Arabia to which over 30 per cent of all UK arms export licences in 2015 were approved. As we move towards expanding our military presence and relationships in the Gulf, we would expect defence exports to that region to have a key role to play. However, this cannot be without conditions or without regard for the UK's international obligations. (Paragraph 65)

UK SUPPORT FOR SAUDI ARABIA AND THE COALITION IN YEMEN

10. The UK's support for Saudi Arabia's military intervention in Yemen has been extensive while remaining short of engaging in the actual combat. Professor Sands QC argued that the UK is in effect involved in the conflict; as "we characterise the nature, extent or depth of that involvement, it is impossible, on the basis of the evidence that is before us, to claim plausibly that the United Kingdom is not involved". Our involvement extends from providing the planes and bombs for airstrikes to UK personnel in the Joint Combined Planning Cell and Saudi Air Operations Centre. This level of involvement without being a party to a conflict is unprecedented and is a result of the "privileged" relationship the UK has with Saudi Arabia and its armed forces. There is again a difficult balance to be struck. We are not convinced that the Government has enough oversight of coalition procedures and operations to be assured that our arms exports are compliant with UK licensing criteria, particularly criterion 2c, while at the same time being sufficiently detached so as not to be implicated in coalition targeting decisions or in the conduct of the air campaign. (Paragraph 78)

11. We are concerned about the involvement of UK personnel with the Saudi-led coalition and the contradictions we have heard regarding their roles. We were told that UK personnel are not part of the intelligence planning cells, but that they are in the Joint Combined Planning Cell HQ. We also heard that UK personnel are in Saudi Arabia to train, educate and teach best practice, which includes understanding international humanitarian law and training air crews and planners how to go about assessing targets for the future, but that our liaison officers "do not provide training, they do not provide advice on IHL compliance, and they have no role in the Saudi targeting chain." This is an area in which there is much confusion and greater clarity is needed. (Paragraph 79)

12. *We recommend that the UK Government provide more detail with regards to the role of UK personnel in Saudi Arabia, in particular answering the following questions:*

- *How many UK personnel are assisting the Saudi Arabian armed forces and in what roles, including BAE Systems employees;*
- *What is the extent of the involvement of each group of UK personnel with the Saudis' operations in Yemen; and*
- *How are UK personnel advising the Saudi Arabian armed forces on IHL and what level of understanding do they have of the coalition's regard for IHL in its operations in Yemen. (Paragraph 80)*

The UK is not a member of the Saudi Arabian-led Coalition and British military personnel are not directly involved in Coalition operations. All personnel remain under UK command and control.

There are three main elements of UK support to the Saudi Armed Forces that touch on Saudi operations in Yemen. It is important these are not conflated:

- **First, we have a very small number of staff working in Saudi headquarters in a liaison capacity only. These liaison officers are not embedded personnel taking part in the Saudi Arabian-led operations and are not involved in carrying out strikes, directing or conducting operations in Yemen or selecting targets, nor in the Saudi targeting decision-making process. All UK personnel remain under UK command and control. We do not discuss specific numbers for reasons of safeguarding operational security.**
- **Second, we continue to provide routine engineering support for UK-supplied aircraft and their systems under long-standing government-to-government arrangements. The UK also supports officer and aircrew training for student pilots and ground technicians. The UK Government's obligations to supply military equipment and support under these arrangements are fulfilled by BAE Systems, the prime contractor. Saudi-based members of the MOD Saudi Armed Forces Projects monitor the delivery of contracted activities by the prime contractor. We do not have full visibility of the prime contractor's manpower footprint in Saudi Arabia, the detail of which forms part of the commercial arrangements underpinning the delivery of much of the contracted support and is therefore sensitive.**
- **Third, we have an on-going defence engagement relationship with the Saudis, as part of which we have provided training courses and advice and guidance in the UK and Saudi Arabia. The RAF provides training to and shares best practice with the Royal Saudi Air Force, including training on targeting. This has included the provision of guidance and advice to support Saudi compliance with International Humanitarian Law (IHL).**

The British military has some of the highest standards in the world in how they conduct themselves in armed conflicts and seek to avoid civilian casualties

and we are happy to share our hard won experience with our partners. We have drawn from our own experiences in Afghanistan, Iraq and elsewhere to learn lessons and to improve our processes even further. It is entirely right that we should share techniques for minimising civilian casualties with other countries to ensure their military campaigns can be conducted in the most humane manner possible.

The UK also has broader defence engagement with Saudi Arabia. There are around 100 military personnel based in the Kingdom of Saudi Arabia, including at the Defence section within the British Embassy Riyadh; providing mentoring and advice to the Saudi Arabian National Guard, as part of the British Military Mission to the Saudi Arabian National Guard; and personnel working on the Saudi Arabia National Guard Communications Project to acquire and support modern communications capabilities for the Saudi Arabian National Guard. In addition to their support to the Royal Saudi Air Force, personnel working on the Ministry of Defence Saudi Armed Forces Projects also support the United Kingdom's commitment to the defence of Saudi Arabia through the supply of modern naval vessels, weapons and associated support services to the Saudi Armed Forces.

UK Defence personnel are unable to form a complete understanding of the Coalition's regard for IHL in its operations in Yemen as they do not have access to all the information required to do so; the UK does not have any embedded personnel taking part in operations, nor do we have any personnel involved in the Saudi targeting decision-making process. However, the insights obtained by Defence personnel into Saudi processes and procedures contribute to our overall view on the approach and attitude of Saudi Arabia to IHL, as part of wider information available to us. This, in turn, informs the FCO risk assessment made against the Consolidated EU and National Arms Export licensing Criteria.

A GLOBAL LEADER IN THE RULE OF LAW

13. We are concerned by the increasing perception that the Government's position is inconsistent with its support for the rule of law and the international rules-based system. The onus is now on the Government to prove that it has complied with its obligations. (Paragraph 87)

The UK government takes arms export responsibilities very seriously and operates one of the most robust arms export control regimes in the world.

The Government is confident in its robust case-by-case assessment of arms export applications against the Consolidated EU and National Arms Export licensing Criteria. In forming a judgement on whether or not to grant a licence, the UK considers whether there is a clear risk the items to be licensed might be used in a serious violation of International Humanitarian Law (IHL).

An export licence will not be granted if to do so would breach any aspect of the mandatory Consolidated Criteria. This includes respect by that country for

international humanitarian law, as set out in Criterion 2 of the Criteria, which is a key consideration when deciding whether to grant an export licence.

A ROBUST LICENSING REGIME

14. The UK Government operates a risk-based arms export licensing regime, requiring Government to assess the risk that arms exports might be used in violation of international humanitarian law. In the face of widespread allegations of violations of international humanitarian law in Yemen, it is difficult for the public to understand how a reliable licence assessment process would not have concluded that there is a clear risk of misuse of at least some arms exports to Saudi Arabia. At present, the Government's export licensing policy towards Saudi Arabia could be interpreted as not living up to the UK's robust and transparent regulations, nor upholding the UK's international obligations. (Paragraph 93)

15. The credibility of the Government's policy and practice of its arm export licensing regime has been called into question. In response, we recommend it issue a public explanation of its risk assessment process and what level of risk would trigger the refusal of a licence.
(Paragraph 94)

The UK Government takes its arms export licensing responsibilities very seriously and operates one of the most robust arms export control regimes in the world. The Consolidated EU and National Arms Export Licensing Criteria provide a thorough risk assessment framework which requires us to think hard about the impact of providing equipment and its capabilities.

An export licence will not be granted if to do so would breach any aspect of the mandatory Consolidated Criteria.

For the licensing of air platforms and associated items for use / likely use by Saudi forces in the conflict in Yemen, the key assessment is the test set out in Criterion 2(c) i.e. whether there is a "clear risk that the items might be used in the commission of a serious violation of international humanitarian law [IHL]". The situation is kept under careful and continual review. On this point the International Trade Secretary takes advice from the Foreign Secretary.

The MOD monitors incidents of alleged IHL violations using all available information. This is used to form an overall view on the approach and attitude of Saudi Arabia to IHL. This, in turn, informs the risk assessment made under the Consolidated Criteria (i.e. whether there is a clear risk that the items to be licensed for export might be used in the commission of a serious violation of IHL). We are not acting to determine whether a sovereign state has or has not acted in breach of IHL, but instead - as Criterion 2(c) requires – we are acting to make an overall judgement.

The analysis undertaken pursuant to Criterion 2(c) with respect to the licensing of arms for export to Saudi Arabia is carried out on a case-by-case basis. It is made by reference to expert advice from both the Foreign and Commonwealth Office and the Ministry of Defence.

16. The Government points to its robust licensing regime as evidence that its arms export practices are responsible. However, by failing to provide persuasive evidence to support this statement or to respond to reports of breaches of international humanitarian law, the Government is preventing public scrutiny of its practices. It is problematic that, at the very time the Government was in receipt of reports documenting violations of international humanitarian law by the Saudi-led coalition the processing times for those licence applications were speeded up. The Government should provide a detailed explanation for those licensing decisions rather than a simple assertion that we have a rigorous licensing regime. (Paragraph 102)

17. *We recommend that the Government implement greater transparency in the policy and practice of its arms exports. As a first step towards this, it should provide further details on the following:*

- *the changes in information, assessment methods and political direction which have occurred since the war in Yemen began;*
- *how differences in opinion between the departments involved in licensing are resolved; and*
- *how often decisions are being referred up the chain of political responsibility, and how far up these decisions go.* (Paragraph 103)

Peace talks are, and have always been, the top priority. The UK government has been clear that a political solution is the best way to bring long-term stability to Yemen and end the conflict.

We continue to assess export licence applications for Saudi Arabia on a case-by-case basis against the Consolidated EU and National Arms Export licensing Criteria, taking account of all relevant factors at the time of the application. The key test for our continued arms exports is whether there is a clear risk that those exports might be used in a commission of a serious violation of International Humanitarian Law (IHL).

The International Trade Secretary takes advice from Other Government Departments concerning whether or not a licence should be issued, refused or revoked based on assessments made against the Consolidated Criteria and other relevant factors at the time. Where there is a difference of opinion between one or more Departments, the final decision rests with the Department for International Trade (DIT).

Middle East and North Africa Directorate (MENAD) is responsible for FCO bilateral relations, policy, and communication for the Middle East and North Africa region. FCO MENAD carefully monitors all developments in Yemen including political negotiations, the economy, humanitarian situation and military activity. It does so via receipt of at least bi-weekly and often daily e-mail updates from the Yemen Office and cross-Whitehall meetings. FCO MENAD also receives updates from posts in the region. FCO MENAD and

Department for International Development (DFID) are also in regular contact with NGOs with an interest in the area, both through formal contacts, such as at roundtable meetings and DFID programme related work, as well as through less formal communications with FCO MENAD officials. Where allegations of IHL violations are reported by NGO partners to DFID these are passed to FCO and MOD to inform IHL updates.

In addition to its general expertise on the situation in Yemen and the surrounding area, the Yemen team in FCO MENAD is responsible for collating specific information relevant to IHL. This information was initially provided to the Foreign Secretary in the form of standard short updates. However, since October 2015, the Foreign Secretary has received regular updates specifically addressing IHL (“IHL Updates”). The purpose of the IHL Updates is to ensure that (i) the Foreign Secretary and Ministers are aware of the developing factual position in relation to the IHL situation in Yemen and (ii) a regular analysis of IHL compliance by Saudi Arabia is undertaken. This information in turn helps to inform the risk assessment under Criterion 2(c) (i.e. whether there is a clear risk that the items to be licensed for export might be used in the commission of a serious violation of IHL) as part of the case-by-case assessment of export licence applications to Saudi Arabia. The situation is kept under careful and continuous review.

Since the commencement of the Coalition operations in Yemen in March 2015, Export Policy Team (EPT) has sent its recommendations in respect of all applications for licences to export precision-guided weapons systems and munitions that are likely to be used by the Saudi Royal Air Force in Yemen to the Foreign Secretary. The Foreign Secretary is thus given an opportunity to comment on all such applications before EPT’s recommendation is sent to DIT. The Foreign Secretary is requested to give a decision in respect of particularly sensitive or finely balanced applications.

In these documents, the Foreign Secretary is either referred to or reminded of the most recent IHL update from FCO MENAD as part of this consultation. He is also provided with details of the export licence application – namely description and quantity of goods, end-user, and end-use.

Once the Foreign Secretary has indicated that he is content with the recommendation, it is finalised by EPT and provided by EPT to officials at DIT in order to inform the final decision on the application.

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