



# SPANISH ARMS EXPORTS AND ALLEGED WAR CRIMES IN YEMEN

How Spanish Arms Exports may have facilitated or contributed to International Crimes allegedly committed in Yemen, 2015-2021

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## EXECUTIVE SUMMARY

In September 2014, the Houthis armed group took control of the Yemeni capital Sana'a by force. On 26 March 2015, a military coalition initially comprised of the Kingdom of Saudi Arabia, the UAE and other states launched military operation 'Decisive Storm' in Yemen. Since then, the armed conflict continues on the territory of Yemen. Throughout this conflict, the Saudi/Emirati-led coalition (hereinafter, "the Coalition") strikes have hit civilians and a range of civilian objects (medical facilities, schools, cultural property, and infrastructure serving the civilian population, residential buildings and civilian gatherings). Already since March 2015, various international organizations, civil society and Non-Governmental Organizations have consistently documented such attacks, revealing a clear pattern of aerial warfare by the Coalition that indiscriminately and disproportionately affects Yemeni civilians, civilian objects and civilian infrastructure.

At several times, the UN Group of Eminent International and Regional Experts on Yemen (GEE) called upon third states to stop transferring arms to parties to the conflict given the role of such transfers in perpetuating the conflict and potentially contributing to violations. The GEE also noted that some States are failing in their responsibilities to ensure respect for international humanitarian law and may be violating their obligations under the Arms Trade Treaty. The GEE also warned that such support may amount to aiding and assisting internationally wrongful acts in contravention of international law and that the aerial and naval blockade imposed by the Coalition had a disproportionate impact on the civilian population, in violation of international humanitarian law. The UN also found that the blockade had the effect of using the threat of starvation as an instrument of war.

An examination of emblematic strikes carried out by the Coalition in its aerial campaign indicates an unwillingness or an inability to comply with international humanitarian law principles, particularly distinction and proportionality and a failure to impartially investigate these violations, which appear to have developed into a pattern of warfare in the course of the conflict.

Military goods of European origin constitute a substantial part of the overall equipment available to Saudi Arabia and UAE air forces. This includes fighter jets and parts and components thereof, missiles, rockets and bombs that will equip such combat aircrafts, as well as further material that supports air warfare such as tanking planes. Based on the composition of the respective air fleets of Saudi Arabia and the UAE, in particular the Eurofighter Typhoon combat aircraft and the A330 MRTT fuelling plane are of high relevance. Spanish military equipment is essential for both aircrafts and a number of other military goods used by the Saudi/Emirati-led Coalition in Yemen. Spanish arms exports to Saudi Arabia and UAE in the period 2015 -1<sup>st</sup> semester of 2021 reached €1,306,980,202 and €311,219,441, respectively.

Parts for the Eurofighter are produced by Airbus Spain in Illescas (Toledo/Spain) and in Getafe (Madrid region/Spain), then delivered to BAE Systems in the United Kingdom and subsequently exported to the Kingdom of Saudi Arabia. A330-MRTT refuelling jets as well as spare parts of it have been delivered to Saudi Arabia after the beginning of the conflict. In addition, public information indicates that A330-MRTT jets were undergoing maintenance in Spain. Several sources, including government sources, statements by individuals and social media posts, have confirmed the use of the Eurofighter Typhoon in airstrikes carried out by the Coalition in Yemen since March 2015. Defence News sources also confirm that the refuelling plane A330 MRTT produced by Airbus Spain has been used by both the UAE and Saudi Arabia in their air campaign over Yemen generally and concretely for the operation "Decisive Storm".

Spanish authorities have granted licences for these products throughout the entire period of the ongoing war in Yemen, despite Art. (a) of Regulation 2014. This regulation suspends, denies or revokes an authorisation when there is reasonable suspicion that the defence material could heighten tensions, latent conflicts and be used in situations of serious international human rights laws, humanitarian laws and international commitments violations.

Art.7 (c) of the 2014 Regulation provides, as another ground for denial, suspension or revocation those cases referred to in Article 6 "Prohibitions" or in cases of non-compliance with the parameters included in Article 7 "Export and Export Assessment" of the Arms Trade Treaty (ATT).

States are prohibited, under Article 6 of the ATT, from authorising any transfer (including export, import, transit, trans-shipment and brokering) of conventional arms and related ammunition/munitions and parts and components where a State has knowledge that they would be used in the commission of attacks directed against civilian objects or civilians protected as such or other war crimes. The ICRC recommends that the term "knowledge" in Article 6 (3) "be interpreted objectively to include what a State Party can normally be expected to know, based on information in its possession or reasonably available to it".

The GEE drew attention to the responsibilities of all States to "ensure respect" for international humanitarian law in Non International Armed Conflicts (NIACs) as a matter of customary international law. This obligation requires that States refrain from transferring weapons "if there is an expectation, based on facts or knowledge of past patterns, that such weapons would be used to violate international humanitarian law." The Spanish government has failed to pay sufficient attention to the GEE reports and its recommendations by continuously granting licence for a steady flow of military goods to Saudi Arabia and the UAE.

The United Nations Guiding Principles for Business and Human Rights (UNGPs) require corporations to avoid causing or contributing to adverse human rights impacts and seek to prevent or mitigate human rights impacts that are directly linked to their operations, products or services. In order to do so, companies should establish human rights due diligence policies and processes to identify,

prevent, mitigate and account for how they address their impacts on human rights. When corporate officers are aware that the corporation's activities are contributing to or may contribute to an adverse human rights impact, they should take the necessary steps to cease or prevent their contribution. Corporations operating in the arms industry and their corporate officers have a particular duty of care due to the military nature of the products sold that carries the risk of complicity in crimes and secondly due to the context in which they supply, since in cases where the purchaser of their weapons is supplying or partaking in an armed conflict, the potential of the use of the manufactured military good for the commission of crimes is again increased.

Where both state officials or corporate actors fail to implement the prohibitions article of the ATT or do not comply with their respective risk assessment obligations, the act of licensing the export and the actual supply of arms can amount to aiding and abetting in the preparation for and perpetration of war crimes. Since neither Spanish government officials nor the corporate actors directly commit war crimes in Yemen, any criminal liability can only be attached to the assistance they provide. The Rome Statute of the International Criminal Court covers the criminal liability for such acts of assistance. According to the relevant parts of its Art. 25 (3) (c): *"a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person for the purpose of facilitating the commission of such crime, aids, abets or otherwise assists in its commission or is attempted commission, including providing the means for its commission"*.

Official reports by e.g. the UN Panel of Experts on Yemen and the GEE have consistently highlighted that all parties including the Coalition have violated principles of International Humanitarian Law. At some instances, these have concluded that the documented violations may even amount to war crimes. Publicly available information also shows that both the Eurofighter and A330 MRTTs play a significant role for the aerial warfare in Yemen, since the Eurofighter presents a non-negligible part of the Saudi Arabian air fleet and the A330 MRTTs have been used both for the refuelling of Saudi and Emirati aircrafts. In addition to the initial delivery of the aircrafts, Airbus Spain subsequently provided spare parts and components and conducted maintenance activities for those aircrafts.

Information on the use of weapons of European (including Spanish) origin was forthcoming throughout the entire period of the conflict in Yemen. Official documents of UN agencies, the European parliament as well as civil society reports constantly and repeatedly "asserted, based on [...] evidence, that [...]" war crimes are being committed in Yemen. All such information was frequently brought to the attention of both government and corporate actors in Spain through parliamentary questions and media reporting in Spain itself. Despite the abundance of reporting Spanish officials continued to licence and Airbus Spain continued to supply military equipment. Given the obligation to review existing risks on the basis of available documentation, this can only have happened in full awareness if not with the intent that the alleged crimes are being committed by the Coalition forces.

In sum, there seems to be a reasonable basis to believe that war crimes were committed by Coalition forces in Yemen and that both Spanish government officials and decision-making staff of Airbus Defence may have aided and abetted such alleged war crimes in the sense of Art. 25. (3) (c) ICC Statute.

The report concludes with detailed recommendations to the Spanish government on issues of transparency, end-use monitoring, the enforcement of the ATT and the regulation of defence and arms-manufacturing companies to guarantee compliance with both national laws and its international obligations and to prevent any further exports of military goods that might be used to commit serious violations of international humanitarian law or war crimes. The three main recommendations are: i) to set up an independent enquiry involving renowned experts in IHRL and IHL into the use of the A330 MRTT refuelling jets and the Eurofighter Typhoon combat aircraft by the Coalition; ii) suspend any licences for the provision of maintenance, training and other associated services related to the A330 MRTT refuelling jets and iii) suspend any export licences of (spare) parts and components for the Eurofighter Typhoon. Detailed recommendations are also made to the Spanish judicial authorities and to Airbus.

