

CASE REPORT _____

European responsibility for war crimes in Yemen – Complicity of RWM Italia and Italian arms export authority?

The deadly incident of 8 October 2016

At 3 am on 8 October 2016, an airstrike – alleged to have been carried out by the Saudi-led military coalition – struck a civilian home in the village of Deir Al-Hajari, in the Al Hudaydah governorate, in northwest Yemen. The airstrike killed a family of six, including a pregnant mother and her four children. Incidents like this have become the common horror for civilians in Yemen for years. Like in many other cases, this was an airstrike with no identifiable military reason, hitting civilians, in this case by nocturnal surprise. The incident of Deir Al-Hajari is well documented, as a field monitor of [Mwatana for Human Rights](#), a Yemeni partner organization of the [European Center for Constitutional and Human Rights](#), attended the scene the day after.

At the site of the airstrike, bomb remnants were found which indicate that the type of bomb used was a guided bomb of the MK80-family. Also in the rubble a suspension lug, which is needed to attach the bomb to the plane, was found. Its serial marks clearly indicate that it was manufactured by [RWM Italia SpA](#), an Italian subsidiary of German [Rheinmetall AG](#). There is no indication that the civilians who were killed were “collateral damage,” as a guided bomb was used and a military checkpoint that was, according to witnesses, more than 300 meters away was not targeted and has not been targeted ever since. Attacks like this occur frequently in the conflict in Yemen. The intentional directing of attacks against the civilian population as such, or against individual civilians not taking direct part in hostilities, amounts to war crimes.

The direct perpetrators of this crime committed in Yemen – coalition politicians and their military personnel – might not be prosecuted at this point in time. However, their suppliers – like enterprises and state officials in Italy – could be brought to justice.

The legal intervention against RWM Italia and UAMA officials

In April 2018, ECCHR, Mwatana, our Italian partner [Rete Italiana per Il Disarmo](#) supported by Osservatorio Permanente sulle Armi Leggere e le Politiche di Sicurezza e Difesa ([OPAL](#)), filed a criminal complaint against managers of RWM Italia and senior officials of Italy’s national authority for the export of armament [UAMA](#) to the public prosecutor in Rome.

The complaint focuses on the airstrike on Deir Al-Hajari. It alleges the criminal liability of RWM Italia managers and UAMA officials for the export of at least a part of the deadly

weapon used in the strike, to Saudi Arabia or another member state of the Saudi-led military coalition.

Despite major warnings that the coalition warfare in Yemen causes significant loss of civilian life and breaches of international humanitarian law, exports of bombs and other weapons to coalition member states had not stopped and are still taking place. In Italy, UAMA authorizes these exports of armaments manufactured in Italy.

Therefore, the complaint filed by ECCHR, Mwatana and Rete Disarmo requests the Italian prosecutor to investigate among others things, the criminal liability of those managers and officials in Italy for, at the very least, their complicity through gross negligence in murder and personal injury under articles 589, 590, together with 61 n.3 of the Italian Criminal Code. Depending on the results of the investigation by the public prosecutor, their actions could even amount to intentional complicity in murder and injury under articles 110, 575, and 582 of the Italian Criminal Code. In addition, the complaint requests the investigation into the alleged abuse of power by UAMA officials under article 323 (2) of the Italian Criminal Code.

Subject to final findings, this case could illustrate how European enterprises and government authorities can influence armed conflicts, can contribute to enable actors in armed conflicts to commit breaches of international humanitarian law, and to grave human rights violations. ECCHR, Mwatana, and Rete Disarmo demand that the Italian prosecutor takes investigative steps to hold the company managers and UAMA officials accountable for their actions.

As European governments interpret the international Arms Trade Treaty (ATT), the EU Common Position 2008/944/CFSP on arms exports and domestic law in a lenient way, a constant stream of new weapons from Europe helps to fuel the conflict in Yemen. Furthermore, there is no current practice to hold arms exporters accountable, in particular when exporting occurs under an official license. Against this background, ECCHR, Mwatana and Rete Disarmo intend to uncover the legal responsibility of those assisting the Saudi-led military coalition, a coalition that commits serious violations of international humanitarian law on a regular basis, which could amount to war crimes.

The bombing campaign of the Saudi-led military coalition

War-torn Yemen suffers from what the UN calls the biggest humanitarian crisis of our times and the loss of thousands of civilian lives. All parties to the conflict have repeatedly violated human rights and also contributed to the humanitarian disaster. Most of the damage done behind the frontlines is a result of thousands of airstrikes by forces of the Saudi-led coalition that became involved in the conflict since March 2015 and is comprised of Saudi Arabia, Bahrain, Kuwait, the United Arab Emirates, Egypt, Jordan, Morocco, Sudan, and initially involved Qatar.

Prior to the military intervention by the Saudi-led military coalition, Yemen had seen a shift in power when, during the 2011 Yemeni uprising, pro-democracy protests caused the resignation of president Ali Abdullah Saleh, who was then replaced in 2012 by Abd-Rabbu Mansour Hadi for a two years interim term. Within these two years the “National Dialogue Conference” was conducted with among other issues: the aim to come to an agreement for a peaceful democratic transition which would federalise Yemen; to insure that all conflict parties surrender their weapons; to release all the political prisoners; all based on a newly adopted constitution to be drafted.

Following the failure of the implementation of the agreement Ansar Allah (the Houthis) took control of the capital Sana'a on 21 September 2014 causing President Hadi of Yemen first to flee to Aden, and afterwards to the Saudi capital Riyadh on 25 March 2015. The next day, the Saudi-led military coalition intervened in the armed conflict in Yemen in support of the president Abd Rabbu Mansour Hadi. The crucial element of coalition's so-called Operation Decisive Storm, followed by Operation Restoring Hope, is a campaign of bombing raids on targets in the areas held by Houthi forces and forces loyal to former President Saleh.

Since the beginning of this campaign, reports of media and human rights organizations have been published documenting indiscriminate attacks on civilian targets such as market places, schools, and civilian homes with serious civilian casualties as a consequence of the Saudi-led coalition's airstrikes.

As early as 9 July 2015, the European Parliament considered that on several occasions air strikes by the Saudi-led military coalition in Yemen have killed civilians in violation of international humanitarian law amounting to war crimes. The European Parliament condemned, among others, the many civilian deaths which the air strikes by the Saudi-led coalition and its naval blockade have caused. Since then the European Parliament called at least in three different resolutions on the High Representative/Vice-President of the European Commission, Federica Mogherini, to launch an initiative to impose an arms embargo against Saudi Arabia given the serious allegations of breaches of international humanitarian law by Saudi Arabia in Yemen.

The role of Europe: Exporting bombs to a leading party in the armed conflict

Despite these facts, numerous European countries like Italy, Germany, the UK, Spain and France and enterprises such as RWM Italia did not stop to arm parties to the conflict with weapons, ammunition and logistical support. The conflict in Yemen is therefore a landmark example where, in spite of the reported human rights and international humanitarian law violations, and contrary to the ATT, the EU Common Position and domestic laws, weapons are exported to countries at war, regardless of the fact that these weapons are used to commit war crimes and contribute to a humanitarian disaster. European companies – and indirectly European governments – profit from those arms exports to the Saudi-led military coalition.

Among these European exporters, Italy plays an important role:

- As of May 2015, remnants of bombs made in Italy were found in the rubble left by coalition airstrikes on various occasions in Yemen.
- Regardless of the reported violations of humanitarian law, government licenses issued for arms exports to Saudi Arabia cover hundreds of millions of euro per year, and have increased since the outbreak of the conflict.
- This is contrary to Italian law 185/1990, which prohibits arms exports “to countries engaged in armed conflict,” and is in contrast with Italy's obligations under the EU Common Position and the Arms Trade Treaty.
- Large parts of the exports from Italy to Saudi Arabia are the bombs manufactured by RWM Italia, a subsidiary of the German arms producer Rheinmetall.

RWM's production plant in Domusnovas/Sardegna, among others, produces bombs of the MK80 type-family, which are common bombs dropped by warplanes of Western origin.

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Warplanes of European and US origin comprise the Royal Saudi bomber fleet, as well as that of many other coalition air forces. Numerous loads of bombs, among others of the types MK82, MK83 and MK84, readymade or as parts for guided bombs, left Italy to Saudi Arabia since the outbreak of the conflict. Some of them were delivered by plane, which could indicate a certain urgency for the recipient. This corresponds to the fact that the Royal Saudi Air Force is among the most active air forces in the skies over Yemen.

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