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Abbreviations

AP	Additional Protocol
AQAP	Al Qaeda in the Arabian Peninsula
AI	Amnesty International
ATT	Arms Trade Treaty
CAC	Control Arms Coalition
CAAT	Campaign against Arms Trade
CCM	The Convention on Cluster Munitions
CM	Cluster Munition
CB	Cluster Bomb
CWC	The Chemical Weapons Convention
ECCHR	The European Center for Constitutional and Human Rights
EP	European Parliament
HRW	Human Rights Watch
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IRC	International Rescue Committee
ICC	International Criminal Court
JIAT	Joint Incidents Assessment Team
KSA	Kingdom of Saudi Arabia
MODSAP	Ministry of Defence Saudi Armed Forces Projects
ML	Military
MSF	Médecins Sans Frontières
POA	Programme of Action
SC	Security Council
SCP	Conference of State Parties
UN	United Nations
UNSC	United Nations Security Council
UK	United Kingdom
USA	United States of America
UNGA	United Nations General Assembly
UNROCA	United Nations Register of Conventional Arms
UAV	Unmanned Ariel Vehicles

UNRWA	The United Nations Relief and Works Agency for Palestine Refugees
YEMAN	The Yemen Executive Mine Action Center
YCHO	Yemeni Comprehensive Humanitarian Operations'

Introduction

The proliferation of arms has been a threat towards the world's peace and security. From small arms to missiles and bombs, trading conventional arms have been an unregulated legitimate business that benefits most of the developed countries in our current days. Arm deals are being made not by companies or brokers, but by presidents and well known ministers such as Donald Trump the United States President, Theresa May the British Prime Minister, and King Mohammed Bin Salman the Saudi ruler. With big names like this involved in the market, lots of politics come through the process which makes it harder to limit it in a small box. Arms trade becomes a powerful way for countries to cooperate with each other, makes a solid ground for diplomatic relations and reimburse these countries with lots of profits in billions. The process becomes tougher to break through with monitoring or evaluating, and that is why the lack of an international regulation system is a big part of the problem.

In 2003, a movement with the name of 'The Control Arms Coalition' (CAC) called for controlling this uncontrolled business because of its impact on the humanitarian situation in many parts of the world¹. The movement was created by some of the non-governmental organisations such as Amnesty International and Oxfam. The CAC was one of the main callers for the creation of the Arms Trade Treaty with no loopholes or gaps, to put an end to some of the unlawful and unmonitored arms transfers. However, despite the incredible work of civil society and the establishment of such a historical legal instrument, the illegality of the arms trade hasn't stopped or the trade hasn't been regulated, but even increased. Amnesty International has shown that the arms exporting and importing countries have spent around \$1.69 trillion on their arsenal and defences in just one year (2016)², which is considered a

¹ *Control Arms*, [website], <https://controlarms.org/control-arms/>, (accessed 15 May 2018).

² 'Killer Facts: The Scale of the global arms trade', *Amnesty International*, [web blog], 12 September 2017, <https://www.amnesty.org/en/latest/campaigns/2017/09/killer-facts-the-scale-of-the-global-arms-trade/>, (accessed 15 May 2018).

huge amount of expenditure given the fact that the trade is now legally controlled. The trade has increased by 38% compared to 2002³, way before an establishment of the arms trade treaty in 2013. The lion's share of these trade was by the western countries, mainly the United States and the United Kingdom; while the excessive demand was coming from the Middle East and South East Asia⁴. Fueling wars in these regions, especially the middle east, has made the work of all the NGO's and civil society go in vain, and has discredited the ATT's work in controlling the arms transfers. These internal and external conflicts have been the product of irresponsible arms trade, and that resulted in massive numbers of civilian casualties and destruction of basic life necessities. These consequences has been considered violations of International Human Rights Law (IHRL) and International Humanitarian Law (IHL), and a current example of such a turmoil is currently seen in Yemen.

There, in Yemen, Saudi Arabia has been fighting the Houthis for three years so far, with continuous supply of weapons from the UK. On the other hand, the Houthis, with limited resources compared to KSA, has been fighting back and controlling major areas in Yemen. Importantly, the Houthi forces are backed and supported by the Saudi-rival, Iran. Saudi Arabia and Iran has been in an on-going tension for many years⁵, and the roots of this tension is growing now in Yemen. The Saudi Kingdom is backing Abd Rabbu Mansour Hadi who was forced to flee outside Yemen due to the conflict, and Iran is backing up the Houthis. Whether it is a political war over the hegemony in the middle east, or a Sunni-Shiite war over religious domination in the region, the Yemenis are the ones who are caught and shattered in the middle. Moreover, this battle in Yemen goes on further as Russia supports Iran and that was shown in a UN-Iran condemnation attempt because of the weapons supply to the

³ V. Kem, 'SIPRI: Weapons sales up again worldwide', *Deutsche Welle*, [website], 2017, <http://www.dw.com/en/sipri-weapons-sales-up-again-worldwide/a-41735391>, (accessed 7 May 2018).

⁴ 'Global Arms industry: first rise in arms sales since 2010', *SIPRI*, 11 December 2017, <https://www.sipri.org/media/press-release/2017/global-arms-industry-first-rise-arms-sales-2010-says-sipri>, (accessed 10 May 2018).

⁵ 'Managing the Saudi-Iran Rivalry', *Council on Foreign Relations*, 2016, https://www.cfr.org/sites/default/files/pdf/2016/10/Workshop_Report_CPA_Saudi_Iran_Rivalry_OR.pdf, (accessed 11 May 2018).

Houthis. Russia opposed the UN move to condemn Iran and used its right to veto on the resolution⁶. The problem in Yemen is much bigger than what it seems on the ground as an internal conflict. It involves many important countries with undeniable international influence and big stock of arms. Surprisingly, the war in Yemen is not having the required publicity and exposure it should have, as the Saudi Government is working hard on keeping the situation on a low-profile status. This was done for example during King Mohammed Bin Salman's visit to the UK in March of 2018. Intensive campaigning was the way to counter the bad image about the Yemeni situation and shift the public's focus. Through posters, PR firms and billboards, the British were trying to show the positives so far in the reign of King Mohammed, giving no attention to the Saudis role in Yemen⁷.

Moreover, Saudi Arabia has been working on providing Yemen with huge amount of aid through King Salman Relief which is a Saudi center to deliver aid to various countries in need⁸. According to the Saudi government, the organisation has been working on delivering food baskets, health-related projects, dignity kits and other humanitarian aid⁹. Another Yemeni aid plan named 'Yemeni Comprehensive Humanitarian Operations' (YCHO) was established by the Saudis-led coalition to facilitate the imports entry to Yemen and to improve the humanitarian situation all across the country. Around \$1.5 billion is part of this plan by the coalition¹⁰, plus other donations. However, this plan is considered part of a huge

⁶ K. Currie, 'Explanation of Vote on a Draft UN Security Council Resolution Condemning Iran For Arms Embargo Violations in Yemen', *United States Mission to the United Nations*, [website], 2018, <https://usun.state.gov/remarks/8324>, (Accessed 13 May 2018).

⁷ J. Watts, 'Mohammed Bin Salman: 'Bizarre' PR drive launched by Saudi Crown Prince's Backers in face of UK protests over Yemen', *Independent*, 7 March 2018, <https://www.independent.co.uk/news/uk/politics/mohammad-bin-salman-uk-visit-protests-pr-publicity-adverts-yemen-saudi-arabia-crown-prince-a8243486.html>, (accessed 10 May 2018).

⁸ *King Salman Humanitarian Aid & Relief Centre*, [website], <https://www.ksrelief.org/English/About/Pages/vesion.aspx>, (accessed 11 May 2018).

⁹ 'Saudi Arabia and the Conflict in Yemen', *Saudi Embassy*, April 2017, https://www.saudiembassy.net/sites/default/files/FactSheet_Humanitarian%20Aid%20Yemen%20Fact_April_2017.pdf, (accessed 11 May 2018).

¹⁰ 'Yemen Comprehensive Humanitarian Operations', *Saudi Embassy*, <https://www.saudiembassy.net/sites/default/files/Yemen%20Comprehensive%20Humanitarian%20Operations.pdf>, (accessed 12 May 2018).

propaganda arranged by Saudi Arabia to cover up the mess happening by its forces in Yemen. The International Rescue Committee (IRC) analysed that the YCHO is not addressing the needs of the Yemenis, but simply serves other Saudi interests in having more control on many regions and ports¹¹. Amanda Catanzano, senior policy and advocacy director at the IRC, said about the plan that *‘The name in itself is misleading: it is neither comprehensive, nor particularly humanitarian’*¹². The Saudi coalition, in general, has the power to end the bombing and lift the blockade on Yemen, instead of creating more humanitarian plans with no real improvements on the ground.

In Yemen, the airstrikes and bombings are destroying schools, hospitals, markets, ports and infrastructure. This consequently affect the availability of life basic tools, and that link between arms trade and civilian casualties in Yemen is clearly depicted in the literature from credible sources/reports. In a report by Human Rights Watch, talking about the effect of airstrikes on Yemenis, stated *“These strikes killed 130 civilians and injured 171 more. The facilities hit by airstrikes produced, stored, or distributed goods for the civilian population including food, medicine, and electricity—items that even before the war were in short supply in Yemen, which is among the poorest countries in the Middle East. Collectively, the facilities employed over 2,500 people; following the attacks, many of the factories ended their production and hundreds of workers lost their livelihoods”*¹³. Legally, strikes that aim at civilians, buildings, hospitals or aid providers are considered a clear violation of IHL.

Before getting into the main focus of this study, it is important to address and point out what is being said about regarding the arms trade between the UK and KSA, and regarding the Arms Trade Treaty to understand more the core of the problem.

¹¹ ‘Yemen: Saudi “aid” plan is war tactic’, *International Rescue Committee*, [website], press release, 2018, <https://www.rescue.org/press-release/yemen-saudi-aid-plan-war-tactic>, (accessed 15 May 2018).

¹² Ibid

¹³ ‘Saudi Coalition Airstrikes Target Civilian Factories in Yemen’, *Human Rights Watch*, [website], 11 July 2016, <https://www.hrw.org/news/2016/07/11/saudi-coalition-airstrikes-target-civilian-factories-yemen>, (accessed 17 May 2018).

Literature Review

The conflict in Yemen has been taking place for three years now, and with the amount of dollars flowing over the arms business between the UK and KSA, shifting the focus from the humanitarian situation is getting bigger every day, and ignoring international and national laws are becoming a usual governmental practice. More weapons are being transferred from side to side, and the costs are millions of human lives at stake and thousands of children in acute need of nutrition. The importance lays down in the low publicity of this issue. There is not enough follow up on the humanitarian crisis that is taking place in Yemen or on the daily human rights violations or on monitoring the states compliance with the ATT. Compared to Syria, Iraq, and Burma, the world is in the dark of the everyday Yemeni struggle.

In order to answer the research question, which is concerned with the UK's compliance with its national and international obligations towards the arms trade, as the British government is one of the main players in this field, lots of literature is needed to be observed to see how the UK is going along with the legality of its arms trade. There are two legal instruments here that the UK is abide by their rules. One is the Arms Trade Treaty (ATT), which is supposed to effectively regulate the arms trade. It is the first main international treaty that was adopted for conventional arms not to be used to violate human rights or international law; and its establishment was a big political hit. Hence, it is under scrutiny as it is not properly followed by the states parties. It should be taken into consideration that the UK has ratified the treaty which does put the British government under the pressure to strictly comply with it. The second instrument is the National Export Act which puts number of criteria for the British government to check before issuing export licences. Hence, the UK has two legal binding instruments that it has to follow their rules. However, whether the UK is fulfilling its obligations is unfortunately scarce in the examined literature.

On the other side, Saudi Arabia hasn't signed or ratified the ATT, which puts more burden, not on KSA but on the UK to monitor the Saudi coalition military activity in Yemen and make sure they are in line with International Law. As long the Saudi forces are using British

arms, the UK then should always be alarmed of where and how these weapons are being used. In a report by Amnesty International about the ATT, the organisation stated that “*The legality of an arms transfer is now explicitly linked to human rights and international humanitarian law (IHL) rules*”¹⁴, so here the link is well-defined. Human rights in Yemen are being violated because IHL is not absolutely followed due to the arms flow between the UK and KSA that led to reckless airstrikes and bombings.

According to recent reports, there is an actual violation of IHL in Yemen by the Saudi coalition. Peter Maurer, International Committee of The Red Cross President, stated, about pre-arms transfer period, “*Before making a decision, states must consider a variety of safeguards including ensuring good management of arms stockpiles, training the recipients in IHL and human rights, and more generally ensuring the recipients have the means to live up to their human rights obligations*”¹⁵. So IHL is in fact should be part of the ongoing arms business discussions for its importance in organising the course of war. The weapons are being used to violate humanitarian law which is there to protect civilians from being recognized as potential military targets. Most of the literature concludes that there is a violation, but what is not specifically discussed is how to enforce the law in order to protect civilians in wartime, and whether it was successful in previous cases in regulating a war.

Philip Luther, Amnesty International Middle East Research and Advocacy Director, cleared the link between war crimes in Yemen and arms trade by saying “*Countries such as the USA, UK and France, which continue to supply coalition members with arms, are allowing Saudi Arabia and its allies to flagrantly flout international law and risk being complicit in grave violations, including war crimes. All countries must immediately halt the flow of arms and*

¹⁴ ‘Applying the Arms Trade to Ensure the Protection of Human Rights’, *Amnesty International*, 2015, <https://www.amnesty.org/download/Documents/ACT3000032015ENGLISH.PDF>, (Accessed 12 May 2018).

¹⁵ P. Maurer, ‘Failure to Manage arms trade responsibility is putting a dirt cheap price on the lives of civilians’, *International Committee of the Red Cross*, [website], 11 September 2017, <https://www.icrc.org/en/document/failure-manage-arms-trade-responsibly-putting-dirt-cheap-price-lives-civilians>, (accessed 17 May 2018).

military assistance to members of the Saudi-led coalition for use in Yemen”¹⁶. The UK is exporting arms to Saudi Arabia regardless of the weapons final destination, when the British government should in the first place analyse carefully and assess the human rights record of KSA and how are they going to use the weapons sold.

Furthermore, The ATT is discussed on a regular basis and the literature examines how it can be implemented for better protection of human rights, and acts as a guide to fully ensure that the weapons are not going to be used unlawfully. What could be a gap here, first, is the missed intensive work that could produce another solution for regulating arms trade. In an interview with Andrew Smith (March 2018), the spokesperson for Campaign Against Arms Trade, I asked him about his opinion on the efficiency of the ATT, his answer was that “*The arms trade treaty is a very weak piece of legislation. There is little evidence that its implementation has done anything to reduce the flow of arms*”. Yet, most of the solutions are flowing over this international treaty that hasn’t proved its strength so far (Analysis of the ATT will be in Chapter III of this study). With some loopholes and open ways to go around the legal system, the ATT would still not be able to limit the harm of the arms and reduce human sufferings.

Additionally, from the ATT, certain types of weapons or quantities that may be bought, or sold by countries in the future are missing from it; no restrictions on killer robots, as a quick example, as it could become one of the most dangerous weapons in the upcoming years. Analysis of the ATT articles exists in reports by Amnesty International, ICRC and HRW as they are the ones who are indeed looking deeply in the issue of arms trade and specifically how does it affect the humanitarian crisis of a specific country. Also another gap in the discussions is how the ATT can be enforced and what are the consequences if violations happen. For instance, there are potential violations by the UK which ratified the treaty, and still issues arms licences to KSA; at the time when there is a clear evidence of these weapons

¹⁶ ‘Yemen: USA, UK and France risk complicity in collective punishment of civilians’, *Amnesty International*, [website], 17 November 2017, <https://www.amnesty.org/en/latest/news/2017/11/yemen-usa-uk-and-france-risk-complicity-in-collective-punishment-of-civilians/>, (accessed 18 May 2018).

being used in targeting civilians in Yemen. The ATT ensures that if there is a clear risk that the end user will launch these arms to violate human rights, then there shouldn't be any trade happening. What is missing also is the assessment that is being done by exporting countries before the trade. The assessment guide in the treaty is not clear enough for the states to apply it nationally. Being one of the most important parts in the treaty, more focus should be on this assessment as it is the one step before deciding whether or not to sell the arms.

Arms Trade is highly affecting human rights, currently, in Yemen. Saudi Arabia has been importing arms from the UK and the US, and has been launching airstrikes on civilians in Yemen since 2015 without any international intervention to ensure the protection of these people. The only international intervention was a permission of the coalition forces to start its war on the Houthis. According to evidence later discussed in the study, lots of parts of UK-manufactured missiles and bombs in Yemen were found, and despite that, the British government still denies the crisis happening in Yemen and claims their trade is lawful.

Among other reports, there is no clear way on how to regulate arms trade except through the ATT, which is not doing what it is supposed to be doing. Most of the literature focus on how to implement the ATT, and others focus on a political solution for the war to end or the trade to be regulated. What is missing also is the search for another way to control the flow of arms and most importantly, national ways. The House of Commons in the UK or, the Congress in the US for example, are more powerful than the UN mechanisms to control the states and how they act. That is being shown by the current work being done by campaigners addressing the British parliament to stop arms supply, military aid, and intelligence to KSA.

The ATT is really important in controlling arms trade, if implemented properly, but there has to be a more critical review on the issue and that hasn't been mentioned in the literature a lot. Taking the ATT as a starting point and combining it with national legislations and monitoring mechanisms plus the use of academic sources and reports of human rights organizations, will guide me for an answer to whether the UK is complying with its international and national obligations. Also, this will guide me to discover how to make states (UK and KSA)

responsible of its arms trade and how to close the gaps to prevent war crimes that can happen in the future, and currently happening in Yemen.

This Study then aims at pointing out whether the UK has been violating its national and international agreements regarding arms trade. With government statements, human rights organisations reports, and evidence presented, I will try to answer this question and get to a conclusion that can maybe put some of the big arms exporters under a legal accountability.

Methodology

The data collection method that used in this study is a qualitative method. I am going to make primary analysis of the Arms Trade Treaty and of the national laws of the U.K. (by looking at the parliament decisions on the issue and written statements of members of the commons about the legality of these trades and the assessments being done to analyze the human rights situation of the end-user country). I am also going to make secondary analysis of reports by the ICRC, The Saudi Foreign Ministry, Amnesty international, OXFAM, USAID and Human Rights Watch. I conducted an interview with one of the experts in this field, Andrew Smith, who is the spokesperson of the Campaign Against Arms Trade. Andrew Smith had beneficial insights about the topic which helped me in my whole research.

Chapter I

The UK trade history with Saudi Arabia

Any stable political or economic relations between countries usually have roots in the past. These roots make everything simpler, and ease any future problems that might appear. History build solid trust and confidence that pave the road for an open ended businesses, especially when it comes to a complex trade like in this case regarding arms. Britain's deals with Saudi Arabia go back to 1965 with the first supply of training aircrafts, radars, and other military equipment in the value of \$280 million. Then, in 1970 and 1973, the UK made another deal with Saudi Arabia for providing training and defence equipment to the Saudi Royal Force¹⁷. However, the biggest deal between both countries was in 1986, when Al Yamama¹⁸ deal was made for the delivery of jet trainers, tornado aircrafts, helicopters, tanks, armored vehicles, missiles and mine hunters. This deal was in exchange of 600,000 oil barrels per day (around 2 billion pounds a year), and it is worth £40 Billion of today's value. The contract was then renewed in 1993 and the last renewal was in 2005 with the delivery of Typhoon aircrafts¹⁹. Hence, arms business between both countries, and BAE systems in the background, has had a solid ground since a long time. This means that the business flow is inevitable between both states as KSA will always empower its defence and at the same assures the presence and the influence of the UK in the middle east by the endless demands of weapons.

Arm Deals between UK & KSA

According to CAAT (Campaigns Against Arms Trade), the UK in the past years, on a national scale, hasn't been benefiting from the arms trade like it was supposed to, as regarding

¹⁷ C. Hirst, 'The Arabian Connection: The UK Arms Trade to Saudi Arabia', CAAT, [website], <https://www.caat.org.uk/resources/countries/saudi-arabia/arabian-connection>, (accessed 14 May 2018).

¹⁸ 'Bribed by Britain', CAAT, [website], October 2007, <https://www.caat.org.uk/resources/publications/corruption/goodwin-5-web.pdf>, (accessed 12 May 2018).

¹⁹ D. Pallister, 'The arms deal they called the dove, how Britain grasped the biggest prize', The Guardian, 15 December 2006, <https://www.theguardian.com/world/2006/dec/15/bae.saudi-arabia>, (accessed 14 May 2018).

to employment, or boosting the economy. On the contrary, the trade was in the benefit of Saudi Arabia more than to the UK²⁰, and can't be in favor of the Yemeni people.

The UK, during the first year of the war in Yemen (2015), has made a huge arms deal with KSA which was worth £2.8 Billion with bombs, torpedoes, rockets and missiles²¹, all ready to be used by the Saudi Arm Force. The British company, BAE Systems, which is the largest arms manufacturer in the UK, has been increasing its sales of arms every year since the war has started. Combat aircrafts and air delivered bombs are the main products being handed in to the Saudi military force. As part of the programmes contracted between both countries, trainings, man power, logistics and upgrades to aircraft have been provided to the Kingdom²². Hence, it is not just a matter of trade between both countries, but it is more of a mutual political relationship that is connected to what is happening in Yemen. The UK, through its Ministry of Defence Saudi Armed Forces Projects (MODSAP)²³, is monitoring the terms that need to be met by both states, and part of its responsibility is making sure that the service is being well delivered according to the contracts. Moreover, providing²⁴ training to the Saudi pilots is an important part of this cooperation. Recently, in March 2018, the UK government and Saudi Arabia have made another deal for securing 48 Typhoon Aircraft to be delivered to the Kingdom²⁵. Rolls Royce company is part of this deal as it is the one responsible for building up the jet engines²⁶ for these 48 Typhoons. Rolls Royce is the second largest arms

²⁰ C. Hirst, 'The Arabian Connection: The UK Arms Trade to Saudi Arabia', CAAT, [website], <https://www.caat.org.uk/resources/countries/saudi-arabia/arabian-connection>, (accessed 14 May 2018).

²¹ 'Dealing Double Standards', *ATT Monitor*, [website], 2016, <https://controlarms.org/wp-content/uploads/2018/03/ATT-Monitor-Case-Study-2-Saudi-Arabia-FINAL.pdf>, (accessed 15 May 2018).

²² 'Annual Report', *Bae Systems*, [website], 2016, <https://investors.baesystems.com/~media/Files/B/Bae-Systems-Investor-Relations-V3/Annual%20Reports/annual-report-2016-28032017.pdf>, (accessed 14 May 2018).

²³ 'MODSAP', *Bae Systems*, [website], <https://www.baesystems.com/en/our-company/our-businesses/bae-systems-saudi-arabia/our-partners/modsap>, (accessed 16 May 2018).

²⁴ O. Bowcott, 'UK military officers give targeting training to Saudi military', *The Guardian*, 15 April 2016, <https://www.theguardian.com/uk-news/2016/apr/15/uk-army-officers-provide-targeting-training-saudi-military>, (accessed 17 May 2018).

²⁵ 'Memorandum of Intent between the Kingdom of Saudi Arabia and the UK Government', *Bae Systems*, [website], 2018, <https://www.baesystems.com/en-sa/article/memorandum-of-intent-between-the-kingdom-of-saudi-arabia-and-the-uk-government>, (accessed 20 May 2018).

²⁶ 'A Shameful Relationship: UK complicity in Saudi State Violence', CAAT, [website], 2016, <https://www.caat.org.uk/campaigns/stop-arming-saudi/a-shameful-relationship.pdf>, (accessed 6 May 2018).

manufacturers in the UK and the 16th largest in the world rank with 24% arms sold of total sales²⁷, with strong arms business commitment to Saudi Arabia. In 2013, the Saudi and the British governments, with Rolls Royce, set on a contract for 4 years to support their RB199 aircrafts engines and supply them with spares and maintenance.

The cooperation is not going to end with weapons being traded, as it is just the first step of political relations being watered to have a solid root in the ground. The cooperation includes also sharing intelligence, having a political influence and a decision making upper hand in the areas where the weapons are being used. For instance, in September 2017, the Saudi and the British government signed a military and security cooperation agreement that would allow both to benefit from each other with regarding to protecting national security, education, and most importantly, counter terrorism intelligence²⁸. David Cameron, the former prime minister has expressed in 2015, that there is an intelligence sharing between both countries for the protection of the British national security and a terroristic incident was stopped once because of information shared from the Saudi side²⁹.

The UK has been taking a big part of what is happening in Yemen by conducting training sessions to Saudi Royal Force personnel on several issues. Two of the most important sessions were a targeting course and the understanding of the International Humanitarian Law. Trainings had taken place in the UK and Saudi Arabia to number of pilots who are responsible for executing the missions. Other courses also were given on ways to use

²⁷ A. Fleurant, et al., 'The SIPRI top 10 Arms-Producing and Military Services Companies, 2016', *SIPRI*, [website], 2017, https://www.sipri.org/sites/default/files/2017-12/fs_arms_industry_2016.pdf, (accessed 10 April 2018).

²⁸ M. Fallon, 'New agreement strengthens UK-Saudi Arabia Defence relationship', *Ministry of Defence*, 2017, <https://www.gov.uk/government/news/new-agreement-strengthens-uk-saudi-arabia-defence-relationship>, (Accessed 15 April 2018).

²⁹ 'A Shameful Relationship: UK complicity in Saudi State Violence', *CAAT*, [website], 2016, <https://www.caat.org.uk/campaigns/stop-arming-saudi/a-shameful-relationship.pdf>, (accessed 6 May 2018).

munitions³⁰. Since the civilian casualties are the highest percentage of targets inside Yemen, the UK training to the Saudis is in a questionable place.

Additionally, part of the UK goals in Yemen is limiting the presence of Al Qaeda in the Arabian Peninsula (AQAP) leaders and activists that impose threat to the United Kingdom security, and that is one of the reasons why the UK is backing up KSA in their war inside Yemen. Yemen for the AQAP is considered the safe harbor as they exist there with large numbers and the country, in general, host numbers of AQAP and ISIS, the two big terrorist groups under its roof. A success in Yemen for the U.K. is a success of ending these two groups from functioning, as they inflict a great danger to the UK. Lieutenant General Sir Simon Mayall, a British army officer positioned now as a Middle East advisor said that, *“In my mind, the motives for the Saudi-led campaign in Yemen are quite clear. The operations themselves are critical to halting Houthi aggression, thereby setting the conditions for a political settlement, for restricting the operation of AQAP”*³¹. The UK’s involvement in Yemen has many motives and it seems as it will continue until these true goals are met.

Saudi Arabia’s Self Defence according to International Law

This whole conflict started when the Houthis launched a missile on the Saudi territory, which alarmed the Saudis to start replying back heavily. Starting an air campaign with a naval blockade was a first step that hasn’t stopped so far, but self defence has many ways and this kind of retaliation is supposed to be considered as a last resort. The Saudi’s argument, to defend their image in front of the international public, is that they are in a state of self defence as they can’t observe and ignore their country being threatened by the Shiite militias without doing anything. This reason has been supported by the UK as Boris Johnson, The Secretary

³⁰ ‘Judicial Review’, *High Court of Justice Administrative Court, Case*, <https://www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2016-03-30.grounds-of-resistence.pdf>, (accessed 13 April 2018).

³¹ ‘The use of UK-manufactured arms in Yemen’, *UK Parliament*, 2015, <https://publications.parliament.uk/pa/cm201617/cmselect/cmfa/688/68806.htm#footnote-058>, (accessed 13 April 2018).

of State for Foreign and Commonwealth Affairs, has stated, when welcoming Saudi Arabia Foreign Minister Adel Al Jubair, that:

*“It is vital that we bring this appalling conflict which has inflicted so much humanitarian suffering to an end. Britain supports Saudi Arabia’s right to defend its national security against missile attacks from Yemen, many of which have targeted the Kingdom’s cities, including Riyadh”*³². This statement is contradicting itself as Boris Johnson is concerned about the humanitarian situation in Yemen and wants to end it, and at the same time urges Saudi Arabia to keep on “defending” itself against the strikes by the Houthis. It is a cause and effect relationship as the humanitarian crisis is happening as a result of the daily bombings on Yemen. Hence, if there is a clear aim to end the humanitarian disaster in Yemen, this “self defence” has to be stopped.

On 24th of March 2015, the Yemeni President Mansour Al Hadi requested the Saudi military intervention in Yemen, by addressing the United Nations Security Council (UNSC), to protect the country from the Houthis violence wave and regain control from them over parts of the country³³. He pointed out and called for article 51 of the UN Charter to be implemented. Article 51 states:

*“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”*³⁴.

KSA responded quickly, but not so efficiently. The Kingdom started bombing Yemen and claimed that it is defending its national security. The Saudis pointed out that they are bordering with Yemen and any instability or any existence of Iranian control there will

³² B. Johnson, ‘Opening Remarks delivered alongside Saudi Arabian Foreign Minister Adel Al Jubair’, *Foreign & Commonwealth Office*, [website], 2018, <https://www.gov.uk/government/speeches/foreign-secretary-remarks-on-the-visit-of-saudi-crown-prince-mohammed-bin-salman>, (accessed 6 April 2018).

³³ UNSC, S/2015/217, (2015) (accessed 14 April 2018).

³⁴ UN Charter (Adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI

directly affect Saudi Arabia. However, there are some conditions that need to be in place and requirements need to be met before using force as a self defence mechanism. First and most important, the step of using of force for self defence must be taken when all necessary measures are already done; the use of force should be the last resort. On 14th of April 2015, the UNSC adopted a resolution demanding the Houthis to abide by the international law, withdraw its forces from Sana' and other areas, not to threaten any neighboring countries, and accept Hadi's invitation to attend a conference in Riyadh to discuss the political transition in Yemen. The UNSC adopted this resolution after Saudi Arabia already begun bombing Yemen in March, and that it why this resolution didn't succeed to meet its goals.

Using force as a self defence has to be a last resort option, after efforts by the international community and the UN to end the hostility. However, Saudi Arabia has declared war on Yemen after President Hadi's request to intervene and they didn't think of any other political options to solve the issue. A second condition is that "*the force must be proportionate to the threat faced and must be limited to what is necessary to deal with the threat*"³⁵. In total, during the three years of the conflict, the Houthis launched 90 missile attacks on the Saudi capital Riyadh. The first casualty was in March of 2018, as one man was killed and two were injured³⁶. Compared to the numbers in Yemen where thousands of civilians died, the force used was neither proportionate nor limited to what is necessary.

The article also requires the use of force, firstly, when an attack happens from another country, and in this case, the missiles fired from a rebel group, not a state. Moreover, article 51 can be implemented if there is a dispute between Saudi Arabia and another country, but here in this case, there is not any kind of dispute between Yemen and KSA, and thus article 51 of the UN charter can't be applicable. In addition, president Hadi, when requested international military intervention in Yemen, wasn't in the country at that time as he fled out

³⁵ D. Bethlehem, 'Principles Relevant to the Scope of a State's Right Of Self Defence Against an Imminent or Actual Armed Attack By non-State Actors', <http://www.un.org/law/counsel/Bethlehem%20-%20Self-Defense%20Article.pdf>, (Accessed 11 April 2018).

³⁶ N. McCarthy, 'The Houthi Missile Threat To Saudi Arabia', *Statista*, [website], 2018, <https://www.statista.com/chart/13375/the-houthi-missile-threat-to-saudi-arabia/>, (accessed 20 April 2018).

of it due to the tension. Therefore, this fleeing raised questions of whether he had legitimacy to request international intervention. However, the international community, represented in the UN, and the Saudi-coalition including Egypt, United Arab Emirates, Kuwait and other Arab countries defended Hadi as the legitimate president of Yemen and accepted his request. Taken into account all of this background information about the intervention in Yemen, the argument by Saudi Arabia, backed up by the UK, that it is defending its national security and the stability of the region is by no means valid.

UK National Export Control

The war is already taking place currently in Yemen and the UK arms cooperation with Saudi Arabia will likely to continue for several coming years. Therefore, it is important to target the UK's obligation with its national and international laws, to try to find out if the UK is complying with these laws and try to raise awareness regarding any existing violations. This part will discuss the national policies in the UK while the international obligation part will be analyzed in chapter III of this study.

Any country's national laws are considered more powerful than any other regional or international laws, as they are the principles where this country is raised upon. The UK has specific and detailed national laws for arms trade to be regulated and to have a legal status. In the British national law³⁷, in order to sell/export something to somewhere outside of the country, the seller/exporter has to issue a license from the "*Export Control Joint Unit*" to approve this trade. There are several criteria for goods to be accepted and permitted to be exported outside of the country; criteria that have to be met in order to prevent illegal and illegitimate trade. There are eight criteria, based on the *EU Consolidated Criteria*, and each consists of several conditions, but for the sake of this study, three of them will only be

³⁷ 'Consolidated EU and National Arms Export Licensing Criteria', UK Parliament, [website], 25 March 2014, <https://publications.parliament.uk/pa/cm201314/cmhansrd/cm140325/wmstext/140325m0001.htm>, (accessed 16 April 2018).

discussed to point out that the UK arm companies and the UK defence industry are violating their national law.

Criterion number I (b) states that:

“The Government will not grant a licence if to do so would be inconsistent with, inter alia: the UK’s obligations under the United Nations arms trade treaty”³⁸. The obligation here is clear, as the UK export laws are not just covering its own concerns on arms exports, but also the international obligations under the ATT, which will be discussed furtherly in chapter III. If all the national obligations have been met, but a potential international violation has been found, the licence shouldn’t be granted. The criterion then is following up on the ATT requirements, and that puts the British government under a large scope of rules that must be legally followed.

Moreover, criterion number II (c) states:

“Having assessed the recipient country’s attitude towards relevant principles established by international human rights instruments, the Government will not grant a licence if there is a clear risk that the items might be used in the commission of a serious violation of international humanitarian law”³⁹.

The criterion here required the consistency with IHL, as protecting civilians would be a priority and any potential risks of violation would, as a result, cancel the transfer. KSA is targeting civilians, hospitals, markets and basic tools for survival by using UK manufactured arms (Evidence is shown in Chapter II). Hence, the UK is violating criterion II (c) of the national licensing criteria. The law is addressing the existence of a “risk” that the weapons are going to be used against human rights. In chapter II, it is shown there is a clear evidence of IHL violation, then accordingly, the trade between both countries is not nationally legal.

³⁸ Ibid

³⁹ Ibid

The last Criterion, number IV (a), states:

*“The Government will not grant a licence if there is a clear risk that the intended recipient would use the items aggressively against another country, or to assert by force a territorial claim. When considering these risks, the Government will take into account, inter alia: the existence or likelihood of armed conflict between the recipient and another country”*⁴⁰.

The criterion requires that if the recipient country is going to use the arms against another country, then the government won't issue a licence. The word 'aggressively' here was mentioned with no further explanation as to what extent a force used could be considered aggressive, which allows for a self-British interpretation and therefore allows room for error. Moreover, there is an armed conflict in Yemen (another country) happening between Saudi Arabia (recipient) armed by the UK, and Houthi forces. Saudi Arabia is using the weapons against Yemen, and that is depictable in the amount of destruction that has happened until this point. However, there is no conflict between KSA and Yemen itself which puts some confusion into whether the criterion applies here. Importantly, the number of casualties and statistics could show that the weapons are used in a nonstop aggressive way. Therefore, the UK is likely to be violating criterion number IV.

Thus, The UK is not complying with its national laws and these criteria ought to be taken in consideration before signing any new contracts with Saudi Arabia. The UK has been receiving objections and calls over the issue that KSA has been violating IHL by using UK arms and that the supply must stop. Consequently, the UK has communicated with the Saudi side and has presented its trust in the Saudi assessment of the situation. As a result, the Saudis presented their assurances that the weapons have been used legally without any violations of any kind⁴¹. This shows that both governments are in parallel of what to present to the general

⁴⁰ Ibid

⁴¹ J. Lunn, 'The Legal and regulatory framework for UK arms exports', *House of Commons Library*, 2017, P.17, <http://researchbriefings.files.parliament.uk/documents/SN02729/SN02729.pdf>, (accessed 22 April 2018).

public and they know exactly how to respond to several condemnations of the violations happening in Yemen. Violating national laws shouldn't be taken easily, but the UK and KSA have been cooperating on a big level which makes the British government defend the Saudi's position in this issue, and defend its licence granting system.

Since the beginning of the war/conflict in March 2015, the UK has issued arms licenses that exceed £4.6 billion to supply Saudi Arabia with what it needs militarily. The arms are divided into ML (Military) categories; basically, the licenses are issued for ML 10, ML4 and ML6⁴².

- 1) ML10, which was worth 2.7£ billion, includes aircrafts, lighter than air vehicles, drones, remotely piloted air vehicles, helicopters, Unmanned Ariel Vehicles (UAV) aero engines, aircrafts and other products specifically used for military use.
- 2) ML4, which was worth 1.9£ billion, includes grenades, bombs, missiles, countermeasures, rockets, torpedoes and other explosive devices.
- 3) ML6, which was worth £572,000, includes armoured/ground vehicles, and tanks⁴³.

The licences are being issued for arms that are war material, designed for destruction and demolition. As long as there is no follow up or monitoring mechanism on the UK national laws, related to the European Union and the UK itself, the arms will keep flowing to Saudi Arabia hitting innocent civilians and non-military bases in Yemen. It is important to note that the government official who is responsible to grant these licenses for exports to KSA is the Secretary of State for International Trade and President of the Board of Trade, Liam Fox.

⁴² European Union, 'Common military list of the European Union', *Official Journal of the European Union*, 2014, <http://exportcontrol.bg/docs/Common%20Military%20List%202014.pdf>, (accessed 20 April 2018).

⁴³ CAAT, 'UK Arms sales To Saudi Arabia', [website], 2017, <https://www.caat.org.uk/campaigns/stop-arming-saudi/arms-sales>, (accessed 20 April 2018).

The Queen (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade

In a productive move against the illegality of this arms trade, The Campaign Against Arms Trade (CAAT) filed a judicial complaint against Liam Fox about his decisions not to stop granting any more license to the Saudi Kingdom. This complaint was on the allegations that Saudi Arabia is violating IHL through its war in Yemen. CAAT was supported by Amnesty International, Human Rights Watch, Right Watch UK, and OXFAM. The allegations are based on evidence that violates, mainly, criterion II of the *EU Consolidated Criteria*, that there is a clear risk that these arms might be used to commit serious human rights violations. The Secretary of State's position was that there was no "clear risk" related to Criterion II⁴⁴.

Thus, evidence was presented by both the Secretary of State, and CAAT (supported by different NGO's). CAAT's evidence was a number of reports assessing the situation and stressing that KSA is violating IHL, but the evidence from the Ministry of Defence (MoD), that KSA is not breaching any law, was more convincing to the court. The information and evidence by Liam Fox included⁴⁵:

- 1) Fast Jet coalition operational reporting data.
- 2) MoD Imagery (High Resolution).
- 3) Intelligence reports.

⁴⁴ C. Bradin and M. Anthony, 'UK High Court finds that arms trade to Saudi Arabia can continue', *Human Rights Law Centre*, [website], 10 July 2017, <https://www.hrlc.org.au/human-rights-case-summaries/2017/10/13/uk-high-court-finds-that-arms-trade-to-saudi-arabia-can-continue>, (accessed 8 April 2018).

⁴⁵ The Queen (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and interveners (Case No: CO/1306/2016).

Due to the specific and massive information presented to the court by the MoD due to its intelligence cooperation with the Saudi government, it has ruled in favor of the Secretary of State. The court stated that the decision made by Liam Fox not to stop granting licences was lawful, and based on critical assessment on the situation in Yemen. It concluded that KSA hasn't breached any IHL, and has opened an investigation on the cases where there were number of civilian casualties⁴⁶.

The court based also her judgment on the *"EU Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment"*⁴⁷, which stated:

"Isolated incidents of international humanitarian law violations are not necessarily indicative of the recipient country's attitude towards international humanitarian law and may not by themselves be considered to constitute a basis for denying an arms transfer."

This shows that targeting civilians could be considered "isolated incidents", and can't be considered as enough evidence to create a "clear risk" and stop issuing the licences for exports. This is a very serious matter, as the guide left a small room for breaches of IHL to happen and for violations to be committed by a country without being held accountable.

However, in May 2018, the UK court of appeal has finally granted an appeal for CAAT to challenge the court's previous decision that the arms exports to Saudi Arabia wasn't unlawful. The campaigners has got a second chance to open this case again and have the hope of ending the UK arms export to the Saudi Kingdom⁴⁸. The core argument of the case would be around criterion II of the *Export Licensing Act* which states that no license should be approved if there is a risk that the exporting products would be used to violate IHL⁴⁹. The

⁴⁶ Ibid.

⁴⁷ Council of the European Union, 'User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment', 20 July 2015, <http://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf>, (accessed 10 April 2018).

⁴⁸ The Queen (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and interveners, T3/2017/2079 and 2079B, <https://www.judiciary.gov.uk/wp-content/uploads/2018/05/caat-v-secretary-of-state-ors-judgment.pdf>

⁴⁹ Ibid.

court has put the Secretary of State under responsibility for continuing granting authorizations of exports when he had real strict obligations to conduct a fair assessment. Ultimately, the court hasn't given a decision yet, but simply going to discuss the matter according to new information about the situation in Yemen.

Joint Incidents Assessment Team (JIAT)

Due to the massive doubts about KSA's obligations with IHL, the Saudi coalition has a Joint Incidents Assessment Team (JIAT) in Yemen, established by the help of the UK. Its task is to investigate on breaches of IHL and report the conclusions of these investigations. JIAT has documented 14 incidents of breaches of IHL, but JIAT being part of the coalition and at the same time investigating about the coalition war on Houthis, is beyond reason. Amnesty International pointed out that JIAT has failed in his investigations so far because they lack transparency and impartiality. More importantly, in the organisation report, they addressed JIAT's mandate and that it is not clear what it is, what will they do with the reports they conduct and their findings, and what will be the possible consequences if a member of the coalition breaches the law⁵⁰. Questions that need to be answered by the Saudi coalition on the transparency and the effectiveness of JIAT.

Lord Tariq Ahmed of Wimbledon, the Minister of State for the Commonwealth, stated that the government is aware of breaches of IHL. He said, "*The Saudi-led Coalition Joint Incidents Assessment Team (JIAT) has announced the findings of a total of 41 investigations and the most recent was released on 19 November 2017*"⁵¹. According to his statement, and if the UK government is aware of the violations committed by the coalition, then why are

⁵⁰ Amnesty International, 'Amnesty International response to the Saudi Arabia-led coalition investigations', 16 January 2017, <https://www.amnesty.org/download/Documents/MDE3154942017ENGLISH.pdf>, (accessed 23 April 2018).

⁵¹ UK Parliament, 'Yemen: Armed Conflict: Written Question – HL3470', [website], 2017, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-11-22/HL3470/>, (accessed 20 April 2018).

they still issuing licenses for arms exports to KSA? Lots of questions rise on the effect of JIAT's investigations to find out violations and report them when it's really part of the coalition. The investigating mechanism is ran by Mansour Ahmed Al-Mansour, a Saudi Lieutenant General⁵² and that creates a distrust in this reporting system. An investigating mechanism led by Saudis is investigating Saudi's breach of IHL in Yemen, which shows how this mechanism lacks a great deal of impartiality.

Essentially to mention, the JIAT responses to several allegations, that the coalition forces are bombing civilian targets, is doubtful. The mechanism is defending the coalition, and that is absolutely anticipated. Amnesty International, for instance, reported in 2015 about the bombing of a main commercial street in Saada' province in Yemen which resulted in the killing of seven people and others were injured. The JIAT response to this was that the market wasn't intentionally targeted as the main target was a warehouse of arms owned by the Houthis. Due to a technical error, the bomb missed the intended target and hit the market. The investigating mechanism advised the coalition governments to apologise for bombing the wrong target, and assured that there will be effective assistance to those who suffered from the incident⁵³.

Another example, in December 2016, the coalition forces bombed a hospital in Hajjah governorate. According to the Saudi Embassy, the bombing resulted in seven deaths and 13 injuries⁵⁴, but according to Médecins Sans Frontières (MSF), the bombing resulted in 19 deaths including one of their workers. The JIAT responded that the bombing happened due to an error in intelligence and information gathered that this spot had armed Houthi leaders.

⁵² S. Leah Whitson, 'Letter to Saudi-led coalition joint incidents assessment team regarding Yemen investigations', *Human Rights Watch*, [website], 2017, <https://www.hrw.org/news/2017/01/16/letter-saudi-led-coalition-joint-incidents-assessment-team-regarding-yemen>, (accessed 18 April 2018).

⁵³ Saudi Press Agency, 'JIAT on Yemen Issues statement on results of a number of incidents', [website], 2017, <https://www.spa.gov.sa/1595497>, (accessed 20 April 2018).

⁵⁴ Saudi Embassy, 'JIAT response to doctors without borders, amnesty international', [website], 6 December 2016, <https://www.saudiembassy.net/news/joint-incidents-assessment-team-jiat-response-doctors-without-borders-amnesty-international>, (accessed 25 April 2018).

According to MSF, this building was a hospital and it had a large symbol that made it clear that this building was a hospital. Any destroyed building, isolated warehouse or an area that was possessed by the Houthis forces is considered as legitimate military target⁵⁵. All the JIAT statements/findings reveal that the strikes were lawful. The reporting mechanism is not blaming KSA for any collateral damage that has been documented so far. This investigating mechanism was created with the help of the UK, and the UK should monitor the JIAT findings and reporting due to more accurate information that would prevent further unnecessary casualties.

⁵⁵ Royal Embassy of Saudi Arabia, 'JIAT Inquiry into Yemen', [website], 25 November 2017, <https://saudiembassyuk.co.uk/joint-incidents-assessment-team-inquiry-into-yemen/>, (accessed 26 April 2018).

Chapter II

Because an armed conflict involves a high risk of deaths, destruction and instability, the international community after WWII couldn't turn a blind eye and was able to produce some set of rules to regulate what is happening during war times. Protection of civilians, prisoners of war, the wounded, and humanitarian workers were the priority and the motivation that led to the birth of such protective rules. Countries have to abide by some humanitarian rules to be able to engage legally in any war/conflict without leaving many casualties behind. These rules are there to put a line between those who are engaging in the conflict, and who are suffering from it. Many casualties during wars are becoming collateral damage, and they were in need of a legal protection.

As a result of a states' struggle to defend war victims from 1863 with the foundation of the ICRC till the end of WWII after the death of millions of people, governments then adopted the Geneva Conventions 1949. Afterwards, in exactly 26 years, Protocol I and II (Additional to the Geneva Conventions) were also adopted for more detailed directions towards the full protection of civilian and other vulnerable groups during international and non-international conflicts. Hence, the International Humanitarian Law (IHL) was born to limit the harms of the war on the non-participants⁵⁶.

The ICRC defines IHL as follows:

“a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict”⁵⁷.

⁵⁶ ICRC, 'Development of Modern international humanitarian law', [website], 2010, <https://www.icrc.org/eng/who-we-are/history/since-1945/history-ihl/overview-development-modern-international-humanitarian-law.htm>, (accessed 26 April 2018).

⁵⁷ ICRC, 'What is International humanitarian law?', 2004, https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf, (accessed 26 April 2018).

A distinction must be made between who might be attacked and who might be spared and protected during armed conflicts. Without this distinction, wars can become chaotic, which they are already in their nature. However, as being defined, IHL is applied to limit the effects of the conflict and not to eliminate them completely as it would be realistically not possible. The death of civilians during war time is inevitable, as Luis Moreno-Ocampo, the former Chief Prosecutor at the International Criminal Court (ICC), stated before, that having civilian casualties during armed conflicts isn't considered a war crime unless it is an intentional targeted strike⁵⁸. In Yemen, Saudi Arabia is responsible for more than 10,000 civilians deaths', and more than 50,000 injured⁵⁹, and it can't be reasoned that all of these deaths are as a result of a targeting mistake or were unintentional. As being shown in chapter I, the JIAT, when encountered with unlawful bombings on civilians, were apologetic and ended their grievances with promises that an investigation would start to find the source of the error that led to the civilian casualties. There is a very narrow line between both, intentional and unintentional bombings. There are no clear criteria in the essence of the IHL that would illustrate the difference for human rights experts and governments to judge and decide whether a strike intended to hit the wrong target . However, with clear evidence that can be shown to demonstrate that the site targeted was not a military base, KSA and the UK's military personnel can be held accountable for the lives that were lost during these three years in Yemen. Evidence will be presented later in this chapter.

The Rome Statute

War crimes, related to the conflict in Yemen, were defined in the Rome Statute of the International Criminal Court. The Rome Statute was the treaty that gave birth to the

⁵⁸ S. Bryen, 'The Doctrine of Proportionality', *Gatestone institute*, [website], 2014, <https://www.gatestoneinstitute.org/4462/proportionality-doctrine>, (accessed 10 March 2018).

⁵⁹ UNOCHA, 'Humanitarian Needs Overview', 2018, https://www.unocha.org/sites/unocha/files/dms/yemen_humanitarian_needs_overview_hno_2018_20171204.pdf, (Accessed 9 March 2018).

establishment of the ICC. Article 8 (2) (b) (i), (ii), and (iii)⁶⁰ respectively are concerned with the protection of civilians during armed conflict. Firstly, article 8 (2) (b) (i) defines one part of war crimes as: “*Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities*”. The article states that targeting civilians by the perpetrator that are not involved in the international conflict with a prior built intention and information, is considered a war crime⁶¹. The condition here and in the next clauses to be considered a war crime is the intention, as there might be some inaccuracies in aiming. Unless it is a systematic and repetitive pursuing on a clear civilian target, then it is not a war crime.

The second clause (ii) of the same article continues on the definition of war crimes as: “*Intentionally directing attacks against civilian objects, that is, objects which are not military objectives*”. It shows here that not only targeting civilians are prohibited, but also objects that are not a military used such as weaponry bases, a military sites, etc. The distinction between both military and not military objects is mentioned in countries’ military manuals. Moreover, a military object is defined in 1923 *Hague Rules of Air Warfare* as follows: “*an object of which the destruction or injury would constitute a distinct military advantage to the belligerent*”⁶², and added by HRW, “*This would include enemy fighters, weapons and ammunition, and objects being used for military purposes*”⁶³. Military objects are these which if destroyed or targeted would eventually give one side a military advantage over the other. The distinction is absolutely clear and it is there to help identify which objects are legible to be bombed.

⁶⁰ ICRC, ‘War Crimes under the Rome Statute of the International Criminal Court and their sources in International Humanitarian Law’, 2012, <https://www.icrc.org/en/document/war-crimes-under-rome-statute-international-criminal-court-and-their-source-international>, (Accessed 8 March 2018).

⁶¹ ICC, ‘Elements of Crime’, 2011, <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>, (accessed 11 March 2018).

⁶² H. B. Robertson, ‘The principle of the military objective in the law of armed conflict’, *Journal of Legal Studies*, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1080&context=faculty_scholarship, (accessed 4 April 2018).

⁶³ Human Rights Watch, ‘Q&A on the conflict in Yemen and international law’, [website], April 6 2015, <https://www.hrw.org/news/2015/04/06/q-conflict-yemen-and-international-law>, (accessed 2 April 2018).

The third clause (iii) of the article continues the definition as: “*Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict*”. This was illustrated in the example of bombing MSF Abs hospital by the coalition forces, and other examples will be found later in this chapter. Humanitarian assistance personnel are in the same category as civilians. They are representing an international body/unit/organization that is not part of the conflict, and inflicting harm to them, intentionally, may amount to war crimes⁶⁴. Again, the common issue here is the intention of the military to aim at a specific civilian, civilian tools or humanitarian assistance.

It is important to point out that the UK has ratified the Rome Statute in 2001, and should be bound by its rules, and Saudi Arabia hasn't. As long as KSA is using British arms, then the UK has the responsibility to monitor the Saudis' active role in the war in Yemen, and make sure that it is compliant with its international obligations. Similar to what happened in Iraq, the UK military personnel and advisors could be held accountable of aiding KSA pilots in their bombings and its war inside Yemen. Recently, in 2017, the ICC has opened an investigation into UK's responsibility for committing war crimes by its forces in Iraq⁶⁵ during the period from 2003 till 2008⁶⁶. Iraq hasn't ratified the Rome Statute, but the UK has, and after a preliminary fact finding, the ICC decided to investigate on the issue. This could also happen, even though there is a small chance, in Yemen. Yemen, like Iraq, hasn't ratified the Rome Statute. However, if there could be another preliminary fact finding or solid evidence presented by different organisation, the ICC could open a formal investigation on the

⁶⁴ ICRC, 'Rule 33. Personnel and Objects involved in a peacekeeping mission', *IHL Database*, [website], https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule33, (accessed 20 April 2018).

⁶⁵ ECCHR, 'War crimes by the UK Forces in Iraq', [website], <https://www.ecchr.eu/en/case/war-crimes-by-uk-forces-in-iraq/>, (accessed 28 April 2018).

⁶⁶ ICC, 'Preliminary Examination', [website], <https://www.icc-cpi.int/iraq>, (accessed 23 April 2018).

involvement of UK advisors and trainers in Yemen, even if it is a remote involvement. For example, UK's military advisors are helping Saudis inside control rooms in their bombing campaigns on Yemen, and are conducting training sessions for Saudi pilots. Even though that prosecution of British individuals could be impracticable, but at least a call for the ICC to open an investigation could alarm both countries about their violations. Whether there will be a good basis for the continuous of the investigation is then according to the judge.

In fact, The European Center for Constitutional and Human Rights (ECCHR) is developing a case file to be submitted to the ICC⁶⁷. This case is to demonstrate that the arms trade between European Countries (such as the UK) and Saudi Arabia could make them be held accountable and could impose great responsibility on them because they are directly connected to the crimes committed in Yemen. The ECCHR would base its argument on the violations of International Humanitarian Law, and the Geneva conventions.

Geneva Conventions 1977

Another legal instrument that provides the basis for the distinction between civilians and military objects in warfare is the Geneva Conventions, and particularly Protocol I of 1977 which is related to the protection of victims in an international armed conflict (It is important to say that there is a big confusion on whether the conflict in Yemen is considered an international or non-international due to the nature, reasons of the war and the number of parties involved. However, for the scope of this study, the conflict will be presented as an international armed conflict).

To begin with, a civilian is defined as any person who doesn't get involved in the hostility taking place, and a person who is not part of any military or any combatants⁶⁸. Therefore, the

⁶⁷ The European Center for Constitutional and Human Rights, 'ECCHR Case Docket', 2018, (accessed 15 May 2018).

⁶⁸ Medicines Sans Frontieres, 'The Practical Guide to Humanitarian Law', [website], <https://guide-humanitarian-law.org/content/article/3/civilians/>, (accessed 29 April 2018).

distinction is noticeably made and the Convention emphasizes that *“In case of doubt whether a person is a civilian, that person shall be considered to be a civilian”*⁶⁹, leaving no room for any mistakes to occur. Article 51(2) states:

*“the civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited”*⁷⁰.

Not only the article stresses about the prohibition of targeting civilians, but also the prohibition of acts of violence that could be used to terrorise the population, which is visible with the daily airstrikes in Yemen. A Yemeni Father expressed his feelings towards the situation by saying that *“Death and destruction are the first things to greet you when entering Saada province,”*⁷¹. Hence, violence and terror are the current theme of a daily life in Yemen due to the non-stop airstrikes that have destroyed lots of regions and have been taking place since 2015 by the coalition forces, backed by the UK.

Furthermore, article 52(3) states:

*“Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”*⁷².

The article defines what are the military objects that are legible to be targeted, which is very useful to differentiate between them and civilian objects from air and on the ground. The first

⁶⁹ Additional Protocols to the Geneva Conventions (Adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

⁷⁰ Ibid. Art 51 (2).

⁷¹ F. Edroos and A. Algohbary, ‘1,000 days of war in Yemen, land of blood and bombs’, *Al Jazeera*, 20 December 2017, <https://www.aljazeera.com/news/2017/12/1000-days-war-yemen-land-blood-bombs-171220084152340.html>, (accessed 1 May 2018).

⁷² Additional Protocols to the Geneva Conventions (Adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3. Article 52 (3).

criterion is that the military objects should serve military purposes that are going to be efficient in times of conflicts. These objects/arms are designed to be used as part of the ongoing battlefield. The second criterion is that their usage during the conflict/war would be considered an asset and give more military gains and control for one side over the other⁷³.

Additionally, under article 54 (2):

“It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive”⁷⁴.

Article 54(2) prohibits the bombing or the destruction of certain tools that are needed for a basic survival. The article stresses the fact that there is no reason to justify the targeting of these valuable tools, because whatever the reason, it would still negatively affect the livelihoods of civilians and would still be prohibited.

After showing the legal obligations that need to be followed, it is important to point out that every allegation made that Saudi Arabia and the UK are violating IHL needs evidence for the case to be completed if there is any chance to hold both countries accountable.

Saudi Arabia and Civilian casualties (Evidence)

The Saudi coalition forces are directing its weapons to whatever targets they spot on the ground. This is not an accusation any more, as it is a fact. For better vision, below is evidence

⁷³ H. B. Robertson, ‘The principle of the military objective in the law of armed conflict’, *Journal of Legal Studies*, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1080&context=faculty_scholarship, (accessed 4 April 2018).

⁷⁴ Additional Protocols to the Geneva Conventions (Adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3. Article 54 (2).

presented and collected by numerous human rights organisations which proves that KSA, as part its involvement, is targeting civilians, humanitarian assistance/workers, and basic life utilities. The coalition till this point is not able to reach the distinction that every humanitarian law calls for. Consequently, civilian casualties are getting higher with time due to the current destruction and air campaigns over the Yemenis.

On the 18th of April 2015⁷⁵, one month after the beginning of the conflict, a warehouse, in Sadaa' province, belonged to OXFAM was bombed by the coalition forces⁷⁶. The target had an important amount of humanitarian aid that was immediately destroyed as a result of the attack. Clean water was supposed to be delivered to the people in urgent need before the coalition felt threatened by the inside content of the warehouse. Fortunately, OXFAM team wasn't at the site at the time of bombing, but one civilian, who was near the warehouse died as a result.

Moreover, On the 8th of May 2015⁷⁷, the coalition forces warned the people in Sa'da and Marran that the Houthis are in control of these areas and there is a need to evacuate both cities. The coalition forces warned that there is going to be an air campaign on both cities targeting the Houthis. They declared both cities as shelters to the Houthi forces and therefore needed to be taken out, and that could be counted as a terrorising environment. This operation was among the operation "*Renewal of Hope*" that aimed for ending the militias movements and protecting civilians. General Ahmed Al Asiri, the spokes-person of the Coalition forces stated, "*we have also designated Sa'da and Marran as military targets loyal to the Houthi militias*"⁷⁸. He also stated in a press conference that the Houthi militias are hiding among

⁷⁵ Human Rights Watch, 'Yemen: Warehouse strike threatens aid delivery', [website], 22 April 2015, <https://www.hrw.org/news/2015/04/22/yemen-warehouse-strike-threatens-aid-delivery>, (accessed 2 May 2018).

⁷⁶ OXFAM International, 'OXFAM statement amended 8 May 2015', [website], 19 April 2015, <https://www.oxfam.org/en/pressroom/reactions/oxfams-statement-amended-8-may-2015-oxfam-condemns-coalition-bombing-warehouse>, (accessed 27 April 2018).

⁷⁷ Amnesty International, 'Bombs fall from the sky day and night', 2015, P.10, https://www.amnestyusa.org/files/bombs-fall-from-the-sky-day-and-night_civilians-under-fire-in-northern-yemen_final.pdf, (accessed 30 April 2018).

⁷⁸ Ibid. P. 11

civilians and inside buildings and hospitals⁷⁹. This statement by the General should have made the Saudis more alert when targeting non-military objects, as Houthis hidden inside these buildings doesn't justify the bombings as the priority should be the protection of civilians as the operation aims.

On July 2015, a residential compound in the city of Mokha, a former principal port for Sanaa', was bombed which resulted in the death of 63 civilians and 50 others were injured. The witnesses said that the nearest air force base was around 1 km away from the compound, and there was no Houthi existence in this area. Hence, there is no reason for this civilian residential area to act as a threat to the Saudi-coalition forces⁸⁰. In the same month, a shopping market was bombed in Lahj governorate when two munitions were dropped on it (More information about the munitions' issue is in chapter III of the study). The attack caused 41 people to lose their lives and other 23 to suffer from injuries⁸¹.

In September of the same year, the coalition forces bombed a security building that led to the partial destruction of a nearby hospital and the death of two babies⁸². The JIAT reported that the hospital was a collateral damage and the strike actually targeted the needed Houthis targets as guided bombs were used⁸³.

On the 28th of September, a wedding was demolished in the city Mokha⁸⁴. The missile strikes by the coalition forces resulted in the death of 135 people, 12 of them were children. The

⁷⁹ Ahmed Al Asiri Press Conference regarding updates on the Yemeni operations: [online video], 2015, https://www.youtube.com/watch?v=l38aLG9l_ec, (accessed 2 May 2018).

⁸⁰ Amnesty International, 'Nowhere safe for civilians: air strikes and ground attacks in Yemen', 2015, https://www.amnesty.nl/content/uploads/2015/08/nowhere_safe_for_civilians_-_taiz_aden_report.pdf?x44743, (accessed 30 April 2018).

⁸¹ R. Perkins, 'State of Crisis: Explosive Weapons in Yemen', OCHA, 2015, <http://www.unocha.org/sites/dms/Documents/Yemen%20EWIPA%20report.pdf>, (accessed 30 April 2018).

⁸² BBC, 'Saudi should be blacklisted over Yemen hospital attacks', [website], 20 April 2017, <http://www.bbc.com/news/world-middle-east-39651265>, (accessed 30 April 2018).

⁸³ Royal Embassy of Saudi Arabia, 'JIAT Inquiry into Yemen', [website], 25 November 2017, <https://saudiembassyuk.co.uk/joint-incidents-assessment-team-inquiry-into-yemen/>, (accessed 26 April 2018).

⁸⁴ United Nations, 'Statement attributable to the spokesman for the Secretary General on Yemen', [website], 28 September 2015, <https://www.un.org/sg/en/content/sg/statement/2015-09-28/statement-attributable-spokesman-secretary-general-yemen>, (accessed 3 May 2018).

focus on the children casualties might be important because children cannot be terrorists or Houthis rebels. 135 person died because of a single decision that was taken by the pilot who bombed the missile on this wedding. Mistakes and errors could happen but there has to be an ongoing investigation from an international body, and not from KSA, to figure why mistakes are being repeated.

In October, a school in Sanaa' became a usual target for the coalition forces⁸⁵. It was bombed four times in one month leaving around three civilians dead, and around 15 injured. This bombing technique used by Saudi pilots, who were trained by the British, should be questioned as the bombings don't hit the right target and the results are always in unnecessary civilian casualties. The same school being bombed for four times shows the intention that is required in order to apply the international humanitarian rules.

On the 12th of December, the coalition bombed a Coca Cola factory which resulted in the injury of five workers, and the destruction of production lines and materials. One of the injured, a sales man of the company, said about his severe injuries, *"I got metal fragments in both of my lower legs. I spent two months in the hospital, and have had to have three operations so far"*⁸⁶. What could ever be the benefit for bombing a Coca Cola factory knowing that there will be casualties and it will not add any military advantage to your side over the Houthis?

In the same month, a clinic ran by MSF, was hit. The strike was only 22 meters from the clinic which was in a tent and not even a building. The strike led to the death of 9 persons including 2 MSF workers. The clinic had the MSF logo on it, but that wasn't evident enough

⁸⁵ Amnesty International, 'Our kids are bombs', 2015, <https://reliefweb.int/sites/reliefweb.int/files/resources/MDE3130262015ENGLISH.PDF>, (accessed 2 May 2018).

⁸⁶ P. Motaparthi, 'Bombing Businesses', *Human Rights Watch*, [website], 11 July 2016, <https://www.hrw.org/report/2016/07/11/bombing-businesses/saudi-coalition-airstrikes-yemens-civilian-economic-structures>, (accessed 3 May 2018).

for the forces to not bomb this area⁸⁷. After two incidents of bombings targeting two MSF hospitals/clinics, MSF removed its workers from number of hospitals in northern Yemen which consequently affected the needs of the Yemenis⁸⁸. Abs, Shiara, and Haydan were other hospitals which were targeted by KSA forces in less than one year⁸⁹.

In January 2016, a Bio Pharma factory was bombed by airstrikes which resulted in zero casualties, but had a negative effect on the medical supplies (Tablets, injections, etc.) being produced. Due to the massive health issues in Yemen and the unavailability of medics, every medical product is needed. A guard factory who was there at the time of the bombing said *“other factories in the area have not been hit.”*⁹⁰. His statement shows that the coalition strikes knew exactly the target they planned to hit. The chances to be confused between a Pharma factory and a military basis are absolutely low. Other workers said *“There’s no evidence to suggest that we are fighters or soldiers”* questioning the forces criteria on which facilities or buildings they choose to bomb.

In August 2017, a residential area in the capital Sanaa’ was targeted. The strike led to the death of 14 people, the injury of other 16, and 5 children were among them. The Deputy Head of International Committee of the Red Cross who investigated on the bombing said, *“Such loss of civilian life is outrageous and runs counter to the basic tenets of the law of armed conflict”*⁹¹, referring to the respect of IHL by the parties involved in the war.

⁸⁷ Medecins Sans Frontières ‘Taiz Incident Report’, 2 December 2015, http://www.msf.org/sites/msf.org/files/taiz_airstrike_clinic.pdf, (accessed 3 May 2018).

⁸⁸ Medecins Sans Frontières, ‘Yemen: MSF releases detailed documentation of attacks on two medical facilities ahead of UN security Council closed session on protection of medical mission’, [website], 27 September 2016, <http://www.msf.org/en/article/yemen-msf-releases-detailed-documentation-attacks-two-medical-facilities-ahead-un-security>, (accessed 28 April 2018).

⁸⁹ Medecins Sans Frontières, ‘Crisis Info 14/January 2017’, 2017, https://lakareutangranser.se/sites/default/files/yemen_crisis_info_14_2017.pdf, (accessed 20 April 2018).

⁹⁰ P. Motaparthi, ‘Bombing Businesses’, *Human Rights Watch*, [website], 11 July 2016, <https://www.hrw.org/report/2016/07/11/bombing-businesses/saudi-coalition-airstrikes-yemens-civilian-economic-structures>, (accessed 3 May 2018).

⁹¹ ICRC, ‘Yemen: airstrikes in residential area of Sana’a are outrageous’, [website], 2017, <https://www.icrc.org/en/document/yemen-airstrikes-residential-area-sanaa-are-outrageous>, (accessed 15 May 2018).

Also, more importantly, on the 2nd of April 2018, the Saudi-coalition bombed Hodeidah port, which is considered the most important port in Yemen. The bombing led to the death of 14 civilians, and some of them were children⁹². Hodeidah is the main entrance for 70% of the humanitarian aid that comes to Yemen, and bombing this port greatly affect the aid flow since Yemen depends significantly on imports⁹³. At the end of April 2018, another wedding was bombed and the incident resulted in around at least 20 people including children⁹⁴. This is the second bombing to happen on a wedding. Hence, it shows that there is a systematic error; and it seems that the coalition forces hasn't found the nature of this error so far.

This targeting of civilians assures that either the coalition forces don't have a specific target and consequently, bomb randomly, or they know exactly where and when to strike. Evidently, it is a disaster in both cases for the Yemenis and it is a violation of IHL.

If it is considered that bombing of buildings, schools, markets, factories is not a coincidence, then Saudi Arabia could be using a strategic bombing war technique inside Yemen. This bombing technique is defined as, "*the methodology used to diminish or neutralise the enemy's overall war-making capability through sustained attacks on targets that may be located deep inside the adversary-state*"⁹⁵. This means that a country aims to destroy means of production in a another country and put an end to anything that could give a military advantage. However, the problem with the strategic bombing, is that it doesn't usually aim at the required targets but is drifted towards civilian objects and basic life tools. KSA could

⁹² J. M. Sharp, 'Yemen: Civil war and regional intervention', *Congressional Research Service*, 2018, P.1, <https://fas.org/sgp/crs/mideast/R43960.pdf>, (accessed 5 May 2018).

⁹³ IRIS France, 'Yemen Six month Economic analysis, Economic welfare and humanitarian crisis', *Humanitarian and Development Programme*, 2017, P.7, <http://www.iris-france.org/wp-content/uploads/2017/04/IARAN-YEMEN-6-month-analysis-REPORT-1.pdf>, (accessed 4 May 2018).

⁹⁴ International Rescue Committee, 'Saudi led bombing of wedding in Yemen may amount to a war crime', [website], 2018, <https://www.rescue.org/press-release/saudi-led-bombing-wedding-yemen-may-amount-war-crime>, (accessed 27 May 2018).

⁹⁵ 'The relevance of the concept of strategic bombing', *Air Power Development Centre Bulletin*, 2015, <http://airpower.airforce.gov.au/APDC/media/PDF-Files/Pathfinder/PF245-The-Relevance-of-the-Concept-of-Strategic-Bombing.pdf>, (accessed 4 May 2018).

be using this technique to destroy the Houthis' supplies and besiege them. Ciaran Donnelly, the Senior Vice President of the International Program at the International Rescue Committee commented on the wedding incident in April by saying "it is despicable, and points to either gross negligence or, a deliberate strategy to commit war crimes"⁹⁶

Moreover, legally, in the Additional Protocol to the Geneva conventions of 1949, protocol I of 1977, article 71 (1) and (2) state:

*"1) Where necessary, relief personnel may form part of the assistance provided in any relief action, in particular for the transportation and distribution of relief consignments; the participation of such personnel shall be subject to the approval of the Party in whose territory they will carry out their duties. 2) Such personnel shall be respected and protected"*⁹⁷.

Uncomplying with international laws, around 4 Red Crescent workers were killed in Yemen in April 2015, and another one was killed in April of 2018⁹⁸. This shows that different parties, whether the coalition forces or the Houthis, are far away from respecting the rules of war. It is strictly prohibited to launch an attack on humanitarian aid workers as they are not part of any conflict. Humanitarian personnel are protected under IHL as they are included in the civilians category. The UK MoD Tracker Database which is a system to detect violations, has tracked around 350 incidents of breaches of IHL principles by the Saudi Kingdom. At the same time, the UK kept on its position not to start an investigation on these incidents and left the investigation to Saudi Arabia. *"MOD analysis of alleged IHL violations is used to*

⁹⁶ International Rescue Committee, 'Saudi led bombing of wedding in Yemen may amount to a war crime', [website], 2018, <https://www.rescue.org/press-release/saudi-led-bombing-wedding-yemen-may-amount-war-crime>, (accessed 27 May 2018).

⁹⁷ Additional Protocols to the Geneva Conventions (Adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3. Art 71.

⁹⁸ ICRC, 'Yemen/Syria: Red cross and red crescent Movement condemns killing of four more red crescent workers', [website], 2015, <https://www.icrc.org/en/document/yemen-syria-red-crescent-workers-killed>, (accessed 27 April 2018).

form an overall view on Saudi Arabia's approach and attitude to IHL ”, said Mark Lancaster, a conservative member in the parliament⁹⁹.

By these evidence presented in this section, the UK and KSA are violating IHL and the Geneva conventions and its protocol I of 1977. Consequently, the officials responsible for all this war mess should be held accountable of the atrocities happening in Yemen due to the illegal use of arms. However, the enforcement mechanism of the IHL is still somehow missing.

International Humanitarian Law Enforcement

The enforcement and compliance with IHL during armed conflicts (International or non-international) is challenging. The states have obligations towards the implementation of IHL in war time, and to make its troops ready for executing orders without violating any international laws. These obligations and responsibilities are explicitly stated in the IHL. The compliance with IHL starts before engaging in the battlefield, and that is an important key element for states to provide the required knowledge to its soldiers and pilots.

First, it is obliged for the state to teach the rules of the war to its military forces and include them in their military manuals in order to prevent any violations from happening and that is stated in ‘article 83’ of Additional Protocol I¹⁰⁰. However, knowing the rules is completely different than implementing them. The UK admitted on several occasions that the MoD gave courses and conducted trainings to The Royal Saudi Air Force in both countries. Sir Michael Fallon, the former Secretary of State for Defence stated:

“As part of our ongoing Defence engagement with Saudi Arabia the UK has provided training to the Royal Saudi Air Force (RSAF) both in the UK and in Saudi Arabia, including

⁹⁹ UK Parliament, ‘Written Question – 125356’, 2018, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-01-29/125356>, (accessed 7 May 2018).

¹⁰⁰ Additional Protocols to the Geneva Conventions (Adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

International Targeting courses for RSAF personnel, to improve their targeting processes and to support International Humanitarian Law (IHL) compliance”¹⁰¹.

Therefore, the RSAF was trained by British experts on how to comply with IHL, but it can't be seen in reality on the Yemeni ground that there is any compliance of any kind. These trainings haven't been able to prevent the Saudi participants from targeting civilians and they haven't been able to control the bombing by the coalition forces. There also should be a British monitoring mechanism to check if these courses are effective and the RSAF absorbed every information properly. It is true that the UK followed the rule of article 83, but the current situation in Yemen doesn't reflect the success of these courses. Furthermore, according to article 90 of AP I, Fact-Finding Commission is a way to ¹⁰² investigate the breaches and violations of IHL by the forces involved in any war. It aimed to ensure that there is a respect for the Geneva Conventions and AP I, and also to restore any order. However, so far there hasn't been any missions to Yemen considering the grave breaches of IHL by KSA.

The IHL also doesn't have a specific enforcement mechanism or a police force to ensure that any violator could be prosecuted for the crimes' done, but it depends on the states international obligation to ensure that their military personnel know the basic principles of the law¹⁰³. The UK has been stressing that if there is any alleged violations by KSA, then the Saudi should start investigating and coming up with reports. The House of Commons also has observed that JIAT is not reporting all of the breaches of IHL compared to the UNSC¹⁰⁴.

¹⁰¹ UK Parliament, 'Written Question – 49029', 2018, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-10-17/49029/>, (accessed 7 May 2018).

¹⁰² ICRC, 'The International Humanitarian Fact Finding mission', 2001, https://www.icrc.org/eng/assets/files/other/fact_finding_commission.pdf, (accessed 8 May 2018).

¹⁰³ Diakonia, 'Enforcement of IHL', [website], 2013, https://www.diakonia.se/en/IHL/The-Law/International-Humanitarian-Law-1/Introduction-to-IHL/Enforcement-of-IHL/#_ftnref1, (accessed 8 May 2018).

¹⁰⁴ UK Parliament, 'The use of UK-manufactured arms in Yemen', 2015, <https://publications.parliament.uk/pa/cm201617/cmselect/cmbis/679/67908.htm>, (accessed 14 April 2018).

In the meantime, even that there are allegations, the UK is still sponsoring the war in Yemen, and doesn't prefer to stop or even to hold the arms' sales during the investigation period.

In 2016, the UK government stated that it doesn't have all of the necessary information to complete the picture about whether KSA is violating IHL in Yemen. Hence, the government can't take new decisions regarding arms trade with the Saudis¹⁰⁵. Another very important issue need to be mentioned is that part of the British hesitation to stop arming KSA for alleged breaches of IHL, is that they don't want Saudi Arabia to turn its head to another exporter that would be involved and produce a new imbalanced system in the Middle East. Lieutenant General Sir Simon Mayall stressed on this point by stating that he prefers Saudi Arabia to use weapons made in the UK better than use other weapons that could be “*less accurate*” and “*has less restrictive rules of engagement*”¹⁰⁶. If the Saudis turned to another exporting state for arms such as Russia for example, then the whole equation could be changed and the UK would lose its influence in the Middle East.

Saudi Arabia and the UK Humanitarian Aid to Yemen

The Yemeni humanitarian crisis is getting into an uncontrolled situation leaving behind tons of people with harsh conditions to cope with. In 2017 and according to World Health Organisation, the war resulted in 18.8 million people in need of aid, 14.8 million lack access to medical services, and 274 health facilities have been destroyed¹⁰⁷. During all of this humanitarian problems, fueled by arm deals, the UK has been sending aid (Like KSA) to the Yemeni people as it is considered the 3rd largest donor. Pitri Patel, the UK Secretary of State for International Development, said “*We will provide £139m for Yemen for financial year*

¹⁰⁵ P. Wintour, ‘Saudis have not breached humanitarian law in Yemen, concludes foreign office’, *The Guardian*, [website], 14 November 2016, <https://www.theguardian.com/world/2016/nov/14/saudis-have-not-breached-humanitarian-law-in-yemen-concludes-foreign-office>, (accessed 6 May 2018).

¹⁰⁶ UK Parliament, ‘The use of UK-manufactured arms in Yemen’, 2015, <https://publications.parliament.uk/pa/cm201617/cmselect/cmfa/688/68806.htm>, (accessed 14 April 2018).

¹⁰⁷ World Health Organization, ‘Yemen Situation report’, [website], 2017, <http://www.who.int/hac/crises/yem/sitreps/en/>, (accessed 10 May 2018).

2017-18; an increase of £27m on the £112 million delivered by the UK last year”¹⁰⁸. Moreover, on the 15th of May, the UK completed a concentrated vaccination campaign in Yemen for the purpose of fighting the harm of cholera that is killing people every day¹⁰⁹. The vaccination started from the beginning of May 2018 and claimed to have reached around half a million Yemeni. Also the International Developmental Secretary Penny Mordaunt announced that there is going to be another vaccination campaign once the UK aid and the vaccination companies have the required access inside the torn country¹¹⁰. The UK aid is targeting 2.9 million people by providing nutrition, clean water, and sanitation¹¹¹.

Even Though the UK has been one of the top donors to Yemen, there are lots of concerns about its humanitarian approach. First, the British government has been hesitant to condemn the violations committed by KSA such as bombing civilians. It hasn’t been publicly clear about the weapons being sold to the Saudis. So far, the UK still value its arms business with KSA more than it values the basic rights of the Yemenis¹¹². The UK also could be using the aid as a defence mechanism against any allegations that its government supports and backs up the violations done by Saudi Arabia coalition. Since the UK has been one of the important donors to Yemen, its integrity is in a good position; but, what if the International community and the international obligations pressed on the UK to stop arm deals with KSA, will it then stop sending aid to Yemen as a sign of objection as Donald Trump did? The American President Donald Trump ordered to cut aid to The United Nations Relief and Works Agency

¹⁰⁸ P. Patel, ‘International Development: written statement – HCW S606’, [website], 2017, https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-04-20/HCW_S606/, (accessed 9 May 2017).

¹⁰⁹ H. Penny Mordaunt, ‘UK aid helps vaccinate over 450,000 people to prevent the spread of deadly cholera in Yemen’, *UK government*, [website], 2018, <https://www.gov.uk/government/news/uk-aid-helps-vaccinate-over-450000-people-to-prevent-the-spread-of-deadly-cholera-in-yemen>, (accessed 20 May 2018).

¹¹⁰ Ibid.

¹¹¹ Department for International Development, ‘Yemen’, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/636567/Yemen2.pdf, (accessed 15 May 2018).

¹¹² E. Cairns, ‘British aid and British arms: a coherent approach to Yemen’, *Oxfam*, [website], 2015, <https://oxfamilibrary.openrepository.com/oxfam/bitstream/10546/577040/1/bn-british-aid-british-arms-yemen-110915-en.pdf>, (accessed 12 May 2018).

for Palestine Refugees (UNRWA) when the UN reject Trump's move to recognize Jerusalem as Israel's capital and move the American embassy from Tel Aviv to Jerusalem¹¹³. The UK is arming Saudi Arabia which results in thousands of civilian deaths in Yemen and at the same time aiding the country with food and fuel. The UK's response to the situation in Yemen is problematic and mystifying.

¹¹³ P. Beaumont, 'Trump cuts jeopardise lives of millions of Palestinians refugees', *The Guardian*, [website], 21 February 2018, <https://www.theguardian.com/global-development/2018/feb/21/trump-cuts-un-agency-for-palestinian-refugees-millions-in-jeopardy-generation-radicalised>, (accessed 19 May 2018).

Chapter III

UK has shown so far its failure to follow its national laws and IHL in its involvement in Yemen through selling arms to Saudi Arabia. With lack of national awareness, and any enforcement mechanisms that could spot the violations and ensure the agreements, it would be really difficult to move forward to protect civilians in Yemen. If the UK is not following its own national obligations, then it is very vital to look into the international ones that could try and break the endless unregulated cycle of arms trade between the UK and KSA.

The two main important instruments that determine the arms flow and how it is controlled, are the Convention on Cluster Munitions (CCM) and The Arms Trade Treaty (ATT). Each legal instrument is there for banning and regulating the arms trade between countries for the sake of preventing various human rights violations. The UK is a state party to both of them and that puts full responsibility on the Kingdom to abide by the rules she agreed and signed on. This chapter will analyze and look deeper into these two instruments. It will look into the UK's required actions taken to comply and other obligations that have and haven't been met by the British government. The KSA hasn't ratified both treaties, thus, to say that there is a legal obligation on the Saudi would be invalid. However, the UK has ratified both. Since the weapons supply is the root of the problem, then the UK's responsibility is to make sure to respect the law and monitor its legal/political decisions not to contradict its international obligations. Mainly, this chapter is going to discuss the legal framework of the subject by analyzing the Convention on Cluster Munitions (CCM) and the Arms Trade Treaty (ATT) and see also how the ATT is effective in regulating the arms trade. Chapter III looks into the defects in the treaty, and gives a full check-up on the UK compliance/non-compliance to both instruments.

The Convention on Cluster Munitions

The Convention on Cluster Munition (CCM) was established and entered into force in 2010. Governments which are concerned about the use of cluster munitions (CM) were invited to a meeting in Oslo as part of a diplomatic process to ban the use of such weapons¹¹⁴. The convention is a legally binding instrument, that would aim to: *“ban the use, production, stockpiling and transfer of cluster munitions, requires clearance of contaminated land within 10 years, destruction of stockpiled cluster munitions within eight years, and includes groundbreaking provisions for victim assistance”*¹¹⁵. The UK has ratified the convention in 2010, and technically, this ratification could hold the UK accountable if she violates the international law regarding cluster munitions. Prior to signing the convention, the UK has been supportive to the idea of using CM as they were not banned. The government analyzed the situation and the risk of using these kind of weapons, and decided, around 10 years before the convention, that cluster munitions are not a threat to any humanitarian conditions¹¹⁶. However, the usage history of CM by the UK contradicts what has been stated by the government. The UK has dropped CM's while participating in several conflicts in the past. In 1982 for example, during the Falklands war between the UK and Argentina that lasted for more than 3 months, the British has used CM's to bomb the Argentinian side; specifically, BL755¹¹⁷ (specifications will be later shown in this chapter). Also, during the Eritrea-Ethiopia conflict, UK-manufactured cluster bombs (CB) were used on a displaced people, but failed to explode. Consequently, there was a contamination resulted from their non

¹¹⁴The United Nations Office at Geneva, 'Convention on Cluster Munition', [website], [https://www.unog.ch/80256EE600585943/\(httpPages\)/F27A2B84309E0C5AC12574F70036F176?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/F27A2B84309E0C5AC12574F70036F176?OpenDocument), (accessed 16 May 2018).

¹¹⁵ Stop Cluster Munitions, 'UK ratifies international treaty banning cluster bombs', [website], 5 May 2010, <http://www.stopclustermunitions.org/en-gb/media/news/2010/uk-ratifies-international-treaty-banning-clus.aspx>, (accessed 17 May 2018).

¹¹⁶ Article 36, 'Refusal to condemn cluster munition use undermines UK claims to leadership on the protection of civilians', September 2015, <http://www.article36.org/wp-content/uploads/2015/09/UK-and-cluster-munitions-2015.pdf>, (accessed 20 May 2018).

¹¹⁷ The Monitor, 'Mine Action', [website], 16 December 2012, http://archives.the-monitor.org/index.php/cp/display/region_profiles/theme/2282, (accessed 20 May 2018).

explosion¹¹⁸, and this is one of the dangers of CM. It is reported that Ethiopia still in control of CM stockpiles manufactured by the British¹¹⁹.

Additionally, in Iraq during the war in the beginning of 2000's, it was reported that the UK has used CM in some neighboring areas. While some precautions were taken and no-strike list (Areas where strikes are prohibited) existed, it still presented a failure in protecting civilians from the dangers of CM¹²⁰. The British CB in Iraq led to hundred injuries, wounds and deaths. All in all, UK-manufactured CM is reported to be sold, stockpiled and used by around 15 countries in the last decade or more. Iran, Saudi Arabia, Serbia and United Arab Emirates are ones of the important countries being in possession of these deadly weapons¹²¹.

Convention on Cluster Munition Important Articles

After negotiations, states approached and put the essence of the CCM to ban the use of CM. Before getting deep in the analysis of the convention, it is crucial to know what are the cluster munitions and what do they consist of. A cluster munition is a war weapon that is fired from the air, or in some cases from the ground, producing a number of submunitions that could exceed 600. These submunitions are thrown without specifying any potential target and by that they could possibly target either a civilian or a soldier¹²². The convention then was established to put rules and limit their use as much as possible because they have a great negative effect on the humanitarian perspective.

¹¹⁸ R. Moyes, 'Explosives remnants of war', *Landmine Action*, March 2002, http://www.article36.org/wp-content/uploads/2008/10/erw_report.pdf, (accessed 22 May 2018).

¹¹⁹ The Monitor, 'Ethiopia: Cluster Munition Ban Policy', [website], 1st August 2017, <http://the-monitor.org/en-gb/reports/2017/ethiopia/view-all.aspx>, (accessed 18 May 2018).

¹²⁰ B. Docherty, 'Meeting the Challenge', *Human Rights Watch*, [website], 22 November 2010, <https://www.hrw.org/report/2010/11/22/meeting-challenge/protecting-civilians-through-convention-cluster-munitions>, (accessed 25 May 2018).

¹²¹ ICRC, 'Humanitarian, Military, technical, and legal challenges of cluster munitions', 20 April 2017, <https://shop.icrc.org/expert-meeting-report-quot-humanitarian-military-technical-and-legal-challenges-of-cluster-munitions-quot-810.html>, (accessed 25 May 2018).

¹²² ICRC, 'Cluster Munitions: what are they and what is the problem?', [website], 2010, <https://www.icrc.org/eng/resources/documents/legal-fact-sheet/cluster-munitions-factsheet-230710.htm>, (accessed 27 May 2018).

The first four articles in the convention are the most important as they put the rules that all state parties must follow and abide by. Article I (1) which is concerned with the general obligations and the scope of application states:

1. Each State Party undertakes never under any circumstances to:

(a) Use cluster munitions;

(b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions;

(c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention¹²³.

Article I puts states under the strict obligation not to use CM's, to export, import, stockpile and produce them to end the activity of such lethal weapons. The article stressed that the use of these munitions can't be justified whatever reason the state might have during an international or non-international armed conflict. Its aim was to be very clear and precise regarding CM leaving no room for personal interpretations. Article II then comes and provides a detailed definition of what is considered a CM. It includes 15 definitions to cover all types of CM's such as "explosive submunitions", "failed cluster munitions" and others. The article even defines the victims that suffer from injuries or mutilations because of this weapon. For the sake of this study, Article II (2) will only be stated as it is the main concern in order to identify a CM. It therefore states:

"Cluster munition means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions¹²⁴". The rest of the article also excludes some of the weapons that are not considered as a CM for states not to have any sort of confusion when time comes for application. This article bases its exclusion on what type of CM's can have what effect on a

¹²³ Convention on Cluster Munitions (adopted 30 May 2008, and entered into force 1st August 2010) Dublin Diplomatic Conference for the Adoption of a Convention on Cluster Munitions, CCM/77, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=2F6D558020FCE893C12574C600391C05>, (accessed 27 May 2018).

¹²⁴ Ibid, article II.

humanitarian situation. It assesses the harm that could be done, and that would make states focus on the impact of these weapons to determine whether they fall under the exclusion in the article. The purpose of the exclusion was to “*avoid indiscriminate area effects and risks posed by unexploded submunition*”¹²⁵. For instance, munitions which have less than ten explosive submunitions, the explosives have to weigh less than 4 kilograms in order to be permitted for usage. Moreover, submunitions which have electronic self-destruction or self-deactivation are excluded¹²⁶ and can be used. These types of munitions will cause less harm compared to the others which are prohibited.

Article III (2) is concerned with the disposal of any CM stocked and possessed by any state party. It states:

*“Each State Party undertakes to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article as soon as possible but not later than eight years after the entry into force of this Convention for that State Party. Each State Party undertakes to ensure that destruction methods comply with applicable international standards for protecting public health and the environment”*¹²⁷.

Article III urges for the destruction of all CM’s stored, and puts a deadline period of 8 years after the treaty would enter into force to complete their disposal. For all the states who might need more time to destroy their munitions, they must request for an extension that would give them 4 more years to complete the process¹²⁸. The convention entered into force in 2010, and that gives the states, who applied for an extension, till 2022 to eliminate their munitions. Moreover, article IV urges for the destruction of any remnants of CM’s located in contaminated areas where hostilities or conflicts occurred under the state party jurisdiction.

¹²⁵ B. Docherty, ‘Breaking New Ground: The Convention on cluster munition and the evolution of IHL’, *The Johns Hopkins University Press*, November 2009, <http://hrp.law.harvard.edu/wp-content/uploads/2013/08/31.4.docherty.pdf>, (accessed 29 May 2018).

¹²⁶ ICRC, ‘Convention on Cluster Munition Definitions’, [website], 30 May 2008, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/620-6?OpenDocument>, (accessed 30 May 2018).

¹²⁷ Convention on Cluster Munitions (Adopted 30 May 2008, entered into force 1 August 2010). [https://www.unog.ch/80256EDD006B8954/\(httpAssets\)/CE9E6C29A6941AF1C12574F7004D3A5C/\\$file/ccm77_english.pdf](https://www.unog.ch/80256EDD006B8954/(httpAssets)/CE9E6C29A6941AF1C12574F7004D3A5C/$file/ccm77_english.pdf) (accessed 6 June 2018).

¹²⁸ Ibid

It states: ‘*Each State Party undertakes to clear and destroy, or ensure the clearance and destruction of, cluster munition remnants located in cluster munition contaminated areas under its jurisdiction or control*’¹²⁹. It gives the states ten years from the entry into force date to remove all CM remains. Removing the parts would prevent loss of lives due to accidents or contamination if they were found later by civilians. In article IV, paragraph 4 helps in a way to hold CM-user states accountable of their actions. It requires these states, who used CM against another state party, to help the affected in providing technical information and assistance to be able to destroy the remnants or to remove entirely the munitions that were used in the past. This paragraph puts great responsibility on the user state to provide their help in order to remove the dangers of the failed/unexploded weapons¹³⁰. The convention’s aim is to limit the harms done by CM’s because, over time, the casualties caused by CM’s were more than 86,000 (recorded and unrecorded estimation)¹³¹. The unexpected matter here is that the recorded casualties after the signing of the convention is surprisingly more than the casualties recorded before the convention which raises many question on its implementation and effectiveness. That brings us to the question of whether the UK is complying with the convention through its arms cooperation with KSA and their involvement in Yemen.

The Effects of Cluster Munitions on Civilians

The Effect of CM is very worrying because they are used during war times and can still last in post conflict countries. One very threatening feature of these munitions is that they don’t aim at a specific target. In their nature, they lack accuracy and reliability which put a great chance on harming non-military targets. As they ae being fired on a wide range area, they

¹²⁹ Ibid, Article 4.

¹³⁰ Stop Cluster Munitions, ‘The Convention on Cluster Munition: Briefing Paper’, 2016, <http://www.stopclustermunitions.org/media/2179973/English-Briefing-Paper-on-the-Convention-on-Cluster-Munitions-2016.pdf>, (accessed 2 June 2018).

¹³¹ The Monitor, ‘Munition Casualties’, [website], 2017, <http://www.the-monitor.org/en-gb/reports/2017/cluster-munition-monitor-2017/casualties.aspx>, (accessed 2 June 2018).

might not reach the intended target, lose track and stray into a civic area. Moreover, their danger is not only to kill civilians but to maim them which could affect their future lives. CM's can injure a person, damage a body part, or cause an impairment¹³². Another danger caused by CM is that most of them they don't explode when they hit the ground, but they remain unexploded and act like a landmine. A percentage can range from 10% to 40% of explosion failure¹³³, and that means they will stay on the ground (mostly in populated areas) where they will explode with the first contact with something or someone. Because of their shape and color, they can deceive people, mostly children, and attract them thinking they are toys or other unarmful objects. Sometimes they are shaped as small as a can and in a peaceful color as a yellow.

In Kosovo in 1999, a child found a submunition (remnants from the NATO air strikes), which was a yellow small object. He brought it to his family and accidentally, they dropped it which resulted in the death of members of the family and in damage in the child's body parts¹³⁴. Another late outcome of a CM is that it produces submunitions that can be left as remnants in the ground causing contamination to the environment around and consequently, affects the population¹³⁵. Other than physical injury, CM's can cause psychological trauma to some persons as a result of being exposed to a munition explosion. In Laos, where the US has dropped large number of cluster bombs, it was found that as an effect, some children were confronted with nightmares, change of behavior and harsh flashbacks of the scenes where the accidents have happened¹³⁶. Due to all of these dangers, CM's are banned from being used, and any attempt or a recorded incident that they are being used by a state party would

¹³² J. Borrie and R. Cave, 'The Humanitarian Effects of Cluster munitions: Why should we worry', *Disarmament Forum*, 2006, https://www.peacepalacelibrary.nl/ebooks/files/UNIDIR_pdf-art2528.pdf, (accessed 3 June 2018).

¹³³ ICRC, 'Cluster Munitions: What are they and what is the problem', [website], 1st August 2010, <https://www.icrc.org/eng/resources/documents/legal-fact-sheet/cluster-munitions-factsheet-230710.htm>, (accessed 5 June 2018).

¹³⁴ Human Rights Watch, 'Protecting Civilians through the convention on cluster munitions', [website], 2010, <https://www.hrw.org/report/2010/11/22/meeting-challenge/protecting-civilians-through-convention-cluster-munitions>, (accessed 6 June 2018).

¹³⁵ ICRC, 'Cluster Munition Contamination', 2008, <https://www.icrc.org/eng/assets/files/other/cluster-munition-contamination-factsheet-2010.pdf>, (accessed 7 June 2018).

¹³⁶ <http://www.unidir.org/files/publications/pdfs/cluster-munitions-en-337.pdf>

be a clear violation of international law and of the CCM. The question now is, if Saudi Arabia is using British CM's in its war in Yemen, does that mean the UK is violating its obligations under the CCM?.

UK's Compliance with the Convention

Before signing the convention, the United Kingdom has been trading CM's with Saudi Arabia around 30 years ago. The British government signed a deal with KSA to deliver 500 cluster bombs from the beginning of 1986 to 1989¹³⁷. In the pre-convention period, the UK was a supporting state to the concept of CM as a legitimate weapon. In 2005, the UK addressed CM as "*an essential capacity against area targets, particularly groups of military vehicles*"¹³⁸. However, the UK was also supportive of the idea that the use of British CM will decrease over time admitting some technical errors that need to be fixed for not to have any unnecessary casualties. In the same year, the UK stated: "*This particular weapon will go out-of-service in coming years*"¹³⁹. Nowadays, the UK is part of the CCM that prohibits the use of CM. However, some evidence show that UK-manufactured cluster bombs are being used in the current conflict in Yemen by Saudi Arabia.

The Use of British Arms in Yemen (Evidence)

In 2016, Amnesty International has found remnants and unexploded UK-manufactured cluster bombs of the type BL-755¹⁴⁰ with 147 high-explosive dual-purpose bomblets -air-

¹³⁷ UK Parliament, 'Arms Trade: Cluster Munitions written question', [website], 20 December 2016, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-12-20/58374>, (Accessed 12 June 2018).

¹³⁸ United Nations, 'Military Utility of Cluster Munitions', 21 February 2005, https://digitallibrary.un.org/record/553019/files/CCW_GGE_X_WG.1_WP.1-EN.pdf?version=1, (accessed 7 June 2018).

¹³⁹ Ibid.

¹⁴⁰ Amnesty International, 'Yemen: children among civilians killed and maimed in cluster bomb minefields', [website], 2016, <https://www.amnesty.org/en/latest/news/2016/05/yemen-children-among-civilians-killed-and-maimed-in-cluster-bomb-minefields/>, (accessed 9 June 2018).

launched¹⁴¹. These bombs were produced by Hunting Engineering Ltd, one of the companies that was responsible for manufacturing weapons for the British MoD back in the 1970's/80's¹⁴². One cluster bomb of this kind can produce large numbers of submunitions (up to 147) that would be spread on a big range equivalent to around 4 football pitches. Some other bombs were still hidden in the soil undetected and unexploded which made them function like a landmine.

The Yemen Executive Mine Action Center (YEMAN) helped in the movement and storage of these CB's for the protection of civilians. Weapons experts analyzed photos and videos taken by Amnesty International of the CM's found, and confirmed that they belonged to the British Royal Air Force. YEMAN concluded that more than half of the bomblets/submunitions failed to explode and automatically acted like landmines ready to detonate within one small interaction. Experts also revealed that the bombs were used recently, countering the coalition argument that these munitions were used in previous conflicts in Yemen that are unrelated to the current war¹⁴³. Ahmed Al Asiri expressed his denial for the CM's photos taken by AI by saying *"There is manipulation in these photos used because they forget that in 2009, we fought these militias and we used this kind [of weapon] to protect our border, but not to use it in civilian areas"*¹⁴⁴. However AI, with independent munitions experts, stated that these munitions couldn't stay unexploded all this time without having contact with anything, keeping in mind that they were found in a populated area. Additionally, the metal of the munitions material wasn't destroyed or spoiled

¹⁴¹ P. Wintour, 'Saudi Arabia and UK-supplied cluster bombs: what do we know', *The Guardian*, [website], 19 December 2016, <https://www.theguardian.com/world/2016/dec/19/saudi-arabia-uk-supplied-cluster-bombs-yemen-war-what-do-we-know>, (accessed 10 June 2018).

¹⁴² Global Security, 'Hunting Defence', [website], <https://www.globalsecurity.org/military/world/europe/hunting.htm>, (accessed 10 June 2018).

¹⁴³ Amnesty International, 'Yemen: Evidence counters UK claims about use of British made cluster Munitions in Yemen', Public statement, 2016, <https://www.amnesty.org/download/Documents/MDE3141942016ENGLISH.pdf>, (accessed 10 June 2018).

¹⁴⁴ P. Wintour, 'Saudi Arabia and UK-supplied cluster bombs: what do we know', *The Guardian*, [website], 19 December 2016, <https://www.theguardian.com/world/2016/dec/19/saudi-arabia-uk-supplied-cluster-bombs-yemen-war-what-do-we-know>, (accessed 10 June 2018).

which shows that they weren't resting on the ground for years¹⁴⁵. Many civilians casualties occurred due to attempts from the Yemenis to remove the munitions for their children not to get in touch with them. Consequently, some of them got badly injured in their legs, hips and arms, and others got killed. Children are the common casualties of CM's as they are usually mistaken, and they think that it's not something dangerous. Couple of children, interviewed by AI, said that the bombs had white and red ribbons around them which made them look safe. They were collecting the submunitions to play, but eventually, they exploded which resulted in the death of one of them¹⁴⁶.



A picture taken of some of the UK-manufactured submunitions by Amnesty International that were found in north of Yemen¹⁴⁷.

Furthermore, in December of 2016, Michael Fallon, the former Secretary of State for Defence, acknowledged that Saudi Arabia has used British made cluster munitions in its war in Yemen¹⁴⁸. This is another great piece of evidence coming out officially from a British

¹⁴⁵ Amnesty International, 'Yemen: Evidence counters UK claims about use of British made cluster Munitions in Yemen', Public statement, 2016,

<https://www.amnesty.org/download/Documents/MDE3141942016ENGLISH.pdf>, (accessed 10 June 2018).

¹⁴⁶ Amnesty International UK, 'Saudi Arabia led coalition has used UK Manufactured cluster bombs in Yemen- new evidence', [website], 23 May 2016, <https://www.amnesty.org.uk/press-releases/saudi-arabia-led-coalition-has-used-uk-manufactured-cluster-bombs-yemen-new-evidence>, (accessed 12 June 2018).

¹⁴⁷ Ibid.

¹⁴⁸ The Queen (on the application of Campaign Against The Arms Trade) v The Secretary of State for International Trade and interveners (Case No: CO/1306/2016).

government Defence representative which puts lots of load on the UK in its responsibility towards the use of these munitions.

However, the problematic situation is that the transfer of all CM's, from the UK to KSA, has happened before the signing of the convention. Additionally, BAE systems stated that the company doesn't produce or sell anymore CB's since the signing of the CCM¹⁴⁹. By this, the British Government declares that there is no legal responsibility on her, and there is no violation of the CCM. The Minister for Defence Procurement Mr. Philip Dunne defended Saudi Arabia by saying *'Based on all the information available to us, including sensitive coalition operational reporting, we assess that no UK-supplied cluster weapons have been used'*¹⁵⁰.

The UK is not using, developing, producing, or transferring CM's to any other state. This commitment proves that the UK is not violating article 1 (1) (a) & (b). However, the evidence showed that KSA is dropping UK CB's on Yemen, and that is a violation of article 1 (1) (c) which states again for reassurance that: *'Each State Party undertakes never under any circumstances to: Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention'*¹⁵¹. The article prohibits states that are parties to the convention to assist other states that are not party in violating the convention's international general obligations. Consequently, The usage of UK made CM's by Saudi Arabia shows that the UK is assisting KSA in its war against the Houthis in Yemen; even if the assistance is considered indirect as the provision didn't make it specific regarding the type of assistance. The UK, as a result, is facilitating the use of the CM's. The British Kingdom was obliged to

¹⁴⁹ BAE Systems, 'Do you Make or Sell Cluster Munitions', [website], <https://www.baesystems.com/en/our-company/corporate-responsibility/working-responsibly/faqs/do-you-make-or-sell-cluster-bombs>, (accessed 13 June 2018).

¹⁵⁰ UK Parliament, 'Yemen: Cluster Munition', *House of Commons*, [website], 2016, <https://hansard.parliament.uk/commons/2016-05-24/debates/16052424000001/YemenClusterMunitions>, (accessed 13 June 2018).

¹⁵¹ ICRC, 'Cluster Munition Contamination', 2008, <https://www.icrc.org/eng/assets/files/other/cluster-munition-contamination-factsheet-2010.pdf>, (accessed 7 June 2018).

make sure, after ratifying the convention, that all their bombs sold to KSA have been destroyed completely for a better implementation of their international obligations¹⁵².

The CM's affect great number of civilians who accidentally are turned into casualties after getting into contact with these bombs. In a country like Yemen, where CB's are like landmines, and most of the people left their homes and farms in fear, more awareness campaigns has to start for all the people to be cautious when locating any cluster munition, especially children as they the most vulnerable.

After the analysis of the first legal instrument, which is the Convention on Cluster Munitions, it is then concluded that the UK is violating article 1 (1) (c). Therefore, the UK has to work in turning violating into abiding and respect international law. Due to its involvement in Yemen, the UK also has to investigate on the unlawful activates done by KSA and its use of British weapons, and make sure that the use of CB's is stopped indefinitely in Yemen and in any country in the future. Moreover, even though KSA is not a party of the convention, by bombing civilians, it violated IHL as it was shown in Chapter II.

The Arms Trade Treaty (ATT)

Historical Overview of the Treaty

Before the establishment of the ATT, efforts were being made to put rules and regulations regarding conventional arms trade which imposed a big threat on human rights. The most tangible effort began in 1998 with the *European Union Code of Conduct on Arms Exports*. The EU put criteria to be met for any state need to purchase arms such as for example the compliance with international human rights standards, compliance with international humanitarian law, respect for international arms embargoes/military sanctions and

¹⁵² Human Rights Watch, 'Staying true to the ban of cluster munition', [website], 2009, <https://www.hrw.org/news/2009/06/23/staying-true-ban-cluster-munitions>, (accessed 13 June 2018).

commitment to promote regional peace and security¹⁵³. Its aim was to end massive arms control by totalitarian regimes, and not to cooperate military or trade with states which back and support terrorism and violate various human rights.

The EU Code of Conduct was a very important step that included all EU members, since most of the arms exports at this time were European states. The code wasn't completely enough to regulate arms trade as it was legally non-binding and politically binding instrument¹⁵⁴. However, it played a crucial role in paving the road for the Arms Trade Treaty. The effort in regulating arms trade continued with shifting the focus on small and light weapons. Because they were easily accessible, proliferated and shaped the environment inside different internal conflicts, the UN rose this issue in 2001, in the United Nations Conference on Illicit Traffic in Small Arms and Light Weapons¹⁵⁵. The UN established the Programme of Action (PoA) to fight the transfer of small arms and weapons on a national, regional and a global level¹⁵⁶. Importantly, the PoA was also not legally binding. Then, in 1997, The Chemical Weapons Convention¹⁵⁷ (CWC), established after the cold war, entered into force. It is a legally binding instrument outlawing the production, selling and stockpiling of chemical weapons. However, till this point, nothing of the same strong legality was done in regards to conventional arms.

The first call came in December of 2006 for resolution 61/89 by the General Assembly on an arms trade treaty, titled '*Towards an arms trade treaty: establishing common international*

¹⁵³ UNESCO Chair on Peace and Human Rights, 'The Codes of conduct to control arms transfer', May 1998, <http://unesdoc.unesco.org/images/0011/001128/112830eo.pdf>, (accessed 15 June 2018).

¹⁵⁴ B. Pahor, 'Drawing up a European code of conduct on arms sales', *Political Affairs Committee*, [website], 10 September 1998, <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8625&lang=EN>, (accessed 15 June 2018).

¹⁵⁵ United Nations, 'Report of the UN Conference on the Illicit Trade in Small arms and Light Weapons in all its aspects', July 2001, [http://www.un.org/events/smallarms2006/pdf/192.15%20\(E\).pdf](http://www.un.org/events/smallarms2006/pdf/192.15%20(E).pdf), (accessed 20 June 2018).

¹⁵⁶ Programme of Action: Illicit trade in small arms and light weapons in all aspects programme of action (Adopted 9-20 July 2001). <http://www.nti.org/media/documents/sarms.pdf>, (accessed 15 June 2018).

¹⁵⁷ Organisation for the prohibition of Chemical weapons, 'The Chemical Weapons Convention: Fact Sheet', https://www.opcw.org/fileadmin/OPCW/Fact_Sheets/Fact_Sheet_2_-_CWC.pdf, (accessed 16 June 2018).

*standards for the import, export and transfer of conventional arms*¹⁵⁸. The resolution requests for establishing a legally binding piece of instrument to be able to regulate conventional arms trade. It's important to mention that the UK played a crucial part in building up the resolution as it was part of the campaigners/co-authors who sponsored it. The post resolution period contained lots of states' negotiations, as every state wanted to secure its own interests in regarding to arms. Exporters didn't want their businesses to be affected, importers didn't want any strict rules on how to build their defences and conflicts-affected-countries were aiming at an effective treaty to protect human rights and prevent any illicit weapons trading¹⁵⁹. The UK at the moment of negotiations was a very strong supporter to finalise the treaty. Ambassador Joanne Adamson, head of the UK delegation to the UN conference, showed his country's full support of this treaty as an effective implementation could help millions of lives severely affected and help in reaching peace and security¹⁶⁰. Finally, in April of 2013 and from 2006 where the original idea emerged, 154 states voted for acceptance to the resolution for the establishment of the ATT. The voting was considered an overwhelming majority; 154 states voted for, 23 abstained (Saudi Arabia included), while Syria, Iran and North Korea were against¹⁶¹. These 7 years of trying to regulate arms trade showed a real struggle on the ground between states in order to have a real majority vote over a controversial issue for more human rights protection. This struggle ended up with the establishment of such a treaty which was a historical moment as most of the state parties called it.

For the first time in history, the UN has established a legally binding instrument to regulate arms transfer between states. It was an important step towards protecting human rights and

¹⁵⁸ General Assembly Resolution /RES/61/89

¹⁵⁹ P. Woolcott, 'The Arms Trade Treaty', *United Nations Audiovisual Library of International Law*, 2014, http://legal.un.org/avl/pdf/ha/att/att_e.pdf, (accessed 26 June 2018).

¹⁶⁰ J. Adamson, 'Opening Statement', *Reaching Critical Will*, 2012, http://reachingcriticalwill.org/images/documents/Disarmament-fora/att/negotiating-conference/statements/5July_UK.pdf, (accessed 18 June 2018).

¹⁶¹ General Assembly 2013 A/67/L.58

preventing arms to be in the hands of human rights violators. The UK is a state party to this treaty; the Kingdom signed and ratified the treaty in 2014, while Saudi Arabia hasn't signed or ratified which means that the Saudis don't believe in the existence of this international instrument. Hence, no international obligation is required from their side. In order to understand the UK's position, the ATT must be understood and analysed. This part of the chapter aims at breaking the ATT into pieces, mainly the first seven articles, for the purpose of knowing its greatest achievements and its worrying loopholes.

The core and objectives of the Treaty

The main aims of this treaty are enshrined in article I which shows the objectives and the purposes. Its main object is to:

- *Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;*
- *prevent and eradicate the illicit trade in conventional arms and prevent their diversion;*

For the purpose of:

- *Contributing to international and regional peace, security and stability;*
- *reducing human suffering;*
- *Promoting Cooperation, transparency and responsible action by states Parties in the international trade in conventional arms, thereby building confidence among state parties*¹⁶².

Article I addresses states parties with their commitments to the international obligation that will, as a result, lead to full and effective implementation of the treaty. The important highlights here are to reduce human suffering (One of the UN three pillars), and establish national standards over the arms transfer that would correspond with the international standards¹⁶³. States are obliged to implement the treaty on a national level effectively, and take responsibility towards their own legal and constitutional levels. The ATT won't be

¹⁶² Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014) No. 52373

¹⁶³ ICRC, 'Understanding The Arms Trade Treaty', 2016, http://icrcndresourcecentre.org/wp-content/uploads/2016/11/4252_002_Understanding-arms-trade_WEB.pdf, (accessed 19 June 2018).

applicable unless states start to adjust their own national laws. Article I gives the states a clear starting point to begin with in order to reach the end goal of the treaty.

The first loophole can be found in article II, the scope, but before spotting it, it is important to state the article. It starts with listing the arms/weapons that the law is to be applied for. Which are seven major conventional arms that were previously outlined in '*United Nations Register of Conventional Arms*'¹⁶⁴ (UNROCA) in 2001. The UN then added one more to the list which are the small arms and light weapons. This addition was important to specific countries, mainly African, as it imposed a huge threat on their societies due to their instant availability. The main arms are the following:

1. *Battle Tanks.*
2. *Armoured Combat Vehicles*
3. *Large-Calibre artillery systems.*
4. *Combat Aircrafts*
5. *Attack helicopters.*
6. *Warships.*
7. *Missiles and missile launchers.*
8. *Small arms and light weapons.*

A first missing issue here in the classification of weapons is that the provision only covers equipment which is used to attack or in times of combat. However, there are some types of arms that can be used for training (unarmed equipment), and could be transformed to a combat equipment and be used accordingly such as helicopters and battle vehicles¹⁶⁵. Article 2 (1) on the other side doesn't apply to all the current conventional arms and all the arms that maybe will exist in the future. Also, other types of weapons also are not part of the treaty,

¹⁶⁴ United Nations, 'United Nations Register of Conventional Arms', Department for Disarmament Affairs, 2001, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/HomePage/ODAPublications/AdhocPublications/PDF/UNRCABooklet2001.pdf>, (accessed 21 June 2018).

¹⁶⁵ L. Lustgarten, 'The Arms Trade Treaty: Achievements, Failings, Future', *Centre for Socio Legal Studies*, 2015, https://www.cambridge-org.uaccess.univie.ac.at/core/services/aop-cambridge-core/content/view/6202C679F47205A8E47A62BA8503091A/S0020589315000202a.pdf/arms_trade_treaty_achievements_failings_future.pdf, (accessed 22 June 2018).

such as drones, tear gas, light artillery armoured troop carrying vehicles and surface to air missiles¹⁶⁶. However, article 5 (3), concerned with general implementation, urges all the states parties to apply the treaty's provisions and rules "*to the broadest range of conventional arms*"¹⁶⁷ to extend its coverage to what hasn't been included.

Moreover, provision (2) states:

*'For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as "transfer"'*¹⁶⁸.

Article 2 (2) covers all kinds of activities that enable weapons transfer between different states, without any exception as to not leave anything excluded that would affect the integrity of the trading process. Naming the activities of international trade is very central. The definition is the core of the treaty as it determines what comes under an international arms trade so that every state would know how to execute its arms agreement¹⁶⁹. All these activities are referred to in the treaty as one common word, "*transfer*".

Moreover, the last provision states: *'This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party's ownership'*¹⁷⁰.

This paragraph doesn't cover transfer of arms when the receiver end is under the state's ownership. The states are then not legally required to analyse the activities of these transfers¹⁷¹. For instance, transporting of arms from a state, or on behalf of this state, to its deployed mission in any country wouldn't be considered as a transfer. Also if a state is sending arms to its peace keeping mission in a certain country, that wouldn't be applicable under the ATT. Since the state is sending arms to its own military personnel, and the

¹⁶⁶ K. Jackson, 'The Arms Trade Treaty: A historic and momentous failure', *Ceasefire*, [website], 2013, <https://ceasefiremagazine.co.uk/failure-arms-trade-treaty/>, (accessed 22 June 2018).

¹⁶⁷ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014) Article 5 (3)

¹⁶⁸ Ibid.

¹⁶⁹ S. Casey Maslen et al, 'The Arms Trade Treaty: A commentary', *Oxford University Press*, 2016, P. 124

¹⁷⁰ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014)

¹⁷¹ S. Casey Maslen et al, 'The Arms Trade Treaty: A commentary', *Oxford University Press*, 2016

ownership doesn't change, then this type of transfer is out of the scope of the ATT¹⁷². In the 67th session of the UN General Assembly (UNGA), in its 71st plenary meeting, the Delegation of Iran expressed their objection on article 2(3). The spokesperson stated that the provision contradicts the object and the purpose of the treaty as it allows certain powerful states to send weapons to its troops that are committing human rights violation in another country. He considered it "a major loophole"¹⁷³ as the goal of the treaty to reduce human suffering and contribute to international and regional peace.

To follow, Articles 3 & 4 show that the ATT, during drafts and negotiations, was trying to cover every single aspect of conventional arms and make the treaty as inclusive as possible to meet its objectives. Both articles have the same obligations on states, but concerned with different issues. Article 3 is concerned with ammunition/munitions, which is a vital part of the arms, and their transfer in many countries can cause various human rights violation as ammunition is considered a main feature to small arms and light weapons. There were some objections to their inclusion (from the U.S. and Russia), but at the same time many other consents as a controlled flow could prevent many conflicts, mainly internal, from fueling. Regrettably, there is minimum regulation on ammunition, and there are hardly any country reports on their ammunition exports¹⁷⁴. Hence, there is a lack of statistics and numbers on ammunitions rounds between different countries, and it all lies down on the country's national policies. For this issue to be solved, article 3 urges that:

*'Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions'*¹⁷⁵.

¹⁷² S. T. Wezeman, 'Arms Watch: SIPRI Report on the First Year of the UN Register of Conventional Arms', Oxford University Press, 1993, P. 107, <https://www.sipri.org/sites/default/files/files/RR/SIPRIIR06.pdf>, (accessed 22 June 2018).

¹⁷³ General Assembly 71st Plenary meeting 2013 A/67/PV.71

¹⁷⁴ OXFAM, 'Stop a bullet, Stop a war', May 2012, <https://www.oxfam.org/sites/www.oxfam.org/files/stop-bullet-stop-war-arms-trade-treaty-310512-en.pdf>, (accessed 24 June 2018).

¹⁷⁵ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014)

The purpose of this article is to oblige states parties to establish a regulation system to manage the export of ammunitions/munitions. A national control system will be able to monitor the export of ammunitions to prevent their divergent to militias and illegal armed forces around the world. The article limits delivery methods of ammunitions that could only be fired, launched or delivered. Other ammunition that are not part of these three categories are not covered under the ATT. That is another loophole in the treaty. It then leaves the “*manually positioned landmines or grenades thrown by a person*” outside the scope of the ATT¹⁷⁶. The article stresses the importance of applying articles 6 & 7 (Will be explained later) which analyze the exports operations before giving any authorization. Another problem with ammunitions/munition is that states are not required to keep records or to report on ammunitions exports that took place¹⁷⁷. They are required only to keep records for only the conventional arms covered under article 2(1). Even though the inclusion of the ammunitions could be considered a great success, especially when two of the biggest exporters showed their objections, there is still some gaps that need to be filled.

Likewise, Article 4 covers the same legal procedures, but towards weapons parts and components. It is addressing the regulation of a state’s transfer of disassembled weapons that could be delivered to another state to reassemble them. The article states:

*‘Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2(1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components’*¹⁷⁸.

¹⁷⁶ S. O’Connor, ‘Up in Arms: A humanitarian analysis of the arms trade treaty and its new Zealand application’, *New Zealand Yearbook of International Law*, vol 11, 2013, <http://www8.austlii.edu.au/nz/journals/NZYbkIntLaw/2013/3.pdf>, (accessed 19 June 2018).

¹⁷⁷ L. Crovetto and D. Caponigro, ‘Implications and Consequences of the Arms Trade Treaty’, *POLITIKON The IAPSS Academic Journal*, March 2016, https://www.iapss.org/wp/wp-content/uploads/2014/10/25_Volume-29.pdf, (accessed 24 June 2018).

¹⁷⁸ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014)

Thus, it instructs states to form a national policy to control the flow shipments with parts and components of weapons falling under article 2(1). However, article 4 doesn't mention parts and components of ammunitions items¹⁷⁹. Same as ammunition, the parts and components don't fall under the recording and reporting requirements.

Another article which is concerned with the implementation and compliance is article 5. Article 5 consists of six general guidelines for states to take and implement them nationally. The first provision inform states that they should apply the treaty commitments in a '*consistent, objective and non- discriminatory manner*'¹⁸⁰ which will lead towards fair and impartial decision making process. Hence, states will be able to make sure that they meet the ATT's purposes. Moreover, the second provision is considered a core provision as it emphasizes the point of creating '*national control system*' and a control list, for a better arms regulation that starts from the state's own soil. The article also points out that states should implement the treaty according to the characterizations provided by UNROCA of the arms listed in article 2(1)¹⁸¹. In addition, the rest three provisions are concerned about the transparency that is presented through reports, control lists, and that they should facilitate information exchange¹⁸². The general implementation article was very necessary to open the road for articles 6 and 7 as they determine exactly how states parties should take certain decisions regarding arms exports. Article 6 & 7 aims to reach the humanitarian goal of this treaty by putting required standards for the states to authorize arms transfers without violating human rights law or international humanitarian law.

¹⁷⁹ University of Geneva, 'The Arms Trade Treaty', *Geneva Academy of International humanitarian law and human rights*, 2013, P.21, <https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/ATT%20Briefing%203%20web.pdf>, (accessed 17 June 2018).

¹⁸⁰ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014)

¹⁸¹ University of Geneva, 'The Arms Trade Treaty', *Geneva Academy of International humanitarian law and human rights*, 2013, P.22, <https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/ATT%20Briefing%203%20web.pdf>, (accessed 17 June 2018).

¹⁸² Ibid. P.36

Article 6 (Prohibitions) ¹⁸³

Article 6 states the prohibitions that stop the state from continuing the arms transfer to another country based on some factors. Article 6 (1) urges states not to authorize any transfers of the arms mentioned in article 2(1), ammunition/munitions or parts and components in the case that the arms are going to be received by a country in the arms embargo list, for example, or there are other international obligations under chapter VII of the UN charter which is concerned with the SC powers to ensure peace and security¹⁸⁴. The embargoes in force currently contain 15 countries, and Yemen is one of them where an arms embargo was imposed on the Houthi rebels since April 2015¹⁸⁵. Chapter VII of the UN charter covers actions that might be taken in response to breaches of peace or acts of aggression by a certain country. Hence, for instance, any country that the UNSC would impose economic sanctions¹⁸⁶ on (As arms embargo is part of the economic sanctions) is not allowed to import arms from any other country and any transfer then would be considered a violation of article 6 (1) by the exporting country.

Additionally, the second provision demands states not to authorize arms transfer if the transfer would violate its agreements to other international treaties, conventions, etc. Specifically, the agreements that are related to conventional arms¹⁸⁷. States then, when giving a decision about a certain arms transfer, must take into consideration their other international obligations apart from the ATT. In other words, they can't authorize a transfer that violates other arms related agreements even though the decision doesn't violate the ATT. There has to be a broader view over arms authorizations, as following the ATT only is not sufficient. The three most relevant legal instruments are The Firearms Protocol, the Landmines

¹⁸³ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014)

¹⁸⁴ B. Wood and R. Abdul-Rahim, 'The Birth and the Heart of the Arms Trade Treaty', *The Sur Files on Arms and Human Rights*, 2015, http://sur.conectas.org/wp-content/uploads/2015/12/01_SUR-22_ENGLISH_BRIAN-WOOD_RASHA-ABDUL-RAHIM.pdf, (accessed 25 June 2018).

¹⁸⁵ SIPRI, 'Yemen NGF', https://www.sipri.org/databases/embargoes/un_arms_embargoes/yemen/yemen, (accessed 22 June 2018).

¹⁸⁶ United Nations, Charter of the United Nations (signed 26 June 1945) 1 UNTS XVI

¹⁸⁷ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014)

convention and the Cluster Munitions Convention. For instance, the UK hasn't ratified the Firearms Protocol, besides the U.S. and Russia, which means that article 6 (2) is not applicable here. If the UK has to authorize arms transfer that will violate the Firearms Protocol but not the ATT, the authorization will continue to process.

Most importantly, paragraph (3) states:

*'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'*¹⁸⁸.

The paragraph is one of the most important cores in the ATT, as it requires states to ban all transfers of weapons if it has knowledge that the receiver country would use these arms to commit war crimes, to violate IHL (Geneva Conventions) or to attack civilians. Article 6 (3) put clear and exact obligations on state parties to halt any potential deals with another state knowing that this state will use these weapons to breach international laws, and to breach, as a result, the objectives of the ATT. Even though the content of the provision seems clear, it has couple of loopholes that need to be addressed. First, the article requires the existence of "knowledge" of potential misuse of weapons in order not to authorize the transfer. However, the term "knowledge" is not defined in the treaty. Even though it is defined, for example, inside article 30 (3) of the Rome Statute as *'awareness that a circumstance exists or a consequence will occur in the ordinary course of events'*¹⁸⁹, the lack of the definition in the ATT gives each country the power to understand it and interpret it differently. Knowledge, however, can be part of inquiries to request information about a certain subject, accessible

¹⁸⁸ Ibid. Article 6 (3)

¹⁸⁹ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6

media information or official UN reports. It can be also information gathered by a third party involved, or information that are publicly known and can't be ignored¹⁹⁰.

The second gap here would be the timing of the knowledge. The paragraph states that the knowledge is obtained at the time of the authorization which could present a slight problem. The problem could occur if the exporter receives information/knowledge about the possibility of the importing country usage of the weapons in committing crimes, after already giving the approval. The article then doesn't require the state to cease the transfer or to cancel the agreement as a result of the new developments¹⁹¹. However, this issue will get clearer when article 7.7 is analysed in the next section.

Article 7 (Export and Export Assessment)

Article 6 acts as a first step towards the legal authorization of arms transfer, while Article 7 continues the obligations and acts as a second and final step to be considered prior to a final arms transfer decision. The article requires states to further assess the situation with more detailed criteria that need to be met in order for the transfer to be lawful.

Paragraph 1 requires the exporting state, with helpful information provided by the importing state, to conduct full assessment on the arms and see if there is a likelihood for them to be used in certain situations. As a first point, the exporter should analyse and find whether the arms transferred '*would contribute to or undermine peace and security*'¹⁹². As one of the purposes of the ATT, it is extremely important for each state party to put it under consideration. Paragraph 1(b) then goes into more detailed criteria that should be considered. The arms should be assessed as whether they could be used to:

- i) commit or facilitate a serious violation of international humanitarian law

¹⁹⁰ B. Kellman, 'Controlling the Arms trade: one important strike of humankind', *Fordham International Law Journal*, 2014, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://www.google.at/&httpsredir=1&article=2336&context=ilj>, (accessed 27 June 2018).

¹⁹¹ Public International Law and Policy Group, 'The Arms Trade Treaty: Key Principles Limiting Arms Trade to Human Rights Violating states', 2015, <https://pilpnjcm.nl/wp-content/uploads/2015/10/150719-ATT-and-EU-arms-trade-PILPG.pdf>, (accessed 27 June 2018).

¹⁹² Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014).

- ii) commit or facilitate a serious violation of international human rights law;
- iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or
- iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party¹⁹³.

Firstly, if there is a possibility of a contribution by the importer towards committing or facilitating violations of IHL or IHRL, there should be no granting of any authorization on an arms transfer. Violations of IHL include attacks on civilians, civilians' objects and tools for survival (Geneva conventions)¹⁹⁴. The assessment also includes whether there is any act of offence to any international agreement regarding terrorism or transnational organized crime. These four factors are to be taken into account before permitting arms to be transferred to another state¹⁹⁵. Notably, there has to be a clear link between the arms and the importer causing human rights violations under international law for the transfer to be stopped. Negatively though, there is no definition of the term "serious violation", and that can leave a big gap of interpreting which acts exactly are to be considered serious and which aren't. The seriousness of the violation could be determined by several factors such as the magnitude of the violation, its impact, and the type of casualties¹⁹⁶. Moreover, the article also encourages a cooperation or potential programmes between states, importing and exporting, for the purpose of mitigating the risks mentioned in the first paragraph.

Moreover, provision 3 is very crucial for the completion of the assessment process. It states:

¹⁹³ Ibid.

¹⁹⁴ For more information about IHL, check Chapter II.

¹⁹⁵ Public International Law and Policy Group, 'The Arms Trade Treaty: Key Principles Limiting Arms Trade to Human Rights Violating states', 2015, <https://pilpnjcm.nl/wp-content/uploads/2015/10/150719-ATT-and-EU-arms-trade-PILPG.pdf>, (accessed 27 June 2018).

¹⁹⁶ University of Geneva, 'What amounts to a serious violation of international human rights law', *Geneva Academy of International Humanitarian Law and Human Rights*, 2014, https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Briefing%206%20What%20is%20a%20serious%20violation%20of%20human%20rights%20law_Academy%20Briefing%20No%206.pdf, (accessed 20 June 2018).

*'If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export'*¹⁹⁷. After applying the previous provisions (7.1 & 7.2) to the potential arms exports, and putting them under these detailed assessments, the exporting state finds an “overriding risk” or any negative consequences of the transfer, the state is then strictly obliged to not give the authorization. This provision faced lots of negotiations between states, especially the great arms exporters, as there was a debate over the term “overriding risk”. At first, the debate was over two terms, either “substantial” or “overriding” and their relations with maintaining/contributing to “peace and security”¹⁹⁸. The term substantial doesn't give any space for other factors to affect the transfer decision, and the powerful states/exporters such as the U.S. opposed this term while the UK was in favor. Substantial means that if there is a “clear” risk that the weapons are going to be used to violate international law, then there should be no approval for the transfer¹⁹⁹. In other words, the term substantial is legally stronger than overriding.

The term overriding doesn't have a definition in the ATT or in international law, and therefore allows the state to interpret according to their national laws. The lack of definition also allow them to value other political and economic interests than the negative consequences by a potential arms transfer. It has been mentioned during the negotiations that if a transfer would affect peace and security in a specific country, then this is considered an overriding risk and the authorization shouldn't be given²⁰⁰. At the end, even though

¹⁹⁷ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014).

¹⁹⁸ L. Lustgarten, 'The Arms Trade Treaty: Achievements, Failings, Future', *Centre for Socio Legal Studies*, 2015, https://www-cambridge-org.uaccess.univie.ac.at/core/services/aop-cambridge-core/content/view/6202C679F47205A8E47A62BA8503091A/S0020589315000202a.pdf/arms_trade_treaty_achievements_failings_future.pdf, (accessed 22 June 2018).

¹⁹⁹ Arms Trade Treaty Monitor, 'Scope and Criteria: getting to the operational heart of the ATT', 2013, <http://reachingcriticalwill.org/images/documents/Disarmament-fora/att/monitor/ATTMonitor6.3.pdf>, (accessed 28 June 2018).

²⁰⁰ B. Wood and R. Abdul-Rahim, 'The Birth and the Heart of the Arms Trade Treaty', *The Sur Files on Arms and Human Rights*, 2015, http://sur.conectas.org/wp-content/uploads/2015/12/01_SUR-22_ENGLISH_BRIAN-WOOD_RASHA-ABDUL-RAHIM.pdf, (accessed 25 June 2018).

“overriding” was a risky term to be included, it was considered a compromise between states to reach a consensus over the treaty.

Additionally, paragraph 4 is considered a breakthrough in international law as it was the first time for gender-based violence against women and children to be mentioned in a legally binding treaty related to conventional arms. Women and children are considered the a vulnerable group, and that is why their protection against arms was of a great concern for some states. Moreover, the states also has to provide a “detailed” authorizations before giving a final decision²⁰¹. The authorization has to give certain information about when is the transfer taking place, what is the final destination, who is the importer, type of arms exported, quantity and costs. An authorization without these specific details could be considered a violation of article 7.5²⁰². That is also plus some information provided by the exporter about the authorization process in case of a request sent by the importer or any third party facilitating the transfer.

In article 6.3, the state is obliged to not give any authorization if at that time of giving a final decision it receives information that the arms would be used to violate certain international agreements. Article 7.7 is completing what was missing in article 6.3, as it states:

‘If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State’²⁰³.

It encourages states, first to continue analyzing the circumstances even after the approval (The authorization usually is given from a period of 1 to 5 years)²⁰⁴ is given to make sure that everything is still in line. Secondly, the states have to reassess the situation if new information comes up that would consequently affect the integrity of the transfer. Two flaws

²⁰¹ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014).

²⁰² University of Geneva, ‘The Arms Trade Treaty’, *Geneva Academy of International humanitarian law and human rights*, 2013, <https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/ATT%20Briefing%203%20web.pdf>, (accessed 17 June 2018).

²⁰³ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014).

²⁰⁴ S. Casey Maslen et al, ‘The Arms Trade Treaty: A commentary’, *Oxford University Press*, 2016

here need to be addressed. Firstly, the exporter is under no requirement to reassess the authorization given due to new relevant information; the exporter is just encouraged, if appropriate, to consult with the importer about this new information. Putting no obligation on the exporter here undermines the value of the treaty to stop arms from violating certain human rights.

Furthermore, the second flow is that the exporting state will not cease the agreement and will be allowed legally to put aside this new information for the sake of the transfer's completion. Some states argued that it would be better if there was a binding obligation for the states to fully assess the situation and even to stop any transfer if any overriding risks exist. In the draft of the ATT of August 2012, article 6.3, the exporter was required to revoke or suspend the authorization if an overriding risk was found after granting the authorization²⁰⁵. However, in the final text of the treaty, this obligation was removed, plus the reassessment has to be done between both states, the exporting and the importing state. This change of context is a huge loophole in the current text of the treaty.

History was written with the establishment of the ATT, but at the same time, the ATT has some weaknesses that could be taken advantage of by the exporting states. In order to be fully implemented in a good faith and without any discrimination, states must make sure that their national laws correspond with the ATT for better regulation of arms and for better protection of human rights.

The UK Compliance to the ATT

The UK is a state party to the ATT and it was an active campaigner for its historical establishment. The UK has a legal obligation towards the implementation of the treaty on a national and international level. Lots of questions are raised regarding the UK's compliance

²⁰⁵ United Nations Conference on the Arms Trade Treaty, Draft of Arms Trade Treaty, 2012.
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede012313unatt_/sede012313unatt_en.pdf

with the ATT rules due to its involvement in Yemen by selling arms to KSA. The UK in its ATT initial report has showed, in its answers, that it is following everything by the book without any laws breaking of any kind. When it comes to exports, imports, prohibitions, assessment and abiding by all the international agreements, the UK seems on paper to have complied properly to not violate any human rights and to be transparent as much as they can²⁰⁶. However, importantly to be mentioned, the ATT wouldn't be stronger than the already nationally existing arms exporting criteria which the study concluded that the UK is violating. Thus, for the UK, both, the ATT and the national criteria are serving the same purpose which is to facilitate or to protect the arms business, and not to control it as the British Secretary of State for Foreign and Commonwealth Affairs once said²⁰⁷.

There is an undeniable amount of evidence that UK-manufactured weapons are being used to bomb the Yemenis. British cruise missiles and guided munitions were found in couple of sites that were bombed by the Saudi Coalition, which resulted in the death of number of civilians²⁰⁸. Moreover, in the targeting of Sanaa Chamber of Commerce, a British Mk-82 500-lb bomb with a Paveway laser guidance kit was identified²⁰⁹ which contains big weight of high explosives and has a destructive wide range. Another Paveway IV guided bomb was identified as part of an airstrike on a warehouse²¹⁰. Additionally, a British PGM-500 "Hakim" air-launched cruise missile was used on a Ceramics factory killing one person.

Amnesty International UK Director expressed her disappointment by saying that the UK is completely ignoring the warnings by the organization that the UK-manufactured weapons

²⁰⁶ National Control system and List, 'United Kingdom Initial ATT Report', http://www.thearmstradetreaty.org/images/151223_ATT_UK_Initial_Report.pdf, (accessed 29 June 2018).

²⁰⁷ W. Hague, 'A Safer Future is Within our grasp', Huffington Post, [website], 2013, https://www.huffingtonpost.co.uk/william-hague/arms-trade-treaty-safer-future-within-our-grasp_b_2669081.html?guccounter=1, (accessed 20 June 2018).

²⁰⁸ Human Rights Watch, 'Saudi Coalition Airstrikes Target Civilian Factories in Yemen', [website], 11 July 2016, <https://www.hrw.org/news/2016/07/11/saudi-coalition-airstrikes-target-civilian-factories-yemen>, (Accessed 24 June 2018).

²⁰⁹ Human Rights Watch, 'Saudi Coalition Airstrikes On Yemen's civilian Economic structures', [website], 11 July 2016, <https://www.hrw.org/news/2016/07/11/saudi-coalition-airstrikes-target-civilian-factories-yemen>, (Accessed 24 June 2018).

²¹⁰ Ibid.

are eventually going to end up over civilians heads²¹¹. In 2015, Deputy Leader of the House of Lords, Earl Howe, admitted that the UK is providing Saudi Arabia with precision guided Paveway weapons in response to a question asked about what kind of UK support is being provided to KSA in the war in Yemen²¹²; and Michael Fallon reconfirmed on this information in 2016²¹³. Moreover, Andrew Smith (CAAT) during his interview when asked about the UK weapons, said '*Right now UK fighter jets and UK bombs are playing a key role in the destruction of Yemen*'.

Article 1 (Object and Purpose)

One of the purposes of the ATT is to contribute to international and regional peace and security, but these terms could differ from one state to another. The UK's involvement in the war in Yemen could be considered fighting for peace and security against the violent Houthi rebels. However, having this huge amount of civilian casualties would eliminate the possibility of reaching peace and security. By fueling the war in Yemen through selling weapons, setting continuous arm deal with KSA, and strengthen the Saudis side with military personnel and intelligence, the UK is affecting the stability, security and peace in the middle eastern state. Moreover, the severe involvement is definitely not reducing human suffering, but on the contrary the situation is escalating. Thus, the UK is violating article 1 of the ATT. Violating one article of a binding international instrument could be sufficient to hold a country accountable of its actions. However, the UK's non-compliance with the ATT is in fact more than just one article.

²¹¹ Amnesty International, 'UK-made missiles used in airstrikes on ceramics factory in Yemen', [website], 25 November 2015, <https://www.amnesty.org.uk/press-releases/uk-made-missile-used-airstrike-ceramics-factory-yemen>, (accessed 13 June 2018).

²¹² UK Parliament, 'Yemen: Military intervention: Written question', [website], 2015, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2015-07-06/HL1125>, (accessed 23 June 2018).

²¹³ UK Parliament, 'Saudi Arabia: Arms Trade Written question', [website], 2016, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-10/30754>, (accessed 20 June 2018).

Article 6.3

According to article 6.3, a state is required not to give the authorization for an arms deal if it knows “at the time of the authorization” that the weapons would be used to commit violations of international agreements. The UK has made arm deals with the Saudis in the past 3 years of the war and has continued discussing more future arm deals with them²¹⁴. During this period, information and records about the massive human rights violation by the Saudis, whether they are using British arms or not, was widely clear and available to the UK government. For instance, a UN panel of experts on Yemen has reported to the Security Council lots of incidents of breaching human rights law and humanitarian law by both the Saudi Coalition and the Houthi forces. The panel has stated ‘*The Panel investigated potential violations of international humanitarian law and international human rights law and other acts that may amount to threats to peace and security attributed to some States members of the coalition led by Saudi Arabia*’²¹⁵. This UN report, in addition to the reports conducted by different credible organisations such as Human Rights Watch, OXFAM and Amnesty International, represented a big load of information that could make the UK rethink its arm deals with KSA. However, in May of 2018, after three years of hostility in Yemen, Lord Ahmad of Wimbledon, as a Minister of State, said ‘*We do not maintain records of casualty figures for the conflict in Yemen. Gathering data is extremely challenging considering the complexities of the situation and the challenges faced by humanitarian monitors across the country. Estimates by the UN and non-governmental organisations vary considerably*’²¹⁶. This statement could be considered either as a huge unawareness of the effects of the war, or as blind eye so not to put KSA under scrutiny and accordingly, pause the arm deals. With

²¹⁴ E. MacAskill, ‘UK moves closer to signing Typhoon jet deal with Saudis’, *The Guardian*, [website], 9 March 2018, <https://www.theguardian.com/business/2018/mar/09/uk-typhoon-jet-deal-saudi-arabia-bae-systems>, (accessed 24 May 2018).

²¹⁵ UN Security Council, *Report of the Security Council on the United Nations Panel of Experts in Yemen*, 31 January 2017, S/2017/81

²¹⁶ UK Parliament, ‘Saudi Arabia: Arms Trade Written question’, [website], 2018, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-04-17/HL6989/>, (accessed 20 June 2018).

evidence presented, and the UK's position towards the on-going casualties in Yemen, the UK is then violating its international obligation under article 6.3 for not stopping giving authorizations for its arm deals with Saudi Arabia with the existence of information.

Article 7.1

Turning to the assessment process by the exporting state, the state is required to conduct an unbiased and objective assessment to see if there is a potential percentage that the weapons are going to do one or more of the negatives mentioned in article 7. First, several reports have shown that KSA has violated IHL and Human Rights Law (7.1.b.i & ii) due to the daily air campaign which resulted in thousands of civilian casualties. Attacks on hospitals, factories, buildings and more of unlawful bombings and targeting civilian objects have been considered a clear violation of IHL in Yemen²¹⁷. Saudi Arabia should be bound by the rules of IHL instead of violating it. Amnesty International has also reported that some of the attacks on civilians have been deliberate which then amounted to war crimes²¹⁸. Amnesty International also, with Safer World organization, concluded that the UK is violating its international and national laws by continuing providing export licenses to Saudi Arabia. These authorizations are happening at the time when there are circumstances proofing that these weapons are used/being used against civilians²¹⁹. The British government responded that if there are any alleged breaches of IHL by the Saudi Coalition, then the Saudis must conduct an investigation first and report the findings²²⁰. However, until everything is confirmed, the arms deals will

²¹⁷ Human Rights Watch, 'Country Report: Saudi Arabia', [website], 2018, <https://www.hrw.org/world-report/2018/country-chapters/saudi-arabia>, (accessed 25 June 2018).

²¹⁸ Amnesty International, 'Saudi Arabia should be held to account for gross and systematic human rights violations', 2016, https://www.ecoi.net/en/file/local/1088992/1226_1465281424_mde2341392016english.PDF, (accessed 27 June 2018).

²¹⁹ Amnesty International, 'UK Government breaking the law supplying arms to Saudi Arabia', [website], 17 December 2015, <https://www.amnesty.org/en/latest/news/2015/12/uk-government-breaking-the-law-supplying-arms-to-saudi-arabia/>, (accessed 20 June 2018).

²²⁰ UK Parliament, 'Written Question: Yemen Bombings', [website], 2018, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-04-16/135975/>, (accessed 29 June 2018).

remain active. The assessment should be done in *a non-discriminatory manner*, but due to the ongoing business relationships between the UK and KSA, there is a great doubt that this is happening. According to this evidence presented and the reactions by both sides, the UK then is violating article (7.1.b.i & ii) of the ATT.

More importantly, in July of 2016, the UK has made a very surprising statement regarding the assessment made of whether there is a violation of IHL by the Saudis. The government stated that there was an error in the previous statements by members of the parliament that the UK has conducted an assessment and found that KSA hasn't violated any international laws. It turned out that the UK, at that time, made no assessment regarding the violations in Yemen. Hence, the kingdom has failed in applying one of the major core values of the ATT²²¹.

Article 7.3

After putting all of the information under the validity test, and risks have been found that would tick one or more of the negative consequences mentioned in provision 1, the exporting state then is required to not give its acceptance over the transfer. The UK hasn't yet stopped or cancelled the authorizations given to Saudi Arabia as a result of the well-known violations of humanitarian and human rights law. This truly questions the legality of these arms that have been used in Yemen. The British government keeps on mentioning that in order for the licenses to be stopped, there has to be a clear risk that these arms are being used to commit violations of IHL. The government also says that the Yemeni situation is being regularly under review and it would be aware of any violations occurred²²². However, all the evidence and the casualties in Yemen contradicts the governments statements that the situation is being

²²¹ P. Wintour, 'Foreign Office retracts statements to MPs on Saudi campaign in Yemen', *The Guardian*, [website], 21 July 2016, <https://www.theguardian.com/politics/2016/jul/21/foreign-office-retracts-statements-to-mps-on-saudi-campaign-in-yemen>, (accessed 2 July 2018).

²²² UK Parliament, 'Saudi Arabia: Arms Trade', [website], 2018, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-04-27/139053/>, (accessed 29 June 2018).

reviewed. It seems that the UK-KSA arms business relations are covering all the violations that are happening by the coalition forces. More importantly, the UK has admitted before that they are helping the Saudi-coalition with military personnel and intelligence. Hence, this admission makes them the closer party to the conflict to collect all the accurate figures and statistics about the situation on the ground. Surprisingly, the government doesn't have any exact knowledge or risks found enough to stop exporting arms to the Saudi Kingdom. The UK is, therefore, violating article 7.3 of the ATT.

Article 7.7

After the emergence of new information concerned with the previous provisions, the exporting state is clearly not required but, as said before, encouraged to reassess the situation with the importing state. The UK has been consulting with KSA and with JIAT to know more about the allegations of breaches of IHL by the coalition forces. However, if the UK hasn't reassessed the situation and disregarded any incoming new information, still there wouldn't be any violation by the UK. Thus, the UK hasn't violated its obligation under article 7.7 of the ATT.

Article 12.1 (Record Keeping)

Additionally, article 12.1 requires that the exporting state shall keep records of its authorizations and its actual exports of conventional arms²²³. The UK, however, keeps record of its authorizations, but no records are kept of its actual arms exports²²⁴, which constitutes a violation of article 12.1 of the ATT.

The UK has clearly violated its national and international commitments that exists in the Arms Export Criteria and the ATT, which could put the UK under legal consequences. Oddly,

²²³ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014) No. 52373

²²⁴ Arms Trade, 'UK Profile', [website], <http://www.armstrade.info/countryprofile/united-kingdom/>, (accessed 22 June 2018).

the UK was one of the countries who played a prominent role in building up for the ATT. That is why there is more pressure over the Kingdom from its own public, different NGO's and the international community to end these illegal arms exports to Saudi Arabia. Penny Lawrence, Deputy Chief Executive of Oxfam GB, has said '*It has misled its own parliament about its oversight of arms sales and its international credibility is in jeopardy as it commits to action on paper but does the opposite in reality*'²²⁵. According to its international obligations, the UK is required to stop issuing export licenses to KSA immediately. It has to be clear and decisive about its own assessment towards the violations happening by the Saudi coalition forces, as these decisions/assessments could have severe consequences on the situation in Yemen.

²²⁵ OXFAM, 'UK government in 'denial and disarray' over treaty it helped create to regulate the arms trade', [website], 23 August 2016, <https://www.oxfam.org.uk/media-centre/press-releases/2016/08/uk-government-in-denial-and-disarray-over-treaty-it-helped-create-to-regulate-the-arms-trade>, (accessed 29 June 2018).

Chapter IV

The root problem of the war in Yemen is the irresponsible arms issuing by the biggest exporters, such as the UK, and in order to end the war and the Yemeni sufferings, the root has to be resolved before facing more civilian casualties. Solutions of this problem have been revolving around the ATT and how the arms trade could be implemented with a human rights perspective. As the ATT is the main legal instrument to control the arms flow around the world, it attracts great attention. The UK has been violating the ATT, but is this violation happening because the ATT is a weak legal weapon? In order to answer this question, looking into the treaty's enforcement mechanism is very fundamental.

Till now, the ATT has its deficiencies, the national laws are not actually followed, some of the exporting states have no intention in stopping their arms supply to human rights violators, arms embargo is not effective and IHL/IHRL is working as a warning alarm for the participating states to notice that violations have been happening. That is why there is the need to look further and further for more methods and ways that could act as a way to hold states/individuals accountable for their unlawful arms trade or to send them a clear message that their deals are not acceptable.. If certain measures are to be taken, exporting states/individuals will have in mind all the possible consequences for their violations.

As a first step, there is a need for more states to accede/ratify the arms trade treaty to show their commitment as only signing the treaty is not sufficient to commit. Only five of the big ten exporting states have ratified the treaty, which leaves out half of the arms in the market unregulated. The U.S., Russia, China, Israel and Ukraine are left out, and there is no way a treaty can be fully implemented without the commitment of all the biggest players in the field. Their move to ratification would put more pressure on them to comply with every legal provision, and would encourage other states as well to follow the leaders' path. It could be argued that the UK has ratified the treaty and still violates it, however, the full acceptance of all the biggest exporters 'could' bring the trade one step closer to be properly regulated. The treaty was first based on an international consensus, and it should continue this way.

Additionally, the second ATT Conference of State Parties (SCP) is going to be held in Geneva in the period from 22nd to 26th of August²²⁶ of 2018. Hopefully, by then the states which haven't ratified the treaty would do that in order to have a helpful meeting with aims to limit the unnecessary harms of the arms trade.

The lack of an Enforcement Mechanism

Having the full involvement of every exporting and importing states is necessary as a first step. As a second step, looking into the ATT enforcement mechanisms is very vital as, unfortunately, there are none. Article 14 states: '*Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty*'²²⁷. The treaty here leaves the implementation techniques to each state to decide how and on what conditions they are going to implement the provisions of the treaty²²⁸.

After all the provisions that put some first regulations in order to control the transfer of arms to human rights violators, a clear enforcement mechanism is missing. If each state is responsible for implementing the treaty in its own national laws, then implementation will vary from state to state according to their political and economic environment. Hence, there will be no one standard violation of the treaty as national laws are different in each state and the treaty will pass by ineffective. The success of this treaty is in the hands of each state party, and that is a risk that could lead to its failure. More importantly, there are no legal sanctions to be imposed on states in case of not implementing the treaty properly in their national laws. No enforcing mechanism and no international sanctions could lead to complete states' non-compliance, such as the case with the UK-KSA. A successful example of an

²²⁶ Amnesty International, 'UN: Zero tolerance for states who flout Arms Trade Treaty obligations', [website], 22 August 2016, <https://www.amnesty.org/en/latest/news/2016/08/un-zero-tolerance-for-states-who-flout-arms-trade-treaty-obligations/>, (accessed 3 July 2018).

²²⁷ Arms Trade Treaty (Adopted 2 April 2013, entered into force 24 December 2014) No. 52373

²²⁸ University of Geneva, 'The Arms Trade Treaty', *Geneva Academy of International humanitarian law and human rights*, 2013, <https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/ATT%20Briefing%203%20web.pdf>, (accessed 17 June 2018).

enforcement mechanism exists in the *Comprehensive Nuclear-Test-Ban Treaty*. Even though the treaty has not yet entered into force, but the enforcement and monitoring mechanism is well-defined. In article II, the treaty established a monitoring body, “The Organisation”, based in Vienna to ensure and follow the implementation and compliance of the treaty²²⁹. The treaty created a specific method (alarm system) for the purpose of sensing and quickly responding when detecting any nuclear activity²³⁰.

Basically, the ATT lacks an enforcement mechanism which leaves the international community/UN out of the process of giving decisions or ordering sanctions. Part of the UK’s non-compliance with the ATT is within the responsibility of the drafters of the treaty itself. Although having an enforcement mechanism wouldn’t guarantee full compliance, but it would certainly limit the error made.

The Importance of a Human Rights Based approach

The aim of the arms trade is like any other trade, concerned with making profits and facing less losses. However, the arms trade problem is that it involves a great deal of human rights. That is why there should be some caution because human lives are at stake with every single signature put on an arm deal contract. A human rights approach is necessary to be implemented and the arm deals should follow certain international human rights standards for best protection of human lives. In order to apply human rights to arms trade, certain details are important. The whole approach should aim to prevent the consequences that might happen before they happen, and ensure that the arms transferred are not going to be used against human rights. First, a thorough review over the end user record of human rights is needed to know where does the recipient stand on this issue. Besides, also whether the

²²⁹ The Comprehensive Nuclear Test Ban Treaty (Open for signature 24 September 1996)

<http://www.nti.org/media/pdfs/aptctbt.pdf>

²³⁰ S. O’Connor, ‘Up in Arms: A humanitarian analysis of the arms trade treaty and its new Zealand application’, *New Zealand Yearbook of International Law*, vol 11, 2013,

<http://www8.austlii.edu.au/nz/journals/NZYbkIntLaw/2013/3.pdf>, (accessed 19 June 2018).

recipient is a state party to the major human rights legal instruments is important to see if this state is generally on the right legal track²³¹. Whether the end user is a party of certain instruments will get the exporter to dig deeper into national policies inside the importing state to know if rules are being implemented. By checking both of these points, the exporting state will be able to know a fair and indiscriminate overview about the importing state. Knowing more about the national context of the importer could provide the exporter with a transparent image about how human rights abusers and victims are dealt with. Moreover, whether the end user has the capabilities to use certain conventional arms is another matter. The end user should know how to use specific arms as regards to the distinction between military and non-military objects. As shown in the aforementioned chapters, the UK has been training the Saudi forces on targeting and respecting IHL. However, this training has shown its complete failure so far which means that the Saudi forces are not yet qualified to use such arms. Also, the relations between both the exporting and importing state could affect the situation. The ability to give guarantees and assurances that the arms will not be directed towards violations of human rights could be risky and not sufficient to issue a transfer order. For example, Saudi Arabia has given promises and assurances to counter all the alleged IHL violations and promised also that the JIAT would open investigations²³². So, should the promises be taken seriously by the UK due to its relations to Saudi Arabia? Apparently, the UK trusts KSA's investigation. However, the assurances seem doubtful given the Saudi's unlawful activities in Yemen.

By considering all of these issues, the exporting state would be able to identify if there are risks that the weapons would be used illegally and thus reach the right decision that would benefit, above all, human rights.

²³¹ Amnesty International, 'how to apply human rights standards to arms transfer decisions', 2008, https://www.amnesty.org.uk/files/how_to_apply_human_rights_standards_to_arms_transfer_decisions.pdf, (accessed 4 July 2018).

²³² UK Parliament, 'Written Question: Yemen Military Intervention', [website], 2018, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-04-26/HL7312/>, (accessed 20 June 2018).

The Assessment Process

The exports assessment, besides the loopholes found in the ATT, has other disadvantage that the international community must take into consideration. The assessment is usually done by the exporting state to identify the importing state record of human rights and potential use of arms. However, there is a great conflict of interest in this process. The exporting state will have to choose between tons of money flowing into a successful business, huge employment opportunities, steady relations with the importing state like in the UK-KSA case, AND protecting its human rights international obligations. The situation is complicated and not all states have the power to reject such business for other potential risks. Hence, there should be an independent international body which is responsible for assessing the situation. This body has to make the assessment without any discrimination or inclining towards one side, and give a final decision whether it is secure to give authorizations for transfers. This body, could be a committee or a working group, will give the international community more monitoring mechanisms on the arms transfers. It would certainly take the control away from both sides, the importer and the exporter, and shift the focus more on the neglected humanitarian perspective of this trade. When the arms checklist would pass the risk test, this body will allow the exporting state to issue the authorization. The UK hasn't made an effective assessment so far and kept issuing licenses for KSA to buy the arms and use it against civilians in Yemen. On the other hand, some countries were able to successfully and independently assess the situation and end/hold their exports to Saudi Arabia. For example, Germany has decided to stop arming the Saudi regime with weapons as the country keeps on violating human rights in Yemen. The Germans move was a good step to ban any future deals with the Saudi Kingdom, and also retrieve previous deals²³³. Moreover, Norway, according to its assessment of potential risks, has also decided to stop sending arms to the Saudi-

²³³ Independent, 'Germany set to ban arms sales to Saudi Arabia and Turkey amid fear of human rights abuses', [website], 28 April 2018, <https://www.independent.co.uk/news/world/europe/germany-ban-arms-sales-saudi-arabia-turkey-uae-human-rights-abuses-a8327036.html>, (accessed 29 June 2018).

coalition²³⁴. In Belgium, the Walloon's government has stopped licensing exports to the Saudi Ministry of Defence because of their unlawful activities in Yemen which result in numerous civilian casualties. As shown, a big Part of the success the ATT depends on each country's national policies towards the arms business. Most of the countries already have this national policy that controls arms trade and exports license, but they are not really effective in putting the arm deals under inspection.

Arms Embargos

Arms embargos are another way to stop the transfer of weapons to a specific state, group or force. The UNSC issues these embargos by prohibiting '*the direct or indirect supply, sale or transfer, to these [the listed] individuals, groups, undertakings and entities from their territories or by their nationals outside their territories*'²³⁵. This imposed rule is designed as a very controlling way to help cutting every source of weapons out of an actor to maintain peace and security. However, realistically, things could be altered. Strangely, the UNSC has put an arms embargo on the Houthi forces and asked all parties involved to stop supplying weapons to this non-governmental forces²³⁶. According to the credible statistics, most of the civilian casualties and objects destroyed is because of the irresponsible bombing by the Saudi coalition. Therefore, pointing the blame towards the Houthis and imposing arms embargo only on them is raising international questions about the integrity of the SC. If implemented and with the cooperation of all the involved parties, arms embargo could be undeniably another way of stopping the flow of arms from the UK to KSA. For instance, the European Parliament (EP) has been calling on banning arms trade with Saudi Arabia to its serious violations of international human rights law and IHL. With massive arm deals

²³⁴ J. Abramson, 'European Cut Saudi Arm Sales', *Arms Control Association*, [website], 2018, <https://www.armscontrol.org/act/2018-03/news/europeans-cut-saudi-arms-sales>, (accessed 3 July 2018).

²³⁵ United Nations Security Council, Arms Embargo, 24 February 2015, https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/eot_arms_embargo_english.pdf, (accessed 25 June 2018).

²³⁶ SIPRI, 'Yemen NGF', https://www.sipri.org/databases/embargoes/un_arms_embargoes/yemen/yemen, (accessed 22 June 2018).

between the two countries, the situation is not improving. Hence, the EP is pushing for an arms embargo on Saudi Arabia. If this embargo didn't end the violations in Yemen, then at least it will allow for the entering of commercial goods and humanitarian assistance (one goal of the EP) for the Yemenis who are living in a failing conditions. However, the arms embargo move hasn't been very successful so far in ending the arms flow or cut the arms supply from an actor/state as long as certain parties are not participating in the embargo.

United Nations Security Council Resolutions

Moreover, since the solution through the ATT could be not so achievable at the moment with lacking of an enforcement mechanism. There has to be some other solutions that could help in resolve the arms dilemma and end the human rights violators from obtaining arms. The international community is always concerned with peace and security, so it has to take some further steps towards ending the war in Yemen. That will happen either through cutting the source of fueling this war (arms) or by other potential political means. One solution is a reaction by the UNSC as it is the most powerful tool in the UN body. The UNSC's response to the war in Yemen wasn't promising, as only one resolution was passed so far in three years of continuous deadly war.

On 14 of April 2015, the SC adopted resolution 2216 which is so far the only resolution concerning with the war in Yemen. Surprisingly, the resolution only blamed the Houthi forces for the war. The SC called the rebel forces to end the violent activities, withdraw from all the cities they took, give up all the political prisoners and most importantly, to not *provoke* or *threaten* neighboring countries²³⁷. With all the serious involvement of Saudi Arabia and the coalition in the war, and with all the foreign weapons being used on the Yemeni grounds, the SC hasn't addressed the Saudi regime with one word. By not mentioning the Saudis, the SC is accepting and giving the coalition the indirect authorization to continue striking the Houthis/Yemenis. Three years passed and the SC is not moving towards maintaining peace

²³⁷ United Nations Security Council Resolution 2216, 14 April 2015.

and security which is enshrined in Chapter VII of the Charter of the United Nations and was the basis of this resolution. Furthermore, the UN reported on massive killings of children in different countries including Yemen and that the Saudi-coalition could be responsible for²³⁸. However, the UN then was contacted by the coalition and was informed about the establishment of a child unit protection at the coalition headquarters for better children safety and to reduce the harm impact on them²³⁹.

The Importance of Raising Awareness

When the exporting states decide to take its own decision regardless of whether these decisions will comply and abide by the rules, certain third parties are involved in order to fight the unlawful governmental acts by a state. The role of civil society organisations and campaigns against the arms trade is so solid. They address the faults of the states nationally and internationally through advocacy, reporting, and monitoring. The Campaign Against Arms Trade (CAAT) as a powerful example is an organization based in the UK²⁴⁰. Its ultimate goal is to end the international arms trade because of its devastating impact on human rights. CAAT is fighting on ground the British government and launching excessive campaigns against members of the House of Commons and the government. CAAT is asking to end the ongoing trade with KSA, as supplying arms to an oppressive undemocratic human rights violator regime is considered unlawful and against the British national laws and the international laws. CAAT's work represented a big part of the judicial complaint against the Secretary of State, which ended up with a possibility that the trade with KSA could be

²³⁸ UN News, 'UN report reveals shocking levels of grave violations against children affected by conflicts', [website], 5 October 2017, <https://news.un.org/en/story/2017/10/567922-un-report-reveals-shocking-levels-grave-violations-against-children-affected>, (accessed 6 July 2018).

²³⁹ Office of the Special Representative of the Secretary General for Children and Armed Conflict, 'Annual Report of the Secretary General on children and armed conflict', *United Nations*, [website], 6 October 2017, <https://childrenandarmedconflict.un.org/millions-of-children-caught-in-conflict-victims-and-targets-of-despicable-harm/>, (accessed 3 July 2018).

²⁴⁰ Campaign Against Arms Trade, 'Stop Arming Saudi Arabia', [website], 2018, <https://www.caat.org.uk/campaigns/stop-arming-saudi>, (accessed 29 June 2018).

stopped. CAAT is monitoring and reporting every single detail or move by the government towards helping Saudi Arabia; the campaign is presenting tons of information about the illegal exports and how it fuels the war in Yemen resulting in a massive humanitarian crisis. Another example of a successful work is Mwatana organization. Mwatana is a Yemeni organization working on field research, taking part particularly in the research for human rights violations and the arms involved in the war in Yemen. Mwatana has succeeded in finding evidence that proves the involvement of arms exporting states such as the UK, US and Italy. It is conducting a fruitful field research that adds more international attention to the crisis.

Another last example is the ECCHR, which is advocating against the illegitimate arms trade by the UK and Italy to Saudi Arabia. The ECCHR filed a complaint to the Italian public prosecutor, with the help of Mwatana, against the Italian foreign ministry for the Italian weapons remnants that were found in Yemen²⁴¹. According to Beatrice Pesce from ECCHR, the Italian prosecutor will have to open an investigation on the Italian arms trade to KSA, and thus, the trade between the two countries could be hold off during the time of the investigation. Hence, the civil society and human rights organisation are doing a remarkable work towards ending the arms transfer to Saudi Arabia.

Even though the solutions presented could be currently out of hand due to the political relations between KSA and the UK, it is very important to keep advocating some of these way-outs and working on regulating the arms trade. Andrew Smith (Interview) said that the war, or at least the bombing campaign, could be stopped if the arms flow from the UK or the US to KSA has stopped. According to Smith, the Saudi arms industry is very small and it can't maintain its operations in Yemen without the unstoppable supply of weapons from the west.

²⁴¹ E. MacAskill, 'Italian officials and German firm face legal action over Saudi arms sales', *The Guardian*, [website], 18 April 2018, https://www.theguardian.com/world/2018/apr/18/italian-officials-and-german-firm-face-legal-action-over-saudi-arms-sales?CMP=Share_AndroidApp_WhatsApp, (accessed 25 May 2018).

Conclusion

On the 23 of June, Anwar Gargash, UAE Minister of State for Foreign Affairs, has announced that the military campaign on Hodeidah has been stopped for a chance of opening negotiations by the UN Special Envoy, Martin Griffith²⁴². The UN direct intervention could lead to better peace implementation and cease fire from both the Houthi and the coalition side. However, regulating the arms trade between the big exporting and importing countries must be a high priority even if the war came to an end.

In Chapter I, I presented the relations history between Saudi Arabia and the UK. They have been having a long term political and economic relationship, and most likely this relationship will continue for years to go. Hence, more trade and arm deals are expected to happen especially for as long as KSA is in an ongoing conflict in Yemen, the kingdom will need an unstoppable supply of weapons. The results of these unregulated trade can be seen in the humanitarian situation in Yemen. It is very critical as infrastructure is being destroyed with the cholera spreading, there is an unavailability of ports to function and no clean water, and the land is getting ripped of its basic needs for human survival.

In the second chapter, I discussed the aspects of International Humanitarian Law represented by the Geneva conventions and Protocol I. Both laws can change the course of action in this war if implemented properly. If all the participants would follow the agreed war rules, then it is expected that the civilians, basic tools for survival and humanitarian workers would be protected. That would lead to less casualties, and less diseases. However, The UK and KSA are violating IHL and the Geneva conventions and its protocol I of 1977, and there is no accountability or no monitoring mechanism to hold both countries in question of their fatal actions in Yemen.

²⁴² A. Gargash, 'To clarify the Coalition has paused the advance on the city & port ...', *Twitter*, [website], 1 July 2018, <https://twitter.com/AnwarGargash/status/1013334298873737216>, (accessed 4 July 2018).

Not only the UK and KSA are not following the strict rules of war, but also violating some of the most important treaties and conventions, nationally before internationally. The UK is violating the Arms Export Criteria that requires a strict national assessment before granting any license for selling arms. Hence, it is concluded that if the UK is not following its own national rules, then it would be expected if its not following the international rules as well. Unfortunately, that what is happening in the current period.

In chapter III, which is the core of answering my research question, and after the detailed analysis of the Convention on Cluster Munitions and the ATT, I concluded that the UK is violating both the convention and the treaty. Therefore, the UK has to communicate with KSA about CM's stockpiles and advise them to stop using any more of these lethal weapons and destroy the rest. Another big part of the non-compliance was related to the ATT and the UK is violating the ATT's articles 1, 6.3, (7.1.b.i & ii), 7.3 and 12.1.

My research question was trying to find out whether the UK is following its international and national obligations regarding its arms trade with Saudi Arabia. Hence, according to all the previous arguments and presented evidence, the UK is currently violating all its international obligations and commitments regarding arms trade. I tried to point out the link between Arms trade and the current destruction in Yemen, however, it's not that apparent. The whole process from signing contracts or permitting licenses is very big and involves many issues, hidden and shown ones. That is why I tried to present my argument and try to prove (according to the material available to me) that from International Humanitarian Law to the Convention on Cluster munition to the Arms Trade Treaty, the UK has gone out of path. Its trade with Saudi Arabia has been progressing in the past years and has put the UK under strict scrutiny due to the mass human rights violations in Yemen. The unregulated arms trade is considered a threat to peace, security and human rights around the globe. Every aspect of human rights is marginalized during the unregulated arms trade.

According to my research, the ATT is not really working to protect the people and to ensure less human suffering, and that is why there is a big need to revise such international treaties for possible adjustment for better protection of human rights.

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Abstract (English):

The United Kingdom, being one of the top arms exporters, has been selling arms to Saudi Arabia which has been using them for its war against the Houthis (A Shiite militia backed by Iran) in Yemen. Saudi Arabia started the war in Yemen in 2015 after the Houthis launched a ballistic missile towards Riyadh which resulted in minor damages and no casualties. Since then, the situation changed drastically with massive number of civilians are dying in the middle of the war due to the air campaigns and ports blockades by the Saudi Coalition against the Houthis. Arms trade is an internationally acceptable business, especially after the establishment of the Arms Trade Treaty in 2014 which formed rules for this trade to continue with respect to various human rights and without any risk that the end user would use them unlawfully. This study aims to investigate the process of arms trade, particularly between U.K. and Saudi Arabia; and examine whether the UK is complying with its international and national commitments towards the Arms Trade Treaty and other legal instruments.

Key Words:

Arms Trade – United Kingdom – Saudi Arabia – Yemen – Human Rights – Civilian Casualties – International Humanitarian Law – Arms Trade Treaty

Abstract (German):

Das Vereinigte Königreich, einer der größten Waffenexporteure weltweit, verkauft seit längerem Waffen an Saudi Arabien. Diese werden im Kampf gegen die Huthi-Rebellen (eine durch den Iran unterstützte schiitische Miliz) im Jemen eingesetzt. Nachdem die Huthi-Rebellen im Jahr 2015 eine Rakete in Richtung Riad abschossen – diese richtete jedoch nur kleinere Schäden an und zog keine Todesopfer nach sich – begann Saudi Arabien mit Kampfhandlungen gegen den Jemen. Seitdem hat sich die Situation drastisch verändert. Luftangriffe sowie Blockaden der jemenitischen Häfen seitens der von Saudi Arabien angeführten Koalition haben eine große Zahl an Todesopfern gefordert. Mit dem 2014 in Kraft getretenen ‘Vertrag über den Waffenhandel’ unterliegt der Waffenhandel internationaler Kontrolle. Dieser Vertrag zielt darauf ab den Handel hinsichtlich menschenrechtlicher Standards zu reglementieren, sowie sicher zu stellen, dass diese nicht rechtswidrig eingesetzt werden. Die vorliegende Studie untersucht den Waffenhandel zwischen dem Vereinigten Königreich und Saudi Arabien. Im Vordergrund steht dabei die Frage, inwiefern das Vereinigte Königreich internationale und nationale Rechtsstandards hinsichtlich des Vertrags über den Waffenhandel sowie anderer rechtlicher Reglementierungen Folge leistet.

Schlagwörter:

Waffenhandel, Vereinigtes Königreich, Saudi Arabien, Jemen, Menschenrechte, zivile Opfer, Humanitäres Völkerrecht, Vertrag über den Waffenhandel

THANK YOU
Mohamed Tharwat