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# A PROCESS FOR ARMS EXPORTS

## Fulfilling Criterion 2C of the Consolidated EU and National Arms Export Licencing Criteria

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**This report presents a recommended process for the UK government in consideration of permission for the export of lethal weapons under Criterion 2C of the Consolidated EU and National Arms Export Licencing Criteria, which states that 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'*.**

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# CONTENTS

<b>1 Introduction .....</b>	<b>3</b>
The purpose of the model process.....	3
How are the model processes determined?.....	4
Recommended process for permitting or refusing an export licence.....	4
<b>2 The model .....</b>	<b>6</b>
The weapons .....	6
The recipient armed forces.....	6
The intended targets .....	6
Records, reports and investigations .....	9
Training.....	9
UK government responsibilities.....	9
Other.....	10
<b>3 Conclusion.....</b>	<b>11</b>
<b>Notes .....</b>	<b>12</b>

# 1 INTRODUCTION

I was asked by Oxfam to prepare a short paper that would establish what process the UK government should undertake in making arms licencing decisions under Criterion 2C of the Consolidated EU and National Arms Export Licensing Criteria,<sup>1</sup> which states that 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'*.

The importance of this was underlined by the Court of Appeal judgement in June 2019 considering the licencing of British arms to Saudi Arabia. The Court concluded that the government's decision-making process had been unlawful in one significant respect: considering the *'clear risk ... of serious violations.'* Specifically, the government had made no conclusive assessments of whether the Saudi-led coalition had committed violations of international humanitarian law (IHL) during the Yemen conflict hitherto, and made no attempt to do so. This was despite a legal obligation to make a systematic assessment of past possible violations, not necessarily in every case but where possible, before deciding whether there is a clear risk of future serious violations.

The successful appeal overturned a 2017 High Court decision allowing the continued sales of UK arms to Saudi Arabia. It means that the government must reconsider the matter and make the necessary assessments about past episodes of concern – allowing for the fact that, in some cases, it will not be possible to reach a conclusion. The government must then estimate the future risks in light of their conclusions about the past.<sup>2</sup>

## **The purpose of the model process**

In response, I have set out what could be described as a 'model' process for assessing the risks. I recommend that the British government adopts this model as the best way of minimizing the likelihood of breaches of international law – specifically the law of armed conflict, often referred to as IHL – as enshrined in various instruments such as the Geneva Conventions. I offer the model in a spirit of helpfulness to the British government. The model would apply whenever there is a request by a company to the government to export lethal weapons. It requires that our government ask recipient governments a set of questions to check that their armed forces have processes ensuring compliance with the law of armed conflict properly in place. Their responses, along with accompanying evidence, will demonstrate to what extent there may be a risk that the actions of the recipient government's armed forces might not be compliant.

Each item in the model relates to a process that needs to be not only in place, but respected, robust and effective. The recipient government should be required to provide evidence to demonstrate this. If it refuses to do so, or if there is any doubt about the quality or honesty of the answers, then the British government should delay authorizing the export of weapons until such time that it is satisfied. The absence of assurance that any of these processes are in place and properly functioning will increase the risk of a breach and therefore the risk that the UK government may again find itself in the dock. Indeed, the implications could extend to legal liability faced by individuals who have been party to licensing decisions.

My model will significantly reduce or even negate this risk if it is followed.

The model has a retrospective element. As mentioned, the Appeal Court ordered that the UK government must determine whether the armed forces of a recipient country have previously committed serious violations of IHL, and whether there is a pattern of violations. There is no set

term regarding how many years back such a determination should cover, but up to ten years – or as far back as any material change in regime in the recipient country – might be considered reasonable to gain an accurate picture of how recipients are using weapons. The Appeal Court determined that the government might not be able to make a decision on each and every incident that had occurred over that time, but that they should do so where possible. The International Committee of the Red Cross (ICRC) has published helpful practical guidance<sup>3</sup> on how to determine whether there should be an investigation when such cases are identified. My model is not intended to replace existing guidance that the UK government and EU Member States agreed under the EU's *User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment*.<sup>4</sup> It also does not replace obligations under the Arms Trade Treaty.<sup>5</sup> Instead, this model includes and expands upon both this and the ICRC's *Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria – a Practical Guide*.<sup>6</sup>

## **How are the model processes determined?**

The model exactly reflects the processes and systems that British armed forces are required to have in place to ensure compliance with international law. Every British serviceman and servicewoman has to pass an annual test of their knowledge of the law of armed conflict. They are issued with manuals, attend lessons and watch films of combat scenarios as part of their training, and each person must determine which actions depicted are lawful and which are not. They know that they might go to prison unless they take particular care to avoid killing civilians.

In effect, what is good for British forces is good for others too. Therefore, the UK government needs to assure itself that other military forces take the rules and related processes as seriously as the British military does, before agreeing that they may buy British-made weapons.

## **Recommended process for permitting or refusing an export licence**

I recommend that relevant UK government experts directly engage the government of the country on whose behalf an application for the export of weapons has been made by a company. These experts would likely be selected Ministry of Defence personnel, advised and supported by the British defence attaché, ambassador and staff in the relevant country. It should be made clear to the government of the country concerned that an export licence will only be forthcoming if it fully engages with these experts by providing honest answers and supporting evidence about whether the model processes set out in this paper are in place and respected by their armed forces.

The answers and supporting evidence should be circulated as a paper to those Whitehall departments required to make a recommendation. This would ensure that these decisions are made on the basis of a reasonable level of insight into whether the weapons would be used in compliance with international law. For example, officials from the Department for International Development (DFID) would be able to take a view on the level of care likely to be taken by the armed forces of the country concerned to avoid damaging any objects indispensable to the civilian population, as well as the impact of licences on the health of the population.

After officers from each department involved had made their independent recommendations, interdepartmental consultation would be required. Disagreement between departments and/or a potentially controversial case would elevate the final decision to ministerial level – or even prime ministerial level if the stakes are very high. The final and casting decision would be accompanied by an explanation of why a licence was granted or refused in the event that officials made differing recommendations.

A further recommendation is that everybody involved in making licensing decisions must have a certain level of IHL training – perhaps including relevant ministers.

I acknowledge, as is clear from reading government submissions during the court processes, that the government has undertaken extensive engagement with Saudi Arabia and its forces, including providing training to improve Saudi performance. No doubt our government has recommended to its Saudi interlocutors that they adopt some – or perhaps even most – of the processes inherent in the model that I recommend. However, it is not possible to discern from government submissions which of those processes our government believes to have been properly adopted by Saudi forces – or indeed, by process of elimination, which it has not.

The model that I present in this paper – when taken as a whole – would provide the foundations for arms licensing, drawing on recommendations made on the basis of reasonable insight into the processes – and thus compliance with international law – of the armed forces of the recipient country. This information would be open to scrutiny, publicly or in secret session as appropriate.

## 2 THE MODEL

Before making licensing decisions, the UK government should examine whether the relevant processes below are fully in place, respected and effective for the armed forces of the recipient country. If it transpires that they are not – or the recipient government is unwilling to say or provide a convincing level of evidence – then licences for export should not be granted.

### The weapons

1. That the weapons for export are not of a nature likely to cause:
  - Indiscriminate damage to military objectives, civilians or civilian property;
  - Unnecessary suffering or superfluous injury; nor
  - Widespread, long-lasting and severe damage to the environment.
2. That the weapons are commensurate with the operational requirements of the stated end-user.

### The recipient armed forces

3. That the armed forces of the country concerned have the capacity and are sufficiently trained to use the weapons in accordance with the requirements of IHL.
4. That the armed forces of the country have effective processes in place to ensure that the conduct of military operations complies with the law of armed conflict.
5. That, when planning attacks against military objectives, constant care is taken to spare the civilian population and civilian objects. This requires taking into account all reasonably foreseeable consequences of such operations on civilians and civilian objects.

### The intended targets

6. That everything feasible is done to verify that targets (both personnel and objects) are military objectives.
  - As an example of good practice, a British serviceman calling in an aerial strike on a ground target would be required to go through the sequence shown in Box 1.

#### Box 1: Model sequence for calling an aerial strike<sup>7</sup>

*Do you have permission to use force / is the use of force justified? (Yes/No)*

1. If you need to call in a strike for self-defence, or to protect allies, this provides justification.
  - This includes a strike against people who are launching, about to launch, preparing to launch or assisting the launch of an attack against you, allies located with or near you, or against allies elsewhere.
  - A strike against someone who is assisting such an attack might include, for example, targeting someone who is observing an allied convoy with a mobile telephone in their hand and who indicates that they are about to trigger an attack.
2. Where third parties are providing information about a possible target, there is a risk of people trying to settle scores or give disinformation. This underlines the importance of verifying all information relevant to targets. Information used must be credible and supported by one or more credible sources.
  - A smartphone photograph of a military objective will fail as the basis for a strike on various counts unless other relevant and credible information is provided. This applies to several of the processes listed in this paper, including a lack of information on the risk of collateral damage to civilians and civilian infrastructure, as well as a lack of confirmation of target coordinates and altitude, etc.

7. That the location of targets is accurate, precise and verified.
  - As an example of good practice, a British serviceperson calling in an aerial strike on a ground target would be required to confirm that they have a reliable fix on its location.<sup>8</sup>
  - An acceptable way of doing this would be to establish two forms of location fix, for example a human intelligence ('humint') indicator and an image intelligence ('imint') indicator.
  - Therefore, a local informer with a mobile telephone telling a British military ground station 'I have a target and it is in such-and-such a place' is not adequate.
8. That no attack is carried out 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 in relation to the concrete and direct military advantage anticipated. This is particularly important if an object to be attacked has both civilian and military value (so-called 'dual-use' objects).
  - Because there is no generally accepted arithmetical formula to determine whether effects are disproportionate or excessive, there should be evidence that commanders use an established and endorsed process for weighing up relevant factors that at least meets the same standards of caution used by British armed forces before endorsing a target attack or strike.
  - As an example, a British Army patrol observing a target would be required to establish a 'pattern of life' at the target for a period of at least 24 hours in order to confirm that civilians would not be in danger if the target were struck.<sup>9</sup> In some circumstances, this could be done remotely over the same period using remote sensor devices.
  - An exception would be a high-value and fleeting target, in which case a 24-hour observation period would clearly not be feasible.
  - Collateral damage to objects is relevant. For example, given the context of cholera outbreaks and the scarcity of clean water in Yemen, targeting needs to take into account any nearby water supply points, to ensure that they are not endangered.
9. That commanders have a process for escalating cases in which there may be excessive civilian casualties or damage.
  - For example, a local commander could be given delegated authority to agree to a strike or attack on a verified military target where there is some risk of up to five civilians being killed, but that he would be required to escalate to the level of a General Officer where there is a risk of 5–10 civilians being killed – and so on up to ministerial level for up to 20 civilians being killed in the worst case.
  - In this regard, proportionality is a function of several things, including the value of the target (for example Bin Laden as a target, compared to a low-level 'foot soldier'), the difficulty of striking a target in a way, place or at a time that will not incur civilian casualties – and, in that light, whether the number of civilians at risk from the strike is 'excessive'.
10. That attacks can and will be cancelled or suspended up to the last feasible moment if it becomes apparent that any of the above criteria are no longer satisfied.
  - ICRC rules on customary IHL state that '*if it becomes clear during the conduct of an attack that the circumstances or the consequences are not what they were thought to have been and the attack would give rise to excessive civilian harm, the attack must be cancelled or suspended*'.<sup>10</sup>
  - In Yemen, in the case of a school bus that was struck as it passed through a market in August 2018, the Saudi Joint Incidents Assessment Team (JIAT) stated that an order was sent to the pilot to delay the attack until such time as the bus was clear of the

market, followed by an order to cancel the attack altogether.<sup>11</sup> However, the JIAT did not explain if/why the pilot might not have received or followed those orders.

11. That effective advance warnings of attacks that may affect the civilian population are given unless circumstances do not permit.

12. That potential targets are assessed as to whether they are subject to special protection, or whether an attack on them might cause damage to an object under special protection.

- A comprehensive, validated and up-to-date list of all such objects should be prepared to assist in such an evaluation. Such 'no-strike lists' consist of locations and objects that must not be attacked, as to do so would cause significant human, infrastructural or environmental damage for civilians.<sup>12</sup> Examples on such a list would include hospitals, markets, prisons and places that if damaged would cause widespread, long-term and severe damage to the environment.
- In places where starvation, malnutrition and disease abound as a direct result of warfare, this is particularly important. IHL requires that *'in all types of conflicts, including non-international armed conflicts, it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population.'*<sup>13</sup> No-strike lists should include items such as all known water supply points. This is especially important in Yemen, where cholera is present and clean water is scarce.
- In Yemen, for example, most targets for Saudi combat aircraft are so-called 'dynamic targets', i.e. they are passed at short notice to a pilot already in the air (on the so-called 'race track', doing circuits while awaiting a task from a ground station). There is a requirement to check the chosen target against the no-strike list via an automated process to ensure that the target is neither on the list nor is its location coincidental with, or close to, an item on the list. However, there is considerable evidence that this does not happen,<sup>14</sup> despite an unofficial statement that an effective system exists and that there is no reason why it should not be used. The practical and logical place where such checks should happen is at the tactical ground station from which (or through which) target details are sent to pilots.<sup>15</sup>

13. That all feasible precautions are taken in the choice of means and methods of warfare with a view to avoiding, and in any event minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.<sup>16</sup>

- An example of good British practice is that in the case of an aerial strike initiated through a British military ground station, the type of weapon that is recommended has to be approved by a senior officer or military lawyer for the strike to be authorized.<sup>17</sup>
- There are additional requirements that apply in order to minimize collateral damage. Damage to any civilian building in the vicinity of a military target should be avoided, especially if there is a concern that the building may contain civilians. Sometimes a choice has to be made where a building may be within the danger zone of a bomb or missile. For instance, if one building is thought to contain civilians and another building on a different angle to the target is believed on good grounds not to, then it would be necessary to adopt an angle of attack that does not endanger the first building in any way.

14. That, when a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be the attack that is expected to cause the least danger to civilian lives and to civilian objects.

## Records, reports and investigations

15. That records are kept in order to meet the obligation to document and investigate allegations of violations and abuses of IHL or international human rights law, and ensure that perpetrators are held accountable. This includes systematically tracking civilian casualties from military operations as part of post-operation battle damage assessments.<sup>18</sup>

- As an example, the British military is assiduous about keeping log sheets of all radio messages in and out, comprehensive patrol reports after every single patrol (in air, on land and at sea) and investigation records.

16. That independent and comprehensive investigations are carried out whenever excessive civilian casualties or damage might have occurred, in order to establish the facts and the causes.

- The Saudi JIAT was established to fulfil this requirement, but has failed to show that it has examined incidents independently and comprehensively in line with the criteria listed above.<sup>19</sup>
- Where there have been cases of civilian injuries and deaths, and damage of critical civilian infrastructure, it is important to understand the process that has been adopted for the attacks in question. The JIAT might claim that everything was done to minimize the risk, but without insights into the process behind each attack it is not possible for international experts to verify such a claim.
- There is an argument that formal review points should be set, for example on a three-monthly basis, in order to determine whether the JIAT process (and other processes listed in this paper) has improved in light of criticisms by mandated international experts – and that issuing or continuing the validity of export licences for lethal arms should be made conditional on improvements against this timescale.<sup>20</sup>

17. That, where violations of IHL or international human rights law are found to have taken place, suitable action, including criminal prosecution where appropriate, should be taken against those responsible, including commanders.

18. That civilians are informed of investigation results.

19. That civilians are given the opportunity to obtain compensation or other forms of redress for wrongful civilian deaths, injuries and harm.<sup>21</sup>

20. That regular public updates are provided on the number of civilian casualties caused by military operations.

21. That a continual review of civilian casualty findings is undertaken to understand the causes of harm to civilians, and that this information is used to identify ways to prevent such occurrences in future, including changes to targeting processes as appropriate.

## Training

22. That training and education for all relevant personnel (including all in charge of weapons systems and their commanders, lawyers and staff officers) is routinely carried out to enable all the above processes and ensure that they are effective.<sup>22</sup>

## UK government responsibilities

23. That the UK government has researched whether all the above processes have been in use and respected in the past by the relevant armed forces of the country concerned, over a period of several years immediately previous to the application for export.

- As an example, while serving as a staff officer in the Directorate of Military Operations in the Ministry of Defence in 1990–1, I recommended that an application by a British defence company to export armoured cars to Saudi Arabia for the Saudi Arabian

National Guard (SANG) be refused. This was because evidence showed that disproportionate and lethal force had been used by the SANG in putting down a riot in the south of the country some ten years before.

24. That, if there is any doubt or absence of proof about any of these processes, the UK government should delay authorizing the export of weapons until such time as it is satisfied that these processes are in place.

### **Other**

25. That the government of the country concerned cooperates with any official international bodies that are mandated for any reason to investigate and report on respect for international law, particularly IHL.<sup>23</sup>

26. That the government of the country concerned accepts that, if they operate militarily in the territory of another state on that state's invitation, they are bound by the international law obligations that bind the host state, particularly those under international human rights law and IHL.

### 3 CONCLUSION

In the context of the war in Yemen and the court case involving the UK government, much more evidence is now available – and from many more sources – compared with the relatively limited assessments available at the time of the High Court judgement in 2017. Thus, determining trends of improvement and whether licences should be suspended or granted on that basis can now be done with greater assurance and conviction as in the case of Saudi Arabia.

Where there is doubt about the degree of implementation of some of the processes listed in this paper, there is a need to ascertain whether matters are improving over time. If the risks do not appear to have reduced – for example, if there is a continuing pattern of excessive collateral damage – then the British government, as the authorizer of the export of relevant weapons, needs to find out why and what is being done about it. The purpose for this is to reduce the risk from that point onwards, if necessary by suspending export licences.

On the licences themselves, we would recommend more transparency on the subject of their suspension. With regard to recent suspensions of licences for export of weapons to Saudi Arabia it seems possible that a significant number of items has been transferred into Open General Licences which have not been suspended and whose contents are – at least for the time being – hard to identify. Thus, lethal weapons and munitions may well continue to be supplied to the Royal Saudi Air Force.

Setting clear milestones against which improvements in the processes listed in this paper can be measured at, say, three-monthly intervals might be a sensible basis on which the UK government could update its risk assessments. A rigorous government-to-government dialogue with the purpose of assessing the degree of implementation of each of the processes listed in this paper would provide the necessary foundation. If improvements are judged to have been insufficient, then licences for the export of weapons should be suspended.

If the recipient government refuses, misleads or obfuscates, then it should be warned that all licences will be suspended unless it engages in the necessary dialogue and achieves a positive outcome.

If a recipient government has misled the British government over a material issue, the terms of a licence or the use of a weapon for which an export licence has been issued, the UK government should make it clear that any other assurances by the recipient government cannot be taken at face value, and future applications for export licences may not be agreed.

In short, before granting permission to export weapons, the British government should systematically seek evidence – as per the model set out in this paper – that the recipients have processes in place for ensuring compliance with the law of armed conflict that are at least as stringent as the processes put in place by and for its own armed forces. If the UK government grants licences without such evidence, then there will always be the possibility that it will be accused of turning a blind eye to the clear risk of violations of international law.

# NOTES

Note all links last accessed 19 December 2019 except where specified

- 1 In a 2014 Written Statement to the House of Commons, Vince Cable MP, Secretary of State for Business, Innovation and Skills, set out the Consolidated EU and National Arms Export Licensing Criteria; (HC Deb, 25 Mar 2014: Column 9WS) at <https://publications.parliament.uk/pa/cm201314/cmhansrd/cm140325/wmstext/140325m0001.htm>
- 2 Campaign Against Arms Trade. (2019, June 20). Press Summary: The Queen (on the application of Campaign Against the Arms Trade) (Appellant) v Secretary of State for International Trade (Respondent) [2019] EWCA Civ 1020. <https://www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/appeal/2019-06-20.press-summary.pdf>
- 3 N. Lubell, J. Pejic and C. Simmons. (2019). Guidelines on Investigating Violations of International Humanitarian Law: Law, policy, and good practice. <https://www.icrc.org/en/document/guidelines-investigating-violations-ihl-law-policy-and-good-practice>
- 4 Council of the European Union. (2015). User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment. <http://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf>
- 5 The Arms Trade Treaty is the first global instrument to regulate the international trade in arms. The UK was a leader in the negotiation of the Treaty. Article 7, entitled "Export and Export Assessment", is key in this regard. Where a proposed export within the scope of the ATT is not absolutely prohibited (for example because of a UN arms embargo), the UK is required under Article 7 to conduct a risk assessment of the export prior to authorisation. This must occur for any and every export of conventional arms, ammunitions, munitions or parts/components within the scope of the ATT. The Treaty does not set out how this must be done, something which is left to national law and guidance to establish.
- 6 International Committee of the Red Cross (ICRC). (2017). Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria – a Practical Guide. <https://www.icrc.org/en/publication/0916-arms-transfer-decisions-applying-international-humanitarian-law-criteria>
- 7 Interview with anonymous serving British officer on the subject of calling in airstrikes, September 2019.
- 8 Ibid.
- 9 Ibid.
- 10 UN Human Rights Council (UN HRC). (2019). Situation of human rights in Yemen, including violations and abuses since September 2014: Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen. A/HRC/42/CRP.1 p 19. [https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A\\_HRC\\_42\\_CRP\\_1.PDF](https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A_HRC_42_CRP_1.PDF)  
  
This advice draws upon ICRC Customary IHL Rule 19, 'Control during the Execution of Attacks', which can be found here: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule19](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule19)
- 11 On 9 August 2018, Saudi Arabian expeditionary aircraft bombed a civilian school bus passing through a crowded market in Dahyan, Saada Governorate, Yemen, near the border with Saudi Arabia with US-made bombs. International reports indicate at least 40 children were killed; all were under 15 years old and most were under 10. Sources disagree on the exact number of deaths, but they estimate that the air strike killed about 51 people. UN HRC. (2019). Situation of human rights in Yemen. Op cit. pp 107 and 112
- 12 Such a list is not a legal requirement but is good practice. UN HRC. (2019). Situation of human rights in Yemen. Op cit. p 107 says: *'The "no strike list" is a means used by militaries in order to assist their targeting teams with meeting their own responsibilities for identifying civilian objects, including and especially those with special protection; the burden does not shift to civilians to make themselves clearly known to attacking parties in armed conflict.'*  
  
In Yemen, this list extends to culturally important sites that are not likely to be of value militarily and not valid as targets. However, *'despite Unesco having provided the coalition with a no-strike list of historical sites when the campaign began in 2015, sites such as the Castle of Taiz have been targeted, as well as the Dhamar Museum.'* B. McKernan. (2019, October 4). 'Manhattan of the desert': civil war puts Yemen's ancient skyscrapers at risk. *The Guardian*. <https://www.theguardian.com/cities/2019/oct/04/manhattan-of-the-desert-civil-war-puts-yemen-ancient-skyscrapers-at-risk>
- 13 UN HRC. (2019). Situation of human rights in Yemen. Op cit. p 181 The quote continues thus: *'This prohibition is defined in Additional Protocol II as a corollary to the prohibition of starvation. Indeed, such attacks may amount to the act of starvation if they have the effect to starve the civilian population. It is generally recognized that Article 14 Additional Protocol II is interpreted like its corresponding provision in Additional Protocol I (Article 54(2)), which is more detailed. The latter also lists objects indispensable to the survival of the civilian population as including food, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works. While the military use of such objects is not per se prohibited, it puts them at higher risk of destruction and such*

*military use is therefore questionable as regards the respect for the principle of distinction and the obligation to protect civilians against the dangers arising from military operations. Article 54 (2) of Additional Protocol I prohibits attacking, destroying, removing or rendering useless objects indispensable to the survival of the population "for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive". All parties to the conflict in Yemen used and conducted attacks impacting objects indispensable to the survival of the civilian population. When committed against protected objects, they amount to violations of international humanitarian law. These acts violate the general protection afforded to civilian objects.'*

See also ICRC Customary IHL Rule 54, 'Attacks against Objects Indispensable to the Survival of the Civilian Population', which can be found here: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule54](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule54)

- 14 Ibid.
- 15 Interview with anonymous serving British officer on the subject of calling in airstrikes, September 2019.
- 16 This means, for example, that the weapons systems employed should be those most likely to avoid or at least minimize civilian casualties or damage, where there is a choice of weapons systems for obtaining a similar military advantage.
- 17 Interview with anonymous serving British officer on the subject of calling in airstrikes, September 2019.
- 18 UN HRC. (2019). Situation of human rights in Yemen. Op cit. p 209. *'The obligation to respect, protect and fulfil international human rights obligations includes the obligation to document and investigate allegations of human rights violations and abuses, and ensure that perpetrators are held accountable. This is equally valid for all duty-bearers of human rights obligations, i.e. in the present context the Government of Yemen, the members of the coalition, and the de facto authorities.'*
- 19 Ibid. p 212–6
- 20 UN HRC. (2019). Situation of human rights in Yemen. Op cit.
- 21 Ibid. p 225 *'There should be a process for providing compensation for wrongful civilian deaths, injuries and harm, and ensure systems are in place for civilians to be informed of investigation results and to request compensation or other forms of redress...[and to] systematically track civilian casualties from coalition military operations as part of post-operation battle damage assessments; explain the basis for determining whether a person killed or injured by a coalition operation is a civilian; provide regular public updates on the number of civilian casualties caused by coalition military operations; continually review civilian casualty findings to understand causes for harm to civilians and use the information to establish lessons learned to prevent future such occurrences.'*
- 22 ICRC. (2017). Arms Transfer Decisions. Op cit.
- 23 This would cover bodies like the UN Special Rapporteurs, which may be asked to look at thematic subjects (e.g. detention and arbitrary killings) rather than specific country mandates. This wording takes into account that many official bodies are mandated to investigate human rights law violations and only secondarily IHL. Furthermore, their mandates may extend beyond the armed forces to civilian leadership.

## NOTE ABOUT THE AUTHOR

John Deverell CBE served for over 30 years in the British Army. He was Defence Attaché in Saudi Arabia and in Yemen at the time of the World Trade Centre attacks in September 2001. He has spent more than a decade in the region.

He attended lectures by Sir Christopher Greenwood on the Law of Armed Conflict at the University of Cambridge and at the Army Command and Staff College. He later taught at the latter.

As a military practitioner, he has experience of the processes for calling on in airpower to engage ground targets.

He left government service in 2009, having held the appointment of Director of Defence Diplomacy in the Ministry of Defence.

He has returned to Saudi Arabia and Yemen a number of times in various capacities. After the war in Yemen began, DFID employed him to advise on humanitarian access to Yemen, and the UN employed him as a mediator in talks between the two military sides.

He offers this short paper in the spirit of wishing to help the government adopt a straightforward and practical process for risk reduction in Yemen and elsewhere.

He has had all items in this paper checked by a legal expert with particular knowledge of this field and region; amendments have been carried out accordingly.



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