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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

#### **Note verbale dated 28 March 2019 from the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights**

The Permanent Mission of the United Arab Emirates to the United Nations Office and other international organizations in Geneva presents its compliments to the President of the Human Rights Council, and has the honor to forward a copy of a letter by the Minister of State for Foreign Affairs, Dr. Anwar Mohammed Gargash, that was transmitted to the United Nations High Commissioner for Human Rights, clarifying the position of the Government of the United Arab Emirates regarding the findings of the Group of Eminent Experts on Yemen contained in the report of the High Commissioner (A/HRC/39/43) (see annex).

The Permanent Mission kindly requests the President of the Human Rights Council to circulate the present note verbale and the annex thereto\* as a document of the fortieth session of the Human Rights Council.

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\* Reproduced as received, in the language of submission only.



**Annex to the note verbale dated 28 March 2019 from the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva addressed to the President of the Human Rights Council.**

**Letter dated 24 March 2019 from H.E. Dr. Anwar Mohammed Gargash, Minister of State for Foreign Affairs addressed to the United Nations High Commissioner for Human Rights**

Excellency,

Please allow me to reiterate the UAE Government's support for your important mandate as United Nations High Commissioner for Human Rights, and deep appreciation for your role in consistently working with member states and other stakeholders to address the human rights challenges around the world, including in Yemen.

After very careful consideration and internal coordination among the concerned authorities in the United Arab Emirates, I write to draw your attention to our serious concerns regarding the work of the Group of Eminent International and Regional Experts on Yemen (Group of Experts).

This is following the letter dated 19 September 2018 sent by the Kingdom of Saudi Arabia on behalf of the Coalition States for Support of Legitimacy in Yemen to the Office of the High Commissioner for Human Rights.

The conflict in Yemen and the humanitarian suffering in many parts of the country are the direct results of the illegal and violent overthrow in 2014 of the legitimate Government of Yemen by the Houthi militia. In 2015, the United Arab Emirates, at the official request of the legitimate Government of Yemen and as a member of the Coalition, took decisive action against the Houthi militia to support the legitimate Government of Yemen. This action was taken in full accordance with international law. At all times and in every area during the conflict, the United Arab Emirates has complied fully with its obligations under international law, in its military actions and in its humanitarian relief efforts.

As such, and because of its shared concern for the wellbeing of the people of Yemen, the United Arab Emirates initially supported the adoption of Human Rights Council Resolution 36/31 (2017), directed at addressing the human rights situation in Yemen through the establishment of a Group of Experts and the provision of support and assistance to the legitimate Government of Yemen.

Regrettably, the Group of Experts has fallen far short of the Human Rights Council's objectives, as reflected in its report issued on 28 August 2018 (A/HRC/39/43). The attached response provides a more comprehensive assessment of the numerous failings of the report, which centre around the manner in which the Group of Experts has:

- *exceeded its mandate* in several respects, including by making legal and judicial determinations of alleged criminal wrongdoing based on subjective speculation;
- *failed to fulfill its mandate* in other respects, for example, neglecting to report on international humanitarian law violations or human rights abuses perpetrated by terrorist groups in Yemen, or on attacks against civilians between September 2014 to March 2015;
- *failed to depict accurately and apply the context of the conflict in Yemen* to its monitoring and reporting functions, including through disregarding the cause of the conflict and the armed aggression by the Houthi militia or the role of Iran in fueling the conflict;
- *erred in its conceptual approach and methodology*, particularly its selective approach in its investigations, underreporting of Houthi militia violations, and its

inconsistent terminology, which ultimately dissociates the Houthi militia from the Group's findings of violations of international humanitarian law;

- *misinterpreted and misapplied* relevant principles of international law, particularly international humanitarian law;
- *presented incorrect, unverified and imprecise claims* against the United Arab Emirates, as a result of flaws in its fact-finding process.

In summary, the Group's mistakes and missteps in judgement and methodology are too numerous and too serious to ignore. They ultimately colour the entirety of the report and its findings, to the point of negating the intended purpose of this Group. Accordingly, following a careful review of the report, the United Arab Emirates along with the Government of Yemen and the Kingdom of Saudi Arabia rejected the findings of the report, and, along with many other Human Rights Council members, decided not to support the renewal of the mandate of the Group of Experts last year. Regrettably, the decision to renew the Group's mandate is considered problematic and was taken in a non-consensual manner.

Instead of commissioning yet another report that will not achieve our shared objective to strengthen the protection and promotion of human rights in Yemen, the United Arab Emirates firmly believes the people of Yemen would be better served if the Human Rights Council refocuses on providing the support, capacity building and technical assistance the Government of Yemen has consistently requested. This would be an important step in rebuilding institutions that will be essential in laying the groundwork for a more hopeful future for all Yemenis.

I respectfully submit our analysis and suggestions for your consideration.

Please accept, Excellency, the assurances of our highest consideration.

Sincerely,

Anwar Mohammed Gargash  
Minister of State for Foreign Affairs  
United Arab Emirates

## Attachment

### Response of the United Arab Emirates to the report of the United Nations High Commissioner for Human Rights containing the findings of the group of eminent international and regional experts on Yemen

1. Human Rights Council Resolution 36/31 (2017)<sup>1</sup> was adopted to address the human rights situation in Yemen through the establishment of the Group of Eminent International and Regional Experts on Yemen (the “**Group of Experts**”) and the provision of support and assistance to the legitimate Government of Yemen. As a result of close consultation between Council Members, the Resolution was sponsored by Egypt on behalf of the Arab Group and adopted by consensus under the agenda item “Human rights, technical assistance and capacity-building in Yemen”. The United Arab Emirates and the Kingdom of Saudi Arabia joined in that consensus because of our shared concern for the wellbeing of the people of Yemen and our firm commitment to strengthening the protection and promotion of human rights in Yemen and supporting its national institutions.
2. Regrettably, the Group of Experts has fallen far short of the Human Rights Council’s objectives.
3. The United Arab Emirates has the following serious reservations about the work of the Group of Experts, set out in the corresponding sections of this response, below:
  - (a) the Group of Experts made errors in its conduct and methodology (Section A);
  - (b) the Group of Experts exceeded its mandate in certain respects, while also neglecting other integral aspects of its mandate, as a result of the manner in which the Group sought to execute its mandate (Section B);
  - (c) the Group of Experts failed to consider and apply the context of the conflict in Yemen properly in its monitoring and reporting functions (Section C);
  - (d) the Group of Experts misinterpreted and misapplied relevant principles of international law, particularly international humanitarian law (Section D);
  - (e) the Group of Experts reached incorrect findings of fact (Section E).
4. This response concludes by sharing the position of the United Arab Emirates on the best way forward for the Human Rights Council and the Office of the High Commissioner for Human Rights (the “**OHCHR**”) to address the human rights situation in Yemen (**Section F**).
5. At the outset, the United Arab Emirates reiterates the strong objections to the Group of Experts made on behalf of the Coalition to Support Legitimacy in Yemen (the “**Coalition**”) in the *note verbale* dated 19 September 2018 from the Permanent Mission of Saudi Arabia to the United Nations Office at Geneva addressed to the Office of the High Commissioner for Human Rights (the “**Coalition note verbale**”).<sup>2</sup> The United Arab Emirates also supports the objections made by the legitimate Government of Yemen in the *note verbale* dated 10 September 2018 from the Permanent Mission of Yemen to the United Nations Office at Geneva addressed to the secretariat of the Human Rights Council (the “**Yemen note verbale**”).<sup>3</sup>

<sup>1</sup> Human Rights Council Resolution 36/31 (2017), *Human rights, technical assistance and capacity-building in Yemen*, A/HRC/RES/36/31 (29 September 2017).

<sup>2</sup> Human Rights Council, *Note verbale dated 19 September 2018 from the Permanent Mission of Saudi Arabia to the United Nations Office at Geneva addressed to the Office of the High Commissioner for Human Rights*, A/HRC/39/G/6 (19 September 2018).

<sup>3</sup> Human Rights Council, *Note verbale dated 10 September 2018 from the Permanent Mission of Yemen to the United Nations Office at Geneva addressed to the secretariat of the Human Rights Council*, A/HRC/39/G/5 (10 September 2018).

6. In addition to the objections outlined in the Coalition *note verbale* and the Yemen *note verbale*, the United Arab Emirates provides this response to the Report of the United Nations High Commissioner for Human Rights containing the findings of the Group of Eminent International and Regional Experts and a summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry (the “**Report**”).<sup>4</sup> It does so following careful consideration of the Report and in light of: (i) the continuing trends and escalation in violations of international humanitarian law and human rights abuses perpetrated by the Iranian-backed Houthis; and (ii) the Group of Experts’ inability to access areas where such abuses have taken place.

## **A. The Group of Experts made errors in its conduct and methodology**

7. United Nations standards for inquiries and human rights monitoring under the Organisation’s authority demand, for the purposes of impartiality, that alleged violations by all parties should be investigated with equal thoroughness and vigour. The Group of Experts is required both to act impartially and to avoid any perceptions of bias. Unfortunately, the methodology and conduct of the Group of Experts does not appear to meet the requisite standards.

### **(i) The methodology adopted by the Group of Experts vis-à-vis alleged attacks affecting civilians attributed to the Coalition is opaque**

8. The opacity of the methodology adopted by the Group of Experts in its examination of attacks affecting civilians is apparent in the Group of Experts’ description of the alleged incidents attributed to the Coalition. The Group of Experts states that it has ‘investigated’ 11 incidents and explains its methodology for these investigations. Confusingly, however, immediately thereafter and throughout the following paragraphs, the Group of Experts proceeds to refer to no less than 150 cases and incidents it claims to have ‘reviewed’. The Group of Experts does not, however, explain the methodology it used, i.e., what ‘review’ means and how it differs from its methodology for ‘investigations’. The Group neither explains why it chose to include references to cases it ‘reviewed’, nor does it provide context for these cases; the ‘reviewed’ cases are included without any reasoned analysis and are presented as if they were verified facts. This lack of clarity is misleading and is particularly objectionable in light of the explicit mandate of the Group of Experts to ‘establish the facts and circumstances surrounding the alleged violations and abuses’.

### **(ii) The manner in which the Group of Experts examined alleged violations attributed to the Coalition sharply differs from its approach vis-à-vis violations attributed to the Houthis**

9. The inconsistency in the Group of Experts’ conduct of its examination of alleged abuses and violations is most evident vis-à-vis attacks affecting civilians. It is troubling that the Group of Experts dedicated its time and resources to ‘investigate’ 11 incidents and ‘review’ some 150 cases and incidents attributed to the Coalition, yet did not investigate a single specific incident attributed to the Houthis and elected to defer making any finding of Houthi responsibility for civilian casualties in Tai’zz, on the basis that it ‘requires further investigation’. Regardless of its motivations, the Group of Experts’ decision only to investigate incidents attributed to the Coalition during its reporting mandate is highly questionable. No reasonable observer could conclude, on this basis, that the Group faithfully executed its obligation to investigate alleged violations by all parties with equal thoroughness and vigour. The unfortunate consequence of the Group of Experts’ improper approach is a report which is irreparably unbalanced, resulting in misperceptions about the situation of human rights in Yemen.

<sup>4</sup> Human Rights Council, Situation of human rights in Yemen, including violations and abuses since September 2014: *Report of the United Nations High Commissioner for Human Rights containing the findings of the Group of Eminent International and Regional Experts and a summary of technical assistance provided by the Office of the High Commissioner to the National Commission of Inquiry*, A/HRC/39/43 (17 August 2018) [issued on 28 August 2018].

10. The Group of Experts' writing on access restrictions provides further evidence of its discriminatory approach: in contrast to its lengthy findings vis-à-vis the Coalition, for which it also dedicates an Annex, the Group concludes that further investigation on restrictions and impediments imposed by all parties in Ta'izz is required.

**(iii) The Group of Experts' inconsistent description of the Houthis in the report minimises the Houthis' wrongdoing**

11. Even where the Group of Experts does address Houthi wrongdoing, its inconsistent identification and descriptions of the Houthi militias – perhaps unintentionally – creates a false impression as to the extent of culpability for widespread and systematic violations of international humanitarian law.

12. The Group of Experts switches between different descriptions of the Houthis throughout its report. For instance, the Group refers to 'Houthi-Saleh' in its limited discussion of Houthi attacks on civilians and child recruitment. However, in several other places, including the "Conclusions and Recommendations" part of the report (Part G), the Group of Experts makes no reference to the Houthis, instead referring to the 'de facto authorities'. No explicit connection between 'the Houthis' and 'the de facto authorities' is established in the body of the report. The Group, without explanation or clarification, alternates between using 'the Houthis' when discussing cases of child recruitment and '[i]ndividuals in the de facto authorities' when concluding that the Houthis have committed acts that may amount to the war crime of child recruitment. Irrespective of the Group of Experts' motivations or justifications, the clear effect of its confusing use of multiple descriptors for the Houthis is to disconnect certain Houthi violations and abuses from others in a manner that minimises their wrongdoing. And, significantly, this practice ultimately dissociates the Houthis from the Group's findings of violations of international humanitarian law.

**(iv) The Group of Experts' selective approach to investigations results in an unbalanced report that does not reflect the extent and gravity of Houthi violations**

13. The Group of Experts' claim that its report is 'illustrative of the main types and patterns of violations' is directly contradicted by its apparent prioritisation of cases involving allegations against the Coalition. Its approach becomes all the more disconcerting when considering the fact that the Group was not able to visit critical parts of Yemen, thereby restricting the report's focus to certain areas of Yemen only.

14. By adopting a case selection approach which appears to prioritise cases involving the Coalition, the Group of Experts fails to depict the extent and gravity of violations committed by the Houthis. This self-evidently results in an unbalanced report. The Group's failure to address Houthi violations is rather surprising, given that the Houthis' complete disregard for international humanitarian law and international human rights law is well documented, including by various United Nations bodies, and in light of the standard of proof adopted by the Group of Experts ("reasonable grounds to believe").

15. For instance, the Group's reporting scarcely reflects that, according to the previous High Commissioner for Human Rights, the Houthis were responsible for 82 per cent of all documented cases of arbitrary or illegal detention between March 2015 and June 2017. Additionally, although the Report mentions that nearly two-thirds of the verified cases of recruitment and use of boys were attributed to the Houthis in 2017, it does not depict the pattern of this violation documented in the Secretary-General's reports on Children and Armed Conflict, i.e., that the Houthis were responsible for a substantial majority of verified cases of child recruitment not just in 2017 but also in 2015 and 2016.

16. Similarly, the Group of Experts' report fails to reflect that the vast majority of incidents involving the denial of humanitarian access in Yemen have been attributed to the Houthis, despite consistent findings in that regard. Nor does it reflect the findings by the Panel of Experts on Yemen of continued Houthi obstructions to the distribution of humanitarian assistance, including: aid diversion; delays or refusals that affect timely distribution; arrests, detentions, intimidation and torture of humanitarian staff and confiscation of equipment; interference in the selection of beneficiaries, areas of operation

and implementing partners; declaration of areas as military zones, making them inaccessible to humanitarians; extortion and demands for payment under threats of violence; obstruction of the delivery of cholera response material; issues relating to customs clearance; and delays in clearing the importation of medicine from Sana'a International Airport. It is also regrettable that the Group of Experts makes only a passing reference in one sentence to what it qualifies as 'acute' restrictions imposed by the Houthi militia forces in Aden in August 2015.

17. Further, the Group of Experts did not investigate incidents of the Houthis damaging protected sites, such as medical facilities, educational facilities and religious and cultural sites, through attacks and by positioning military objectives within these sites. The Group of Experts makes no conclusive finding with regard to the Houthis' recurrent and indiscriminate shelling of densely populated civilian areas, which the former High Commissioner for Human Rights concluded has 'caused hundreds of civilian casualties and vast destruction to civilian objects'.

18. Other well-documented violations that are not included in the report include the Houthis' widespread and indiscriminate laying of hundreds of thousands of personnel mines and improvised explosive devices, resulting in civilian casualties, the verified cases of the Houthis abducting children for ransom; the verified cases of the Houthis forced displacement of entire villages; the use of human shields, to mention some.

**(v) The continuing pattern of Houthi violations highlights the flaws in the Group of Experts' conduct and methodology**

19. The fundamentally erroneous approach of the Group to its methodology and case selection is confirmed by the fact that the very pattern of Houthi violations that the Group overlooked has continued in the period since the Group's submission of its Report in August 2018.

20. The Houthis continue to violate human rights law and international humanitarian law systematically. For example, the most recent report of the Panel of Experts on Yemen found that the Houthis committed several violations of international humanitarian law, including: attacks in the Red Sea against a commercial vessel carrying food; the indiscriminate use of explosive ordnances disproportionately affecting civilians; arbitrary detention and mistreatment of detainees; attacking an ambulance and damaging and forcing the evacuation of a hospital; and obstruction to the distribution of humanitarian assistance. The Panel of Experts also held that the Houthis have 'demonstrated a frequent disrespect' for international humanitarian law and have failed to respect their obligations to facilitate the delivery of humanitarian relief, by placing 'consistent pressure' on humanitarian actors.

21. Worryingly, the Houthis have prevented access to and attacked the Red Sea Mills, which contain enough grains to feed 3.7 million people for a month. United Nations officials have also repeatedly raised concern at restrictions and bureaucratic impediments humanitarian organisations face in Sana'a, including delays in visas and customs and registration of non-governmental organisations, and at unacceptable interference with humanitarian operations such as the Houthis blocking humanitarian supplies from travelling to areas under the legitimate government of Yemen. Recently, the WFP has uncovered the outrageous diversion of humanitarian food relief in Yemen in Sana'a and other Houthi seized areas and has demanded that the Houthis take immediate action to end the diversion. There also continues to be a shortage of relief goods as a result of deliberate actions by the Houthis to obstruct the distribution of aid. For example, on 29 December 2018, the Houthis refused to reciprocate cross-line arrangements for the passage of a major United Nations humanitarian convoy and, again, blocked a convoy on 29 January 2019. As reported by Médecins Sans Frontières, the Houthis continue to plant landmines and improvised explosive devices, thereby endangering the civilian population. These actions clearly imperil the lives of civilians and demonstrate a contemptuous disregard for international law.

## **B. The Group of Experts exceeded its mandate in certain respects, while also neglecting other integral aspects of its mandate**

22. The United Arab Emirates is deeply troubled by the manner in which the Group of Experts has exceeded its mandate in certain respects, while neglecting other critical aspects of its mandate.

23. The United Arab Emirates reiterates the strong objections of Yemen<sup>5</sup> and of the Kingdom of Saudi Arabia on behalf of the Coalition<sup>6</sup> with respect to the Group of Experts' approach to its mandate. In addition, the United Arab Emirates makes the following observations.

### **(i) By not examining and reporting on violations and abuses by non-state actors, the Group of Experts has failed to fulfil a critical aspect of its mandate**

24. Under Human Rights Council Resolution 36/31 (2017), the Group of Experts was tasked with conducting a comprehensive examination of 'all alleged violations and abuses of international human rights and other appropriate and applicable fields of international law committed by all parties to the conflict'.<sup>7</sup> The Group expressed the view that the report 'is illustrative of the main types and patterns of violations'.<sup>8</sup> Yet, it failed to report on any international humanitarian law violations or human rights abuses perpetrated by terrorist groups namely Al-Qaida in the Arabian Peninsula ("AQAP") and Da'esh. This is deeply concerning and objectionable.

25. The modus operandi of AQAP and Da'esh is to terrorise civilians through deliberate, unlawful attacks calculated to cause suffering and instil fear. AQAP, in particular, has sought to capitalise on the political instability in Yemen and remains a threat to regional and international peace and security.<sup>9</sup> Numerous United Nations bodies have held that:

- (a) AQAP and Da'esh are responsible for the killing of civilians;<sup>10</sup>
  - (b) AQAP is responsible for the abduction of civilians,<sup>11</sup> including cases of abduction for ransom,<sup>12</sup> and the recruitment of children;<sup>13</sup>
  - (c) AQAP and Da'esh have carried out attacks on religious and cultural sites;<sup>14</sup>
- and

<sup>5</sup> Yemen note verbale, ¶¶1–3.

<sup>6</sup> Coalition note verbale, ¶¶1, 3.

<sup>7</sup> Resolution 36/31 (2017), ¶12 (a) [emphasis added].

<sup>8</sup> Ibid, ¶6.

<sup>9</sup> See, Security Council, *Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014)*, S/2016/73 (22 January 2016) (Panel of Experts 2016 Report), ¶¶54–59. AQAP and Da'esh remain present in Yemen. See Security Council, *Final report of the Panel of Experts on Yemen*, S/2019/83 (25 January 2019) (Panel of Experts 2019 Report), ¶70 [AQAP], ¶73 [Da'esh]; Security Council, *Twenty-third report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da'esh), Al-Qaida and associated individuals and entities*, S/2019/50 (15 January 2019), ¶27 [AQAP], ¶28 [Da'esh].

<sup>10</sup> See, e.g. Panel of Experts 2016 Report, ¶57 [Daesh], Panel of Experts 2017 Report, Annex 28; ¶Human Rights Council, *Report of the United Nations High Commissioner for Human Rights*, A/HRC/33/38, (4 August 2016) (HCHR 2016 Report), ¶57; Security Council, *Twenty-first report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da'esh), Al-Qaida and associated individuals and entities*, S/2018/14/Rev.1 (17 January 2018), ¶24.

<sup>11</sup> See, e.g., Human Rights Council, *Situation of human rights in Yemen, including violations and abuses since September 2014: Report of the United Nations High Commissioner for Human Rights*, A/HRC/36/33 (13 September 2017) (HCHR 2017 Report), ¶61.

<sup>12</sup> See, e.g., Security Council, *Twenty-second report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2368 (2017) concerning ISIL (Da'esh), Al-Qaida and associated individuals and entities*, S/2018/705 (16 July 2018), ¶26; Security Council, *Children and Armed Conflict: Report of the Secretary-General*, S/2016/360 (20 April 2016) (CAAC 2016 Report), ¶173; CAAC 2017 Report, ¶197.

<sup>13</sup> See, e.g., CAAC 2018 Report, ¶201; CAAC 2017 Report, ¶188.



(d) AQAP has used a hospital for its military operations.<sup>15</sup>

26. Yet, notwithstanding this abundant evidence, the Group of Experts does not make any findings against AQAP or Da'esh; indeed, the Report only makes a solitary passing reference to 'suicide and other attacks ... resulting in high civilian casualties' claimed by Al-Qaida and groups affiliated with Da'esh, in 2015 and 2016.<sup>16</sup>

27. The Group of Experts' failure to examine and report on violations and abuses committed by AQAP and Da'esh is more than a mere oversight; it is tantamount to a derogation from the Group's mandate to examine 'all alleged violations and abuses of international human rights and other appropriate and applicable fields of international law'<sup>17</sup> in Yemen. Importantly, by electing not to examine and report on the threat presented by these terrorist groups, the Group also narrows the context of its examinations in a manner that falls outside its mandate, effectively ignoring the imperative of counterterrorism operations undertaken by the Coalition, local Yemeni forces and other States.

**(ii) The Group of Experts has failed to fulfil its mandate for the period from September 2014 to March 2015**

28. The Group of Experts has also inexplicably delimited the temporal scope of its investigations. The Human Rights Council explicitly mandated the Group of Experts to carry out a comprehensive examination of all alleged violations and abuses committed by all parties to the conflict 'since September 2014'.<sup>18</sup> The decision by the Group of Experts to prioritise the investigation of airstrike incidents occurring since August 2017 – purportedly to 'update OHCHR's last public report' – is, in and of itself, inappropriate.<sup>19</sup> The Human Rights Council did not establish the Group of Experts merely in order to supplement the reporting of the OHCHR. And, in any event, the Group of Experts contradicts itself on this point when it nevertheless repeatedly includes references of alleged Coalition airstrikes occurring in 2015 and 2016<sup>20</sup>.

29. It is significant that the Group of Experts has elected largely to ignore grave violations and abuses perpetrated by the Houthi militias in the time period prescribed under its mandate. In particular, the Group of Experts fails entirely to investigate a single alleged attack affecting civilians and other abuses during and following the Houthis' illegal seizure of state institutions in the period from September 2014 to March 2015.<sup>21</sup> For other types of alleged violations or abuses, the Group's efforts to fulfil its mandate are wantonly incomplete and amount to little more than paying lip service to its mandate for this period.<sup>22</sup> The Group of Experts' conscious decision to neglect the human rights abuses perpetrated by the Houthis in the period from September 2014 to March 2015 constitutes a partial abdication of its mandate.

**(iii) The Group of Experts has exceeded its mandate**

30. The United Arab Emirates also has serious reservations about the ways in which the Group of Experts has exceeded its mandate. Nowhere is this more apparent than in the Group of Experts' recommendations. In particular, instead of calling for the parties to comply with the arms embargo established under Security Council resolution 2216 (2015),

<sup>14</sup> See, e.g., HCHR 2016 Report, ¶44 and Annex I (E).

<sup>15</sup> See, e.g., CAAC 2016 Report, ¶172.

<sup>16</sup> Report, ¶21.

<sup>17</sup> Resolution 36/31 (2017), ¶12 (a) [emphasis added].

<sup>18</sup> Ibid.

<sup>19</sup> Report, Annex IV, ¶13.

<sup>20</sup> See Report, ¶¶29–36.

<sup>21</sup> See e.g. *ibid.*, ¶27.

<sup>22</sup> See, e.g., *ibid.*, ¶¶75, 81, 86. In contrast, the Panel of Experts on Yemen made several findings of violations committed during this period: Security Council, *Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014)*, S/2015/125 (20 February 2015) (Panel of Experts 2015 Report), ¶¶130–144.

the Group of Experts takes it upon itself to recommend – sweepingly and without qualification – that the international community ‘[r]efrain from providing arms that could be used in the conflict in Yemen’.<sup>23</sup> Such recommendation goes far beyond the Group of Experts’ functions or mandate and is unconnected to its findings.

31. Further, the Group of Experts goes beyond its mandate as a monitoring and reporting body when it purports to make legal and judicial determinations of criminal wrongdoings.<sup>24</sup> In this regard, the terminology adopted in Resolution 36/31 (2017) differs from the Resolution that established the Independent International Commission of Inquiry on the Syrian Arab Republic.<sup>25</sup>

32. In any event, even if it had the mandate to do so, the Group of Experts, in a number of instances, did not correctly implement it.<sup>26</sup> Instead of establishing the facts and circumstances that are necessary to reach a specific legal determination, it based it on conjecture. For example, the Group of Experts states that certain acts, ‘with the requisite intent’, may amount to international crimes.<sup>27</sup> Crucially, it fails to establish whether the requisite intent is present in the circumstances, yet decides to make a legal determination that the acts may constitute crimes. As a consequence, the Group of Experts’ legal determination is speculative and dangerously misleading.

33. The Group of Experts’ unsubstantiated legal assessments about the lawfulness of alleged Coalition airstrikes are especially concerning. Despite its self-proclaimed approach of examining incidents partly on the basis of ‘access to victims, witnesses and supporting documentation’,<sup>28</sup> the Group of Experts admits that it does not possess critical information about the Coalition’s targeting process. Despite this, the Group of Experts undertakes a broad-brush analysis of the lawfulness of all alleged airstrikes, based only on the results of the incidents.<sup>29</sup> This analysis is deeply flawed and a serious misapplication of international humanitarian law. Absent information about the military objectives of alleged airstrikes, the Group of Experts simply speculates as to whether said airstrikes had a legitimate military objective.<sup>30</sup> In so doing, the Group of Experts ignores that the relevant test under international law necessitates an assessment based on the information available to a reasonable person in the circumstances of each individual targeting decision<sup>31</sup>. The Group nonetheless repeatedly reaches sweeping conclusions about ‘war crimes’ without ever examining such real-time information. It does not examine what information was available to commanders in the field. Instead, the Group substitutes its own hindsight judgment.

34. The Group of Experts also chose to publish a section on ‘Mapping of actors’ in Annex I of its report, which includes inaccuracies. No explanation is provided for the inclusion of this Annex.<sup>32</sup> It is not cited in the body of the report and no clarification or caveat is given as to its intended use. In light of the fact that the Group of Experts transmitted a list of individuals who may be responsible for international crimes to the High

<sup>23</sup> Report, ¶112 (b).

<sup>24</sup> See e.g. Report, ¶108 (b).

<sup>25</sup> The Group of Experts’ mandate is to ‘establish the facts and circumstances surrounding the alleged violations and abuses and, where possible, to identify those responsible’. See Resolution 36/31 (2017), ¶12 (a)). By contrast, the mandate of the Commission of Inquiry on Syria is to ‘to establish the facts and circumstances that may amount to such violations *and of the crimes perpetrated* [emphasis added] and, where possible, to identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable’. See Human Rights Council Resolution S-17/1, A/HRC/RES/S-17/1 (22 August 2011), ¶13.

<sup>26</sup> Report, ¶¶39, 59.

<sup>27</sup> See *ibid.*, ¶59.

<sup>28</sup> *Ibid.*, ¶4.

<sup>29</sup> *Ibid.*, ¶37–38.

<sup>30</sup> *Ibid.*, ¶38 (a).

<sup>31</sup> International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T (5 December 2003), ¶58; Office of the Prosecutor, International Criminal Tribunal for the former Yugoslavia, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia* (2000), ¶50.

<sup>32</sup> The publication of this Annex is distinct from any internal actor-mapping exercise that may have been necessary for its monitoring function.

Commissioner for Human Rights, the utility of the publication of Annex I and its rational connection to the Group of Experts' mandate is indiscernible. Taken together with the Group's improper speculation about the commission of international crimes, the publication of Annex I serves only to invite unwarranted and dangerous speculation about individual criminal responsibility.

### C. The Group of Experts failed to consider and apply the context of the conflict in Yemen properly

35. It is an integral part of the Group of Experts' mandate to consider the context of the conflict in Yemen. It is directed to do so, in its mandate, by 'establish[ing] the facts and circumstances surrounding the alleged violations and abuses' of international law in the Yemen conflict.<sup>33</sup> The context of the conflict in Yemen is critical. It is necessary to understand the causes of the conflict and the factors which continue to fuel it. It is also necessary to assess actions taken by the legitimate Government of Yemen to protect the human rights of its citizens and those of the Coalition to Support Legitimacy in Yemen at the request of the Government of Yemen. Additionally, the context of the conflict is necessary to ascertain whether certain acts constitute lawful restrictions on human rights or whether there exist circumstances precluding the wrongfulness of certain acts.

36. Unfortunately, the Group of Experts has failed to depict and apply the context of the Yemen conflict and the surrounding circumstances accurately.<sup>34</sup> In particular, it disregards the causes of the conflict and the armed aggression by the Houthi militias. This lapse in judgment is inexcusable. It is inconsistent with the Security Council's repeated condemnation of the:

- unilateral actions taken by the Houthis to dissolve parliament and take over Yemen's government institutions, which ... seriously escalated the situation, ... [and] the acts of violence committed by the Houthis and their supporters, which ... undermined the political transition process in Yemen, and jeopardized the security, stability, sovereignty and unity of Yemen.<sup>35</sup>

37. Similarly, the Group of Experts neglects to consider Iran's role in fuelling the conflict, through its provision of arms, materiel and know-how to the Houthis, in violation of the arms embargo and restrictions imposed by the Security Council.<sup>36</sup>

38. A further example is the Group of Experts' ill-advised description of Abdulmalik Bader Aldain al-Houthi as the "Leader of the revolution". This contrasts starkly with the designation of Mr. al-Houthi by the Security Council as 'a leader of a group that has engaged in acts that threaten the peace, security, or stability of Yemen'.<sup>37</sup>

39. The Group of Experts' description seemingly ascribes legitimacy to al-Houthi's unlawful actions and is irresponsible. In this regard, it is noteworthy that other United Nations bodies and officials have not used this description.<sup>38</sup>

40. The Group of Experts' other errors and inaccuracies about the context of the Yemen conflict have been comprehensively refuted by the Government of Yemen<sup>39</sup> and the

<sup>33</sup> Resolution 36/31 (2017), ¶12 (a).

<sup>34</sup> See OHCHR, Manual on Human Rights Monitoring, No. 7, Rev. 1 (2007), Ch. II, ¶N (OHCHR Human Rights Monitoring Manual).

<sup>35</sup> Security Council Resolution 2201 (2015), S/RES/2201 (15 February 2015).

<sup>36</sup> Security Council Resolution 2216 (2015), S/RES/2216 (14 April 2015); Security Council Resolution 2231 (2015), S/RES/2231 (20 July 2015). See Security Council, *Final report of the Panel of Experts on Yemen*, S/2018/594 (26 January 2018 (Panel of Experts 2018 Report)), ¶¶79, 90 (i), 96, 100–101, 104; Security Council, *Sixth report of the Secretary-General on the implementation of Security Council resolution 2231 (2015)*, S/2018/1089 (6 December 2018), ¶¶10–11, 23–24.

<sup>37</sup> Security Council Resolution 2216 (2015), Annex, ¶1.

<sup>38</sup> See e.g. Security Council, 8441<sup>st</sup> meeting, S/PV.8441 (9 January 2019) [Special Envoy of the Secretary-General for Yemen].

<sup>39</sup> See Yemen note verbale, ¶11.

Kingdom of Saudi Arabia (on behalf of the Coalition).<sup>40</sup> For present purposes, it is sufficient to observe that these material errors colour the entirety of the Group's work, affecting its case selection, investigation processes, legal analysis, findings and recommendations.

#### **D. The Group of Experts misinterpreted and misapplied relevant principles of international law, particularly international humanitarian law**

41. Under its mandate, the Group of Experts was to 'monitor and report on' the human rights situation in Yemen, 'carry out a comprehensive examination' of alleged violations, 'establish facts and circumstances' surrounding the alleged violations and, where possible, 'identify those responsible'. It was to 'make general recommendations' on how to improve the respect for human rights and 'provide guidance' on access to justice, accountability and reconciliation. Finally, it was to engage with all stakeholders with a view to exchanging information and providing support for national, regional and international efforts to promote accountability.

42. None of these tasks empowered the Group of Experts to determine criminal responsibility for violations to certain parties to the conflict.

43. The Group of Experts nevertheless makes sweeping assertions that are at risk of being mistaken for credible legal assessments. They are not. They are devoid of the precise legal analysis necessary for the application of international humanitarian law. They amount to nothing more than dangerous speculation.

##### **(i) Mischaracterisation of international humanitarian law principles applicable to targeting process**

44. The Group of Experts misrepresents the rules of international humanitarian law and international criminal law applicable in a non-international armed conflict, when it erroneously claims that 'errors in the targeting process that effectively remove the protections provided by international law'<sup>41</sup> would amount to violations and 'may' amount to war crimes. Not only is this allegation against the Coalition unsubstantiated by the Group of Experts but the Group of Experts fails to cite any legal support for its assertion or to identify the elements of conduct that, in its view, would violate the purported rule.

45. To reach its conclusion that these alleged errors may amount to war crimes, the Group uses a speculative proposition 'depending on the circumstances', that omits to identify, let alone address, the material elements of war crimes under international law. The Group of Expert's analysis in this regard is irresponsible and deeply concerning: by sidestepping material elements of war crimes and the necessary circumstances that would have to be present to trigger such a finding, the Group reaches a speculative conclusion about war crimes which is so equivocal as to be devoid of any value and which only serves to invite misinterpretation and sensationalisation of the Group's findings.

##### **(ii) The alleged 'de facto blockades'**

46. The Group of Experts conflates the various measures adopted by the Coalition at different points of the Yemen conflict and describes 'the whole of the coalition operations restricting access to Yemen'<sup>42</sup> as 'de facto blockades'.<sup>43</sup> This is a "legal fiction" unknown to customary and conventional international humanitarian law applicable to non-international armed conflicts. In so doing, the Group fails to explain how the definition of a blockade under international law is capable of being transposed to the specific circumstances discussed. Remarkably, the Group of Experts itself recognises that 'blockades are generally

<sup>40</sup> Coalition note verbale, II.A, ¶¶1–7¶.

<sup>41</sup> Report, ¶39, *see also* Annex IV, ¶14.

<sup>42</sup> *Ibid*, Annex II, footnote 1.

<sup>43</sup> *Ibid*, ¶47, Annex II, footnote 1.

understood as applicable in an international armed conflict and this report considers Yemen to be in a state of non-international armed conflict<sup>44</sup> and admits that it ‘relies on an evolved understanding of the application of the principles of international humanitarian law’;<sup>45</sup> that is, an “understanding” which is incongruent with the settled principles of international humanitarian law applicable to non-international armed conflicts. In this regard, it is worth noting that the Group of Experts elected not to apply an “evolved understanding” of international humanitarian law to the Houthis’ sustained assault on Tai’zz in 2015, despite several United Nations officials and bodies characterising it as a ‘virtual siege’.<sup>46</sup>

47. Worryingly, the Group of Experts fails to undertake a proper analysis of the objectives of the Coalition’s measures, yet the Group superficially concludes that said measures are unlikely to achieve their objectives<sup>47</sup> and have had no military impact.<sup>48</sup> This further amplifies the impropriety of its speculation that they may amount to international crimes.<sup>49</sup>

48. The Group of Experts reaches an unfounded, distorted conclusion about the effects of the naval and air restrictions on the civilian population and commercial shipping.<sup>50</sup> Rather than conduct the comprehensive examination of the causes of the complex humanitarian situation in Yemen that its mandate demands, the Group of Experts instead egregiously attribute the entirety of the humanitarian situation to the Coalition’s measures.<sup>51</sup> In so doing, the Group of Experts fails to consider the Houthis’ aggression as the cause of the conflict in Yemen.<sup>52</sup> It also fails to account for the deleterious effects to the humanitarian situation in Yemen caused by the widespread Houthi violations of international humanitarian law, including the obstruction of the distribution of humanitarian aid.<sup>53</sup> Equally, the Group of Experts completely neglects to assess the positive and mitigating effects of the humanitarian assistance to Yemen, as outlined in the Coalition *note verbale*.<sup>54</sup>

## E. The Group of Experts reached incorrect findings of fact

49. The United Arab Emirates reaffirms its commitment to and compliance with international human rights law and international humanitarian. The United Arab Emirates is also committed to legitimate processes to promote these legal frameworks. However, in this instance, inevitably, the numerous flaws affecting the Group of Experts’ approach to its mandate, its methodology and its legal analysis result in a number of serious errors in its factual findings. The United Arab Emirates believes that it is critical that these misrepresentations are understood.

50. The United Arab Emirates reiterates the rebuttal, in the Coalition *note verbale*,<sup>55</sup> to the Group of Experts’ allegations of violations of international law by the Coalition and its

<sup>44</sup> Ibid, Annex II, footnote 1.

<sup>45</sup> Ibid, Annex II, ¶31.

<sup>46</sup> United Nations Office for the Coordination of Humanitarian Affairs, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Stephen O’Brien, ‘Statement on Yemen’ (24 November 2015), <[https://www.unocha.org/sites/unocha/files/dms/Documents/Statement%20on%20Yemen%20USG\\_ERC%20Stephen%20OBrien%2024Nov2015.pdf](https://www.unocha.org/sites/unocha/files/dms/Documents/Statement%20on%20Yemen%20USG_ERC%20Stephen%20OBrien%2024Nov2015.pdf)> (last accessed 14 February 2019) [describing the assault on Tai’zz as a ‘virtual state of siege’]; United Nations Security Council, 7596<sup>th</sup> meeting, S/PV.7596 (22 December 2015), 6 [Assistant-Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator, Kyung-wha Kang, describing it as a ‘virtual siege’]; Panel of Experts 2016 Report, ¶134 [describing it as a ‘siege’].

<sup>47</sup> Report, ¶54.

<sup>48</sup> Ibid, ¶58.

<sup>49</sup> Ibid, ¶59.

<sup>50</sup> Ibid, ¶¶50–53.

<sup>51</sup> See *ibid*, ¶¶51–53, see also Annex II, ¶23.

<sup>52</sup> See Section B above.

<sup>53</sup> See Sections C (iv) and (v) above.

<sup>54</sup> Coalition note verbale, II.B, ¶2.

<sup>55</sup> Coalition note verbale, II.B, ¶¶1–4.

members. Further to the elements mentioned in the Coalition *note verbale*, the United Arab Emirates also wishes to put on the record the following.

**(i) The Group of Experts' findings related to places of detention in Yemen are incorrect**

51. The United Arab Emirates categorically rejects the unverified, unsubstantiated and factually inaccurate findings of the Group of Experts regarding places of detention in Yemen<sup>56</sup> and treatment of detainees.<sup>57</sup> The United Arab Emirates further affirms that, to the best of its knowledge, arrest and detention operations are conducted by the authorities of the legitimate Government of Yemen. Persons subject to arrest or detention remain under the supervision of the Yemeni public prosecution department, in accordance with applicable legal procedures.

52. Additionally, the United Arab Emirates notes that it has been providing support to the Government of Yemen to rehabilitate its security, judicial and penal institutions that had been damaged by terrorist attacks and sabotage. Through these efforts, the United Arab Emirates has been supporting the Yemeni justice institutions to carry out their tasks in an effective manner, in line with the United Arab Emirates' commitment to empower the legitimate government of Yemen. In particular, the United Arab Emirates assisted with the reconstruction and restoration of Al Mukalla Central Prison, Al Mansoura Prison and Bir Ahmed Prison, handing over these prisons to the Government of Yemen once repairs were completed.

**(ii) The Group of Experts' claims regarding 'proxy forces' are incorrect**

53. A further example of the Group of Experts' flawed approach leading to incorrect findings is the Group of Experts' unverified allegation that the United Arab Emirates maintains 'proxy forces' in Yemen. The Group of Experts seemingly reached this view without any reasoned examination of credible information. In so doing, the Group of Experts once again ignores evidence which contradicts its finding, such as the fact that the Security Belt Forces were established by decree of President Hadi (Decree No. 53 of 2016). It also ignores the fact that the Government of Yemen has made repeated affirmations that these local forces are under its authority and control.

54. In order to address the unfortunate misconceptions arising from the Group of Experts' faulty analysis, the United Arab Emirates takes this opportunity to reject once again – in the strongest terms – this erroneous finding about 'proxy forces'. The United Arab Emirates reiterates that the Security Belt Forces, Hadrami Elite Forces and Shabwani Elite forces are under the authority and control of the legitimate Government of Yemen, and the role of the United Arab Emirates is limited to providing support, training and technical advice to these local forces.

<sup>56</sup> In forming its views, the Group of Experts ignored evidence to the contrary, such as the statement of the Vice Minister of Interior of Yemen, Major General Ali Nasser Lakhsha, that there are no United Arab Emirates-controlled detention centres in Yemen. See *الدخالية اليمنية: سرية وجود سجون سرية*: (9 July 2018), <<https://www.alhurra.com/a/%D8%A7%D9%84%D8%AF%D8%A7%D8%AE%D9%84%D9%8A%D8%A9-%D8%A7%D9%84%D9%8A%D9%85%D9%86%D9%8A%D8%A9-%D8%A7%D9%84%D8%B3%D8%AC%D9%88%D9%86-%D8%B9%D8%A7%D8%AF%D8%AA-%D9%84%D8%B3%D9%8A%D8%B7%D8%B1%D8%A9-%D8%A7%D9%84%D8%AD%D9%83%D9%88%D9%85%D8%A9/445660.html>> [last accessed 15 February 2019].

<sup>57</sup> The information collected on the ground by other States corroborates that the United Arab Emirates has no involvement in human rights abuses in Yemeni detention centres. See e.g. United States Department of Defense, report circulated among the United States House and Senate Armed Services committees in December 2018, <<https://www.documentcloud.org/documents/5676973-Congress-Yemen-Report.html#document/p1>> [last accessed 15 February 2019]: 'DoD has not developed any independent, credible information indication that U.S. allies or partners have abused detainees in Yemen'.

## F. Concluding observations and the way forward

55. In adopting Resolution 36/31 (2017), the members of the Human Rights Council, including the United Arab Emirates and the Kingdom of Saudi Arabia, placed their trust in the Group of Experts as a mechanism to examine comprehensively all violations and abuses of human rights in Yemen. The United Arab Emirates believed this to be a critically important mandate. The errors and inaccuracies outlined in Sections A to E above colour the entirety of the Report and its findings and call into question the Group of Experts' working methods, legal analysis, findings, recommendations and, ultimately, its ability to fulfil its mandate. The Group's mistakes and missteps in judgment, reasoning, form and process are too numerous and too serious simply to ignore.

56. Indeed, the former High Commissioner's doubts as to the 'perceived partiality' of the National Commission of Inquiry,<sup>58</sup> which prompted his call for an independent, international body, now appear off the mark when compared against the endemic flaws in the Group's methodology, legal analysis and approach to its mandate. And, on the Group's own admission,<sup>59</sup> the very same obstacles, which the former High Commissioner for Human Rights highlighted as affecting the work of the National Commission of Inquiry – security and logistical constraints, as well as Houthi obstructionism<sup>60</sup> – have also limited the Group of Experts' ability to execute its mandate.

57. The other objective of Resolution 36/31 (2017), namely the provision of technical support and assistance to the National Commission of Inquiry, appears to have become an afterthought. The Group of Eminent Experts' mandate provides ample opportunity for it to support the efforts of the National Commission of Inquiry, through the exchange of information or even through the making of general recommendations. Indeed, its mandate expressly requires it to "engage with Yemeni authorities and all stakeholders ... with a view to exchanging information and providing support for national, regional and international efforts to promote accountability for human rights violations and abuses in Yemen". Regrettably, instead of seizing this opportunity, the Group has elected to dismiss and disregard the National Commission of Inquiry's critical work<sup>61</sup> on the basis of the unsubstantiated allegation that it 'is not an independent body'.<sup>62</sup> This cursory dismissal impugns the National Commission of Inquiry and is contrary to the spirit and objectives of Resolution 36/31 (2017).

58. It is imperative that the High Commissioner for Human Rights, the members of the Human Rights Council and the international community consider a way forward to strengthen the protection and promotion of human rights in the conflict in Yemen. The United Arab Emirates respectfully submits that the interests and wellbeing of the brotherly Yemeni people would not be served by another report which fails to grasp either the context of the conflict or consider the complexities of the country's humanitarian situation; which neglects to address comprehensively the continuing pattern of grave violations and abuses perpetrated by the Houthis; which suffers from restricted access on the ground; and which includes one-sided speculation not grounded in a reasoned analysis of facts and applicable law. Rather, the people of Yemen and the international community would be better served by the Human Rights Council refocusing on the provision of support and technical assistance to Yemen's national human rights and accountability institutions.

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<sup>58</sup> HCHR 2017 Report, ¶16.

<sup>59</sup> Report, ¶¶4, 7–8.

<sup>60</sup> HCHR 2017 Report, ¶¶15–16.

<sup>61</sup> The importance of the work of National Commission of Inquiry is recognised by the Human Rights Council throughout Resolution 36/31 (2017): preambular ¶¶15, ¶16, operative ¶¶10, 17. *See also* Human Rights Council Resolution 39/16 (2018), Human rights situation in Yemen, A/HRC/RES/39/16 (28 September 2018), preambular ¶16, operative ¶10.

<sup>62</sup> Report, ¶103.