



CASE REPORT _____

Made in Europe, bombed in Yemen: How the ICC could tackle the responsibility of arms exporters and government officials

War-torn Yemen suffers from what the UN calls the worst humanitarian crisis of our times. Thousands of civilians have been killed and wounded in the fighting; millions more suffer from hunger and disease. All parties to the armed conflict are responsible for serious violations of international humanitarian law, some of which may amount to war crimes.

Two of the European arms industry's largest customers – Saudi Arabia and the United Arab Emirates (UAE) – lead a military coalition (the “Coalition”) that has carried out scores of indiscriminate and disproportionate attacks on civilian homes, markets, hospitals, schools and cultural heritage sites.

Despite many documented serious violations of international humanitarian law in Yemen, countries like Germany, France, Italy, Spain and the United Kingdom continue to export arms, components and spare parts, as well as provide maintenance, training and support to Saudi Arabia and the UAE. Military aircraft and (guided) bombs from Europe comprise a substantial part of the Coalition's war arsenal. Based on evidence collected by reputable international organizations, remnants of the exported arms have been found at airstrike sites.

In an historic step, on 11 December 2019, a [communication](#) (the “Communication”) on the situation in Yemen, and the role of European companies and government actors was submitted to the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) by the European Center for Constitutional and Human Rights ([ECCHR](#)) and [Mwatana for Human Rights](#) from Yemen along with its partner organizations – the International Secretariat of [Amnesty International](#), the Campaign Against Arms Trade ([CAAT](#)) based in the United Kingdom, Centre d'Estudis per la Pau J.M. Delàs ([Centre Delàs](#)) from Spain, and Osservatorio Permanente sulle Armi Leggere e le Politiche di Sicurezza e Difesa ([O.P.A.L.](#)) from Italy.

Bringing European economic and political actors before the ICC to investigate their potential involvement in alleged war crimes committed by the Coalition in Yemen is

a new avenue in the quest for justice. This ground-breaking Communication, challenges European economic and political actors' role in Yemen. Arms exports to Coalition members fuel the armed conflict, and should be stopped.

The Communication focuses on the following companies: Airbus Defence and Space S.A. (Spain), Airbus Defence and Space GmbH (Germany), BAE Systems Plc. (UK), Dassault Aviation S.A. (France), Leonardo S.p.A. (Italy), MBDA UK Ltd. (UK), MBDA France S.A.S. (France), Raytheon Systems Ltd. (UK), Rheinmetall AG (Germany) through its subsidiary RWM Italia S.p.A. (Italy), and Thales France.

These companies exported (or still export) arms to the Coalition. These exports were licensed by high-ranking government officials who ECCHR, Mwatana and its partners believe knew that there is a strong likelihood that these arms could be used to commit violations of international humanitarian law that may amount to war crimes.

The conflict in Yemen is a stark example of how arms companies' executives and government officials can potentially abet international crimes committed by and in other states. There is no clear jurisdictional route to prosecuting the direct perpetrators of the potential war crimes committed by the Coalition in Yemen – Coalition officials and military personnel – at the International Criminal Court at this point in time. Yet, the ICC does have the ability to hold their suppliers – high-ranking corporate and political actors in Europe – accountable.

With this Communication, ECCHR, Mwatana and its partners intend to challenge the potential legal responsibility of corporate and political actors who, by authorizing and exporting arms to Coalition members, may have contributed to serious violations of international humanitarian law in Yemen.

So far, this issue has been not adequately addressed by national law enforcement agencies, nor by the ICC.

To achieve holistic accountability for any crimes committed by the Coalition in Yemen, and to expose corporate officers' role in enabling any such crimes, the Office of the Prosecutor must open an investigation into the situation in Yemen.

Attacks on civilian targets: Potential war crimes in Yemen by the Saudi/UAE-led Coalition

The 350-page Communication provides factual information on 26 incidents of airstrikes allegedly conducted by the Coalition on residential buildings, schools, hospitals, a museum and world heritage sites, which may constitute war crimes under the Rome Statute.

The airstrikes detailed in the Communication are emblematic of thousands of Coalition airstrikes in Yemen. They illustrate a pattern of warfare conducted by the Coalition characterized by indiscriminate and disproportionate attacks that have led to civilian deaths and injury, and damaged civilian objects.

On 12 June 2015, for example, the Coalition allegedly conducted an airstrike on a residential area in the Old City Al-Qasimi neighbourhood in Sana'a, Yemen's capital. As

reported, five civilians were killed. Five houses in the city center's World Heritage Site were completely destroyed. No evidence has been found to indicate that the houses were military targets at the time of the attack.¹ The Coalition's Joint Incident Assessment Team (JIAT) claimed the Coalition did not bomb the neighbourhood on that day. However, a remnant of a 2000 pound bomb reported to have been found at the scene, and the level of destruction caused by the strike, question JIAT's statement.

On 2 December 2015, the Coalition attacked the direct vicinity of a Médecins Sans Frontières (MSF) tented clinic in Taiz city in south-western Yemen.² The clinic served many internally displaced people. Nine people were injured, including two MSF staff members. One of those injured died the following day. The Coalition was aware of the clinic's location and operation. As reported, prior to the airstrike, MSF shared the clinic's coordinates with all parties to the conflict. Despite several attempts by MSF to raise concerns with the Coalition about an airstrikes near the clinic, the Coalition informed MSF that it could "be sure that we will not approach those locations and your team has to stay there for the time being." Not long afterwards, the vicinity of the clinic was bombed, and staff and others wounded.

On 8 October 2016, three bombs allegedly dropped by the Coalition struck the Deir Al-Ḥajārī village in north-west Yemen. The [airstrike killed a family of six](#), including a pregnant mother and her four children. The family's house was located in a rural area and of no strategic interest. Bomb remnants and a suspension lug – used to attach a bomb to a military aircraft – manufactured by RWM Italia S.p.A., a subsidiary of the German arms manufacturer Rheinmetall AG – were found at the site.

Many other similar airstrikes by the Coalition have been thoroughly documented by the UN Panel of Experts on Yemen, the Group of Eminent Experts on Yemen, and renowned non-governmental organizations such as Mwatana, [Human Rights Watch](#) and Amnesty International.

In the view of ECCHR, Mwatana and its partners, the scale of civilian casualties, and the damage to and destruction of civilian objects by Coalition airstrikes indicates a pattern of indiscriminate and disproportionate attacks, as well as possibly direct attacks on civilians and specially protected objects. Data from the Yemen Data Project – a non-profit organization that collects data on the war in Yemen, in light of the absence of official military records – indicates that since the beginning of the Coalition's air campaign, there have been a total of approximately 20,321 airstrikes, of which 6,897 were on military, and 6,357 on non-military targets.³ In 6,929 cases, it is unknown if there was a legitimate military target present.

1

Mwatana, *The Degradation of History Report*, 15 November 2018, p 49, www.mwatana.org/en/yemens-cultural-property/.

2

2018 Report of the Group of the UN Panel of Experts on Yemen.

3

The Coalition's military intervention: From aerial warfare to a *de facto* blockade of Yemen

In 2011, pro-democracy uprisings in Yemen led former long-time President Ali Abdullah Saleh to resign. In September 2014, the Houthi armed group (also known as the Houthis or Ansar Allah) took control of the Yemeni capital Sana'a by force. The move followed a series of smaller armed confrontations between the Houthi armed group and other forces, including Yemeni government forces, in Saada, Al Jawf and Amran. President Abd Rabboh Mansour Hadi, who replaced Saleh, fled to Aden in southern Yemen. In March 2015, the Houthi armed group, together with troops loyal to former president Saleh, entered the city of Aden. President Hadi then fled to Saudi Arabia.

In March 2015, the Saudi/UAE-led Coalition became involved in the Yemen conflict, when it launched the "Decisive Storm" military air operation in response to President Hadi's request for support against the Houthi armed group.⁴ At the end of April 2015, Decisive Storm was succeeded by Operation "Restoring Hope."⁵ In addition to conducting an aerial campaign, the Coalition imposed a *de facto* naval blockade on areas controlled by the Houthi-Saleh forces and closed off the Sana'a airport.

The Coalition was initially comprised of Saudi Arabia, the UAE, Bahrain, Kuwait, Egypt, Jordan, Morocco, Sudan and Qatar.⁶ Coalition military activities are under the control of Saudi Arabia and the UAE.⁷ A joint headquarters in Riyadh, led by Saudi Arabia, controls air operations in Yemen.

Detailed data on the airstrikes can be found on the Yemen Data Project's website: www.yemendataproject.org/data.html. The Yemen Data Project is an independent data collection project aimed at collecting and disseminating data on the conduct of the war in Yemen, with the purpose of increasing transparency and promoting accountability of the actors involved. The Yemen Data Project lists target categories based on the original use of the target, "e.g. a school hit by an airstrike is referred to as a school building, with no further assessment on its use at the time of the airstrike or the circumstances that led to the airstrike."

4

Identical letters dated 26 March 2015 from the Permanent Representative of Qatar to the UN Addressed to the Secretary-General and the President of the UNSC, UN Doc. S/2015/217 (2015).

5

Noah Browning and Mostafa Hashem: "Saudi/UAE-led Coalition announces end to Yemen operation", in: Reuters, 21 April 2015, www.reuters.com/article/us-yemen-security-saudi/saudi-led-coalition-announces-end-to-yemen-operation-idUSKBN0NC24T20150421.

6

After the Gulf crisis, Qatar left the Coalition.

7

Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the UN Security Council, Final report of the Panel of Experts on Yemen.

Europe's role: Exporting military goods to parties leading the Coalition involved in the armed conflict in Yemen

Supplying weapons to the Yemen conflict is a flagrant example of non-compliance with international, regional and national export control law. Contrary to provisions in the Arms Trade Treaty, the EU Common Position and domestic laws, European states have continued to supply arms that carry a substantial risk of being used to commit or facilitate serious violations of international humanitarian law and grave human rights abuses.

Numerous companies from European countries have supplied Coalition members – in particular Saudi Arabia and the UAE – with arms, components, spare parts, maintenance, training and support services. European companies – and indirectly European states – profit from these exports.

While the US is a key supplier, military goods from Europe constitute a substantial part of the overall equipment available to Coalition air forces. The United Kingdom, Germany, Spain, France and Italy manufacture the biggest share of arms delivered from Europe to Saudi Arabia, the UAE and Egypt.

As ECCHR, Mwatana and its partners understand, the Coalition relies on military products manufactured by European companies: Typhoon and Tornado fighter jets, indispensable to air warfare, are the result of joint production schemes including several European companies, namely BAE, Airbus Defence and Space GmbH (Germany), Airbus Defence and Space S.A. (Spain), and Leonardo for the Typhoon, as well as Leonardo, BAE, Airbus, and Panavia GmbH (Germany) for the Tornado.

These planes are further equipped with bombs and missiles of European origin, comprising in particular MBDA (UK and France) manufactured Brimstone and Storm Shadow Missiles, as well as Raytheon UK produced Paveway IV bombs and RWM Italia manufactured bombs of the MK 80 series. Targeting devices that allow for the bombs to be deployed are provided by the French company Thales, among others.

Several sources have confirmed the Coalition's use of Eurofighter Typhoons in airstrikes carried in Yemen. The same goes for Mirage military aircraft, produced by the French company Dassault, which are part of the UAE fleet.

In the vast majority of attacks, it is near impossible to identify the aircraft used. However, the supply of these jets, as well as the ongoing provision of spare parts and maintenance, training, and support services that keeps them operational, may constitute a substantial contribution to the commission of serious violations of international humanitarian law in Yemen – violations that in some instances may amount to war crimes.

Bomb remnants found in airstrikes sites in Yemen include bomb guidance kits: Paveway IV (INS/GPS and laser-guided) munition produced by Raytheon in the UK, bombs from the MK 80 series produced by RWM Italia, as well as the Storm Shadow and Brimstone Missiles produced jointly by MBDA UK and France.

Therefore, these European companies and products have substantially contributed to the aerial warfare carried out in Yemen and, as a result, may be potentially complicit in the

Coalition's serious violations of international humanitarian law, some of which may amount to war crimes.

The International Criminal Court: A forum to challenge Europe's role in alleged war crimes in Yemen

Communications to the ICC against corporate actors are rare, let alone investigations into their activities.

Investigating the alleged crimes at the national level is complicated due to the transnational character of the corporations involved, their complex structures, the overall opaqueness of data on arms exports, a lack of willingness and ability to investigate companies, and the fact that the main crimes are alleged to have been committed in Yemen.

Currently, there is a lack of genuine national investigations into and/or prosecutions in relation to this matter in the various domestic European jurisdictions. Pursuing accountability for crimes committed in Yemen will constitute a step towards closing this corporate impunity gap, as well as provide the OTP with a sound basis to challenge important actors' role. The European dimension, and potential complicity, in violations that amount to international crimes in Yemen need more public attention and deserve criminal investigations.

The Communication to the OTP: European economic and political actors potentially bear criminal responsibility

The Communication submitted by ECCHR, Mwatana and its partners to the OTP in December 2019 specifically tackles European arms companies and high-ranking government officials' potential complicity. By authorizing and exporting arms to Coalition members, they may have contributed to serious violations of international humanitarian law in Yemen. As a result, the economic and political actors involved in the arms trade potentially bear criminal responsibility.

ECCHR, Mwatana, Amnesty, CAAT, Centre Delàs and Rete Disarmo request the OTP to investigate the responsibility of a) EU national high-level corporate executives from BAE Systems, Leonardo, Airbus Spain, Airbus Germany, Dassault, Raytheon UK, RWM Italia, MBDA UK and MBDA France, and Thales, and b) high-ranking government officials from the UK, France, Spain, Italy and Germany's arms export licensing authorities, for potential complicity in serious violations of international humanitarian law, which may amount to war crimes.

In addition, domestic authorities should start to investigate arms exports to Coalition members by arms manufacturing companies incorporated in their jurisdictions.

The Communication provides factual information on 26 incidents of airstrikes on residential buildings, schools, hospitals, a museum and world heritage sites. Each of the airstrikes outlined in the Communication may amount to a war crime under articles 8(2)(c)(i), and 8(2)(e)(i), (ii), (iii) and (iv) of the Rome Statute, including intentionally

directing attacks against the civilian population and against buildings dedicated to education, art, historic monuments, hospitals and places where the sick and wounded are collected.

First, the Communication includes significant details on each of the 26 incidents. Mwatana's field researchers visited most of these sites where they interviewed witnesses, victims and family members of those killed and wounded, and took photos of the destruction, and, where possible, the arms used.

Evidence taken by Mwatana and submitted along with the Communication includes testimony by women and men who witnessed Coalition airstrikes on civilians, civilian houses, cultural property, hospitals and schools. In addition, photographic evidence and satellite imagery, as well as a large number of public documents and reports, were used as sources.

Second, it sets out an in-depth overview of arms exports from the respective countries to Saudi Arabia and the UAE.

Third, the companies' corporate structure, corporate governance and corporate social responsibility policies are detailed.

Lastly, the Communication discusses the applicable legal framework and questions of jurisdiction, admissibility, gravity, modes of liability. It then applies these to the factual framework, concluding that an investigation by the OTP is warranted.

Investigating the responsibility of individuals in key positions in these companies, and high-ranking government officials with decision-making power in the licensing processes explicitly recognizes the possibility of corporate involvement in the commission of the most serious crimes within the International Criminal Court's jurisdiction. It also presents an opportunity to close the corporate impunity gap that largely exists in *ad hoc* tribunals and the ICC's current practice.

Last updated: February 2020

European Center for Constitutional and Human Rights (ECCHR) e.V.

www.ecchr.eu