RESOLVED, That the American Bar Association urges the United States Government to enforce fully and consistently the Arms Export Control Act and the Foreign Assistance Act, particularly the human rights provisions thereof;

FURTHER RESOLVED, That the American Bar Association urges the United States Government 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; and

FURTHER RESOLVED, That the American Bar Association urges the Financial Action Task Force (FATF) to enforce its requirement that the Kingdom of Saudi Arabia address and resolve fully FATF’s concerns regarding the Kingdom’s failure to end terrorist financing emanating therefrom and the misuse of its anti-terrorism laws against non-terrorists, including lawyers, and that the Kingdom release all persons it has wrongfully detained, within the next three years in order to retain membership in the Task Force.
REPORT

The murder of the Saudi journalist, Jamal Khashoggi, in the Saudi consulate in Turkey, has drawn renewed attention to the Kingdom of Saudi Arabia’s poor human rights record. The Kingdom has a longstanding reputation as one of the world’s worst human rights abusers, including systematic misuse of its justice system to torture, imprison and execute those who advocate for democratic governance and the rule of law, including a number of lawyers.¹

In addition to these concerns, over the last three years the Kingdom has been accused of routine indiscriminate attacks against civilians during hostilities in Yemen, where the Kingdom is trying to restore a regime that it considers a bulwark against Iranian influence.² A de facto blockade of Yemen by the Saudi-led coalition has contributed to the world’s worst humanitarian disaster, which has forced 12 million Yemenis to the brink of famine.³

In response to these developments, the U.S. Congress has held several unprecedented votes over the last two years, aimed at curbing U.S. support for the Saudi-led coalition’s bombing of Yemen. The Obama administration authorized the sale of more than $100 billion in military equipment and services to the Kingdom before suspending the sale of precision guided munitions due to concerns about unlawful airstrikes.⁴ The Trump administration has continued negotiations for the sale of another $100 billion in defense articles and services.⁵ The ranking member of the Senate Foreign Relations Committee, Sen. Menendez, placed a hold on the sale of additional precision guided munitions, which have been used in numerous air strikes that the UN Panel of Experts found to be inconsistent with the laws of armed conflict.⁶

In response to a congressionally mandated reporting requirement, Secretary of State Michael Pompeo certified that the Saudi-led coalition was taking adequate measures to prevent civilian casualties in Yemen, but acknowledged that the coalition has violated end-use agreements regulating the use of U.S.-origin military equipment. He did not, however, suspend further sales, as required by Section 3 of the Arms Export Control Act for an end-use violation.

A bipartisan group of senators has questioned the veracity of Secretary Pompeo’s certification. In the previous Congress, Sen. Menendez introduced a bipartisan bill that would, inter alia, suspend the sale of certain military equipment, require the Government Accountability Office to review the Pompeo certification, and mandate a State Department report pursuant to Section 502B of the Foreign Assistance Act on whether the Kingdom has engaged in a consistent pattern of gross violations of internationally recognized human rights. Further, Sens. Feinstein and Graham introduced a resolution that would have expressed “the sense of the Senate that Crown Prince Mohammed bin Salman bin Abd al Aziz Al Saud of Saudi Arabia be held accountable for contributing to the humanitarian crisis in Yemen, preventing a resolution to the blockade of Qatar, the jailing and torture of dissidents and activists inside the Kingdom of Saudi Arabia, the use of force to intimidate rivals, and the abhorrent and unjustified murder of journalist Jamal Khashoggi.” The full U.S. House and Senate, meanwhile, voted for the first time to adopt a War Powers Resolution to end U.S. participation in the conflict.

ABA Actions to Date

For several years, the ABA Center for Human Rights has been documenting gross human rights violations against human rights advocates wrongfully imprisoned in Saudi prisons, including one lawyer who was sentenced to prison

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for 15 years by a specialized counterterrorism court. The Center has documented significant fair trial violations in the court, including nearly exclusive reliance on torture-derived evidence. It has presented evidence that the specialized court is diverting counterterrorism resources to spurious cases and not effectively investigating terrorism cases. This information was presented to the U.S. Treasury Department as well as the Financial Action Task Force (FATF), a multilateral body charged with monitoring implementation of counterterror financing laws.

The Task Force issued an evaluation of Saudi Arabia that confirmed that the Kingdom is relying almost exclusively on confessions in its counterterrorism prosecutions and is likely diverting resources to spurious cases. It further found that the Kingdom has “not yet tackled” the problem of third-party terrorist financing, especially with regard to terrorism outside the Middle East. These findings raise serious concerns about whether the Kingdom has addressed the issues that contributed to the financing of those involved in the 9/11 attacks. In response to these findings, the UN Special Rapporteur on Promoting Human Rights While Countering Terrorism and former U.S. Sen. Bob Graham (who chaired the congressional Joint Inquiry into the 9/11 attacks) have called on FATF not to admit the Kingdom to the Task Force – a step that would open-up financial markets for the Kingdom – until Saudi Arabia has tackled the issue of third-party financing of global terrorism and taken steps to bring its counterterrorism law and prosecutions into compliance with international law.

The Kingdom of Saudi Arabia was admitted into FATF in June 2019 but is subject to “enhanced follow-up” due to its low rating for implementing anti-money

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15 Id. at 64.

laundering and counter-terror financing protections.\textsuperscript{17} Pursuant to FATF policies and procedures, members are generally expected to address all deficiencies in their evaluation within three years of the evaluation.\textsuperscript{18}

As to the situation in Yemen, the ABA sent a letter to Sen. Murphy in 2016 noting that ongoing sales of weapons to Saudi Arabia in the face of the misuse of such equipment in Yemen violated Section 502B of the Foreign Assistance Act, which prohibits the provisions of weapons to countries engaged in a consistent pattern of gross human rights violations.\textsuperscript{19} The Center subsequently requested a legal opinion on the matter from Prof. Michael Newton (LTC, U.S. Army ret.). Prof. Newton concluded that, in addition to violating Section 502B, ongoing sales also violate Section 3 of the Arms Export Control Act.\textsuperscript{20}

In sum, the Kingdom of Saudi Arabia’s unrelenting history of human rights abuse is intensifying, which demands a response both consistent and compliant with U.S. and international law. The U.S. Government has unique leverage with the Saudi Government, which it should exercise in defense of human rights and promotion of the rule of law.\textsuperscript{21} To the extent the ABA might influence the U.S. Government to undertake such action, it should do so.


\textsuperscript{18} Id. at para. 29.

\textsuperscript{19} Letter from Thomas M. Susman, Director, Governmental Affairs Office, American Bar Assoc., to The Hon. Chris Murphy, United States Senate (Sept. 14, 2016), available at \url{https://www.americanbar.org/content/dam/aba/uncategorized/GAO/2016sept14_saudiarmstransfers_1.authcheckdam.pdf}.

\textsuperscript{20} Letter from Michael Pates, Director, Center for Human Rights, American Bar Assoc., to The United States Senate (May 19, 2017), available at \url{https://www.documentcloud.org/documents/3727674-ABA-CHR-Assessment-of-Arms-Sales-to-Saudi-Arabia.html#document/p5}.

\textsuperscript{21} See generally Van Metre and Bishai, supra n.13. The authors address broadly the nexus of countering violent extremism to promoting human rights and the rule of law, particularly in the context of failed states where the “elites” in leadership “prey” on the states’ wealth and resources at the expense of the general populace — a scenario that also is applicable to stable dictatorships.

In a political climate in which corrupt despots are painted as critical security partners in the war on terror, how do we make the case that holding these governments accountable is not only in the U.S. interest but actually a better solution to dealing with the threat of extremist violence? . . .

This issue affects developed and developing states alike; it’s a moment of global reckoning. . . . We need to flip the script regarding our sensitivity to these states, because the predatory nature of the elite class has been a powerful driver of violent extremism all along. It’s time for a re-definition — and holding to account — of these so-called “fragile” (mal- governed) states.

The second challenge is to devise a strategy that directly targets state predation, recognizing that it cannot be left up to predatory elites to transform themselves. Such an approach must target the entire system, creating a new political-economy ecosystem; shutting off financial safe havens; and dismantling the mechanisms of predation. The
Respectfully submitted,

Hon. Bernice B. Donald
Chair, Center for Human Rights
August 2019
Resolutions:

1. **Summary of Resolution(s).**

   RESOLVED, That the American Bar Association urges the United States Government to enforce fully and consistently the Arms Export Control Act and the Foreign Assistance Act, particularly the human rights provisions thereof;

   FURTHER RESOLVED, That the American Bar Association urges the United States Government to impose sanctions and other appropriate punitive measures against any and 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;

   FURTHER RESOLVED, That the American Bar Association urges the Financial Action Task Force (FATF) to enforce its requirement that the Kingdom of Saudi Arabia address and resolve fully FATF’s concerns regarding the Kingdom’s failure to end terrorist financing emanating therefrom and the misuse of its anti-terrorism laws against non-terrorists, and that the Kingdom release all persons it has wrongfully detained, within the next three years in order to retain membership in the Task Force.

   This resolution addresses specific legal and policy issues that bear on recent human rights abuses committed by the Kingdom of Saudi Arabia as part of its long record of such abuses. The resolutions urges actions that will address these recent abuses directly and, if implemented, carry significant potential impact on Saudi interests, which may have the effect of curbing the Kingdom’s malign behavior.

2. **Approval by Submitting Entity.** The resolution was approved by the CHR Board in April 2019.

3. **Has this or a similar resolution been submitted to the House or Board previously?** No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?** This resolution will support and demonstrate the Association’s longstanding commitments to various international human rights instruments and to human rights defenders.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?** The initial report was submitted before the deadline. The revised
report has been modified to reflect recent developments, specifically the admission of the Kingdom of Saudi Arabia into FATF in late June 2019.

6. **Status of Legislation.** (If applicable) The president recently vetoed a resolution addressing many of the issues covered in the resolution. It appears Congress will continue its efforts on these issues.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.** Working with the Governmental Affairs Office, CHR will advocate the resolution before relevant governmental bodies.

8. **Cost to the Association.** (Both direct and indirect costs) No additional direct or indirect costs to the Association are anticipated.

9. **Disclosure of Interest.** (If applicable) N/A

10. **Referrals.** The Resolution with Report has been referred to the Business Law Section, the Section of Civil Rights and Social Justice, the Health Law Section, the Section of International Law, the Section of Labor and Employment Law, and the Section of Litigation, as well as the Center for Public Interest Law and the Commission on Domestic & Sexual Violence, the Commission on Immigration, and the Commission on Sexual Orientation and Gender Identity.

11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

   Michael Pates, CHR Director
   American Bar Association
   1050 Connecticut Ave, NW, Fourth Floor
   Washington, DC 20036
   202/662-1025
   michael.pates@americanbar.org

12. **Contact Name and Address Information.** (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*)

   Hon. Bernice B. Donald, CHR Chair
   American Bar Association
   1050 Connecticut Ave, NW, Fourth Floor
   Washington, DC 20036
   240/476-1870 (CHR Director)
   Amy_Robinson@ca6.uscourts.gov (assistant)

**EXECUTIVE SUMMARY**
1. **Summary of the Resolution**

   RESOLVED, That the American Bar Association urges the United States Government to enforce fully and consistently the Arms Export Control Act and the Foreign Assistance Act, particularly the human rights provisions thereof;

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2. **Summary of the Issue that the Resolution Addresses**

   The murder of the Saudi journalist, Jamal Khashoggi, in the Saudi consulate in Turkey, has drawn renewed attention to the Kingdom of Saudi Arabia’s poor human rights record. The Kingdom has a longstanding reputation as one of the world’s worst human rights abusers, including systematic misuse of its justice system to torture, imprison and execute those who advocate for democratic governance and the rule of law, including a number of lawyers.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   The Kingdom of Saudi Arabia’s history of human rights abuse is intensifying, which demands a response both consistent and compliant with U.S. and international law. The U.S. Government has unique leverage with the Saudi Government, which it should exercise in defense of human rights and promotion of the rule of law. To the extent the ABA might influence the U.S. Government to undertake such action, it should do so.
4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None received thus far.