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**Arms Trade Between United Kingdom with Saudi Arabia in Yemen Conflict
associated with Arms Trade Treaty 2014 and International Law**

Vera Ridhani*

Abstract

In March 2015, the Saudi-led coalition of nine Arab countries commenced its military operations against the Houthi rebels and the forces loyal to President Saleh. This operation included bombing raids to civilians and civilian objects, a blockade in the Gulf of Aden, which is causing widespread humanitarian suffering in Yemen. During the Yemen conflict, the United Kingdom has issued 152 military licenses and export arms to Saudi Arabia with a value of £ 2,8 billion. The arms exported by the United Kingdom and use of weapons by Saudi Arabia has resulted in serious violation of International Humanitarian Law. Furthermore, the United Kingdom, as a state party to the Arms Trade Treaty 2014, has violated Article 6(3) and Article 7 of the Arms Trade Treaty for exporting the weapons without conducting mitigation risk and assessment. This article aims to analyze the violations of the Arms Trade Treaty caused by the serious violations of International Humanitarian Law, as well as the violations of United Kingdom's national law and framework governing arms exports. This article also argues that according to the International Law Commission Article on Responsibility of States for Internationally Wrongful Acts, the United Kingdom is responsible for the arms export that has caused damage to Yemen and should carry out compensation as a form of state responsibility.

Keywords: Arms Trade Treaty, Export, Transfer

**Perdagangan Senjata antara Inggris dengan Arab Saudi dalam Konflik Yaman
dikaitkan dengan Arms Trade Treaty 2014 dan Hukum Internasional**

Abstrak

Pada Maret 2015, koalisi pimpinan Arab Saudi dan kelompok koalisi melakukan operasi militer melawan pemberontak Houthi dan pasukan yang setia kepada Presiden Saleh. Operasi ini termasuk serangan pemboman terhadap warga sipil dan objek sipil, blokade di Teluk Aden, yang menyebabkan penderitaan kemanusiaan yang meluas di Yaman. Selama konflik Yaman, Inggris telah menerbitkan 152 lisensi militer dan mengekspor senjata ke Arab Saudi senilai £ 2,8 miliar. Senjata yang diekspor Inggris dan penggunaan senjata oleh Arab Saudi telah mengakibatkan pelanggaran serius Hukum Humaniter Internasional. Lebih lanjut, Inggris sebagai negara pihak Arms Trade Treaty 2014 telah melanggar Pasal 6(3) dan Pasal 7 Arms Trade Treaty karena mengekspor senjata tanpa melakukan mitigasi risiko dan penilaian. Artikel ini bertujuan untuk menganalisis pelanggaran Arms Trade Treaty yang disebabkan oleh pelanggaran serius Hukum Humaniter Internasional, serta pelanggaran hukum nasional Inggris dan kerangka kerja yang mengatur ekspor senjata. Artikel ini juga berpendapat bahwa menurut International Law Commission Article on Responsibility of States for Internationally Wrongful Acts, Inggris bertanggung jawab atas

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* Associate at Bagus Enrico & Partners Law, DBS Bank Tower 17th floor, Suite 1701 Jl. Prof. Dr. Satrio Kav. 3 – 5 Jakarta 12940, S.H. (Universitas Padjadjaran), vera.ridhani@gmail.com.

ekspor senjata yang telah menyebabkan kerusakan di Yaman dan harus melakukan kompensasi sebagai bentuk tanggung jawab negara.

Kata Kunci: Ekspor, Perjanjian Perdagangan Senjata, Transfer

A. INTRODUCTION

The armed conflict in Yemen began in 2011 when parts of the Yemeni population rose against President Ali Abdullah Saleh, who was replaced by Vice-President Abd-Rabbu Mansour Hadi. The conflict escalated after the Houthi rebels took control of the capital Sana'a in 2014. In March 2015, Hadi fled to Saudi Arabia and the Saudi-led coalition responded with Hadi's request to conduct military intervention. Between 26 March 2015 until 11 June 2015, Saudi Arabia and its coalition have carried out 2,724 aerial bombardments. These air explosive weapons have heavily damaged and destroyed civilian objects including houses, hospitals, schools, commercial buildings, historical objects, as well as infrastructures such as bridges and markets. Further, Saudi Arabia and its coalition have also carried out a naval blockade on Yemen ports and restricted air and land transportation, preventing the entry of food, fuel, and humanitarian aid to the people of Yemen.

The Saudi-led coalition has obtained military aid from western states including the United Kingdom. The United Kingdom has provided technical support and precision-guided weapons as well as equipping Saudi Arabia with Tornado fighter jets currently used in the airstrikes. The United Kingdom government has issued 152 military licenses to export arms to Saudi Arabia with a value of £ 2,8 billion. Although the United Kingdom has issued the arms license and transfer such arms to Saudi Arabia, United Kingdom is a party to the Arms Trade Treaty 2014 (ATT). States that

have signed the ATT are urged to control arms trade to parties who are allowed to use weapons so that they do not have an impact on the occurrence of serious violations of International Humanitarian Law (IHL).

Based on such facts, the article begins with the elaboration of the Yemen Conflict, Saudi Arabia intervention, and the arms trade between Saudi Arabia and the United Kingdom. It identifies the serious violations of international humanitarian law caused by the use of conventional arms exported by the United Kingdom. It further identifies the obligation of the United Kingdom as the exporting state to ensure that the weapons, ammunition and components transferred to the importing states are not used to commit or facilitate serious violations of IHL. This article will also discuss the United Kingdom's national law and framework governing arms exports. This article will be closed with the view United Kingdom's responsibility for arms trade with Saudi Arabia resulting in serious violations of IHL under International Law Commission Article on Responsibility of States for Internationally Wrongful Acts.

B. YEMEN CONFLICT

1. Saudi Arabia Intervention that Caused Serious Violation of International Humanitarian Law

Between 2011 and 2012, there was a government transition between former President Abdullah Saleh and Abd-Rabbu Mansour Hadi. In September 2012, President Hadi decided to form a

commission of inquiry to investigate the human rights violations allegations committed by the Houthi rebels in 2011. The commission was tasked with providing recommendations measures to detain criminals and was responsible to give compensations to the victims. However, President Hadi failed to address the human rights abuses investigations and made no progress. Consequently, in 2014 there was a mass protest to hold President Hadi accountable which ended with conflicts in various parts of the Yemeni state involving the Yemeni armed forces and the Houthi rebels. The outbreak of fighting in Yemen caused the government to deploy its security forces and used excessive force against the Houthi rebels where for four days the Houthi armed forces managed to occupy the capital Sana'a.

The fighting in the city of Sana'a ended on 21 September 2014 was marked by the signing of a peace agreement as well as the resignation of the Yemeni prime minister and the creation of a new government in November 2014. On 15 February 2015, the United Nations (UN) Security Council has issued UN Security Council Resolution 2201 responding to the attack in Sana'a and criticizing the Houthis' actions, and demanding them to refrain from any actions that could undermine Yemen's political and

security transition.¹ Although the peace agreement was signed and political transitions were undergoing, the Houthi armed group carried out its first bomb attack in Sana'a in March 2015 which was followed by an attack in the south of Yemen and threatening the port city of Aden. The intensity of the attacks carried out by the Houthis caused President Hadi to lose control of three-quarters of the Yemeni territory and he fled to Riyadh in Saudi Arabia to seek help to regain his power in Yemen. In response to Hadi's request, on 26 March 2015 Saudi Arabia and its coalitions: Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Sudan, and the United Arab Emirates immediately launched the first air explosive weapons at Sana'a and Sada'a aimed at the Houthis.²

Such attacks have caused the civilians to bear the brunt of the conflict in Yemen. Reports by several international organizations and NGOs indicated that Saudi Arabia and its coalition have been involved in extensive airstrikes in Yemen.³ Since 26 March 2015, the UN High Commissioner for Human Rights has documented a total of 3,704 civilians killed and 6,566 injured.⁴ Furthermore, the UN estimates that explosives launched from coalition planes of Saudi Arabia caused the majority of the deaths and injuries of civilians in the conflict.⁵ The

¹ United Nations Security Council ("UNSC") Resolutions, S/RES/2201, 2015, p. 2; Amnesty International, "Amnesty International Report 2015/2016 The State of The World's Human Rights", *Amnesty International Ltd*, 2016, p. 401.

² Human Rights Watch (HRW), "Yemen Events of 2015", 2015. Available at: <https://www.hrw.org/world-report/2016/country-chapters/yemen>

³ HRW, "Suspend Saudi Arabia from the UN Human Rights Council",

<https://www.hrw.org/news/2016/06/29/suspend-saudi-arabia-un-human-rights-council>, accessed on 5th of January 2021

⁴ HRW, Targeting Saad'a Unlawful Coalition Airstrikes on Saad'a City in Yemen, New York: Human Rights Watch, 2015, p. 8.

⁵ Hannah Tonkin (*et.al.*), "State of Crisis: Explosive Weapons in Yemen", *Action on Armed Violence Office for the Coordination of Humanitarian Affairs*, 2015, p. 9.

UN Deputy Secretary-General for Humanitarian Affairs has determined that the airstrikes led by Saudi Arabia are contradictory with the principles of IHL and unacceptable under international law.⁶ The European Union Parliament also passed a resolution in early July 2015 condemning airstrikes by Saudi Arabia and its coalition that killed civilians violated IHL, and argued that there are steps that needed to be done to prevent or minimize civilian casualties.⁷

Some of the attacks by Saudi Arabian forces and their coalition that have caused serious violations of IHL are as follows: (i) Air attack on Oxfam's humanitarian aid storage facility in Governor Sada'a's office on 18 April 2015.⁸ (ii) On 8 May 2015, the cities of Sada'a and Marran were targeted by military and airstrikes, resulting in tremendous destruction to buildings and civilians.⁹ The Saudi Arabian Coalition gave only a few hours to civilians to leave their homes before the attack began. Yet, as the UN OHCHR points out, the limited availability of fuel in Sada'a, the challenging terrain, and almost unusable

telecommunication services are an obstacle for tens of thousands of civilians to evacuate.¹⁰ In June 2015, satellite images obtained by Human Rights Watch indicates that there were 210 different locations in the area of the city of Sada'a which was the area of the aerial bombardment.¹¹ (iii) On 24 July 2015, several airstrikes were directed at the residential complex of the port city of Mokha which is home to 1,300 civilians, resulting in 65 deaths including rescue workers who were killed in the second attack and 40 civilians were injured.¹² Some reports prove that there is no military protection from the government at each port location. (iv) Saudi Arabian coalition forces attacked a ceramics factory located in a civilian residential area in Sana'a killing a civilian and wounding 2 civilians on 23 September 2015. The attack left debris from a missile called the British-made PGM-500 Hakim which was found in a ruin area.¹³ (v) On 27 October 2015, there were several air raids on the *Médecins Sans Frontières* (MSF) hospital in Sada'a which resulted in casualties and the hospital's destruction.¹⁴ The attacks on the

⁶ Michelle Nicholas, "UN says air strikes on Yemen Port could worsen aid crisis", Reuters, <http://www.reuters.com/article/2015/08/19/us-yemen-security-un-idUSKCN0QO28Y20150819#ptdOwuKemW5cGGiC.99>, accessed on 1st of December 2020.

⁷ European Parliament Resolution, "Situation in Yemen", 2015/2760(RSP), 2015, para. 3.

⁸ Oxfam, "Oxfam condemns coalition bombing of a warehouse containing vital humanitarian aid", <http://reliefweb.int/report/yemen/oxfam-condemns-coalition-bombing-warehouse-containing-vital-humanitarian-aid>, accessed on 23rd of November 2020.

⁹ Amnesty International, *Bombs Fall from the Sky Day and Night: Civilians under Fire in Northern Yemen*, London: Amnesty International, 2015, p. 30.

¹⁰ United Nations High Commissioner for Refugees (UNHRC), "Report on the Situation of human rights in Yemen", UN Doc.A/HRC/30/31, 2015, para. 49.

¹¹ HRW, "Yemen: Warehouse strike threatens aid delivery", <https://www.hrw.org/news/2015/04/22/yemen-warehouse-strike-threatens-aid-delivery>, accessed on 2nd of January 2021.

¹² HRW, "Yemen: Coalition strikes on residence apparent war crime", <http://www.hrw.org/news/2015/07/27/yemen-coalition-strikes-residence-apparent-war->, accessed on 2nd of January 2021.

¹³ Amnesty International, "UK-made missile used in airstrike on ceramics factory in Yemen", <http://www.amnesty.org.uk/press-releases/uk-made-missile-used-airstrike-ceramics-factory-yemen>, accessed on 2nd of January 2021.

¹⁴ UN News Centre, "Statement attributable to the Spokesman for the Secretary-General on Yemen", <http://www.un.org/sg/statements/index/asp?nid=9187>, accessed on 2nd of January 2021.

hospital facilities were intentional considering the six shots fired into the facilities. The UN Secretary-General and WHO called the airstrike a violation of IHL.¹⁵ The MSF Hospital is one of 50 hospitals and health care facilities that were damaged or partially destroyed as a result of the airstrikes which also injured and killed the hospital's staff and patients.¹⁶ (vi) The blockade on Yemeni ports and airports by Saudi Arabia and its coalition has resulted in the influx of aid, food, and fuel supplies.¹⁷ This has major consequences for Yemeni civilians where in August 2015 the UN World Food Program determined that Yemeni civilians were in a state of starvation.

Saudi Arabia, a member of the Geneva Conventions since 18 May 1963,¹⁸ has violated the provisions in the Conventions during the Yemen conflict. One of them is Article 19 of the Geneva Convention I regarding the protection of medical units where Saudi Arabia has launched an attack to MSF hospital in Sada'a which caused casualties and the destruction of the

hospital. According to data, the coordinates of the hospital were set as a target two weeks before the attack,¹⁹ therefore the UN Secretary-General and the World Health Organization called the airstrikes a serious violation of IHL. Saudi Arabia has also breached Article 18(2) of the Additional Protocol II to the Geneva Conventions due to the blockade on Yemeni ports and airports which impacted the delivery of aid, food and fuel supplies and has major consequences for Yemeni civilians who were in a state of starvation.²⁰

The Geneva Conventions acknowledge fundamental principles such as the principle of distinction which obliges conflict parties to only target military objects and not civilians or civilian objects. The Office for the Coordination of Humanitarian Affairs reports that 95% of the fatalities were victims of the use of heavy weapons such as explosives in residential areas and 86% were civilians.²¹ Saudi Arabia and its coalition carried out indiscriminate attacks²² that failed to distinguish between combatants and

¹⁵ World Health Organization (WHO), "WHO condemns attacks on MSF hospital in Yemen", <http://www.who.int/mediacentre/news/statements/2015/msf-hospital-yemen/en/>, accessed on 2nd of January 2021.

¹⁶ Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Bulletin Yemen, https://www.humanitarianresponse.info/en/system/files/documents/files/yemen_humanitarian_bulletin_15_october_2015_1.pdf, accessed on 2nd of January 2021.

¹⁷ UNHRC, Report on the Situation of human rights in Yemen, *Op.cit.*, para. 16

¹⁸ ICRC, "Treaties, States Parties and Commentaries", https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=SA, accessed on 2nd of January 2021.

¹⁹ WHO, "WHO condemns attacks on MSF hospital in Yemen", <http://www.who.int/mediacentre/news/statements/>

2015/msf-hospital-yemen/en/, accessed on 2nd of January 2021.

²⁰ World Food Programme News, "WFP Warns of Food Crisis in Yemen Amid Challenges in Reaching People and Shortage of Funding", <http://www.wfp.org/news/news-release/wfp-head-warns-growing-food-crisis-yemen-amid-challenges-reaching-people-and-short>, accessed on 2nd of January 2021.

²¹ Hannah Tonkin et.al., *Op.cit.*, p. 5

²² Indiscriminate attack defined in Addition Protocol I to the Geneva Conventions of 12 August 1949, Article 51(4) that reads: "Indiscriminate attacks are prohibited. Indiscriminate attacks are: a) those which are not directed at a specific military objective; b) those which employ a method or means of combat which cannot be directed at a specific military objective; or c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction."

military objects from civilians and civilian objects and used combat methods that were deliberately directed against military objects where civilians lived around using air explosive weapons.

In addition, Saudi Arabia has carried out disproportionate attacks using weapons such as air bombs that have caused excessive damage against civilian objects and the civilians were injured and killed.²³ Based on the principle of proportionality stipulated in Article 51 (5) (b) of the Additional Protocol I of the Geneva Conventions, the principle of proportionality minimizes and protects civilians from potential harm, launching an attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive regarding the concrete and direct military advantage anticipated, is prohibited. Furthermore, all parties to the conflict must take precautions to protect civilians and civilian objects from the impact of attacks. In the context of the conflict in Yemen, Saudi Arabia has violated the principle of distinction and proportionality by using explosive weapons in residential areas and civilian objects.

2. Arms trade between United Kingdom and Saudi Arabia

Since 1960 the British Government has permitted numerous arms export deals

with Saudi Arabia for its fighter aircraft fleet and its supporting infrastructure and components and ammunition for the maintenance of these aircraft. The United Kingdom Trade & Investment Defense & Security Organization and United Kingdom Export Finance regulate the arms trade relationship between the United Kingdom and Saudi Arabia with the function of promoting and providing subsidies for arms exports to demonstrate government support. In the last ten years, Saudi Arabia has become the first customer for Britain in the arms export industry and in 2015, around 30% of the United Kingdom arms licence and arms export were to Saudi Arabia.²⁴

In mid-March 2015, the United Kingdom transferred mass conventional weapons to Saudi Arabia used to intervene in the Yemen conflict. The Department for Business, Innovation and Skills and the Export Control Organization is a British government agency that issues weapons licenses every 3 months.²⁵ Of the 152 licenses issued by the United Kingdom, 132 of these licenses are Standard Individual Export Licenses (SIELS) which limit the number of exports of certain items for named end-users.²⁶ While other 20 licenses are Open Individual Export Licenses (OIELS) which limit shipments for more than five years without limitation on the number or value for

²³ UNSC, Overview of Sanctions Committee Documents, S/2016/73, 2016, p. 37.

²⁴ House of Commons, "The Use of United Kingdom-manufactured Arms in Yemen", *Business, Innovation and Skills and International Development Committees*, 2016, p. 5.

²⁵ United Kingdom Government, "Strategic Export Controls: Licensing Data",

<https://www.gov.uk/government/collections/strategic-export-controls-licensing-data>, accessed on 2nd of January 2021.

²⁶ United Kingdom Government, "Strategic Export Controls: Licensing Statistics 2015", 2015, p. 7, <https://www.gov.uk/government/policies/export-controls>, accessed on 2nd of January 2021.

some export destination regions, usually without named end-users.

Based on data from The Department for Business, Innovation and Skills and the Export Control Organization, at the time of the conflict in Yemen, the arms exports were accelerated by shortening the processing time for weapons licenses to Saudi Arabia. In Term 2 between 1 April and 30 June 2015, the median processing time for SIELS was 25 days for £ 1,736,807,764.²⁷ The largest license category was the ML10 which is an aircraft, unmanned aerial vehicle, and its components priced at £ 1,714,184,642,209. In Term 3 between 1 July and 30 September 2015, the median processing time for SIELS was 14 days with a value of £ 1,108,300,139.²⁸ The ML4 category of bombs, torpedoes, rockets, and missiles was the largest category exported for £ 1,066,216,510,211 in Term 4 between 1 October and 31 December 2015, the median processing time for SIELS was 12 days with a value of £ 19,739,194,212.²⁹ The most submitted categories were ML4 for £ 3,705,539 and the ML1 category which was a firearm priced at £ 1,005,560,213.

Between 1 January and 30 September 2015, the United Kingdom has issued 152 military licenses to export weapons to Saudi Arabia worth £ 2.8 billion.³⁰ Nine of these licenses are bombs, torpedoes, rockets, and missiles which cost more than £ 1 billion, while the other 23 licenses are the aircraft and its components licenses cost £ 1.7 billion.³¹ The United Kingdom also sent fighter jets to Saudi Arabia including three Typhoon Block-20 jets worth £ 4.4 billion and 2,400 Paveway-IV Guided Bombs for £ 150 million.³²

C. ARMS TRADE VIOLATIONS BETWEEN THE UNITED KINGDOM AND SAUDI ARABIA IN YEMEN CONFLICT BASED ON ARMS TRADE TREATY 2014

1. United Kingdom arms transfer prohibition according to Article 6(3) Arms Trade Treaty 2014

In October 2003, Amnesty International, Oxfam, the International Action Network on Small Arms and several other NGOs launched the Control Arms Campaign to encourage states to form ATT. The campaign was fruitful, the ATT was adopted by a vote of 154 in favor, 3 against, and 23 abstentions. It opened for signature on 3 June 2013. On 24 December 2014, the ATT entered into force with 61 ratifications and 130 signatures,

²⁷ Department for International Trade, "Strategic Export Controls: Country Pivot Report 1st April 2015 – 30th June 2015", 2015, p. 262, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583211/strategic-export-controls-country-pivot-report-2015-qtr-2.pdf, accessed on 2nd of January 2021.

²⁸ Department for International Trade, "Strategic Export Controls: Country Pivot Report 1st July 2015 – 30th September 2015", p. 250, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583219/strategic-export-controls-country-pivot-report-2015-qtr-3.pdf, accessed on 2nd of January 2021.

²⁹ Department for International Trade, "Strategic Export Controls: Country Pivot Report 1st October 2015 – 30th December 2015", p. 266, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583221/strategic-export-controls-country-pivot-report-2015-qtr-4.pdf, accessed on 2nd of January 2021.

³⁰ *Ibid.*

³¹ ATT Monitor, "Dealing in Double Standards How Arms Sales to Saudi Arabia are Causing Human Suffering in Yemen", *ATT Monitor – Case Study 2*, 2016, p.5.

³² *Ibid.*

including the United Kingdom. ATT is an attempt to regulate the international trade of conventional weapons to contribute to international and regional peace; reducing human suffering; and promoting cooperation, transparency, and responsible action by and among states.³³ The Treaty covers conventional weapons, meaning not nuclear, chemical, or biological. The arms specifically mentioned in the Treaty are battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers and small arms and light weapons. Ammunition, as well as the parts and components that makeup weapons systems, also fall under this Treaty.

On a separate note, based on Article 34 Vienna Convention on the Law of Treaties 1969, an international agreement cannot create obligations or rights to non-member states, so that Saudi Arabia as a non-member state of ATT cannot be bound by ATT. Therefore, in implementing the arms trade, the article relies on ATT as a form of positive law that applies to the United Kingdom as a member of ATT.

One of the important elements of the ATT agreement is regulated in Article 6 which states three forms of prohibitions on the transfer of weapons that are prohibited in ATT. Article 6 (3) ATT stipulated:

"A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of

items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party."

Arms Trade Treaty: A Commentary explains Article 6(3) that ATT states are not allowed to authorize transfers (imports, exports, brokering, or transit) of conventional weapons, ammunition, parts, and components if they have knowledge of arms trade used for commissions attempted genocide, crimes against humanity or war crimes that committed serious violations of the 1949 Geneva Conventions, attacks directed against protected civilians and civilian objects, or other war crimes defined by international treaties approved by the parties.³⁴ Accordingly, Article 6(3) ATT requires the United Kingdom, as a state party, to have knowledge that weapons will be used to commit serious violations of IHL.

Although, there are no provisions in the ATT that define knowledge. The standard knowledge referred to in ATT is spelled out in the decisions of the International Court of Justice dealing

³³ International Committee of the Red Cross (ICRC), "Understanding the Arms Trade Treaty From A Humanitarian Perspective", International Committee of the Red Cross, 2016, p. 12.

³⁴ Andrew Clapham, (et al)., *The Arms Trade Treaty: A Commentary*, Oxford: Oxford University Press, 2016, p. 178.

with violations by the state of international obligations such as in the Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia v. Serbia).³⁵ According to the International Court of Justice, it relates to the assessment of the obligations of a state with regard to the prevention of violations of international law by other states in the future. In the case of Bosnia v. Serbia, the International Court of Justice stated that knowledge is defined as constructive knowledge which the state should have realized (should normally have been aware).³⁶

On this basis, United Kingdom violated Article 6 (3) of ATT because at the time of the transfer of weapons or its components to Saudi Arabia, United Kingdom was aware or should have been aware that these weapons would be used for attacking citizens or civilian objects or war crimes that constitute a serious violation of the 1949 Geneva Conventions in Yemen Conflict.³⁷ The author can conclude that future transfers of arms or their components by the United Kingdom in the Yemen conflict may harm citizens and civilian objects. Therefore, the United Kingdom as a state party must deny a transfer under Article 6 (3) if it has substantial grounds to believe, based on information in its possession or that is reasonably available to it, that the weapons would be used to commit genocide, crimes against humanity or war crimes. It is also important to recall that, apart from the transfer prohibition

under Article 6 (3) of the ATT, each state has a duty to ensure respect for IHL in its arms transfer decisions. This is one of the key principles that a state must bear in mind when implementing the Treaty. The obligation includes refraining from transferring weapons to a party to an armed conflict if there is a substantial or clear risk that the recipient would use the weapons to commit violations of IHL. It requires a state to consider the risk of all forms of serious violations occurring, not just the three categories of war crimes listed in Article 6 (3).

2. United Kingdom export risk assessment according to Article 7 Arms Trade Treaty 2014

If a proposed export of arms, ammunition or parts and components has not been prohibited under Article 6 of the ATT, a state party is required to carry out a further assessment under Article 7 of the risk that the arms or items “could be used to commit or facilitate” serious violations of IHL or international human rights law, or other serious crimes. The United Kingdom as an exporting state party is required to carry out a risk assessment before granting the export license to other states based on Article 7 of ATT.

In this present situation, the United Kingdom must refuse the arms export license if the export can be used to engage or facilitate Saudi Arabia in serious violations of IHL. These serious offenses include deliberate attacks on civilians and civilian objects, indiscriminate attacks,

³⁵ Phillippe Sands, (*et.al.*), *Op.cit.*, p. 41.

³⁶ International Court of Justice (ICJ), Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide, (Bosnia and

Herzegovina v. Serbia and Montenegro), Judgment, 11 July 1996, para. 432.

³⁷ Phillippe Sands (*et.al.*), *Op.cit.*, p. 41.

disproportionate attacks, and attacks launched without precautionary measures to avoid or reduce risks to civilians.

Article 7 (1) ATT has a wider application than Article 6 (3) ATT for three reasons. These reasons include:³⁸ (i) the risk of serious violations of IHL, including attacks directed against civilians and civilian objects and war crimes that have been regulated in international treaties to which the United Kingdom is a party; (ii) arms transfers could potentially be used to facilitate serious violations of IHL; and (iii) whether the weapon could be used for serious violations of IHL, not whether the weapon would be used. However, there must be a potential causal link between the specific export in question and the risk of a serious violation for an export to be refused on this basis.

The risk assessment that the United Kingdom must undertake under Article 7 (1) of the ATT can be carried out in two stages. In the first stage is based on Article 7 (1) (a) of ATT, the United Kingdom needs to observe whether arms exports have the potential to contribute or undermine international, domestic peace and security or are related to the Yemen conflict. When the United Kingdom carries out the risk assessment of arms and its components exports where the results of the weapons risk assessment could compromise peace and security, the

requests for arms licenses must be rejected.³⁹ On the other hand, if the United Kingdom declared that the export of arms or its components would not interfere with peace and security, the United Kingdom would consider proceeding to the second stage.

Furthermore, the second stage based on Article 7 (1) (b) of ATT requires state parties to consider the potential negative use of arms exports.⁴⁰ Article 7 (1) (b) (i) of ATT refers to serious violations of IHL related to war crimes where it will be a serious issue if it endangers protected persons and objects such as citizens and civilian objects or if it violates important values.⁴¹ The United Kingdom must consider whether the weapons and their components can be used to commit or facilitate serious violations of IHL. Article 7 (1) stipulates that risk assessment must be carried out with non-discriminatory purposes and methods to consider any factors including information from importing states. According to Article 8 (1) regarding imports, the importing states must provide information including end-user information regarding the characteristics of hostility in armed conflict, domestic sales, or peacekeeping. In the Yemen conflict, Saudi Arabia as the end-user must provide information regarding the records of compliance with IHL. This information includes the nature, type and quantity of exported weapons,

³⁸ Phillippe Sands (*et.al.*), *Op.cit.*, p. 52

³⁹ *Ibid.*, p. 49.

⁴⁰ Marlitt Brandes, "All's Well That Ends Well or Much Ado About Nothing?: A Commentary on the Arms Trade Treaty", *Goettingen Journal of International Law*, 2013, p. 416.

⁴¹ ICRC, "What Are "Serious Violations of International Humanitarian Law"?": Explanatory Note", <<http://www.icrc.org/eng/assets/files/2012/att-what-are-seriousviolations-of-ihl-icrc.pdf>> accessed on 2nd of January 2021.

intended use of weapons, general situation in Saudi Arabia and the surrounding area, UN or NGO, reports and statements relating to this information.⁴² Although the risk assessment process under Article 7 is forward-looking, focusing on the likelihood of future behavior, past conduct by Saudi Arabia will necessarily be a relevant indicator as to the likely future conduct of the State.⁴³

After obtaining all the evidence to carry out the risk assessment, the United Kingdom should pay attention to any countermeasures that Saudi Arabia or the United Kingdom could take to deal with the risks. Article 7 (2) ATT refers to the agreed program to be compiled and formed jointly by exporting and importing states to carry out mitigation measures. Examples of such mitigation measures include an end-user certificate that provides information on end-user weapons and training for importing state officials or military forces.⁴⁴ With regards to arms exports to Saudi Arabia, the British Government has offered Saudi Arabia training to its military forces to ensure that there would be no serious violations of IHL when their military forces waged war.⁴⁵ Saudi Arabia has accepted the offer and the United Kingdom claimed that the training was another form of their mitigation

measures. However, the training provided by the United Kingdom for members of the Saudi Arabian military forces during the armed conflict turned out to be a greater risk ratio for serious violations of IHL so that the training did not deserve to be called a mitigation measure.

After conducting a risk assessment and carrying out mitigation measures, the United Kingdom needs to determine export license if there is an overriding risk as regulated in Article 7 (1) (b) of ATT. The term overriding risk in Article 7 (3) ATT is one of the most contested provisions because this concept is not known in international law or has a clear and understandable meaning.⁴⁶ Another interpretation of the term overriding risk is stated by a member of the state party that ratifies the ATT that means a risk that is more likely to occur.⁴⁷

During the ATT negotiation period, there were efforts made by several states to replace overriding to be “substantial” or “clear” to prevent an export from being allowed and to create standards that could measure risks for peace and security and the risk of serious violations of IHL. The United Kingdom viewed that substantial risk is the appropriate term in Article 7 (3) ATT.⁴⁸ This means that the exporting state must refuse the arms transfer

⁴² Sarah Parker, “Breaking New Ground? The Arms Trade Treaty”, *Small Arms Survey*, 2014, p. 90.

⁴³ Philippe Sands (*et.al.*), *Op.cit.*, p. 50.

⁴⁴ Human Rights Watch, “Joint Statement: Fanning the Flames of the Yemen Conflict”, <https://www.hrw.org/news/2016/03/22/joint-statement-fanning-flames-yemen-conflict>, accessed on January 2021.

⁴⁵ Cusick, the Independent, “UK could be prosecuted for war crimes over missiles sold to Saudi Arabia that were used to kill civilians in Yemen”, [http://www.independent.co.uk/news/uk/politics/uk-](http://www.independent.co.uk/news/uk/politics/uk-could-be-prosecuted-for-war-crimes-over-missiles-sold-to-saudi-arabia-that-were-used-to-kill-civilians-in-yemen)

[could-be-prosecuted-for-war-crimes-over-missiles-sold-to-saudi-arabia-that-were-used-to-kill-civilians-in-yemen](http://www.independent.co.uk/news/uk/politics/uk-could-be-prosecuted-for-war-crimes-over-missiles-sold-to-saudi-arabia-that-were-used-to-kill-civilians-in-yemen), accessed on 2nd of January 2021.

⁴⁶ Philippe Sands, (*et.al.*), *Op.cit.*, p. 53.

⁴⁷ Declaration of Liechtenstein when ratifying ATT, <https://treaties.un.org/doc/Publication/MTDSG/Volume%2011/Chapter%20XXVI/XXVI-8.en.pdf>, accessed on 2nd of January 2021.

⁴⁸ UN Conference on the Arms Trade Treaty, “Compilation of Views on the Elements of an Arms Trade Treaty: Background Document Prepared by the Secretariat”, UN Doc. A/CONF.217/2, 2012, p. 108.

license if the exporting state knows that the arms transfers could potentially be used to violate international commitments such as terrorist acts, violent crimes and will also be used in serious violation of IHL.⁴⁹

3. United Kingdom Domestic Framework Governing Arms Exports

This section sets out an analysis of the United Kingdom's arms transfers based on the United Kingdom main legislative and policy provisions governing arms exports which consist of: (a) Export Control Act 2002 and Export Control Order 2008 and (b) The Consolidated European Union and National Arms Export Licensing Criteria (The Consolidated Criteria). The Consolidated Criteria is carried out to create international legal instruments that can be legally applied to United Kingdom's laws and policies.

a. Export Control Act 2002 and Export Control Order 2008

The Export Control Act 2001 and the Export Control Order 2008 are British laws that aim to increase transparency and accountability in export controls by setting limits for the government. Section 32 of the 2008 Export Control Order obliges the United Kingdom to revise or revoke arms transfer licenses if exports to importing states do not

comply with the Consolidated Criteria.

During the Arab Spring and the persecution that continued in 2011, the British Government created a suspension mechanism to be used against states that experienced a decline in state security and stability for a certain period of time in accordance with the advice of the British diplomatic post.⁵⁰

The policy stipulated that "suspension will not be invoked automatically or lightly, but triggered when conflict or crisis conditions suddenly increase the level of risk or make conducting a proper risk assessment difficult. We will conduct these assessments on a case-by-case basis, in the same way, that we do whenever issuing a license."⁵¹ The suspension mechanism has been implemented by the British government regarding the pending license applications, pending licenses, and suspends each transfer for a specified period of time. The tests carried out by the British government in making the temporary dismissal decision are judged on whether these tools can be used in internal repression.⁵²

Available at:
http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/2.

⁴⁹ UN General Assembly, "Report of the Secretary-General: Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and *Transfer* of Conventional Arms", UN Doc. A/67/278(Part II), 2007, pp. 228-229.

⁵⁰ UK Parliamentary Committee on Arms Exports Controls, "Scrutiny of Arms Exports and Arms Control (2013), Section 9 – Arms Export Control Policies",

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmquad/2015/205ii11.htm>, accessed on 2nd of January 2021.

⁵¹ Department for Business, Innovation & Skills, "Government to strengthen measures on export licensing", <http://www.gov.uk/government/news/government-to-strengthen-measures-on-export-licensing>, accessed on 2nd of January 2021.

⁵² J. Lunn, "UK Arms Export Control Policy", *House of Commons Library Briefing Paper N. 02729*, 2015, p. 9.

b. The Consolidated European Union and National Arms Export Licensing Criteria

The Consolidated Criteria, which was amended in March 2014, aims to align with the British law with international obligations.⁵³ There are eight criteria in the Consolidated Criteria that must be assessed before granting a license to export weapons and their components from the United Kingdom.⁵⁴ Based on the Consolidated Criteria, there two criteria that the United Kingdom has violated during the arms exports to Saudi Arabia. The British government states that if the proposed export fails to meet one or more criteria, then the export license cannot be permitted and will be refused.⁵⁵

Criteria 1 and Criteria 2 (c) are mandatory in the Consolidated Criteria which emphasizes that a license cannot be granted if the conditions specified in these criteria are not met. Criteria 1 concerning the United Kingdom's international commitments stated that the British Government will not grant a license if it is inconsistent with the ATT, European Union Common Position 2008/944/CFSP and Organization for Security and Co-operation in Europe Guidelines.⁵⁶ Criteria 1 functions to give legal

effect to the instrument in national law and policy.⁵⁷ The transfer of weapons by the United Kingdom to Saudi Arabia that was used in Saudi Arabia's military operations in Yemen to conduct the attack on civilians and civilian objects as well as the blockade of ports in Yemen is not consistent with United Kingdom's obligations under the ATT, European Union Common Position and OSCE Guidelines. Therefore, the transfer of weapons has breached Criterion 1.

The Criterion 2(c) of the Consolidated Criteria concerns the respect for IHL. The British government will not grant a license if there is a clear risk that the weapons might be used in the commission of a serious violation of IHL. Any authorization by the United Kingdom of exports of weapons or related items, governed by the Export Control Act and Order, to Saudi Arabia, capable of being used in its military activities in Yemen, including in support of its blockade of Yemeni ports, which imposes no restrictions on their end-use, would also constitute a breach of United Kingdom Criterion 2(c).⁵⁸

⁵³ *Ibid.*

⁵⁴ Department for Business, Innovation & Skills and Export Control Organization, "Consolidated EU and National Arms Export Licensing Criteria", <https://www.gov.uk/government/publications/consolidated-eu-and-national-arms-export-licensing-criteria>, accessed on 2nd of January 2021.

⁵⁵ Department for Business, Innovation & Skills and Export Control Organization, "Assessment of Export

License Applications: Criteria and Policy", <http://www.gov.uk/guidance/assessment-of-export-licence-applications-criteria-and-policy>, accessed on 2nd of January 2021.

⁵⁶ Phillippe Sands (*et.al.*), *Op.cit.*, p. 74.

⁵⁷ *Ibid.*

⁵⁸ Phillippe Sands (*et.al.*), *Op.cit.*, p. 75.

D. UNITED KINGDOM'S RESPONSIBILITY FOR ARMS TRADE WITH SAUDI ARABIA RESULTING IN SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW UNDER INTERNATIONAL LAW

The responsibility of the state is a fundamental principle of international law that arises from the international legal system and the doctrines of state sovereignty and the equal rights of states. A state can be held accountable when a state violates international obligations, commits negligence, and causes harm to another state or other international legal subject.⁵⁹ A state will be responsible for an action or an order if the state conducts wrongful acts. Based on Article 1 of the International Law Commission Article on Responsibility of States for Internationally Wrongful Acts ("ILC Articles"), the United Kingdom commits international wrongful acts of a state when the British government had transfer arms to Saudi Arabia which resulted in serious violations of IHL in the Yemen conflict.

Stipulated in Article 2 of the ILC Articles, the United Kingdom as a state has committed an internationally wrongful act of a state if it committed an action or omission that is attributable to the state under international law; and that constitutes a breach of an international obligation of the state.

To determine the existence of the United Kingdom's responsibility, it must be proven that there is an attributable burden of guilt to state officials. Actions taken by state officials or persons acting on behalf of

the state can be borne by the state. Based on Article 4 (1) ILC Articles states the first principle of state attribution in which the actions of a state organ are related to the state. State organs do not differentiate between legislative and executive or judicial organs wherein the *Salvador Commercial Company* case, the International Arbitration Awards court stipulated that A state is responsible for the acts of its rulers, whether they belong to the legislative, executive, or judicial department of the Government, so far as the acts are done in their official capacity. In the Yemen conflict, The Department for Business, Innovation and Skills and the Export Control Organization is a British government agency that issued weapons licenses every 3 months to Saudi Arabia during the conflict in Yemen.⁶⁰ These actions created responsibility for the state.

State responsibility must be caused by a violation of the international obligations applicable to the state at that time. Based on the case of the *United States Diplomatic and Consular Staff in Tehran*, it must consider their compatibility or incompatibility with the obligations of Iran under treaties in force or under any other rules of international law that may be applicable.⁶¹

State obligations which are also the basis for state responsibility provision are also included in the ATT preamble which reads: "The responsibility of all states, in accordance with their respective international obligations, to effectively regulate the international trade in

⁵⁹ Huala Adolf, *Aspek-Aspek Negara Dalam Hukum Internasional*, Jakarta: PT. RajaGrafindo Persada, 1991, p. 255.

⁶⁰ United Kingdom Government, "Strategic Export Controls: Licensing Data", <https://www.gov.uk/government/collections/strategi>

c-export-controls-licensing-data, accessed on 2nd of January 2021.

⁶¹ ICJ, *United States Diplomatic and Consular Staff in Tehran*, (*United States of America v. Iran*), Judgment, 24 May 1980, p. 3.

conventional arms, and to prevent their diversion, as well as the primary responsibility of all states in establishing and implementing their respective national control systems.” The United Kingdom, a state member of ATT which has signed and ratified the international treaty on 2 April 2014,⁶² has the responsibility in accordance with its obligations to ATT to regulate an effective arms trade and the United Kingdom is responsible for establishing and implementing its national control system.⁶³ Therefore, the United Kingdom as a state member of ATT, is prohibited to violate the ATT provisions.

Based on Article 12 of the ILC Articles, there is a breach of an international obligation by a state when an act of that state is not in conformity with what is required of it by that obligation, regardless of its origin or character. Based on this article, a violation of international obligations by a state occurs when that state's actions are incompatible with what should be done regardless of the origin or character of the state.⁶⁴ When the United Kingdom carried out arms transfers with Saudi Arabia between 1 January and 30 December 2015,⁶⁵ The United Kingdom has violated Article 6 (3) and Article 7 of ATT, which is one of the provisions of the international obligations of ATT. Therefore, the United Kingdom can be held accountable.

In the Yemen conflict, the United Kingdom failed to regulate an effective arms trade whereby United Kingdom weapons

transfer to Saudi Arabia has resulted in serious violations of IHL which also means violating ATT, Export Control Act and Order and the Consolidated Criteria. As international treaties are legal instruments that apply obligations to states that bind themselves to such treaties, violations of ATT can be considered as international wrongful acts that arise from state responsibility.⁶⁶

With the United Kingdom taking action against international law, some responsibilities involve legal consequences. The United Kingdom, as a state, is responsible for the obligation to provide full reparation based on Article 31 of the ILC Articles in the form of restitution, compensation, or satisfaction, either separately or a combination of them.⁶⁷

The author argues that the form of responsibility that should be done by the United Kingdom to Yemen is in the form of compensation. Compensation is regulated in Article 36 ILC Articles which reads: “(1) The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution. (2) The compensation shall cover any financially accessible damage including loss of profits insofar as it is established.” Compensation could be in the form of the payment of a sum of money as compensation for losses.⁶⁸ The compensation that the United Kingdom can make includes any financial loss that Yemen could count as a loss. In the case of

⁶² The Arms Trade Treaty, “United Nations Office for Disarmament Affairs”, <https://www.un.org/disarmament/convarms/att/>, accessed on 2nd of January 2021.

⁶³ Andrew Clapham (*et.al.*), *Op.cit.*, p. 443.

⁶⁴ *Ibid.*, p. 98.

⁶⁵ United Kingdom Government, “Strategic Export Controls: Licensing Data”, <https://www.gov.uk/government/collections/strategi>

c-export-controls-licensing-data, accessed on 2nd of January 2021.

⁶⁶ International Law Commission, “Report of the International Law Commission on the work of its sixty-sixth session”, A/69/10, 2014, p. 258.

⁶⁷ Peter Malanczuk, *Modern Introduction to International Law*, New York: Routledge Publication, 1997, p. 270.

⁶⁸ Ian Brownlie, *Principles of Public International Law*, Oxford: Clarendon Press, 1992, p. 458.

Paraguay v. USA in the International Court of Justice, the United States stated that compensation is a form of reparation that is more reasonable and more practical.⁶⁹

The United Kingdom is responsible for Yemen's losses in the form of compensation in order not to repeat any other form of satisfaction. In addition, Yemen can use the United Kingdom's compensation to repair damage caused by arms licenses issued by the United Kingdom. According to a report from the United Nations Office for the Coordination of Humanitarian Affairs, the current damage to Yemen's economy is based on the Disaster Needs Assessment established by the World Bank, European Union, United Nations and Islamic Development Bank estimated the infrastructure damage and other damage costs at USD 19 billion.⁷⁰ The United Kingdom must be responsible for the damage to civilian objects and the death of civilians and those injured in the Yemen conflict as in the case of Zambia and Rhodesia where the United Nations Security Council Resolution Number 455 of 23 November 1979 states that Zambia as a responsible state must compensate South Rhodesia and further calls for the payment of full and adequate compensation to the Republic of Zambia by the responsible authorities for the damage to life and property resulting from the acts of aggression.⁷¹

Under ATT, the United Kingdom is responsible for all damage and losses from the licensed arms transfers to Saudi Arabia in the Yemen conflict. The United Kingdom, which is a member state of ATT, has committed itself to the rights and obligations contained in the international treaty. Thus, the United Kingdom must comply with Articles 6 and Article 7 of the ATT before granting arms transfer licenses to Saudi Arabia or other states that will conduct arms trade with the United Kingdom. The United Kingdom as an exporting state should be more careful in carrying out risk assessments such as mitigation measures or overriding risk tests to prevent serious violations of IHL. The United Kingdom should take precautions by investigating and examining the parties involved in imports, exports, monitoring additional documents such as end-user certificates, obtaining warranties from importing states for the use of weapons, and not granting transfers if they do not comply with the mitigation measures that have been taken.⁷²

The Campaign Against Arms Trade (CAAT), a non-governmental organization in the United Kingdom, opposes the British Government's decision to continue licensing arms exports to Saudi Arabia and was suing the British Government in The High Court of Justice Queen's Bench Division Administrative Court (High Court) in June 2016.⁷³ This case was brought to the

⁶⁹ Christine Gray, "The Choice between Restitution and Compensation", 10:2 *European Journal of International Law*, 1999, p. 417, <http://www.ejil.org/pdfs/10/2/591.pdf>, accessed on January 2021; ICJ, *Vienna Convention on Consular Relation*, (Paraguay v. United States of America), Judgment, 9 April 1998, p. 23.

⁷⁰ United Nations Office of Humanitarian Affairs, "Yemen Humanitarian Needs Overview 2017", p. 8., https://docs.unocha.org/sites/dms/Yemen/YEMEN%202017%20HNO_Final.pdf, accessed on 2nd of January 2021.

⁷¹ UNSC Resolution, "Security Council Resolution 455 (1979) between Southern Rhodesia and Zambia", S/RES/455, <http://www.refworld.org/docid/3b00f15e30.html>, accessed on 2nd of January 2021.

⁷² Article 11 of the ATT.

⁷³ CAAT, "Saudi Arabia – legal challenge", <https://www.caat.org.uk/resources/countries/saudi-arabia/legal-2016>, accessed on 2nd of January 2021.

High Court between CAAT as the claimant and The Secretary of State for International Trade, responsible for licensing the export of arms, as the defendant and Amnesty International, Human Rights Watch, Rights Watch United Kingdom and Oxfam as the interveners.

On 8 February 2017, the claimant challenged that the Government failed to question the use of weapons and the consequences of using the weapons against Saudi Arabia in the Yemen conflict and failed to raise sufficient questions to Saudi Arabia regarding the conditions of the conflict in Yemen before granting the arms export licenses.⁷⁴ Claimant also argued about United Kingdom Government's failure to take mitigation measures, not complying with the National Arms Export Licensing Criteria (Consolidated Criteria) and failing to identify military targets for airstrikes, and not declaring Saudi Arabia's actions of serious violations of IHL as clear risks.⁷⁵

Meanwhile, the Secretary of State argued that he had taken steps to obtain the relevant information to decide to grant arms exports license to Saudi Arabia.⁷⁶ Defendants argued that they had carried out a risk assessment based on Criterion 2 (c) Consolidated Criteria and also stated that there was no clear risk that the arms export license from the UK can be used in the commission of serious violations of

IHL.⁷⁷ Lastly, the defendant also stated that a claimant is not enough just to show serious violations of IHL committed by Saudi Arabia in the past to produce an irrational conclusion.⁷⁸

The High Court had ruled that the government is entitled to continue authorizing arms supplies to Saudi Arabia. The High Court in London dismissed a legal challenge from the NGO Campaign Against Arms Trade (CAAT), which claimed that such arms transfers should not take place because of the clear risk that the weapons supplied would be used to commit serious violations of international humanitarian law in Yemen's armed conflict.

CAAT appealed the High Court decision, and the Court of Appeal hearing took place in April 2019. In June 2019, the Court of Appeal ruled that the Secretary of State undertaken not to grant any new licenses for the export of arms or military equipment to Saudi Arabia for possible use in the conflict in Yemen. The Court of Appeal ordered that the order of the High Court dated 24 July 2017 is set aside in its entirety. Further, the defendant's decisions not to suspend extant export licenses for the transfer of arms and military equipment to Saudi Arabia for possible use in the conflict in Yemen and to continue to grant further such licenses are quashed; and the matter is remitted to the Secretary of State to retake the decisions on the correct legal basis.⁷⁹

⁷⁴ The High Court of Justice Queen's Bench Division Administrative Court, CAAT v. The Secretary of State for International Trade, Skeleton Argument for the Claimant, Claim No. CO 1306/2016, 2016, p. 28, <https://www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2017-01-30.caat-skeleton.pdf>, accessed on 2nd of January 2021.

⁷⁵ *Ibid.*, pp. 32, 35-37.

⁷⁶ The High Court of Justice Queen's Bench Division Administrative Court, CAAT v. The Secretary of State for International Trade, Skeleton Argument of the Secretary of State, Claim No. CO 1306/2016, 2016, p. 33-42,

<https://www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2017-02-03.defendant-skeleton.pdf>, accessed on 2nd of January 2021.

⁷⁷ *Ibid.*, pp. 42-43.

⁷⁸ *Ibid.*, pp. 44-48.

⁷⁹ The Court of Appeal, On Appeal From The High Court Of Justice (Queen's Bench Divisional Court), CAAT v. The Secretary of State for International Trade, 2019, p. 46, <https://www.judiciary.uk/wp-content/uploads/2019/06/CAAT-v-Secretary-of-State-and-Others-Open-12-June-2019-1.pdf>, accessed on 2nd of January 2021.

E. CONCLUSION

United Kingdom arms exports are bound by the obligations within the Arms Trade Treaty (ATT), the EU Common Position on Arms Exports and the Consolidated EU and UK arms licensing criteria. United Kingdom action by carrying out excessive arms export without conducting mitigation risk has violated articles 6(3) and 7 of the ATT as well as the Export Control Act and Order and The Consolidated European Union and National Arms Export. Due to the arms transfer by the United Kingdom, Saudi Arabia used the weapons for bombing and airstrikes in the Yemen conflict causing a violation of the principle of distinction and the principle of proportionality. Furthermore, Saudi Arabia carried out indiscriminate attacks, attacks on citizens and protected civilian objects, and attacks on medical units. The United Kingdom as a state member of ATT, had failed to implement the prohibition under Article 6 (3) on the arms transfer to Saudi Arabia where the United Kingdom has the knowledge that weapons and components transferred can be used in war crimes. The United Kingdom has also failed to carry out an export risk assessment based on Article 7 of the ATT where the United Kingdom must assess whether the potential exports can contribute to the violation of IHL, as well as take mitigation measures and carry out overriding risk testing.

The form of the United Kingdom's responsibility for the arms transfer to Saudi Arabia that caused damage to Yemen can be given in the form of compensation. Based on the Disaster Needs Assessment established by the World Bank, European Union, United Nations and the Islamic Development Bank, it estimates infrastructure damage and other damage in Yemen cost USD 19 billion. On a separate

note, in 2017 this case was brought to the court of the High Court of Justice Queen's Bench Division Administrative Court (High Court) where the Campaign Against Arms Trade (CAAT) as the plaintiff demanded and opposed the British Government's decision to continue the license to export arms to Saudi Arabia. However, the High Court dismissed the CAAT's legal challenge and the United Kingdom government won the case. CAAT appealed the High Court's decision in 2019 and the Court of Appeal had overturned the 2017 ruling that allowed the United Kingdom government to continue licensing arms exports to Saudi Arabia for use in Yemen. The new ruling supports claims by human rights and humanitarian groups including the CAAT, Amnesty International, Oxfam UK, and Human Rights Watch that the United Kingdom arms transfer to Saudi Arabia is breach of national and international obligations.

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