September 14, 2016

The Honorable Chris Murphy  The Honorable Rand Paul
United States Senate    United States Senate
Washington, DC 20510   Washington, DC 20510

Dear Senator Murphy and Senator Paul:

On behalf of the American Bar Association (ABA), I write to commend you for your efforts to draw attention to the humanitarian crisis in Yemen resulting from the armed conflict in that country and the need for increased scrutiny of exports of military equipment to parties to that conflict.

The ABA is an independent, voluntary, nongovernmental organization of over 400,000 lawyers, judges, and law students worldwide. The ABA regards human rights and the rule of law as cornerstones of a free and just society, including in times of armed conflict. It supports strict adherence to the law of armed conflict and has called for investigations into alleged violations of such law by both the United States and others.

As you know, there have been significant civilian casualties in the course of the conflict in Yemen; in a recent report, the UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein called for an international independent investigation into serious violations of international human rights law and international humanitarian law committed by all sides to the conflict. There are credible reports that Saudi security forces have used U.S.-origin military equipment in indiscriminate and disproportionate attacks on civilians. The ABA is particularly concerned by reports of the use of cluster munitions in civilian areas.

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U.S. law generally prohibits the provision of security assistance, including the authorization of the export of military equipment and services, to any country whose government “engages in a consistent pattern of gross violations of internationally recognized human rights.” See 22 U.S.C. § 2304. It also prohibits sales of military equipment pursuant to the Arms Export Control Act to foreign units that are the subject of credible reports of human rights abuses. See 22 U.S.C. § 2378d. The Department of Defense is prohibited from providing assistance or support services to units engaged in gross violations of human rights or that are otherwise prohibited from receiving U.S. assistance. See 10 U.S.C. Sections 2249e and 2282. The United States is also required to collect information on incidents that may constitute violations of international humanitarian law. See 22 U.S.C. § 8213.
In light of these provisions of law, the United States has an obligation to suspend further security assistance at least until such time as it can be credibly determined that Saudi Arabia – and any other recipients of U.S. defense articles or services participating in the conflict that are alleged to have engaged in human rights violations – are abiding by the law of armed conflict and have fully investigated these allegations. Congress should therefore take all appropriate steps to ensure implementation of U.S. law with regard to the sale of military equipment to parties to the conflict in Yemen.

The ABA is concerned that ongoing export of equipment that has been used in an inappropriate manner in civilian areas could have a destabilizing influence in the region. Adherence to the law of armed conflict, including in particular the prohibition on indiscriminate or disproportionate attacks, is essential to our efforts not only to uphold the rule of law, but to successfully combat violent extremism. If the United States is perceived, even implicitly, to condone or aid and abet indiscriminate attacks on civilians, our nation’s efforts to isolate and marginalize those advocating violent extremism will be undermined.

In light of the potentially severe long-term implications of indiscriminate or disproportionate attacks on civilians in Yemen, it is essential that the United States ensure that no parties to the conflict are using U.S.-origin military equipment or services in furtherance of violations of the law of armed conflict.

Thank you for your leadership on this matter.

Sincerely,

Thomas M. Susman