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Federica Mogherini
EU High Representative for Foreign Affairs and Security Policy
Vice President of the European Commission
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26 February 2016

Subject: **EU Member States' Arms Sales to Saudi Arabia**

Dear High Representative Mrs Federica Mogherini

We welcome your positive response to the recent European Parliamentary call for an EU investigation into the legality of EU Member States' arms sales to Saudi Arabia in light of the pattern of violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) by the Houthis, the Saudi Arabia-led coalition¹, and all other combatant parties in the almost year-long war in Yemen.

The UN, the International Committee of Red Cross and Red Crescent Societies (ICRC), humanitarian agencies and human rights organisations have all documented in detail the deaths, injuries and gross violation of human rights of civilians due to military action, including that caused by coalition airstrikes and by ground fighting involving the Saudi-led coalition and opposed forces in Yemen. Most recently, a report by the UN Panel of Experts on Yemen (attached) stated that "the coalition had conducted air strikes targeting civilians and civilian objects, in violation of international humanitarian law."

In August last year, the violations of IHL and IHRL had escalated to the point where UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator reported to the UN Security Council that the "scale of human suffering is almost incomprehensible"[19 August 2015, UN Doc. S/PV.7507]. Fighting intensified again in January and last week in his statement to the Security

¹ The coalition led by Saudi Arabia with four members of the Gulf Cooperation Council (Bahrain, Kuwait, Qatar and the United Arab Emirates) and four members of the League of Arab States (Egypt, Jordan, Morocco and the Sudan).

Council, the UN Under Secretary General again reported on the ‘immeasurable suffering... much of this resulting from indiscriminate bombing and shelling by the parties.’ [16 February 2016] The UN Panel observed that “the supply of weapons to resistance forces by the coalition without due measures being taken to ensure accountability is also contributing to a destabilizing accumulation of arms in Yemen” [Final Report 27 January 2016].

Matrix Chambers, in their legal opinion of December 2015 regarding UK arms supplies to Saudi Arabia, concluded that under UK law, the EU Common Position and the Arms Trade Treaty, UK exports to Saudi Arabia are illegal, due to “a clear risk that [those arms] ... might be used in the commission of serious violations of IHL by Saudi Arabia. On that basis, we are of the view that future transfers to Saudi Arabia of such weapons or equipment ... would constitute a breach ... of Criterion 2 of the EU Common Position (i.e. concerned with the risk of weapons being used to violate IHL by the recipient State and/or IHRL in the territory of the recipient State). ... Further, transfers authorised since July 2015, when there was clear *prima facie* evidence of serious breaches by the Saudi-led Coalition of IHL, would have constituted such a breach.” The Matrix legal opinion also concluded that “... weapons exports to [Saudi Arabia] also appear to breach EU Criterion 6, concerned with the general respect by States for international law.”

The legal obligations governing in UK arms transfers under the Arms Trade Treaty and exports under the EU Common Position also apply to other EU Member States’ exports to Saudi Arabia and the coalition. In light of this we have deep concerns regarding the legality of transfers and licenses during 2015 from other EU Member States including Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Italy, the Netherlands and Spain. We would be pleased to furnish details of these export licences and transfers, while noting that due to the tardiness and/or brevity of reporting in many Member States, this will be only a partial picture of the extent of Member States’ support for parties committing serious violations of international law.

We note the joint motion for a resolution on the humanitarian situation in Yemen adopted by the European Parliament on February 25, 2016, and the amendment thereto also adopted, which calls for “an initiative aimed at imposing an EU arms embargo against Saudi Arabia”. The Matrix Opinion implies that, pending the outcome of a proper and credible inquiry into the allegations of serious violations of IHL and IHRL in Yemen, the EU should halt transfers of the arms of the type that have been misused for such violations by parties to the conflict. It is incumbent upon the EU institutions, in ensuring respect of EU law, to ensure that any exports and potential exports of arms from Member States at high risk of being used in Yemen to commit or facilitate serious violations of IHL or IHRL by members of the Saudi-led Coalition should be immediately suspended until it can be demonstrated with certainty that such misuse of the arms will no longer take place.

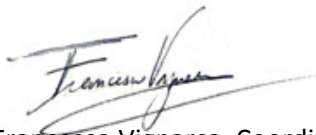
We realise that arms transfer decisions fall within Member States’ national competence, however we believe that an investigation by your office would definitely serve the stated intentions of EU Common Position 2008/944/CFSP to “set high common standards” so as to “prevent the export of military technology and equipment which might be used for internal repression or international aggression or contribute to regional instability.” To facilitate such an investigation, we also ask you place this issue as a matter of urgency on the agenda of the Foreign Affairs Council, specifically to discuss credible reports of serious violations of IHL and IHRL in Yemen and Member States’ current

policies on arms transfers that are used to facilitate such violations, and thereby seek to agree a common EU response.

Accordingly we would welcome an urgent opportunity to meet with you to discuss in more detail our concerns regarding the grave situation in Yemen, and the legal implications of EU Member States knowingly supplying arms to some parties to the conflict, notably Saudi Arabia and its coalition partners. Those supplies are undermining the EU's obligations under international law as well as the EU's humanitarian activities in Yemen.

We will contact your staff to determine when such a meeting with you is possible.

Yours Sincerely



Francesco Vignarca, Coordinatore, Rete Italiana per il Disarmo

and

Iain Overton, Director, Action on Armed Violence, UK

Thomas Nash, Director, Article 36, UK

Benoît Muracciole, Président, Action Sécurité Ethique Républicaines, France

Iverna McGowan, Advocacy Director and Head of European Institutions Office, Amnesty International

Eva Quistorp, Mdep a.d, Berlin Women for Peace, Germany

Andrea Kolling- Speaker and Research, BUKO-Campaign: "stop the arms trade" –Germany

Ann Feltham, Parliamentary Co-ordinator, Campaign Against Arms Trade, UK

Anni Lahtinen, Secretary General, Committee of 100, Finland

Luc Mampaey, Director, Groupe de recherche et d'information sur la paix et la sécurité, Belgium.

Tony Fortin, President, Observatoire des armements, France

Helen Close, Research Associate, Omega Research Foundation, UK

Natalia Alonso, Deputy Director of Advocacy & Campaigns, Oxfam EU Advocacy Office

Karin Olofsson, Secretary General, Parliamentary Forum on Small Arms and Light Weapons

Christer Winbäck, Board Member, Parliamentary Forum on Small Arms and Light Weapons (former MP of the Swedish Parliament representing the Liberal Party, former member of the Foreign Policy Committee and European Union Committee)

Jan Gruiters, General Director, PAX, the Netherlands

Andrew Lane, Quaker Representative to the European Union and Council of Europe

Anna Ek, President of the Swedish Peace and Arbitration Society (SPAS), Sweden

Paul Murphy, Executive Director, Saferworld, UK

Wendela de Vries, coordinator Stop Wapenhandel, the Netherlands

Bram Vranken - campaigner/researcher, Vredesactie, Belgium
