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Submission by Americans for Democracy & Human Rights in Bahrain (ADHRB), NGO in Consultative Status with ECOSOC and the European Centre for Democracy and Human Rights (ECDHR)

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I. Executive Summary

- i. Americans for Democracy & Human Rights in Bahrain (ADHRB) fosters awareness of, and support for, democracy and human rights in Bahrain and the Middle East. The European Centre for Democracy and Human Rights (ECDHR) is a non-profit organisation based in Brussels and registered in Dublin.
- ii. This document focuses on the role that United States (US) security force assistance to the Kingdom of Saudi Arabia and the United Arab Emirates (UAE) – the leaders of a coalition of states engaged in the war in Yemen – plays in aiding and abetting the conflict in Yemen. Since Saudi Arabia and the UAE became involved in the war in Yemen in March 2015, the US has supported their actions in a number of ways. Among the most significant forms of support the US supplies is arms sales and in-air refueling of Saudi and coalition fighter jets. According to some American lawmakers, “the war could not continue without the assistance of US refueling.”¹
- iii. Through this support, the US has become complicit in the coalition’s war crimes and violations of international humanitarian law. It has also breached international laws and treaties to which it is a party.

II. Scope of US support to coalition members

- i. On 26 March 2015, Saudi Arabia at the head of a coalition of states, composed of the UAE, Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Senegal, and Sudan, initiated military operations against Houthi-Saleh forces in Yemen.² Since then, the UAE has quietly increased its engagement in Yemen, emerging as a co-leader of the coalition.
- ii. Since March 2015, the US has allocated a significant amount of funds in support of Saudi Arabia and the UAE. According to Security Assistance Monitor (SAM), from Fiscal Year 2015 to Fiscal Year 2019, the US allocated \$305,867 worth of security assistance to Saudi Arabia.³ According to SAM, throughout the same period, the US allocated \$931,706 of funds to the UAE.⁴ While neither Saudi Arabia nor the UAE directed all of the funds they received towards the war, the amount indicates the US’ continuing interest in supporting both states.
- iii. During this time, the US Department of Defense (DoD) also notified Congress of billions of dollars in weapons and ammunition sales, as well as support services. According to the Defense Security Cooperation Agency (DSCA), the DoD body that notifies Congress of impending sales, since March 2015, the US has notified lawmakers of \$12.05 billion of sales to the UAE. DSCA has notified lawmakers of \$48.59 billion in sales to Saudi Arabia.⁵ However, the numbers are almost certainly higher, as DSCA only notifies lawmakers of large sales. On 20 May 2017, two years after the Saudi-led coalition entered Yemen, US President

¹ Alex Emmons, “The US will stop refueling Saudi-led coalition jets in Yemen, but progressives in Congress want more,” The Intercept, 10 November 2018, <https://theintercept.com/2018/11/09/the-u-s-will-stop-refueling-saudi-led-coalition-jets-in-yemen-but-progressives-in-congress-want-more/>.

² Qatar left the coalition in June 2017 and Morocco reportedly left in February 2019.

³ Combatting Terrorism Fellowship Program; International Military Education Training; Regional Centers for Security Studies; Counter Drug Assistance as specified under Section 1004 of the National Defense Authorization Act (NDAA); and through Service Academies. See <https://securityassistance.org/data/program/military/Saudi%20Arabia/2015/2019/all/Global/>.

⁴ The programs included are: Department of Homeland Security – US Coast Guard Activities; Regional Centers for Security Studies; Section 1004 of the NDAA pertaining to Counter-Drug Assistance; and Service Academies. See <https://securityassistance.org/data/program/military/United%20Arab%20Emirates/2015/2019/all/Global/>.

⁵ Figures pulled from monthly notifications. See <https://www.dsca.mil/major-arms-sales>.

Donald Trump and Saudi King Salman bin Abdulaziz signed a nearly \$110 billion defense package, demonstrating the US' continued interest in long-term security relations.⁶ The US has also provided substantial military training to each country. It has trained over 5,000 Emirati soldiers between 2009 and 2016.⁷

III. The US role in the conflict

- i. The coalition has leaned heavily upon US-supplied material to conduct its war. Reportedly, “nearly 100 American military personnel are advising or assisting the coalition war effort,” while “American mechanics service the jets and carry out repairs on the ground, [while] American technicians upgrade the targeting software and other classified technology.”⁸ A critical aspect of this, is the mid-air refueling of coalition jets that allow coalition planes to stay in the air longer and conduct more missions against more targets.⁹ As a result, not only are the bombs being dropped often made in the US, but American personnel ensure the jets can fly, and the targeting system works, leading Senator Chris Murphy to say that “[t]here’s an American imprint on every civilian life lost in Yemen.”¹⁰
- ii. Sen. Murphy has reiterated his criticism of US support for the coalition, stating the

*Bombing campaign that targeted the electricity infrastructure in Yemen could only happen with US support. It is the United States that provides the targeting assistance for Saudi planes. It is the US refueling planes flying in the sky around Yemen that restock the Saudi fighter jets with fuel, allowing them to drop more ordinance. It is the US-made ordinance that is carried on these planes and dropped on civil and infrastructure targets inside Yemen. The United States is part of this coalition. The bombing campaign that has caused the cholera outbreak could not happen without us.*¹¹

Thus, even though the US announced on 10 November 2018 that it would end mid-air refueling, the US has continued to backstop the coalition’s war efforts.¹²

- iii. Numerous airstrikes have been linked to US weapons. Reportedly, as of 2017, three out of every five weapons imported by the coalition was US-made.¹³ Drawing on documentation

⁶ “Fact Sheet: Intended sales to Saudi Arabia via Foreign Military Sales,” Defense Security Cooperation Agency, 20 May 2017, <https://www.dsca.mil/news-media/news-archive/fact-sheet-intended-sales-saudi-arabia-foreign-military-sales>.

⁷ “The US-Saudi Alliance Is on the Brink,” The Atlantic, 1 July 2019, <https://www.theatlantic.com/politics/archive/2019/07/trump-blocking-big-change-us-saudi-alliance/592504/>.

⁸ Declan Walsh and Eric Schmitt, “Arms Sales Leave American Fingerprints on Yemen’s Carnage,” The New York Times, 25 December 2018, <https://www.nytimes.com/2018/12/25/world/middleeast/yemen-us-saudi-civilian-war.html>.

⁹ Ibid.

¹⁰ The Editorial Board, “America is Complicit in the Carnage in Yemen,” New York Times, 17 August 2016, https://www.nytimes.com/2016/08/17/opinion/stop-saudi-arms-sales-until-carnage-in-yemen-ends.html?_r=0.

¹¹ Alex Emmons, “Chris Murphy accuses US of complicity in war crimes from the floor of the Senate,” The Intercept, 15 November 2017, <https://theintercept.com/2017/11/14/chris-murphy-accuses-u-s-of-complicity-in-war-crimes-from-the-floor-of-the-senate/>.

¹² Phil Stewart, “US halting refueling of Saudi-led coalition aircraft in Yemen’s war,” Reuters, 10 November 2018, <https://www.reuters.com/article/us-usa-yemen-refueling/u-s-halting-refueling-of-saudi-led-coalition-aircraft-in-yemens-war-idUSKCN1NE2LJ>.

¹³ Frank Andrews, “Middle East Eye, REVEALED : The Full Extent of US Arms Deals with Saudi Arabia and UAE,” Middle East Eye, 4 April 2019, <https://www.middleeasteye.net/news/revealed-full-extent-us-arms-deals-saudi-arabia-and-uae>.

supplied by Yemeni human rights organization Mwatana, CNN has noted several such strikes,¹⁴ including:

- a. A 10 August 2015 strike with a cluster bomb that hit a farmer's house in Bani Haddad village in Hajjah Governorate, killing 10 individuals. The weapon, a 430-kilogram US-made cluster bomb was manufactured in 1977 and exported to Saudi Arabia between 1970 and 1995. The US is one of seven states, including China, Israel, Iran, North Korea, Russia, and Saudi Arabia, that have rejected signing the Convention on Cluster Munitions.
 - b. On 20 September 2016, an airstrike on a vehicle in Al-Mutama district in Al-Jawf Governorate killed 15 members of one family, including 12 children. Recovered fragments of the bomb indicated it was a GBU-12 Paveway II laser guided bomb manufactured by Raytheon.
 - c. A 22 April 2018 airstrike on a wedding in Bani Qais District in Hajjah Governorate killed 21 individuals and injured 97 others. The bomb was a GBU-12 Paveway II guided bomb linked to Raytheon.
- iv. The US' ongoing support of Saudi Arabia and the UAE, has helped fuel the conflict in Yemen. In part due to this, the conflict's death toll is fast approaching 100,000.¹⁵ Aside from deaths caused directly from airstrikes, a growing number of civilians have been negatively affected by the destruction of infrastructure, including health infrastructure. Attacks against hospitals and import buildings at ports have helped fuel a humanitarian crisis, from malnutrition to the spread of cholera.
- v. Given the broad negative impact of airstrikes, including airstrikes conducted with US-made and supplied material, there was concern during the Obama administration that the US' support for the coalition may make it a "co-belligerent" although it is not directly involved in the war. According to emails from inside the State Department, "lawyers ultimately did not reach a conclusion on whether the US was a 'co-belligerent.'" However, "one of the emails specifically referenced a 2013 ruling from the war crimes trial of former Liberian president Charles Taylor" that found that "practical assistance, encouragement or moral support is sufficient to determine liability for war crimes."¹⁶

IV. Legal Analysis

- i. Under customary international law as reflected in Article 16 of the International Law Commission's Articles on State Responsibility, the US, by supporting the Saudi-led coalition, may bear responsibility for aiding or assisting their indiscriminate attacks. It also places the US in violation of its treaty obligations. For example, Common Article 1 of the Geneva

¹⁴ Nima Elbagir, Salma Abdelaziz, Laura Smith-Spark, "Made in America: shrapnel found in Yemen ties US bombs to string of civilian deaths over course of bloody civil war," CNN, accessed 15 September 2019, <https://edition.cnn.com/interactive/2018/09/world/yemen-airstrikes-intl/>.

¹⁵ "Human Cost of Yemen War laid bare as the death toll nears 100,000," The Guardian, 20 June 2019, <https://www.theguardian.com/global-development/2019/jun/20/human-cost-of-yemen-war-laid-bare-as-civilian-death-toll-put-at-100000>.

¹⁶ Warren Strobel and Jonathan Landay, "Reuters, Exclusive : As Saudis bombed Yemen, US worried about legal blowback," 10 October 2016, <https://www.reuters.com/article/us-usa-saudi-yemen/exclusive-as-saudis-bombed-yemen-u-s-worried-about-legal-blowback-idUSKCN12A0BQ>.

Conventions requires that parties “undertake to respect and ensure respect”¹⁷ for the provisions of the Conventions. Common Article 1 commits parties to not encourage or assist violations and to aid in preventing such violations.

- ii. The US is a signatory to the Arms Trade Treaty (ATT), but it has not ratified it.¹⁸ Under international law, a signatory who has yet to ratify a treaty must not undermine the treaty’s “object and purpose”¹⁹ which is “establishing the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms” and “reducing human suffering.”²⁰ In this way, because there are reasonable grounds to believe that weapons sold to the coalition will be used against civilians, the US’ continued weapons sales, does not meet the ATT’s standards. The US must apply ATT standards to its policies, even though it has not ratified it.
- iii. International human rights law applies during all armed conflicts alongside IHL. Even beyond treaty obligations, the International Law Commission’s draft articles on State Responsibility recall the general principle of international law in Articles 1 and 2 which provide that “every internationally wrongful act of a State entails the international responsibility of that State” and “there is an internationally wrongful act of a State when conduct consisting of an action or omission: a) is attributable to the State under international law; and b) constitutes a breach of an international obligation of the State.”²¹
- iv. By aiding and assisting the parties to the conflict in Yemen through arms sales, although the US government has reason to believe the assistance is unlawful, the US is in breach of these international principles.
- v. Common Article 1 of the Geneva Conventions states that “the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.”²² This lays down an obligation to respect the Conventions in all circumstances. It includes that third party States, have an international legal obligation not only to avoid encouraging IHL violations committed by others, but also to take measures to put an end to ongoing violations and to actively prevent their occurrence.²³
- vi. Article 3 of the Universal Declaration of Human Rights (UDHR) enshrines the right for everyone to life, liberty and security of person. A State is also considered in violation of this article if it restricts or denies this right. In this way, the US is aiding the coalition’s violation of this right, placing the US in violation as well. Moreover, Human Rights Committee General Comment N.36²⁴ highlights how Article 6 of the International Covenant on Civil and Political

¹⁷ ICRC, Common Article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations, (Sep. 21. 2015), <https://www.icrc.org/en/international-review/article/common-article-1>.

¹⁸ Arms Control Association, “The Arms Trade Treaty,” United Nations, opened for signatures 3 June 2013, came into force 24 December 2014, available at <http://disarmament.un.org/treaties/t/att/text>.

¹⁹ <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

²⁰ “Vienna Convention on the law with treaties,” United Nations Treaty Series, 27 January 1980, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>.

²¹ “Responsibility of States for Internationally Wrongful Acts,” United Nations, 2001, http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

²² “Common Article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations,” International Committee of the Red Cross, 21 September 2015, <https://www.icrc.org/en/international-review/article/common-article-1>.

²³ Ibid.

²⁴ Vito Todeschini, “The Human Rights Committee’s General Comment No.36 and the Right to Life in Armed Conflict”, *Opinio Juris*, 21 January 2018, <http://opiniojuris.org/2019/01/21/the-human-rights-committees-general-comment-no-36-and-the-right-to-life-in-armed-conflict/>.

Rights (ICCPR) and IHL interact during armed conflicts. The Committee holds that Article 6 ICCPR is breached not only when a violation of IHL results in the killing of civilians or other protected persons, but also when it entails a risk to their lives. Additionally, the General Comment clearly states that “[States] must also investigate alleged or suspected violations of article 6 in situations of armed conflict in accordance with the relevant international standards” and denounce and do any effort to stop the loss of life.

- vii. The US, aware of the unlawful and disproportionate loss of life during the Yemeni conflict, is contributing to the violation of the right to life by providing military support to the coalition.
- viii. Through its support for the war, the US is indirectly violating Article 25 of the UDHR which says that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”
- ix. The right to adequate standards of living it is covered by numerous international conventions which the US are party to, such as in the common provision of the International Covenants -ICCPR and International Covenant on Economic, Social and Cultural Rights (ICESCR) - where Article 1.2 states that “all people may, for their own ends, freely dispose of their natural wealth and resources [...] In no case may a people be deprived of its own means of subsistence.”²⁵
- x. In the Additional Protocol to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts, Article 14 states that “starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population.”²⁶ The destruction of roads and main bridges considered crucial to deliver humanitarian aid and the destruction of medical facilities by US-made bombs, makes the US an indirect part of the hostilities and thus partially responsible for the restriction of Yemenis’ right to an adequate standard of living, in clear violation of Article 25 of the UDHR, Article 1 of the ICCPR, and 14 of Geneva Convention Additional Protocol III.

V. Recommendations

- i. The US is failing to abide by its international commitments to protect safeguard rights in its foreign policy, specifically through its support for the war in Yemen. We therefore call on the Government of the United States of America to:
 - a. Stop arms transfers and other forms of military support to coalition countries for likely use in the military campaign in Yemen;
 - b. Pass legislation which can help prevent the resumption of arms sales and assistance to coalition countries for use in Yemen;

²⁵ “International Standards,” United Nations, accessed 15 September 2019,

<https://www.ohchr.org/EN/Issues/Food/Pages/Standards.aspx>.

²⁶ Ibid.

- c. Demand wide and credible investigations into the alleged crimes and violations perpetrated by the Saudi-led coalition, including cases involving the US through weapons supplies or other forms of military assistance;
- d. Clarify the role it has been playing in the conflict, the measures it has adopted to minimize casualties in air operations within the Yemeni borders and investigate itself the alleged violations of the laws of war its forces have taken part in;
- e. Accede to the Convention on Cluster Munitions and end the exports of munitions banned under this Conventions;
- f. Ratify the Arms Trade Treaty without delay and fully support the work of the UN Group of Eminent Experts into abuses by all parties to the conflict; and
- g. Create a cohesive report that tracks all arms sales, both commercial and governmental, with precise details on buyers and the amount value with specific weapons listed allowing for munitions data to be easily accessed to enable accountability.