



## 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 during 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 largest customers of the European arms industry – 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 civilians’ homes, markets, hospitals, schools, and cultural heritage.

Despite the many documented serious violations of international humanitarian law in Yemen, countries like Germany, France, Italy, Spain and the United Kingdom have continued to export arms, components and spare parts as well as providing maintenance, training and support services 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 some remnants of the exported arms have been found on the sites of the airstrikes.

In an historic step on 11 December 2019, a [communication](#) (the “Communication”) on the situation in Yemen and the role of European companies as well as 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](#)) along with its partner organizations Mwatana for Human Rights from Yemen ([Mwatana](#)), the International Secretariat of Amnesty International ([Amnesty](#)), 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. With this ground-breaking Communication to the ICC, ECCHR and its partners are challenging the role of European economic and political actors in Yemen. Arms exports to Coalition members fuel the armed conflict in Yemen, and should be stopped.**

The companies focused on in the Communication are: 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 have exported (or are still exporting) arms to the Coalition. The exports are licensed by high-ranking government officials who ECCHR and its partners believe know that there is a strong likelihood that these arms may 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 high-level company officers as well as high-ranking government officials can potentially act as abettors to 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 accountable their suppliers – corporate officers of arms companies and government officials in Europe.

With this Communication, ECCHR and its partners intend to challenge the potential legal responsibility of arms companies and high-ranking government officials who through authorizing and exporting arms to members of the Coalition may have been contributing to serious violations of international humanitarian law in Yemen.

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

To achieve holistic accountability for any crimes committed by the Coalition in Yemen and to expose the role corporate officers played in enabling any such crimes, an investigation into the situation in Yemen must be opened by the OTP.

### **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 examples of thousands of Coalition airstrikes in Yemen. They illustrate a pattern of warfare conducted by the Coalition which is characterized by indiscriminate and disproportionate attacks that have led to the deaths and injury of civilians and damage to civilian objects.

On 12 June 2015, for example, the Coalition allegedly conducted an airstrike on a residential area in the Al-Qasimi neighborhood in the Old City of Sana'a, the capital of Yemen. As reported, five civilians were killed. Five houses which were part of the World Heritage Site in the historic center of Sana'a were completely destroyed. No evidence has been found indicating the houses were military targets at the time of the attack.<sup>1</sup> The Coalition's Joint Incident Assessment Team (JIAT) claimed the Coalition did not bomb the neighborhood on that day. However, a remnant of a 2000 lb 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.<sup>2</sup> The clinic served a high number of internally displaced people. Nine people were injured, including two MSF staff members. One of the injured died the following day. The Coalition was aware of the location and operation of the clinic. As reported, prior to the airstrike, MSF had shared the coordinates of the clinic with all of the parties to the conflict. Despite several calls by MSF to the Coalition to raise their concerns about airstrikes in the surroundings, the Coalition informed MSF that they 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 struck and staff wounded.

On 8 October 2016, three bombs allegedly dropped by the Coalition struck the village of Deir Deir Al-Hajari 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. At the site of the airstrike bomb remnants were found as well as 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.

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 for Human Rights from Yemen, [Human Rights Watch](#) and Amnesty International.

The scale of civilian casualties and the damage to and destruction of civilian objects from Coalition airstrikes in the view of ECCHR and its partners 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 aimed at collecting data on the conduct of the war in Yemen in light of the absence of official military records – indicates that the total number of air raids since the beginning of the air campaign by the Coalition amount to approximately 20,321, of which

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Mwatana, *The Degradation of History Report*, 15 November 2018, p 49, [www.mwatana.org/en/yemens-cultural-property/](http://www.mwatana.org/en/yemens-cultural-property/).

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

6,897 on military and 6,357 were on non-military targets.<sup>3</sup> Of 6,929 airstrikes it is unknown whether there was a legitimate military target present.

### **The military intervention of the Coalition: 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 fled to Saudi Arabia.

In March 2015, the Saudi/UAE-led Coalition became involved in the Yemen conflict, when it launched a military air operation named "Decisive Storm" in response to President Hadi's request for support against the Houthi armed group.<sup>4</sup> At the end of April 2015, Decisive Storm was succeeded by Operation "Restoring Hope."<sup>5</sup> 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 Sana'a airport.

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

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Detailed data on the airstrikes can be found on the Yemen Data Project's website: [www.yemendataproject.org/data.html](http://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 category 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."

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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).

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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](http://www.reuters.com/article/us-yemen-security-saudi/saudi-led-coalition-announces-end-to-yemen-operation-idUSKBN0NC24T20150421).

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After the Gulf crisis, Qatar left the coalition.

## **The role of Europe: Exporting military goods to leading parties in the armed conflict in Yemen**

The supply of 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 which carry a substantial risk of being used to commit or facilitate serious violations of international humanitarian law violations and grave human rights abuses in the Yemen conflict.

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

While the US are a key Coalition 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 make up the biggest share of arms delivered from Europe to Saudi Arabia, the UAE and Egypt.

As ECCHR and its partners understand, the Coalition relies on the following military products manufactured by European companies: Typhoon and Tornado fighter jets, indispensable for the 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 equally 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 actual deployment of those bombs are provided by the French company Thales among others.

Several sources have confirmed the use of the Eurofighter Typhoons in the airstrikes carried out by the Coalition in Yemen. The same goes for Mirage military aircrafts, produced by French company Dassault, which are part of the UAE fleet which has been used in the armed conflict in Yemen.

While it is near impossible to identify the aircraft used in an airstrike in the vast majority of attacks, the supply of these jets, as well as as the ongoing provision of spare parts and maintenance, training, and support services that keeps them operational, may constitute 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 on sites of airstrikes in Yemen include in particular the guidance kits for bombs: Paveway IV (INS/GPS and laser-guided) munition produced by Raytheon in the United Kingdom. But also 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.

These European companies and products therefore have substantially contributed to the aerial warfare carried out in Yemen and, as a result, may be potentially complicit in the serious violations of international humanitarian law committed by the Coalition, some of which may amount to war crimes.

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

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

Investigating the alleged crimes at a national level is complicated due to the transnational character of the corporations involved, their complex structures, the overall opaqueness of data on arms exports, the 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 efforts for Yemen will not only constitute a step towards closing this corporate impunity gap but will also provide the OTP with a sound basis to challenge the role of important actors in the war in Yemen. The European dimension and potential complicity violations that amount to international crimes in Yemen needs more attention and is deserving criminal investigations.

### **The Communication to the OTP: Economic and political actors from Europe potentially bear criminal responsibility**

The Communication submitted to the OTP by ECCHR and its partners in December 2019 specifically tackles the potential complicity of European arms companies and high-ranking government officials, who, by authorizing and exporting arms to members of the Coalition may have been contributing 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) high-level corporate officers with EU nationality 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 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 committed by the Coalition in Yemen.

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, namely, among others, 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.

The Communication firstly includes significant details on each of the 26 incidents. Most of these sites were visited by Mwatana's field researchers, where they interviewed witnesses, victims and family members of those killed and wounded, and took photos of the destruction caused, and, where possible, the arms used. The documentation is key to the Communication.

The evidence submitted along with the Communication includes testimonies 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 have been used as sources.

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

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

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

Investigating the responsibility of persons in key positions within these companies and that of high-ranking government officials with decision-making power in the licensing process, not only explicitly recognized the possibility of corporate involvement in the commission of the most serious crimes within the jurisdiction of the court. It also presents an opportunity to close the corporate impunity gap that largely exists from the current practice of *ad hoc* tribunals and the ICC.

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