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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, which hit 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](#), was at 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-variety. A suspension lug, which is needed to attach the bomb to the plane, was also found in the rubble. 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, while 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 targeting of attacks on the civilian population as such, or against individual civilians that do not take part directly 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 – such as 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, and our Italian partner Rete Italiana Pace e 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 did not stop 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 that Italian prosecutor 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) and 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 course of criminal investigations

Following the submission of the criminal complaint, the prosecutor in Rome opened a criminal investigation into the alleged abuse of power by UAMA officials and RWM Italia S.p.A's manager, under article 323 (2) of the Italian Criminal Code. Within the course of the investigations, relevant information and evidence for assessing the potential complicity of both the company executives and Italian export authorities in war crimes was obtained. Nonetheless, the prosecutor [requested](#) the dismissal of the case in October 2019, arguing that UAMA's decision to authorize the export of bombs to members of the Saudi-led Coalition was legitimized by the public interest of protecting the national economy. Despite this dismissal, the prosecutor confirmed that its investigation showed that the suspension lug used in the October 2016 airstrike in Yemen belonged to a batch manufactured by RWM Italia and shipped to Saudi Arabia and the UAE between 9 April and 15 November 2015, after the coalition had begun its military operations in Yemen. The prosecutor did not review or give reasons for its dismissal of the murder and personal injury charges.

ECCHR, Mwatana for Human Rights and the [Rete Italiana Pace e Disarmo](#) opposed the decision in front of the Judge for Preliminary Investigations (*Giudice per le Indagini Preliminari* – GIP), who in February 2021 overruled the prosecutor’s arguments in their entirety and ordered the continuation of the investigations. The GIP clarified that the ATT and the EU Common Position were directly applicable and that Italian law on arms transfers should be interpreted in accordance with these, along with Italy’s relevant international human rights obligations. In this respect, the GIP established that Italy’s obligation to safeguard employment levels “cannot, even abstractly, justify a deliberate infringement of rules prohibiting arms exports to countries responsible for serious war crimes and against civilian populations.”

On December 7th of 2021, and without having fully completed the investigations ordered by the GIP, the prosecutor decided to request for the second time the dismissal of the case. The complainants appealed the decision and requested the GIP to proceed to trial. After more than five years of investigations, on 10 March 2023, the GIP in Rome decided to [close the investigations](#), despite confirming that Italy’s National Authority for the Export of Armament (UAMA) had acted “in violation of at least Articles 6 and 7 of the Arms Trade Treaty (ATT)” by issuing export licenses to RWM Italia S.p.A.,” while being “certainly aware of the possible use of the arms sold by RWM to Saudi Arabia in the conflict in Yemen to the detriment of civilians.” Due to the gravity of the allegations presented in the case and the compelling evidence gathered within the course of almost five years of investigations, our analysis finds that the arguments underpinning the judge’s decision appear factually and legally flawed. Some of the most salient shortcomings of the decision can be found [here](#).

The decision to close the investigations not only denies those affected by the airstrike access to justice and a fair trial, but also stands in stark contrast to the evidence gathered over years of investigations.

Application to the European and Court of Human Rights

Following the GIP’s decision to close criminal investigations in Italy, on 4 July 2023, the victims of the Deir Al Hajari attack submitted an application against Italy to the European Court of Human Rights. The applicants allege that the Italian state violated Article 2 of the ECHR (right to life), as, despite the fact that the applicants had reported the murder of their relatives, the Italian prosecuting authorities failed to investigate the crimes of homicide and personal injury, contrary to Italian constitutional law and the principles laid down by the ECtHR in the leading case *Önerildiz v. Turkey*.

Furthermore, they allege that the Italian authorities failed to suspend and revoke the authorization for the export of arms to Saudi Arabia and the United Arab Emirates, despite their awareness of the clear risk that such weaponry could be used in the commission of war crimes and to violate of international human rights law, including the right to life.

The application offers the ECtHR the unprecedented opportunity to ensure that European states provide access to justice for victims of war crimes committed with weapons produced in Europe. The applicants are supported by the human rights organizations Mwatana for Human Rights, Rete Pace e Disarmo and the European Center for Constitutional and Human Rights (ECCHR).

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 Saudi-led coalition forces that became

involved in the conflict beginning in March 2015. The coalition 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 underwent a shift in power when, during the 2011 Yemeni uprising, pro-democracy protests precipitated the resignation of president Ali Abdullah Saleh, who was then replaced in 2012 by Abd-Rabbu Mansour Hadi for a two-year interim term. During these two years, the “National Dialogue Conference” was held with the aims of coming to an agreement on a peaceful democratic transition that would federalize Yemen, insuring that all parties to the conflict surrender their weapons, and releasing all political prisoners, among other issues – all of which would be based on a newly adopted constitution to be drafted.

Following the failure to implement the agreement, Ansar Allah (the Houthis) took control of the capital Sana’a on 21 September 2014, prompting President Abd Rabbu Mansour Hadi of Yemen first to flee to Aden and, then later, 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 President Hadi. The crucial element within the coalition’s so-called Operation Decisive Storm, followed by Operation Restoring Hope, was a campaign of bombing raids on targets in areas held by Houthi forces and forces loyal to former President Saleh.

Since the beginning of this campaign, reports by media and human rights organizations have been published documenting indiscriminate attacks on civilian targets, such as marketplaces, 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 recognized that on several occasions, airstrikes by the Saudi-led military coalition in Yemen have killed civilians in violation of international humanitarian law that amount to war crimes. The European Parliament condemned, among other things, the many civilian deaths caused by the Saudi-led coalition airstrikes and its naval blockade. Since then, the European Parliament, with at least three different resolutions, called 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 arming parties to the conflict with weapons and ammunition and providing logistical support. The conflict in Yemen is therefore a key example of how – in spite of 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 such 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 amount to hundreds of millions of euros 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 conflicts 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 produces bombs of the MK80 type-family, among others, which are bombs commonly dropped by warplanes of Western origin.”

The Royal Saudi bomber fleet, as well as those of many other coalition air forces, are comprised of warplanes of European and US origin. Numerous shipments of bombs, including other types such as the MK82, MK83 and MK84 and as both readymade or in the form of parts for guided bombs, have been provided by 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.

Last updated: July 2023

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