October 25, 2019

The Honorable James Inhofe
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Adam Smith
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Mac Thornberry
Ranking Member
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Inhofe, Ranking Member Reed, Chairman Smith, and Ranking Member Thornberry:

On behalf of the American Bar Association (ABA), I express our support for several provisions of the House version of the National Defense Authorization Act (NDAA) (H.R. 2500) for FY2020. Specifically, we urge you to retain the provisions in the final FY2020 NDAA which address the war in Yemen (H.R. 2500, Sections 1099X and 1270). We also urge the retention of the provisions regarding the killing of Saudi journalist, Jamal Khashoggi (H.R. 2500, Subtitle K).

The ABA, which is the largest voluntary association of lawyers and legal professionals in the world, regards human rights and the rule of law as cornerstones of a free and just society and is committed to strengthening them in the United States and internationally. In August, we adopted policy urging the United States to enforce fully and consistently the Arms Export Control Act (AECA) and the Foreign Assistance Act (FAA), particularly the human rights provisions thereof. The House-passed version of the NDAA contains several provisions that would help ensure compliance with both these laws and respect for human rights as they relate to hostilities in Yemen.

As you know, the conflict in Yemen has created the largest humanitarian disaster in the world today, with over 14 million people at risk of famine. According to the UN Panel of Experts on Yemen, serious violations of international law have been committed by many parties to the conflict, including the Saudi-led coalition.¹ These violations have been at times, according to the panel, “widespread and systematic” and resulted in thousands of civilian deaths.²

International law prohibits indiscriminate or disproportionate strikes on civilians and the use of force in a manner that is not necessary to achieve legitimate military objectives. Section 3 of the

² id. at 3
AECA requires the suspension of security assistance to partners who use U.S. assistance for unauthorized purposes, including the use of force in a manner that is not necessary and proportionate to legitimate self-defense needs.³ The FAA prohibits the provision of security assistance to governments that engage in a consistent pattern of gross violations of internationally recognized human rights or restricts the delivery of U.S. humanitarian assistance.⁴

Section 1099X

Section 1099X of the House-passed NDAA would prohibit for one year the export of air-to-ground munitions to the Kingdom of Saudi Arabia and the United Arab Emirates. The UN Panel of Experts identified incidents where U.S.-origin air-to-ground munitions were used by the Saudi-led coalition in strikes that were “almost certain[ly]” illegal.⁵ Human Rights Watch recently reported that unlawful strikes by the Saudi-led coalition continue to occur.⁶ Inclusion of Section 1099X as currently drafted in the final bill would help ensure compliance with the AECA and FAA, as well as the United States’ international treaty obligations.

Section 1270

Several provisions in Section 1270 of the House-passed bill would also help ensure compliance with the AECA and the FAA. Section 1270N would prohibit in-flight refueling for the next two years to non-U.S. aircraft engaged in hostilities in Yemen. The Saudi-led coalition relies on U.S. in-flight refueling to carry out airstrikes in Yemen. The UN Panel of Experts identified a significant number of unlawful airstrikes by the Saudi-led coalition.⁷ This provision is needed to ensure that U.S. assistance is not used in furtherance of unlawful strikes. Section 1270F would prohibit the use of special-acquisition funds to support the conduct of hostilities in Yemen. Section 1270G would ensure that the Congress has the opportunity to review proposed sales of defense articles to the Kingdom of Saudi Arabia and the United Arab Emirates. Section 1270H would prohibit support for certain military operations in Yemen, including the provision of spare parts that could be used in unlawful airstrikes.

Subtitle K

The ABA policy adopted in August also urges the United States to impose sanctions and other appropriate punitive measures against every person directly or indirectly responsible for the murder of journalist Jamal Khashoggi and to seek their prosecution in proceedings that are consistent with international law. Subtitle K of the House-passed bill would begin that accountability process. It would require the Director of National Intelligence to submit a report to Congress to determine those responsible for or complicit in the killing and would revoke or deny visas for those individuals.

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⁵ UN Panel of Experts report, supra note 1, at 34.
⁷ UN Panel of Experts report, supra note 1, at 45.
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The aforementioned provisions of the House-passed NDAA send the message that the United States is committed to the just rule of law and accountability for serious violations of international human rights and humanitarian law. We urge you to include them in the final NDAA for FY 2020.

Sincerely,

Judy Perry Martinez