

AMNISTÍA  
INTERNACIONAL



EUROPEAN CENTER FOR  
CONSTITUTIONAL AND  
HUMAN RIGHTS

CENTRE DELÀS  
D'ESTUDIS  
PER LA PAU

# 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

Christian Schliemann-Radbruch  
Jordi Calvo Rufanges  
Alberto Estévez Suárez

Authors:

Christian Schliemann-Radbruch, Jordi Calvo Rufanges, Alberto Estévez Suárez

Barcelona, May 2022

Graphic Design:

Esteva&Estêvão

Cover photo: UN Photo/Heba Naji; p. 5: Fahd Sadi; p. 8: ECHO/H. Veit; p. 11: Steven Byles;  
p. 18: M. Quintana/AIRBUS; p. 26: Paul Stephens/IRIN; p. 36: Clément Alloing;  
p. 39: Peter Biro/European Union; p. 41: Alisdare Hickson

ISBN: 978-84-09-33968-6



## TABLE OF CONTENTS

<b>Executive Summary</b> .....	<b>5</b>
<b>Introduction</b> .....	<b>9</b>
<b>1. Background: The Military Intervention by the Saudi/UAE-led Coalition in Yemen and Violations of International Human Rights and Humanitarian Law</b> .....	<b>11</b>
1.1 The Early Stages of the Conflict .....	11
1.2 The Armed Conflict in Yemen and the Involvement of the Saudi/UAE-led Coalition .....	12
1.3 The Humanitarian and Human Rights Impacts of Aerial Warfare ..	12
1.4 Aerial and Naval Blockades .....	14
1.5 Lack of Compliance with International Humanitarian Law .....	15
1.6 The Coalition's Air Fleet and the Role of Military Supplies from Europe .....	15
<b>2. Spanish Arms Exports fuelling the Conflict in Yemen</b> .....	<b>18</b>
2.1 Airbus Defence and Space S.A. as a Main Contributor to European Exports to the KSA and UAE .....	21
2.2 The Contribution of Airbus to the Eurofighter Aircraft .....	22
2.3 The Spanish Contribution to the Production and Export of the Airbus A330-MRTT Refuelling Jet .....	24
<b>3. Legal Framework: Arms Exports and War Crimes</b> .....	<b>26</b>
3.1 The Legal Framework for the National Licensing Procedure in Spain .....	26
3.2 Corporate Responsibility with Respect to Human Rights in the Context of Arms Exports .....	31
3.3 Legal Requirements for Criminal Liability under International Criminal Law .....	33
<b>4. Assessing the Criminal Responsibility of Corporate Officers and Spanish Officials</b> .....	<b>36</b>
4.1 Actus Reus .....	36
4.2 Mens Rea .....	37
<b>5. Conclusions</b> .....	<b>39</b>
<b>6. Recommendations</b> .....	<b>41</b>
<b>Annex</b> .....	<b>43</b>
■ Right of Reply to Upcoming Publication on Spanish Arms Exports and Alleged War Crimes in Yemen and Responsibility of Airbus Defence and Space .....	43
■ Airbus Official Response .....	51

**INDEX OF TABLES**

Table 1. Spanish Arms Exports to Saudi Arabia (2015-June 2021) .....19

Table 2 UAE Spanish Arms Exports (2015-June 2021) ..... 20

Table 3. Arms exports licences to Saudi Arabia and the UAE (2015-June 2021) .....21



## 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 obliga-

tions, 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.





## INTRODUCTION

This report is the result of a joint effort by the European Centre for Constitutional and Human Rights (ECCHR), Centre Delàs for Peace Studies and Amnesty International (Spain), based on the work conducted by ECCHR in collaboration with the support of Centre Delàs for the Spanish case, and Mwatana for Human Rights, Amnesty International, Rete Disarmo, and the Campaign Against the Arms Trade (CAAT) for the entire communication that was submitted to the Prosecutor's Office of the International Criminal Court (ICC) in December 2019.<sup>1</sup> The report maps the links between Spanish arms transfers and alleged war crimes in the Yemen war between 2015 and the first semester of 2021, the last year with official information on Spanish arms exports at the time of writing this briefing paper.

The report firstly provides a brief summary of the conflict in Yemen, the role of the Saudi/UAE-led Coalition, and the humanitarian and human rights impacts of the conflict, with a specific focus on airstrikes and on the naval and air blockade.

Secondly, it documents the role of European arms transfers in the Yemeni civil war, in particular Spanish arms exports to Saudi Arabia and the UAE, while highlighting the role of Spain in the production, export and maintenance of both combat aircrafts - the Eurofighter Typhoon and the aerial refuelling tanker plane - the A330 MRTT. It details the companies involved in the production and export of combat aircrafts to the Kingdom of Saudi Arabia (KSA) and the United Arab Emirates (UAE) with a focus on the Spanish company Airbus Defence and Space S.A. in Spain.

Thirdly, the reports presents the legal framework in which arms exports from Spain operate. Details are provided on the legislative framework, including the prohibitions and risk assessment of potential misuse and the obligations imposed by the Arms Trade Treaty with respect to Spain's arms exports, as well as the business and human rights framework that subjects companies to compliance with due diligence requirements in terms of human rights when manufacturing and exporting military goods.

1. <https://www.amnesty.org/en/latest/press-release/2019/12/icc-investigate-arms-companies-yemen-war-crimes-allegations/>.

Subsequently, the international criminal law framework, as based on the Rome Statute of the International Criminal Court will be presented.

The report concludes by analysing the potential criminal liability of both government officials within Spain's export authorities and the corporate actors that provide military goods to the Saudi/UAE-led Coalition and contrasts their actions against the backdrop of international criminal law.

This foundation is used to make recommendations to both the government and the corporate sector with regard to how they should honour their obligations and responsibilities and end any export activities that could be qualified as aiding and abetting war crimes in Yemen.



## 1. BACKGROUND: THE MILITARY INTERVENTION BY THE SAUDI/ UAE-LED COALITION IN YEMEN AND VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

### 1.1 THE EARLY STAGES OF THE CONFLICT

Hostilities between the parties in Yemen, and the military involvement of Saudi Arabian forces in this country can be traced back to the civil war that has been raging intermittently in Yemen since at least 2004, when fighting broke out between government troops and the rebel Houthi movement of northern Yemen.<sup>2</sup>

Since 2004, six distinct rounds of armed conflict, in which thousands of people were killed and many others injured took place in the Sa'dah Governorate, which borders Saudi Arabia. In the south of Yemen tens of thousands of people participated in sporadic protests against perceived discrimination by the government against southerners, which has been taking place since 2007. Some factions of the Southern Movement were making ever-increasing demands for

the secession of the south of the country. The government responded with brutal repression. In August 2009, the Saudi Air Force launched a bombing campaign that caused large numbers of civilian casualties and the evacuation of the population.<sup>3</sup>

In the wake of the 2011 pro-reform protests in Yemen, Amnesty International called for the suspension of transfers for all types of weaponry, munitions and related equipment to the Yemeni police and security forces in view of the substantial risk of excessive or even lethal use of force in controlling these protests.<sup>4</sup>

In 2011, Amnesty International documented fighting in the north, where the Yemeni government's military offensive (code-named "Scorched Earth") began in August 2009 and ended with a ceasefire on 11 February 2010. "Scorched Earth" involved the deployment of military force against the Houthis on a scale that had not been witnessed before, particularly after Saudi Arabian involvement in November 2009. Weeks of heavy bombardment of Sa'dah, by Saudi Arabian and Yemeni forces in late 2009 and

2. Éric David, Daniel Turp, Brian Wood and Valentina Azarova: The Conflict in Yemen and the Legality of Arms Transfers, pp. 16–19, December 2019, published by IPIS and ASER [https://ipisresearch.be/wp-content/uploads/2019/12/191209-Yemen-EN\\_WEB-2.pdf](https://ipisresearch.be/wp-content/uploads/2019/12/191209-Yemen-EN_WEB-2.pdf).

3. Amnesty International, 'Yemen: Cracking Down Under Pressure', Index: MDE 31/010/2010, August 2010, <https://www.amnesty.org/en/documents/MDE31/010/2010/en>, pp. 39–47.

4. Amnesty International, 'Arms Transfers to the Middle East and North Africa: Lessons for an Effective Arms Trade Treaty', Index: ACT 30/117/2011, July 2011, <https://www.amnesty.org/en/documents/act30/117/2011/en/>, pp. 63–65.

early 2010, were reported to have killed hundreds of people and caused widespread damage to homes and other civilian buildings, such as mosques and schools, as well as local industries and infrastructures.<sup>5</sup>

## 1.2 THE ARMED CONFLICT IN YEMEN AND THE INVOLVEMENT OF THE SAUDI/UAE-LED COALITION

In September 2014, the Houthi armed group (Houthi or Ansar Allah) took control of the Yemeni capital Sana'a, by force. In February 2015, the United Nations Security Council adopted Resolution 2201 (2015),<sup>6</sup> which called on the Houthis to withdraw their forces from government institutions, including Sana'a. Between 2015 and 2020 both the front line and alliances in Yemen shifted in various areas, especially on the western coast, as associations changed. After having offered assistance through an official letter addressed to the UN Security Council and the Secretary General of the UN General Assembly, on 26 March 2015 a military coalition that initially comprised Saudi Arabia, the UAE, Bahrain, Kuwait, Qatar,<sup>7</sup> Egypt, Jordan, Morocco,<sup>8</sup> and Sudan (hereinafter the Saudi/UAE-led Coalition will be termed as the 'Coalition'), launched the military operation 'Decisive Storm' in Yemen.<sup>9</sup>

The military activities of the Coalition are under the control of Saudi Arabia and the UAE,<sup>10</sup> its joint headquarters being in Riyadh. At the end of April 2015, Operation Decisive Storm was followed by operation 'Restoring Hope'.

The Coalition imposed a *de facto* naval and air blockade on areas controlled by the Houthi-Saleh forces, which included the ports of Saleef, Ras Isa, Al-Hudaydah, and Sana'a airport.<sup>11</sup> In 2017, the Coalition began operations along Yemen's West Coast. In June 2018, fighting in and around Al-Hudaydah began, including aerial and ground

attacks, and this was when healthcare, water and sanitation facilities were attacked.<sup>12</sup>

The Stockholm Agreement of December 2018 included a ceasefire and a mechanism for activating the exchange of prisoners and a statement of understanding.<sup>13</sup> However, its implementation did not proceed as planned. By 2019 the United Nations Office for the Coordination of Humanitarian Affairs (the UN OCHA) estimated that 24.1 million people (almost 80 per cent of the population) required aid in order to survive, and the humanitarian crisis continued to have a disproportionate impact on women and children.<sup>14</sup>

## 1.3 THE HUMANITARIAN AND HUMAN RIGHTS IMPACTS OF AERIAL WARFARE

Given the difficulties of documenting the conflict in Yemen, where access to many parts of the country is limited, estimates regarding the number of airstrikes and civilian casualties vary considerably with respect to the source cited, however it is clear that sustained bombardment has led to thousands of civilian casualties. According to one source, 23,886 deaths have been documented in the Yemen War since 2015.<sup>15</sup> These figures point to the fact that at least 8,967 civilians were killed and some 10,214 were injured<sup>16</sup> in over 24,000 Coalition air raids (according to information available at the time of writing). The Coalition and its allies remain responsible for about 67% of all reported civilian fatalities in Yemen, which have amounted to over 8,000 deaths since 2015.<sup>17</sup> The Houthis and their allies are, according to The Armed Conflict Location & Event Data Project (ACLED), responsible for over 1,900 reported civilian deaths from direct targeting.<sup>18</sup>

Since its military intervention in March 2015, the Coalition has conducted thousands of airstrikes on Yemeni territory. Mwatana documented at least 577 airstrikes by the Coalition between March 2015 and

5. Amnesty International concluded that some of the attacks appeared to violate IHL in that they appeared to either deliberately target civilians or civilian objects, or to be indiscriminate or disproportionate attacks that took little or no account of the danger they posed to civilians. Neither the Saudi Arabia nor Yemeni government provided any explanation for the vast majority of such attacks, nor did they explain what, if any, precautions were taken by their forces in order to spare civilians who were taking no part in the hostilities.

6. UN Doc S/RES/2201 (2015), para. 7(b).

7. In 2017 Qatar was expelled from the Coalition.

8. Morocco ceased air operations in support of the Coalition on 22 January 2019.

9. Jon Lake, (2015, June) Yemen on the Edge, *Airforces Monthly*, 36-40, at 40 (hereinafter Lake, Yemen on the Edge 2015), <https://pocketmags.com/us/airforces-monthly-magazine/june-2015>.

10. Final report of the Panel of Experts on Yemen, UN Doc. S/2018/193 (2017) (hereinafter, UN Panel of Experts on Yemen 2017 Report), p. 14, <https://www.undocs.org/S/2018/193>.

11. Final report of the Panel of Experts on Yemen, UN Doc. S/2016/73 (2016) (hereinafter, UN Panel of Experts on Yemen 2016 Report), p. 12, [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2016\\_73.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_73.pdf).

12. Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Mr. Mark Lowcock, Statement on the situation in Yemen, 24 August 2018, <https://reliefweb.int/report/yemen/under-secretary-general-humanitarian-affairs-and-emergency-relief-coordinator-mr-mark-3> and M. Mundy, "The Strategies of the Coalition in the Yemen War: Aerial Bombardment and Food War", distributed by the World Peace Foundation 9 October 2018, <https://sites.tufts.edu/wpf/files/2018/10/Strategies-of-Coalition-in-Yemen-War-Final-20181005-1.pdf>.

13. Report of the Group of Eminent International and Regional Experts, UN Doc. A/HRC/42/17 (2019) (hereinafter Group of Eminent Experts Report 2019), para. 16.

14. Group of Eminent Experts Report 2019, supra note 13, paras. 21 and 22.

15. Updated from UCDP <https://ucdp.uu.se/country/678>, accessed 23 July 2021.

16. Updated data from <https://yemendataproject.org/>, accessed 15 February 2022.

17. According to ACLED this number does not include collateral civilian fatalities. It is therefore an underestimate of all conflict-related civilian fatalities. See ACLED Press Release: 'Yemen War Death Toll Exceeds 90,000 according to new ACLED data for 2015', 18 June 2019, <https://www.acleddata.com/2019/06/18/press-release-yemen-war-death-toll-exceeds-90000-according-to-new-acled-data-for-2015/>.

18. Ibid.

March 2021 that impacted civilians or civilian objects. The airstrikes killed at least 3,820 civilians, injuring some 3,000 people.<sup>19</sup> According to the Yemen Data Project, it is unknown whether there were legitimate military targets present in the 6,929 airstrikes that were carried out.<sup>20</sup> From September 2020 to September 2021, Mwatana documented indiscriminate and disproportionate airstrikes that inflicted severe harm on civilians and civilian objects; 15 airstrikes killed 16 civilians and wounded 41 civilians.<sup>21</sup> Between 1 January and 31 December 2021, Mwatana for Human Rights documented about 839 incidents of harm to civilians and civilian objects in Yemen in which over 782 civilians were killed and injured. In 2021, Mwatana documented at least 18 airstrikes by the Saudi/UAE-led Coalition. These airstrikes killed at least 17 civilians, including 7 children, and 2 women. At least 43 civilians were wounded, including 11 children and 8 women.<sup>22</sup>

Throughout the armed conflict, the Coalition strikes have hit civilians and a range of civilian objects (medical facilities, schools,<sup>23</sup> cultural properties, infrastructures serving the civilian population, residential buildings and civilian gatherings). Since March 2015, various international organizations, civil society and non-governmental organisations have consistently documented such attacks, revealing the clear pattern of aerial warfare strategies implemented by the Coalition that indiscriminately and disproportionately affect Yemeni civilians, civilian objects, and civilian infrastructures.

In 2019, the UN Group of Eminent International and Regional Experts on Yemen (GEE) reported that:

*Despite reported reductions in the overall number of airstrikes and resulting civilian casualties, the patterns of harm caused by airstrikes remained consistent and significant [...] The fact that these patterns continue casts a serious doubt about whether the targeting process adopted by the Coali-*

*tion complied with these fundamental principles of international humanitarian law."<sup>24</sup>*

In September 2020, the Group of Experts reported that:

*Airstrikes continue to be carried out by Coalition forces without appropriate regard to international law on the principles of distinction, proportionality and/or precaution. Persistently high civilian casualties from airstrikes on markets and farms, for instance, indicate that the Coalition may be failing to take all legally-necessary measures to protect civilians and civilian objects. Some airstrikes may amount to disproportionate attacks [...].<sup>25</sup>*

The Group of Experts also:

*Reiterated its call for 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.<sup>26</sup>*

Considering that:

*Some states are failing in their responsibilities to ensure respect for international humanitarian law, and that some states may be violating their obligations under the Arms Trade Treaty. Furthermore, such support may amount to aiding and assisting internationally-wrongful acts in contravention of international law.<sup>27</sup>*

Similarly, a report from the United Nations Panel of Experts on Yemen, issued on 27 January 2020, examined eight air strikes that killed approximately 146 people and injured 133, among many other incidents, concluded that "violations of international humanitarian law and international human rights law continued to be widely committed by all parties in Yemen".<sup>28</sup>

Most recently, in September 2021, the Chair of the Group of Eminent Experts, the GEE<sup>29</sup> stated:

19. Press release of Mwatana for Human Rights, March 28, 2021 <https://mwatana.org/en/civilians-in-yemen-remain-stuck/>.

20. Detailed data on the airstrikes can be found on the Yemen Data Project website: <https://yemendataproject.org/data.html>. The Yemen Data Project is an independent data collection project aimed at gathering and disseminating data on the conduct of the war in Yemen, with the purpose of increasing transparency and promoting the accountability of those actors involved. In the absence of official military records from any of the parties to the conflict. The Yemen Data Project was founded in 2016 with the general aim of contributing independent and neutral data to increase transparency with respect to the conduct of the war and to inform on humanitarian responses, human rights advocacy, media coverage, and policy discussion.

21. <https://mwatana.org/en/end-impunity/>.

22. <https://mwatana.org/en/bloody-conflict/>.

23. In its field report "War of Ignorance" dated January 2021, the Yemeni-based organization describes the impacts of the war on the education system in Yemen, especially the destroying of educational facilities, as well as the evacuation of students and teachers by the conflict: Mwatana for Human Rights, War of Ignorance a Field Study on the Impact of the Armed Conflict on Access to Education in Yemen (January 2021).

24. Group of Eminent Experts Report 2019, supra note 13, para 5. See also for the previous years, UN Panel of Experts on Yemen 2016 report, supra note 11; UN Panel of Experts on Yemen 2017 report, supra note 10; Final Report of the Panel of Experts on Yemen, UN Doc. S/2018/594 (2018) (hereinafter, UN Panel of Experts on Yemen 2018 report).

25. Detailed findings of the Group of Eminent International and Regional Experts on Yemen, UN Doc. A/HRC/45/CRP.7, p. 2.

26. Report of the Group of Eminent International and Regional Experts on Yemen, UN Doc. A/HRC/45/6 (2020) (hereinafter Group of Eminent Experts Report 2020), para. 102.

27. *Ibid.*, para. 102.

28. Final Report from the Panel of Experts on Yemen, UN Doc. S/2020/70 (2020) (hereinafter UN Panel of Experts on Yemen 2020 report), p. 3; [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S\\_2020\\_70.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2020_70.pdf).

29. Press release, 14 September 2021, Group of Experts on Yemen to the Human Rights Council: Impunity Continues Largely Unabated for those who Perpetrate Serious Violations in Yemen, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27460&LangID=E>.

[...] *If third States were truly committed to bringing an end to the conflict and the violations being experienced in Yemen, they would stop transferring arms and providing other military support to the parties to the conflict.*

The GEE September 2021 report<sup>30</sup> found that:

*Notwithstanding the strong recommendations by the Group of Eminent Experts in its previous reports, third states, including Canada, France, Iran (Islamic Republic of), the United Kingdom of Great Britain and Northern Ireland and the United States, continued their support of parties to the conflict, including through arms transfers. Furthermore, some states, such as Italy, have loosened previous restrictions. As the Group has previously noted, arms sales are fuel that perpetuates the conflict.*

In this same report, the GEE also said:

*Since March 2015, over 23,000 airstrikes have been launched by the coalition in Yemen, killing or injuring over 18,000 civilians. Living in a country subjected to an average of 10 airstrikes per day has left millions feeling far from safe.*

According to this latest report, since 2018 the Group of Eminent Experts has

*investigated some 30 airstrikes that killed and injured civilians, including civilians shopping at markets, receiving care in hospitals, or attending weddings and funerals; children on buses; fishers in boats; migrants seeking a better life; individuals strolling through their neighbourhoods; and people who were at home.*

The GEE recommended that other states and regional and international organizations

*take all reasonable measures to ensure respect for international humanitarian law and international human rights law by all parties to the conflict, in particular, by ceasing to provide arms and military support to the parties.*

## 1.4 AERIAL AND NAVAL BLOCKADES

The Coalition has imposed naval and aerial blockades, while claiming to be implementing the arms embargo imposed on the Houthis by the UN Security Council, which is meant to prevent arms transfers to the Houthis (who have received support from Iran). However, frigates from Saudi Arabia, Egypt and the UAE, among others used by the Coalition either prevented, arbitrarily delayed or obstructed commercial and civilian vessels from accessing these ports. Only vessels with valid

clearance from the Coalition were authorised to enter embargoed ports.

In addition to this *de facto* naval blockade, on 9 August 2016, the Coalition closed off Sana'a airport, which was Yemen's main international airport before the conflict for commercial flights. In December 2016, the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) stressed the importance of reopening Yemeni airspace for commercial flights from Sana'a airport

*especially so the thousands of sick and injured can receive the medical treatment and assistance they require. Until that happens, preventable suffering and deaths will continue".*

The UN Group of Eminent Experts found that

*the effective closure of Sana'a airport is a violation of international humanitarian law protection for the sick and wounded. Such acts, together with the requisite intent, may amount to international crimes.<sup>31</sup>*

On 6 November 2017, following the interception of a Houthi missile fired at Riyadh, the Coalition: "*decided to temporarily close all Yemeni ground, air and sea ports*".<sup>32</sup> Goods were effectively blocked from entering Yemen, including food, fuel and medicines.<sup>33</sup>

By April 2017, a UN expert stated that the Coalition's aerial and naval blockade was an unlawful coercive measure.<sup>34</sup> As Amnesty International noted, the Coalition's restrictions have adversely affected access by Yemenis to health care and clean water. Fuel shortages have affected the purification of water and have had an impact on hospitals.<sup>35</sup> Thus, the *de facto* naval and aerial blockade is not only problematic, as humanitarian aid is hindered from entering Yemen, it has also

*drastically limited imports and impeded the delivery of relief supplies, thereby significantly contributing to the deterioration of the economy in Yemen, [and] these measures have*

30. Report of the Group of Eminent International and Regional Experts on Yemen, UN Doc. A/HRC/48/20 (2021) (hereinafter Group of Eminent Experts Report 2021), para. 19, [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session48/Documents/A\\_HRC\\_48\\_20\\_AdvanceEditedVersion.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session48/Documents/A_HRC_48_20_AdvanceEditedVersion.docx).

31. UN OHCHR, Press Release, Yemen: United Nations Experts point to Possible War Crimes by Parties to the Conflict, 28 August 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23479>.

32. 'Statement by the Command of the Coalition to Restore Legitimacy in Yemen', Saudi Press Agency, 6 November 2017, <http://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=1684682>.

33. K. McVeigh, 'Closure of Yemen's Borders to aid Deliveries is 'catastrophic', UN warns', The Guardian, 7 November 2017, <https://www.theguardian.com/global-development/2017/nov/07/closure-of-yemen-borders-to-aid-deliveries-is-catastrophic-un-united-nations-warns>; UN OCHA, Yemen Humanitarian Bulletin, Issue 29, 20 November 2017, <https://reliefweb.int/report/yemen/yemen-humanitarian-bulletin-issue-29-20-november-2017>.

34. UN OHCHR, Lift Blockade of Yemen to stop "Catastrophe" of Millions facing Starvation, says UN expert, 12 April 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21496&LangID=E>.

35. Amnesty International, Stranglehold – Coalition and Huthi obstacles compound Yemen's humanitarian crisis, 2018, p. 4, <https://www.amnesty.org/en/documents/mde31/8505/2018/en/>.

*had a disproportionate impact on the civilian population, in violation of international humanitarian law.”<sup>36</sup>*

These measures, when taken as a whole, have had a disproportionate impact on the civilian population, in violation of international humanitarian law. Furthermore, the UN Panel of Experts found that the November 2017 blockade “*had the effect of using the threat of starvation as an instrument of war,*”<sup>37</sup> a fact that has been demonstrated by the Mwatana for Human Rights 2021 report on the use of starvation as a weapon of war.<sup>38</sup>

## 1.5 LACK OF COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW

The documentation on the Coalition's warfare strategies provided in preceding sections, details the fundamental, enduring, and grave problems with the Coalition's targeting process which effectively remove the protection provided by international humanitarian law. In many cases, the targeting process appears to amount to serious violations of international humanitarian law and may even amount to a war crime.

Firstly, the Coalition appears to be repeatedly failing to respect the principle of **distinction**, given the absence of any apparent military objectives in many of the strikes examined, and the repeated pattern of strikes on civilian objects. This raises serious concerns that the Coalition is indeed failing to appropriately identify and define military targets before conducting aerial attacks, as required by IHL.

Secondly, the Coalition appears to be repeatedly failing to respect the principle of **proportionality**. The scope and scale of civilian casualties and civilian objects damaged and destroyed in aerial attacks indicates that the Coalition is failing to carry out appropriate proportionality assessments in advance of attacks.

Thirdly, given the timing of several attacks and the choice of weapons used, the Coalition appears to be repeatedly failing to take **appropriate precautionary measures**.

The Coalition has also repeatedly failed to impartially investigate alleged violations of international humanitarian law in Yemen.<sup>39</sup> The Coalition has shown little to no willingness in terms of investigating personal criminal responsibility for unlawful airstrikes. In a

submission made to the UK's Secretary of State for International Trade on 9 May 2020, Mwatana and GLAN presented extensive evidence of Coalition air-strike sites regarding which, despite conclusive evidence to the contrary, the Joint Incidents Assessments Team, JIAT had concluded that the Coalition had not attacked the locations in question.<sup>40</sup> In 2017, Amnesty International warned that “*JIAT's investigations appear to be falling short of international standards, including those of transparency, independence, impartiality and effectiveness.*”<sup>41</sup> In 2018, Human Rights Watch (HRW) examined the way JIAT, the Coalition's investigative body, looked into Coalition compliance with the laws of war and civilian harm by means of a post-strike analysis, and it found that the Saudi/Emirati-led Coalition's investigations into alleged war crimes in Yemen lacked credibility and failed to provide redress to civilian victims.<sup>42</sup>

In short, an examination of several representative strikes carried out by the Coalition in its aerial campaign have shown an unwillingness, or an inability to comply with the principles of international humanitarian law, especially those of distinction and proportionality, in addition to a failure to impartially investigate alleged violations of international humanitarian law. These violations go beyond those of any individual strike and appear to have developed into a pattern of warfare over the course of the conflict.

## 1.6 THE COALITION'S AIR FLEET AND THE ROLE OF MILITARY SUPPLIES FROM EUROPE

At the beginning of the Coalition's intervention in March 2015, Saudi Arabia provided the largest amount of military material for aerial warfare (100 aircrafts), followed by the UAE (30 aircrafts). Other countries that formed part of the Coalition provided smaller numbers of aircraft, notably Bahrain (15), Qatar (10), Jordan (6) and Morocco (6).<sup>43</sup> On 22 August 2017, the President of Egypt Al Sisi confirmed that Egypt possessed “air force elements” in Saudi Arabia.<sup>44</sup>

36. Group of Eminent Experts Report 2019, *supra* note 13, para 53.

37. UN Panel of Experts on Yemen 2018 report, *supra* note 24, p. 3.

38. Mwatana for Human Rights (2021): Starvation Makers. The Use of Starvation by Warring Parties in Yemen, September 2021.

39. Human Rights Watch, Yemen: Coalition Airstrikes Deadly for Children, 12 September 2017, <https://www.hrw.org/news/2017/09/12/yemen-coalition-airstrikes-deadly-children>.

40. Mwatana for Human Rights (2020): Mwatana and GLAN Submission to the UK's Secretary of State for International Trade, 9 May 2020, <https://mwatana.org/en/mwatana-glan-submission-to-uk/>.

41. Amnesty International response to the Saudi Arabia-led coalition's investigations (16 January, 2017) <https://www.amnesty.org/en/documents/mde31/5494/2017/en/>.

42. Human Rights Watch, (2018) Hiding Behind the Coalition: Failure to Credibly Investigate and Provide Redress for Unlawful Attacks in Yemen <https://www.hrw.org/report/2018/08/24/hiding-behind-coalition/failure-credibly-investigate-and-provide-redress-unlawful>.

43. Michael Knights and Alexandre Mello, The Saudi-UAE War Effort in Yemen (Part 2): The Air Campaign, The Washington Institute for Near East Policy, 11 August 2015, (hereinafter The Washington Institute, War Effort in Yemen 2015), <https://www.washingtoninstitute.org/policy-analysis/view/the-saudi-uae-war-effort-in-yemen-part-2-the-air-campaign>. See also, Human Rights Watch, Hiding Behind the Coalition, *supra* note 42 and for further details as to military involvement of the Coalition's members [https://www.hrw.org/sites/default/files/supporting\\_resources/letters\\_investigating\\_alleged\\_violations\\_yemen.pdf](https://www.hrw.org/sites/default/files/supporting_resources/letters_investigating_alleged_violations_yemen.pdf).

44. UN Panel of Experts on Yemen 2017 Report, *supra* note 10, at 14.

## 1.6.1 THE ROYAL SAUDI AIR FORCE

Using information from the 2019 ISS Military Balance, the Royal Saudi Air Force (RSAF) has at least 67 Tornado combat aircrafts, and 71 European-origin Typhoon combat aircrafts, which make up almost half of those planes in the fleet with the capacity to attack, given that the total number of attack-capable aircraft are 252.<sup>45</sup>

According to Defence News sources, these combat aircrafts operate with high precision targeting pods, including the Damocles Pod produced by Thales, as well as precision laser and GPS-guided munition (PGMs).<sup>46</sup> The Damocles targeting pod is generally used on the Typhoon, together with Paveway II laser-guided bombs.<sup>47</sup> The air-to-ground missile manufactured by MBDA, 'Storm Shadow', is also used on Typhoons.<sup>48</sup> In-flight fuelling of both the Typhoon and the Tornado can be carried out by the A330 MRTTs procured from Airbus Defence & Space Spain that are equipped with underwing hose-and-drogue refuelling pods that are compatible with both types of aircraft.<sup>49</sup>

The Royal Saudi Air Force, as well as other forces making up the Coalition, mainly operates from two airbases. King Khalid Air base at Khamis Mushyt lies 412 miles north of Aden, and King Fahd Air Base at Taif, is 660 miles from Aden, both have mainly been used to fly air attacks, although there have also been reports of operations from King Abdul Aziz Air Base at Dhahran.<sup>50</sup> The Typhoons and Tornados are operated by the Royal Saudi Airforce's 10<sup>th</sup> Squadron at Taif Airbase.<sup>51</sup>

## 1.6.2 THE UAE AIR FORCE

European-manufactured combat aircrafts comprise a substantial part of the UAE Air Force fleet. The UAE operates 59 Dassault Mirage 2000 jets as part of the 124 attack-capable aircraft in its fleet.<sup>52</sup> This constitutes just under half of the combat capable aircraft at the disposal of the UAE Air Force.

In September 2015, the UAE established a military infrastructure in Eritrea, in the port of Assab, and on the

runaway of the local airport. Satellite imagery of this location revealed the presence of five Mirage 2000-9s, among other aircrafts.<sup>53</sup> According to the same source, the Assab air base enables the UAE to operate on the other side of the Arabian Peninsula and it facilitates operations over Yemen.<sup>54</sup> In early 2021, the UAE was reported to be dismantling parts of the base in Assab, which had been used since late 2015 as a base to ferry heavy weaponry and Sudanese troops into Yemen.<sup>55</sup>

## 1.6.3 MILITARY SUPPLIES FROM EUROPE

Military goods of European origin constitute a substantial part of the overall equipment available to the Saudi Arabian and UAE air forces. Among them, military goods from five European countries, namely the United Kingdom, Germany, Spain, France and Italy make up the largest share of those arms delivered from Europe to Saudi Arabia, the UAE and Egypt. The Coalition relies among others on the following military products manufactured by European companies.

Typhoon and Tornado combat aircrafts, which are indispensable for air warfare, are the result of joint production schemes that include several European companies. For the Eurofighter Typhoon the key companies involved are BAE Systems (United Kingdom), Airbus Space & Defence GmbH (Germany), Airbus Space & Defence S.A. (Spain) with its joint parent company Airbus SE (The Netherlands), and Leonardo (Italy). With respect to the Tornado, these companies are Leonardo (formerly Finmeccanica), BAE, Airbus Germany, and Panavia GmbH. The four major companies subcontract the production of certain parts and components to a large number of subcontractors. For example, a consortium of Rolls-Royce, MTU Avio and ITP produces the EJ200 engines for the Eurofighter Typhoons.<sup>56</sup> Altogether, around 150 main contractors and subcontractors and some 400 European companies from the technology and avi-

45. International Institute for Strategic Studies (IISS), The Military Balance 2019, at 366, (hereinafter IISS Military Balance 2019) <https://www.iiiss.org/publications/the-military-balance/the-military-balance-2019>.

46. Ralph Shield (2018) The Saudi air war in Yemen: A case for coercive success through battlefield denial, *Journal of Strategic Studies*, 41:3, 461-489, <https://www.tandfonline.com/doi/full/10.1080/01402390.2017.1308863>.

47. Jane's Defence Weekly, 30 October 2013, Briefing: Gulf air rising, *IHS Global Limited*, Volume 50, Issue 48 (hereinafter IHS Gulf air rising 2013).

48. Ibid.

49. Ibid.

50. Lake, *Yemen on the Edge* (2015) supra note 9, p. 40.

51. Ibid.

52. IISS Military Balance 2019, supra note 45, p. 374.

53. Arnaud Delalande, (2017, September) Air War in Yemen, *Airforces Monthly*, at 96, (hereinafter Delalande, Air War in Yemen 2017) <https://pocketmags.com/airforces-monthly-magazine/september-2017>.

54. Ibid.

55. [https://www.voanews.com/a/africa\\_uae-dismantles-eritrea-base-it-pulls-back-after-yemen-war/6202212.html](https://www.voanews.com/a/africa_uae-dismantles-eritrea-base-it-pulls-back-after-yemen-war/6202212.html).

56. EUROJET Turbo GmbH – owned by Rolls-Royce (33%, in the UK), MTU Aero Engines (33%, in Germany), ITP (13%, in Spain), and Avia Aero (21%, in Italy) – was formed as the management company responsible for the development, production, maintenance and sales of the EJ200 engine. See <https://www.rolls-royce.com/products-and-services/defence/aerospace/combats-jets/ej200.aspx#/> and <https://www.eurojet.de/company-shareholders.php>. It must be noted that companies such as Rolls-Royce are engaged in major contracts to supply, maintain and overhaul engines for the Eurofighter and the Tornado. For example, in 2013 Rolls-Royce announced a four year agreement to provide support to Saudi Arabia for the Tornado engines, <https://www.rolls-royce.com/media/press-releases/2013/160113-saudi-arabia.aspx>. Furthermore, it was reported that in 2018 alone Rolls-Royce generated £282m in revenues from Saudi Arabia in relation to the EJ200 engine, amounting to 1.8 per cent of its total revenue, <https://www.investorchronicle.co.uk/shares/2019/06/24/saudi-arms-ruling-raises-questions-over-future-bae-business/>.

ation sector participate in the Eurofighter Typhoon programme.<sup>57</sup>

Combat aircrafts are further equipped with bombs and missiles equally of European origin, comprising in particular MBDA (UK & France) manufactured Brimstone and Storm Shadow Missiles, as well as Raytheon UK produced Paveway IV bombs<sup>58</sup> and RWM Italia manufactured MK 80 series bombs.<sup>59</sup>

These companies have supplied a substantial proportion of the military hardware used for the aerial warfare missions undertaken in Yemen, which potentially links them to the alleged war crimes committed by the Coalition.<sup>60</sup>

---

57. Airpower, Team Eurofighter, <http://eurofighter.airpower.at/fertigung-unternehmen.htm>.

58. Letter of the UK Department for International Trade with information on the licences granted for Storm Shadow, Brimstone and Paveway IV bombs. Information given by UK reporting institutions on this licence can also be retrieved from the CAAT website here: [https://www.caat.org.uk/resources/export-licences/licence-list?date\\_from=2014-03-01&date\\_to=2014-03-31&region=Saudi+Arabia&rating=ML4](https://www.caat.org.uk/resources/export-licences/licence-list?date_from=2014-03-01&date_to=2014-03-31&region=Saudi+Arabia&rating=ML4).

59. Il Post, "Da dove vengono le bombe usate in Yemen", 25 June 2015, <https://www.ilpost.it/2015/06/26/yemen-bombe-inchiesta-italia/>.

---

60. For more information on military supplies from European countries and additional sources see: <https://yemen.forensic-architecture.org/>.



## 2. SPANISH ARMS EXPORTS FUELLING THE CONFLICT IN YEMEN

As follows from the above description of Europe's contribution to the war effort in Yemen, the most relevant military equipment is for the aerial warfare. This includes fighter jets as well as parts and components thereof, in addition to missiles, rockets and bombs used to equip such combat aircraft, in addition to other material that supports air warfare missions, such as tanking planes. All these types of products fall under specific categories of the Common Military List of the European Union.<sup>61</sup> Those most relevant are Category ML 4 for bombs torpedoes, rockets, missiles and Category ML 10 for aircraft and aircraft equipment, which are related equipment and components. Official data from the Spanish government provides some information on actual deliveries, these have been broken down into product categories.

The following exports to Saudi Arabia that relate to the ML4 and ML10 categories can be confirmed:

In 2015, the total for exports of military goods to Saudi Arabia amounted to €545,979,750, from which the ML10 category ranked first among all product categories with a value of €498,647,443. The second largest category product was ML4, with a value of €42,063,173. Taken together, these categories represent more than 95% of all exported goods to Saudi Arabia for 2015.

The official government report specifies that those exports from Spain to Saudi Arabia in this category include, among others, 2 refuelling planes, of which one was delivered after the beginning of operation "Decisive Storm".<sup>62</sup>

It is worth noting that the substantial risk of these planes being used to commit or facilitate serious breaches of IHL by the Saudis was discussed in detail with Spanish government officials from the Ministry of Trade together with Amnesty International (AI) Spain in the summer of 2015, when the pattern of alleged war crimes was already well-documented. The Spanish officials stated that the Saudis had to abide by the end-use agreements in those operations. As Amnesty International indicated, at the time there was no *ex post* system to enforce and verify compliance with those agreements. As a result, the government created a working group to improve the end-use monitoring of Spanish arms exports. This process led to the adoption, in April 2020, of a revised regulation<sup>63</sup> of arms exports that included an *ex post* verification protocol on end-use monitoring. In June 2021, the Secretary of State for Trade reported that this mechanism was implemented for one operation for Saudi Arabia and three operations for the UAE. The Spanish government also stated that "strengthened guarantees" were applied in 14 cases to Saudi Arabia, mostly regarding ammunition/munitions, and 20 op-

61. Common Military List of the European Union, as adopted by the Council on 17 February 2020. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XG0313\(07\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XG0313(07)&from=EN).

62. Spanish Arms Export Statistics 2015, p. 73, Annex 1 states that a refuelling plane was delivered to Saudi Arabia with date 31 July 2015, [https://www.sipri.org/sites/default/files/SPA\\_2015\\_spanish\\_0.pdf](https://www.sipri.org/sites/default/files/SPA_2015_spanish_0.pdf).

63. [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-4708](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4708).

**Table 1. Spanish Arms Exports to Saudi Arabia (2015-June 2021)**

Euros

ML	2015	2016	2017	2018	2019	2020	2021 (1 <sup>st</sup> semester)	Total
1	2,140					19,330		21,470
2				991,437				991,437
3		34,780,546	90,117,910	80,345,272	7,064,757	27,039,177	39,530,476	278,878,138
4	42,063,173	41,200,000		9,200,000	827,500	444,225		93,734,898
5	600,000		57,000,000	19,226,100	3,873,749	921,457		81,621,306
8				1,700,439				1,700,439
9						4,072,600	2,324,000	6,396,600
10	498,647,443	32,232,315	98,497,699	120,334,111	23,076,175	15,765,968	13,890,065	802,443,776
11	465,000	4,229,178	1,429,791	235,232				6,359,201
15	4,201,994		23,120,401	3,236,265	524,297		0	31,082,957
22		3,750,000						3,750,000
<b>TOTAL</b>	<b>545,979,750</b>	<b>116,192,039</b>	<b>270,165,801</b>	<b>235,268,856</b>	<b>35,366,478</b>	<b>48,262,756</b>	<b>55,744,541</b>	<b>1,306,980,222</b>

Source: Authors' own. from *Histórico de informes de material de Defensa*, [https://comercio.gob.es/ImportacionExportacion/Informes\\_Estadisticas/Paginas/Historico\\_Material\\_Defensa.aspx](https://comercio.gob.es/ImportacionExportacion/Informes_Estadisticas/Paginas/Historico_Material_Defensa.aspx), Secretaría de Estado de Comercio, Gobierno de España

erations for the UAE. These guarantees are intended to ensure that the arms are not used outside the territory of the country of destination, nor that they are re-transferred without the agreement of the Spanish government.<sup>64</sup>

In 2016, exports in the ML 4 products category were the largest category of all exports, with a value of €41,200,000, followed by ML 10 products as the third-largest category, with a value of €32,232,315. According to the official report, the deliveries of spare parts for refuelling jets were worth €101,811,591.<sup>65</sup>

In 2017, no physical exports of bombs and missiles (ML 4) took place, yet products belonging to the ML 10 category again represented the largest category of goods exports, at €98,497,699. The official information includes one military transport plane, spare parts for refuelling planes, and other items to Saudi Arabia, for an amount of €253,756,068.<sup>66</sup>

In 2018, ML4 category exports were worth €9,200,000 and the highest amount of goods exported in the ML 10 category, worth €120,334,111, were stated as being

2 military transport planes, among other ammunition/munitions, including spare parts for refuelling jets.<sup>67</sup>

In 2019, ML4 products were worth €827,500, and ML10, €23,076,175, however licences worth €200,000,000 for spare parts for refuelling jets were authorised.<sup>68</sup>

In 2020, ML4 category exports were worth €444,225 and ML10 items were valued at €15,765,968, which again included spare parts for a refuelling jet, transport planes and spare parts for a European cooperation armed combat aeroplane.<sup>69</sup> There were no ML4 category exports during the first semester of 2021. Current ML 10 exports are worth €13,890,065.

A brief mention must also be made of over 30 Saudi ships that have called at Spanish ports since 2015, and that have allegedly been loaded with Spanish arms at several ports, in operations shrouded in secrecy.<sup>70</sup> These transits are regulated under Articles 2, 6 and 9 of the Arms Treaty and should be prohibited when the conventional arms, ammunition/munitions are to be used for the purposes of genocide, crimes against humanity, grave breaches of the Geneva Convention of 1949, attacks directed against civilian objects or ci-

64. For further information and a detailed analysis and policy proposals on how to turn this protocol into a more-focused system on potential misuse, see the Annex of the joint AI Spain report with other NGOs *La política del avestruz. ¿Acabarán el Gobierno y los grupos parlamentarios con los secretos que matan? Análisis de las exportaciones españolas de material de defensa y otro material de 2020* <https://doc.es.amnesty.org/ms-opac/doc?q=exportaciones+espa%C3%B1olas&start=0&rows=1&sort=fecha%20desc&fq=norm&fv=>.

65. Spanish Arms Export Statistics 2016, p. 69, [https://www.sipri.org/sites/default/files/2018-10/spa\\_16\\_spanish.pdf](https://www.sipri.org/sites/default/files/2018-10/spa_16_spanish.pdf).

66. Spanish Arms Export Statistics 2017, pp. 9, 73, [https://comercio.gob.es/ImportacionExportacion/Informes\\_Estadisticas/Material%20Defensa%20Doble%20Uso/2017/Exportaciones%20espa%C3%B1olas%20en%20el%20A%C3%B1o%202017.pdf](https://comercio.gob.es/ImportacionExportacion/Informes_Estadisticas/Material%20Defensa%20Doble%20Uso/2017/Exportaciones%20espa%C3%B1olas%20en%20el%20A%C3%B1o%202017.pdf).

67. Spanish Arms Export Statistics 2018, pp. 9, 73, [https://comercio.gob.es/ImportacionExportacion/Informes\\_Estadisticas/Material%20Defensa%20Doble%20Uso/2018/INFORMEESTAD%C3%8DSTICAS2018\(4\\_5\\_20\).pdf](https://comercio.gob.es/ImportacionExportacion/Informes_Estadisticas/Material%20Defensa%20Doble%20Uso/2018/INFORMEESTAD%C3%8DSTICAS2018(4_5_20).pdf).

68. Spanish Arms Export Statistics 2019, p. 73, [https://comercio.gob.es/ImportacionExportacion/Informes\\_Estadisticas/Sectores/Material%20de%20Defensa%20-%20periodos/Material-Defensa-ultimo-periodo.pdf](https://comercio.gob.es/ImportacionExportacion/Informes_Estadisticas/Sectores/Material%20de%20Defensa%20-%20periodos/Material-Defensa-ultimo-periodo.pdf).

69. Spanish Arms Export Statistics 2020, p. 9, [https://comercio.gob.es/ImportacionExportacion/Informes\\_Estadisticas/Material%20Defensa%20Doble%20Uso/2020/informe\\_estadisticas\\_2020.pdf](https://comercio.gob.es/ImportacionExportacion/Informes_Estadisticas/Material%20Defensa%20Doble%20Uso/2020/informe_estadisticas_2020.pdf).

70. <https://www.publico.es/politica/30-barcos-muerte-saudies-han-cargado-armas-espana-inicio-guerra-yemen.html>.

vilians protected as such, or other war crimes.<sup>71</sup> As of 31<sup>st</sup> December 2021, the last of these four Saudi ships that visited Spain in 2021 called at the Port of Sagunto on 21 October 2021.<sup>72</sup>

With respect to the United Arab Emirates, exports for ML4 category products were made in 2017 alone, for the amount of €15,251,360. In all the years analysed, significant exports of products pertaining to the ML 10 category took place.

In 2015 such products were in fact the only items exported, to a value of €3,942,910, including spare parts for a refuelling jet.<sup>73</sup>

In 2016, Spain exported products in the ML10 category amounting to €21,166,596; these comprised €11,671,250 for spare parts, documentation and other items for a refuelling jet.

In 2017, these items were, for the first time, not the largest category, ranking only third among all categories, to a value of €10,295,751 and among other products, spare parts for refuelling jets<sup>74</sup> were exported.

In 2018, a similar figure (€11,412,829) was reached, including parts for refuelling jets.<sup>75</sup>

However, in 2019 Spain delivered €160,241,508 in ML10 category products that mainly included items for 4 military transport airplanes and for spare parts for refuelling jets.<sup>76</sup>

In 2020, Spain exported only €6,308,285 worth of ML10 category goods, however the report states that this included spare parts for refuelling jets.<sup>77</sup>

In the first semester of 2021, Spanish exports of ML4 goods were worth €986,277 and ML 10 category exports reached a value of €3,820,267. In total, according to the Spanish official reports, Spanish arms exports to Saudi Arabia since 2015 reached €1,306,980,202, and those to the UAE were worth €311,219,440. The global volume of Spanish arms exports to the main countries of the Coalition since the beginning of the conflict reveals the relevance of these two clients for the Spanish arms industry. However, there was a reduction in the level of exports to Saudi Arabia (2019-2020) during these last two years and this occurred only in 2020 with respect to the UAE. In all events, arms exports of weapons that could be directly related to warfare (categories ML1 to ML6) are still relevant, even in 2020.

One arms transfer from Spain to Saudi Arabia is also worth mentioning; the transfer of 400 US-made Paveway laser-guided bombs to Saudi Arabia that were delivered in late 2018 by the Spanish Ministry of Defence under a contract signed in 2015 by the then Popular Party government. The controversial transfer was, according to media reports,<sup>78</sup> reviewed<sup>79</sup> and initially halted by the Spanish Minister of Defence in mid-August following a Coalition airstrike that killed at least 26 children and wounded at least 19 more in or near a school bus in the busy market of Dhahyan, in northern Yemen, on 9 August, 2018,<sup>80</sup> in what

71. <https://www.amnesty.org/en/latest/press-release/2019/12/spain-ensure-saudi-arabian-ship-carries-no-arms-through-spanish-ports/>.

72. <https://www.publico.es/politica/barco-muerte-saudi-atracara-jueves-puerto-sagunto-incrementan-bombardeos-yemen.html>.

73. Spanish Arms Export Statistics 2016, supra note 65, p. 9.

74. Spanish Arms Export Statistics 2017, supra note 66, p. 10.

75. Spanish Arms Export Statistics 2018, supra note 67, p. 9.

76. Spanish Arms Export Statistics 2019, supra note 68, p. 9.

77. Spanish Arms Export Statistics 2020, supra note 69, p. 10.

78. [https://cadenaser.com/ser/2018/09/03/tribunales/1535994127\\_982762.html](https://cadenaser.com/ser/2018/09/03/tribunales/1535994127_982762.html) and [https://elpais.com/politica/2018/08/13/actualidad/1534180893\\_587047.html](https://elpais.com/politica/2018/08/13/actualidad/1534180893_587047.html).

79. <https://www.defensa.gob.es/gabinete/notasPrensa/2018/08/DGC-180816-armas.html>.

80. <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/no-se-pueden-permitir-mas-muertes-de-civiles-en-yemen/>.

**Table 2 UAE Spanish Arms Exports (2015-June 2021)**

ML	Euros							
	2015	2016	2017	2018	2019	2020	2021 (1 <sup>st</sup> 6months)	Total
1						1,206		1,206
3		5,572,266	27,381,091	2,470,680	9,488,693	8,209,773	1,113,110	54,235,613
4			15,251,360				985,277	16,236,637
5						11,967,350	717,151	12,684,501
6					75,216			75,216
10	3,942,910	21,166,596	10,295,751	11,412,829	160,241,508	6,308,285	3,820,267	217,188,146
11					9,100,000			9,100,000
22					285,282	1,195,763	216,076	1,697,121
<b>TOTAL</b>	<b>3,942,910</b>	<b>26,738,862</b>	<b>52,928,202</b>	<b>13,883,509</b>	<b>179,190,699</b>	<b>27,682,377</b>	<b>6,852,882</b>	<b>311,219,440</b>

Source: Author's own, from *Histórico de informes de material de Defensa*, [https://comercio.gob.es/ImportacionExportacion/Informes\\_Estadisticas/Paginas/Historico\\_Material\\_Defensa.aspx](https://comercio.gob.es/ImportacionExportacion/Informes_Estadisticas/Paginas/Historico_Material_Defensa.aspx), Secretaría de Estado de Comercio, Gobierno de España

appeared to be a war crime.<sup>81</sup> In early September, AI and other NGOs called for the suspension<sup>82</sup> of arms transfers to the Saudi/Emirati-led Coalition in a meeting with the Secretary of State for Trade, who stated that these exports were being "reviewed". A de facto suspension of licences was reportedly<sup>83</sup> adopted between November 2018 and early 2020, when a new end-use monitoring system was approved. After a diplomatic crisis with Saudi Arabia in September 2018, and apparently<sup>84</sup> fearing the potential impact of a decision not to deliver the bombs, in late October, the Spanish Prime Minister stated that the transfer of the 400 bombs would be made (according to media reports, it took place in late September from the Port of Santander<sup>85</sup>), a move heavily criticised by Spanish NGOs.<sup>86</sup>

Finally, it is worth considering the licences granted to both the KSA and UAE between 2015 and June 2021 (latest official data available at the time of writing). The table below shows the number of licences to either of these countries leading the Coalition. The licences granted in this period to both Saudi Arabia and the UAE are worth €2,461 million, a figure that reaches €2,867 million when including those licences to other Coalition members.

As shown in the table 3, there has been a steady flow of licences, except for those to Saudi Arabia in 2018 when, for a few months, the Spanish government undertook a review of those licences. The most positive development in this period was the denial of a licence of bombs to the UAE under criterion four (preservation of regional peace, security and stability) of the EU Council Common Position 2008/944/CFSP of 8 December 2008.

81. <https://www.hrw.org/news/2018/09/02/yemen-coalition-bus-bombing-apparent-war-crime>.
82. <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/carta-abierta-al-gobierno-espanol-sobre-la-suspension-de-la-venta-de-armas-a-arabia-saudi/>.
83. [https://elpais.com/politica/2020/02/09/actualidad/1581279741\\_634771.html](https://elpais.com/politica/2020/02/09/actualidad/1581279741_634771.html).
84. [https://elpais.com/politica/2018/09/12/actualidad/1536778107\\_560827.html?rel=listaapoyo](https://elpais.com/politica/2018/09/12/actualidad/1536778107_560827.html?rel=listaapoyo).
85. [https://cadenaser.com/emisora/2018/10/24/radio\\_santander/1540376875\\_699962.html](https://cadenaser.com/emisora/2018/10/24/radio_santander/1540376875_699962.html).
86. <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/decepcion-el-presidente-se-decanta-por-los-intereses-economicos-en-su-politica-de-venta-de-armas-a/>.

## 2.1 AIRBUS DEFENCE AND SPACE S.A. AS A MAIN CONTRIBUTOR TO EUROPEAN EXPORTS TO THE KSA AND UAE

Spanish military equipment is significant for a number of goods used by the Saudi led Coalition in Yemen. As can be gathered by the structure of the respective air fleets of Saudi Arabia and the UAE, the Eurofighter and the A330 MRTT fuelling plane are highly important to their fleets. Spanish parts and components are essential for both these planes.

The Eurofighter Typhoon Programme involves four partner nations (Germany, Spain, Italy and the UK). When the Eurofighter consortium produces Eurofighter aircrafts for the participating countries, the components are produced in each of the four countries, and the final assembly takes place in the country that buys the aircraft. However, in the present scenario, when Eurofighter aircrafts are ordered by, and produced for countries outside the consortium, contracts are signed with one specific partner in the consortium, who is assigned as the 'main contractor', and final assembly takes place in this partner's home country. All partner companies produce the components.

The contracts are negotiated directly between the purchasing country (e.g. the Kingdom of Saudi Arabia, KSA) and the industrial party (e.g. BAE Systems). The programme functions as a "project management corporation", which tasks various subcontractors with technical service provision.<sup>87</sup> The four large partner corporations, Leonardo S.p.A. (Leonardo), BAE Systems plc (BAE), Airbus Defence and Space S.A. (Airbus SP) and Airbus Defence and Space GmbH (Airbus GE), are referred to as the 'head subcontractors' in the four countries respectively.<sup>88</sup>

Eurofighter Jagdflugzeug GmbH<sup>89</sup> is a limited liability company (based in Munich). At this moment, BAE (33%), Airbus GE (33%), Airbus SP (13%), and Leonar-

87. Altogether, roughly over 400 European companies make up "Team Eurofighter", taking part in the Eurofighter Typhoon programme. See <http://eurofighter.airpower.at/fertigung-unternehmen.htm>.
88. "Unternehmensregister, Eurofighter Jagdflugzeug GmbH 'Jahresabschluss zum Geschäftsjahr vom 01.01.2017 bis zum 31.12.2017. Lagebericht für das Geschäftsjahr 2017, p. 1; available at <https://www.bundesanzeiger.de/ebanzwww/wexsservlet>.
89. Eurofighter Jagdflugzeug GmbH, Am Söldnermoos 17, D-85399 HallbergmoosGermany, Tel: +49 811 801222.

**Table 3. Arms exports licences to Saudi Arabia and the UAE (2015-June 2021)**

Country	2015	2016	2017	2018	2019	2020	2021 (1st half)	TOTAL
KSA	18	10	27	4	22	26	9	116
UAE	11	8	21	24	23	34	19	140

Source: Author's own, from *Histórico de informes de material de Defensa*, [https://comercio.gob.es/ImportacionExportacion/Informes\\_Estadisticas/Paginas/Historico\\_Material\\_Defensa.aspx](https://comercio.gob.es/ImportacionExportacion/Informes_Estadisticas/Paginas/Historico_Material_Defensa.aspx), Secretaría de Estado de Comercio, Gobierno de España

do (21%) own Eurofighter Jagdflugzeug GmbH,<sup>90</sup> the structure of its ownership shares having changed over time. When it comes to exports to Saudi Arabia, Eurofighter Jagdflugzeug GmbH acts as a subcontractor for BAE, which means that BAE is the main contract partner with Saudi Arabia.<sup>91</sup> Parts for the Eurofighter are produced by Airbus Spain in Illescas (Toledo/Spain) and in Getafe (Madrid region/Spain). According to Airbus "Illescas is responsible for manufacturing the components of the tail assembly and aft fuselage for all Airbus aircrafts versions and for the Eurofighter combat aircrafts." "Airbus undertakes the parts manufacturing and assembly for the Eurofighter at the Getafe site."<sup>92</sup> The left wing, the right wing and the nose of the Eurofighters are assembled in Getafe.<sup>93</sup>

According to Airbus:

*the Airbus Military A330 MRTT is the only new generation strategic tanker/transport aircraft flying, certified and available today. [...] enables the A330 MRTT to excel in air-to-air refuelling missions without the need for an additional fuel tank. [...] Thanks to its true wide-body fuselage, the A330 MRTT can also be used as a pure transport aircraft.*

As noted above before, in-flight fuelling of both the Typhoon and the Tornado can be carried out by the A330-200 MRTTs. The A330 MRTT is the result of a collaborative effort by several companies from different countries.

The civilian model of the plane is made at Airbus France, after which it is sent to Airbus Spain where it is then configured into a military plane, with the help of components sourced from Airbus Germany. Regarding exports from France, neither official reporting nor media sources allow for precise information on when licences were granted, nor when the physical delivery to Spain took place.

90. <https://www.eurofighter.com/about-us>.

91. "Eurofighter Jagdflugzeug GmbH generates its operating profit through management activities such as: -acting as the general contractor to NETMA and Austria for the Eurofighter Typhoon programme-subcontractor of BAE for the Export Saudi Arabia and Oman Project-Leonardo subcontractor for the initial phase of the Kuwait project". Lagebericht für das Geschäftsjahr 2017' pp. 3-4; Unternehmensregister, Eurofighter Jagdflugzeug GmbH, 'Jahresabschluss zum Geschäftsjahr vom 01.01.2017 bis zum 31.12.2017. Available at <https://www.bundesanzeiger.de/ebanzwww/wexsservlet>.

92. Airbus Official Website, "Airbus in Spain", <https://www.airbus.com/company/worldwide-presence/spain.html>.

93. <https://abcblogs.abc.es/tierra-mar-aire/otros-temas/eurofighter-caza-construy.html>.

Both products and more precisely the Spanish components thereof are therefore made by Airbus Defence and Space S.A. The Spanish Defence and Space arm of Airbus is registered in Madrid. Airbus SP is registered as a "Sociedad Anónima" (a limited liability company) and is a 'single member company', with 100% of its shares being owned by Airbus S.E.<sup>94</sup>

## 2.2 THE CONTRIBUTION OF AIRBUS TO THE EUROFIGHTER AIRCRAFT

### 2.2.1 PARTS AND COMPONENTS FOR THE EUROFIGHTER TYPHOON FROM SPAIN

With respect to the licensing of the Eurofighter for export from Airbus Spain to the UK for final assembly or onward exports to Saudi Arabia, it has been difficult to access information on when exactly which parts and components were licenced. Nor is there any information on when exactly which parts and components were licensed and delivered from Airbus Spain to prepare for the final assembly process in the UK.

A freedom of information request made by Centre Delàs on 17 July 2019 to the Ministry of Industry, Commerce and Tourism to obtain access to the licences of exports for Tornado parts, was denied on 26 July 2019, with the statement that all information regarding licences was covered under the 1968 Official Secrets Act.

Deliveries of the Eurofighter Typhoon combat aircraft from BAE to Saudi Arabia in the relevant time period are based on a purchase agreement for the so-called Project Salam of September 2007, comprising the delivery of 72 Eurofighter Typhoon aircrafts. The Al Salam deal involved two main programmes: aircraft deliveries (72 Eurofighter aircrafts), and the Saudi Arabia support programme ("air crew and ground crew training, maintenance facilities, technical support, spares and repairs, aircraft availability, and aircraft capability upgrades").<sup>95</sup> Using company and public information, it was noted that 12 Eurofighter aircrafts were delivered in 2015, 11 in 2016 and 4 in 2017, the remaining jets were exported prior to April 2015. However, the

94. Under the Spanish Corporate Enterprises Act, 2010, Article 210, 'company administration may be entrusted to a sole director, several directors acting jointly, or jointly and severally or a board of directors'. In joint stock companies when the administration is entrusted to more than two directors, they shall from a Board of Directors.

95. David Wearing, 'A Shameful Relationship. UK Complicity in Saudi State Violence', CAAT, April 2016, p. 22, <https://caat.org.uk/publications/a-shameful-relationship-uk-complicity-in-saudi-state-violence/>.

specific dates for the licence granted to BAE authorising them to export assembled Eurofighter aircrafts to Saudi Arabia cannot be retrieved.

## 2.2.2 THE USE OF THE EUROFIGHTER IN THE CONFLICT IN YEMEN

Several sources, which include government sources, statements made by individuals and social media posts, have confirmed the use of Eurofighter Typhoons in airstrikes carried out by the Coalition in Yemen since March 2015.<sup>96</sup> Pointing to specific airstrikes in which the Eurofighter Typhoon was used is, however, difficult. Since they are by nature not announced, these aircrafts usually fly at high altitudes and are therefore impossible to film. Even where rare video footage of strikes exists, it is often not of a quality that allows the clear identification of the type of combat aircraft deployed. Yet, given the high percentage of Eurofighters in the Coalition air fleet, and their ability to carry various types of ammunition/munitions, it is highly likely that the Eurofighter Typhoon would have been involved in many of the airstrikes carried out by the Coalition.

These airstrikes include the attacks on Doctors without Borders, or Médecins Sans Frontières (MSF) hospitals with protected status: One such case is an attack on Haydan Hospital on 26 October 2016. The building displayed the MSF logo and name on its roof, the Coalition was aware of this and the JIAT acknowledged that the Coalition hit the hospital intentionally, claiming it was being misused for military purposes.<sup>97</sup> The MSF Mother and Child Hospital was also hit by a Coalition airstrike on 5 December 2015. This mobile clinic had been set up to temporarily relieve the nearby hospital and was also marked with a large MSF logo. The Coalition was aware of the fact that this was the same location as the tented clinic.<sup>98</sup> Furthermore, the MSF Abs rural hospital was attacked on 15 August 2016, yet it had been properly

identified, with logos and through the communication of GPS coordinates.<sup>99</sup>

There have also been attacks on schools as documented by Mwatana for Human Rights in its report "Undermining the Future". According to the report, there were 153 coalition airstrikes on or impacting schools from 2015 to 2019 in 16 Yemeni governorates.<sup>100</sup> "In 140 of these cases, Mwatana researchers and witnesses interviewed did not identify military targets near or in the school that was damaged or destroyed by an airstrike. These Saudi/UAE-led coalition bombings form part of a pattern of attacks on civilian objects which appear to be indiscriminate".<sup>101</sup>

There are also a series of cases of attacks against civilians that have been documented by the UN Panel of Experts on Yemen, Reuters, Mwatana, Human Rights Watch, Amnesty International and other NGOs including: the case of the Al Hudaydah warehouses,<sup>102</sup> the attack on a civilian house in Mahala in 2016,<sup>103</sup> on the Radfan water bottling factory,<sup>104</sup> on the Alsonidar Factory,<sup>105</sup> on Tahir Square, in the Old city of Sana'a,<sup>106</sup> on a residential house in Deir Al-Hajari,<sup>107</sup> at the Salah al-Kubra community hall,<sup>108</sup> on a wedding party in Al-Raqa,<sup>109</sup> on a civilian home in Ghafira,<sup>110</sup> on the Wadi Al Nshour water project,<sup>111</sup> on fishing boats and fishermen at Aqban Island,<sup>112</sup> on a residential home in Ta'iz governorate<sup>113</sup> and a residential building in Sana'a.<sup>114</sup>

96. Reply to parliamentary question of May 2015, BT Drucksache 18/4824, answer to Question 10, (hereinafter German Gov. Reply 18/4824) <https://dipbt.bundestag.de/doc/btd/18/048/1804824.pdf>; UK Minister of Defence reply to written parliamentary question no. 38591 on Yemen: Military Intervention, <https://web.archive.org/web/20190130130928/https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-05-25/38591/>; UK Minister of Defence reply to Written Parliamentary Question no. s64277 on Yemen: Military Intervention, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-02-17/64277/>; Hekman Ludo, "#GermanArms Jets over Yemen", 27 February 2019, video clip, [https://www.youtube.com/watch?time\\_continue=154&v=An8B62toSgq](https://www.youtube.com/watch?time_continue=154&v=An8B62toSgq); On Lighthouse reports, see <https://www.lighthousereports.nl/>.

97. Human Rights Watch, Yemen: Coalition Airstrikes Hit Hospital, 27 October 2015, <https://www.hrw.org/news/2015/10/27/yemen-coalition-airstrikes-hit-hospital> and UN Panel of Experts on Yemen 2016 Report, supra note 11, p. 191.

98. MSF incident report: Airstrike on the Taiz Health Clinic, Houban District, Taiz City, 2 December 2015, p. 1, [https://reliefweb.int/sites/reliefweb.int/files/resources/Yemen\\_Taiz\\_investigation\\_summary\\_final.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Yemen_Taiz_investigation_summary_final.pdf).

99. MSF International investigation of the 15 August Attack on Abs Hospital Yemen, Summary of Findings, 27 September 2016, [https://www.msf.org/sites/msf.org/files/yemen\\_abs\\_investigation.pdf](https://www.msf.org/sites/msf.org/files/yemen_abs_investigation.pdf), p. 2.

100. Mwatana for Human Rights, August 2020, Undermining our Future – Attacks on Yemen's Schools March 2015 – December 2019.

101. Mwatana for Human Rights, August 2020, Undermining our Future – Attacks on Yemen's Schools March 2015 – December 2019, p. 32.

102. Documentary produced by Mwatana, 'From the Margin of Life, into the Heart of the War'; <https://www.youtube.com/watch?v=m-UAy5TcIHg&feature=youtu.be>.

103. UN Panel of Experts on Yemen 2017 Report, supra note 10, p. 206.

104. UN Panel of Experts on Yemen 2018 Report, supra note 24, p. 279.

105. Ibid, p. 266.

106. UN Panel of Experts on Yemen 2017 Report, supra note 10, p. 267.

107. <https://www.ecchr.eu/en/case/european-responsibility-for-war-crimes-in-yemen/>.

108. Human Rights Watch, Yemen: Saudi-Led Funeral Attack Apparent War Crime, 13 October 2016, <https://www.hrw.org/news/2016/10/13/yemen-saudi-led-funeral-attack-apparent-war-crime>.

109. <https://yemen.bellingcat.com/investigations/haj10004-bani-qais-wedding-strike>.

110. <https://yemendataproject.org/data.html>.

111. <https://www.facebook.com/NFDHR.org/>.

112. Yara Bayoumy, 'Several Yemeni Fishermen killed in Saudi-led Strikes – witnesses', Reuters 24 October 2015, <https://uk.reuters.com/article/uk-yemen-security/several-yemeni-fishermen-killed-in-saudi-led-strikes-witnesses-idUKKCN05I07C20151024>.

113. <https://www.amnesty.org/en/latest/press-release/2019/09/yemen-us-made-bomb-used-in-deadly-air-strike-on-civilians/>.

114. <https://www.amnesty.org/en/latest/news/2017/09/yemen-us-made-bomb-kills-and-maims-children-in-deadly-strike-on-residential-homes/>.

## 2.3 THE SPANISH CONTRIBUTION TO THE PRODUCTION AND EXPORT OF THE AIRBUS A330-MRTT REFUELLING JET

### 2.3.1 THE EXPORT AND MAINTENANCE OF THE A330-MRTTS

As a result of this central and strategic role, both Saudi Arabia and the UAE have ordered and received several A330 MRTTs, with Saudi Arabia receiving six A330 MRTTs from Airbus Spain. Defence News sources show that the last one of the three planes from the second batch was delivered after the beginning of the Operation "Decisive Storm" in March 2015.<sup>115</sup>

With respect to Germany, some information on licences and exports related to the A330 MRTT was obtained through parliamentary questions. The German government confirmed that, between July 2015 and December 2015, licences were granted for exports of components produced for the A330 MRTT fuelling plane which is assembled in and exported from Spain to Saudi Arabia.<sup>116</sup> Moreover, since the beginning of the conflict in 2015, up to 2020 spare parts for in-flight refuelling were exported from Spain to Saudi Arabia.<sup>117</sup> It is highly likely that these included the exports of spare parts for the A330-MRTTs.

In July 2015, Spanish Government officials authorised the export of one "in-flight refuelling jet, spare parts and documentation" worth €400 million to Saudi Arabia.<sup>118</sup> It appears that these exports would have facilitated the aerial attacks over Yemen implemented by Coalition members, which were conducted in a systematic manner from the beginning of Operation Decisive Storm.<sup>119</sup>

Regarding the maintenance of A330-MRTT aircraft, in June 2017 it was reported that an A330-MRTT that landed in Madrid Barajas with registration number 2401 was undergoing maintenance.<sup>120</sup> Later, between 18 February 2019 and 24 May 2019, a Saudi Arabian A330-MRTT with registration number 2403 was sighted. From this information it appears that 2 Saudi A330-MRTT jets returned to Madrid in 2017 and 2019 and were spotted close to Iberia airline's La Muñoza maintenance site. It is likely that the planes were there for maintenance. Iberia has stated that it has a contract with Airbus and that some of the Sau-

di planes had returned for small modifications after 2013. According to an Airbus Spain spokesperson, the majority of the checks and maintenance are undertaken in Saudi Arabia, but the 'heavy checks', meaning maintenance checks that need to be carried out every certain amount of flight hours are carried out in Spain; this type of maintenance appears to be performed by Iberia under a contract with Airbus.<sup>121</sup>

### 2.3.2 THE USE OF THE AIRBUS A330-MRTT REFUELLING JET FOR THE YEMEN ARMED CONFLICT

Defence News sources confirm that A330 MRTTs refuelling planes produced by Airbus Spain are being used in a general manner by both the UAE and Saudi Arabia in their air campaign over Yemen, and specifically that one of the 30 planes deployed by the UAE in the operation "Decisive Storm" was specifically used as a A330 multi-role tanker transport aircraft.<sup>122</sup> On 26 June 2017, the media outlet *Defensa.com* published a news article that reported that the first Airbus 330 MRTT had returned from Saudi Arabia to Spain for maintenance.<sup>123</sup> According to this media outlet, the 330 MRTT refuelling jet had returned to the Airbus 'La Muñoza' site in order to undergo maintenance operations and improvements on its military systems, after an intense operational period in the Saudi Arabian intervention in Yemen. Similarly, a leaked French government document also confirms the use of the Emirati A330 MRTT, which was most probably from the Jeddah air base.<sup>124</sup>

Fuelling planes are central to the air campaign led by the Coalition, given their unique capacities. The A330-MRTT allows for "air-to-air refuelling missions without the need for an additional fuel tank". The larger the amount of fuel carried results in greater flexibility, a broader range and longer time in service.

The contribution of these planes to aerial warfare and their significance to the UAE and Saudi Arabia campaigns were illustrated in November 2018 when US officials decided to stop refuelling Saudi aircrafts for operations in Yemen. The US stopped refuelling Coalition planes on 9 November 2018. On 13 December 2018, Defence News reported "the Pentagon announced it will be billing Saudi Arabia and the United Arab Emirates \$331 million after undercharging the

115. Airforces monthly, José Ramón Valero, "Saudi A330 MRTT Programme Almost Complete".

116. Reply of German Government to written question by Member of Parliament Jan van Aken on 13 January 2016, p. 3.

117. More information and sources in Section 4.

118. Spanish Arms Export Statistics 2015, supra note 62, p. 73.

119. See the next section below on the use of the A330 MRTT.

120. Julio Maiz Sanz, "El Primer A330 MRTT Saudita vuelve a España para tareas de mantenimiento", *Defensa.com*, 26 June 2017, <https://www.defensa.com/aeronautica-y-espacio/primer-a330-mrtt-saudita-vuelve-espana-para-tareas-mantenimiento>.

121. Pol Pareja, "Airbus e Iberia realizan en Barajas tareas de mantenimiento para aviones militares de Arabia Saudí", *El Diario*, 25 November 2019, [https://www.eldiario.es/politica/iberia-realiza-mantenimiento-aviones-madrid\\_1\\_1164060.html](https://www.eldiario.es/politica/iberia-realiza-mantenimiento-aviones-madrid_1_1164060.html).

122. Lake, *Yemen on the Edge* (2015) supra note 9, p. 41.

123. <https://www.defensa.com/aeronautica-y-espacio/primer-a330-mrtt-saudita-vuelve-espana-para-tareas-mantenimiento>.

124. Direction du renseignement militaire, *Yémen - situation sécuritaire*, Note à destination des hautes autorités dans le cadre du conseil restreint du 3 Octobre 2018, 25 September 2018, p. 10, <https://made-in-france.disclose.ngo/en/documents>.

two countries for US aerial refuelling of their aircrafts during the Yemeni Civil War."<sup>125</sup> The amount of money charged by the USA shows the importance of the air-to-air refuelling missions in the operations conducted by the Coalition in Yemen. At around the same time, the Saudi Press Agency stated: "Recently the Kingdom and the Coalition has increased its capability to independently conduct inflight refuelling in Yemen."<sup>126</sup>

On 26 June 2017, the media outlet 'La Defensa' published a news article reporting that "The aerial and land-based interventions against Houthi rebels in Yemen has required the continued intervention of Saudi airplanes (...) These operations are being continually supported by air-to-air refuelling (AAR), which is carried out by the Saudi's 330 MRTT, not only in favour of its own combat aircraft but also to refuel the

aircraft of other Coalition members."<sup>127</sup> This confirms that A330 MRTT refuelling aircrafts are not only essential for ensuring the operational capacity of Saudi Arabian and UAE combat aircrafts, but for the whole aerial arsenal of the Coalition as well.

It may therefore be said that after the Coalition intervened in Yemen, A330-MRTT refuelling jets were delivered to Saudi Arabia.<sup>128</sup> Additional sources indicate the likelihood that spare parts for the A330-MRTT jets were also delivered - at least in 2016. And, in 2017 and 2019 open source data and new reporting indicates that A330-MRTT jets were undergoing maintenance in Spain. At the same time, French government documents confirm that the A330-MRTTs has been used by the Coalition in Yemen.

---

125. Joe Gould, (2018): US to bill UAE, Saudi Arabia \$331M for Yemen Refuelling, <https://www.defensenews.com/news/pentagon-congress/2018/12/13/us-to-bill-saudi-arabia-uae-331m-for-yemen-refueling/>, accessed 10 February 2022.

126. P. Stewart and N.A. Mahmoud (2018), "U.S. ends refuelling Support in Yemen War as Pressure builds on Saudi Arabia", <https://www.reuters.com/article/us-yemen-security-idUSKCN1NF06R>, Reuters.com, Accessed 23 July 2021.

---

127. Julio Maiz Sanz, "El Primer A330 MRTT Saudita vuelve a Espana para tareas de mantenimiento", Defensa.com, 26 June 2017, <https://www.defensa.com/aeronautica-y-espacio/primer-a330-mrtt-saudita-vuelve-espana-para-tareas-mantenimiento>.

128. Spanish Arms Export Statistics 2015, supra note 62, p. 73.



### 3. LEGAL FRAMEWORK: ARMS EXPORTS AND WAR CRIMES

The conflict in Yemen and the supply of European weapons to the warring parties, especially Saudi Arabia and the UAE, has not occurred within a legal vacuum. Quite the contrary, arms exports are strictly regulated not only due to the dangerous nature of the goods themselves, and their impact on human rights, but but also on their impact on local, regional and global security and stability, and their potential misuse in violations of International Humanitarian Law. As such, arms exports require prior authorisation by the respective government authorities of each country, which is also the case in the Spanish context.

Moreover, attacks carried out by the Coalition in Yemen may amount to war crimes if they violate certain provisions of International Humanitarian Law. Consequentially, actors who provide the means for such crimes risk being liable for complicity. Such liability, both for the principal crime, and for aiding and abetting these crimes may be prosecuted both on domestic and on international levels. In terms of this report, we will focus on the rules of international criminal law that would allow for the prosecution and the subsequent conviction of perpetrators under the framework of the International Criminal Court, or, with regard to the principle of universal jurisdiction implemented in a domestic context, by state prosecutors and courts.

In the following sub-sections, we will firstly present the arms export rules applicable in Spain, and sec-

ondly, the international law framework on criminal liability for complicity in war crimes. These normative frameworks are relevant to both the conduct of those state authorities that authorise exports, and to those corporate actors that manufacture and export weapons.

#### 3.1 THE LEGAL FRAMEWORK FOR THE NATIONAL LICENSING PROCEDURE IN SPAIN

In Spain, the Secretary of State for Trade at the Ministry for Industry, Trade and Tourism is responsible for arms export authorisations. The legal framework regulating these decisions consists of Law 53/2007 of 28 December 2007<sup>129</sup>, and its implementing regulation: the Regulation on the control of foreign trade in defence material, other material and dual-use products and technologies.<sup>130</sup> In terms of procedure, every company that applies for the authorisation of arms transfers has to provide documents on end-use control and the end-use of the weapons. The Secretary of State then either grants or denies the licence application within a period of 6 months. The Secretary of State is informed by the Inter-Ministerial Regulatory Board on External Trade in Defence and Dual-use Material (JIMDDU) which prepares a report on every licence to be discussed. The JIMDDU has 11 members, 10 with voting powers, and it mainly comprises the representatives of economic ministries. The JIMDDU is chaired by the Secretary of State for Trade and the deputy chair is the

129. [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2014-8926](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-8926), <https://www.boe.es/eli/es/l/2007/12/28/53/con>.

130. [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2020-4708](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4708).

Secretary of State for Foreign Affairs at the Ministry of Foreign Affairs and Cooperation.

The minutes of the JIMDDU are held secret by virtue of an agreement made by the Cabinet of Ministers of March 1987, which is based on the 1968 Official Secrets Act, and therefore, only limited information is available. In January 2022, the Spanish government included the drafting of a new Classified Information Act in its Yearly Policy Plan for 2022 in order to replace the 1968 Official Secrets Act. Amnesty Spain has called on the Spanish government to ensure that any restrictions on the right of access to information<sup>131</sup> in the new bill comply with the principles of legality, necessity and proportionality, in line with international standards.<sup>132</sup>

When taking a decision, the JIMDDU must ensure, before an export licence is approved, that the obligations of Spain in this matter are met. Art. 7(a) of Regulation 2014<sup>133</sup> indicates that an authorisation may be suspended, denied or revoked:

*When there is reasonable suspicion that the defence material, other material or dual-use items and technologies may be used for actions that could disturb peace, stability or security on a global or regional scale, could heighten tensions or latent conflicts, could be used in such a way as to disrespect the inherent dignity of human beings, could be used for domestic repression or in situations of serious violations of international human rights law or international humanitarian law, are destined to countries with a record of diverting transferred material, or which could violate international commitments undertaken by Spain.*

As the final provision of the article indicates, this obligation needs to be read in combination with applicable rules in the European Union and other international commitments that legally bind Spain. This is the case under Articles 10 and 96 of the Spanish Constitution, the latter of which reads "Validly concluded international treaties, once officially published in Spain, shall form part of the internal legal order."<sup>134</sup> In the European Union, arms export control is regulated by Council Common Position 2008/944/CFSP of 8 December 2008, which was updated in 2019.<sup>135</sup> Under

the criteria established therein, government officials are obliged to assess certain risks before granting an export licence. First, Criterion 2(c) of the Common Position obliges EU Member States to deny an export licence 'if there is a clear risk' that the arms 'might be used in the commission of serious violations of international humanitarian law'. Secondly, according to Criterion 6(b), a EU Member State needs to take into account the recipient state's compliance with International Humanitarian Law, and is not allowed to issue a licence where the general evaluation of the recipient state's compliance record is not positive.<sup>136</sup> To this end, before issuing a licence, a government official needs to actively seek information concerning the recipient state's 'IHL record' and the possibility that the arms concerned will be used in violations of IHL. The User's Guide to the EU Common Position provides further details on what sources government officials need to consult as a minimum requirement before taking their decisions. These include among others: documentation from the United Nations, the International Committee of the Red Cross and other international and regional organisations, reports from international NGOs, as well as from local human rights NGOs and civil society in general.<sup>137</sup>

Furthermore, Art.7 (c) of the Implementing Regulation, approved by the Royal Decree of 2014 establishes as another ground for denial, suspension or revocation:

*In 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, which was approved on 2 April, 2013 and signed by Spain on 3 June, 2013 and ratified on 2 April, 2014.<sup>138</sup>*

For the purposes of proper ATT implementation, it is worth quoting a number of key issues from a guide published by Amnesty International in 2015 to help government officials implement the ATT.<sup>139</sup>

*At its core, the ATT represents a shift by the international community towards addressing one of the structural conditions that make crimes under international law and serious violations and abuses of human rights possible – the poorly-regulated and illicit supply of arms. In seeking to regulate the conditions that allow such violations and abuses to occur, the ATT is a preventive treaty.*

131. <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/ley-secretos-oficiales/>.

132. For further information, see the October 2020 Amnesty International Spain report ¿Abrimos ya el candado de la ley de secretos oficiales? Preocupaciones y recomendaciones de Amnistía Internacional para la tramitación de la reforma de la Ley 9/1968, de 5 de abril, sobre secretos oficiales. <https://bit.ly/3dM7EgW>.

133. [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2014-8926](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-8926).

134. Article 10.2 on Legal Guarantees reads "The principles relating to the fundamental rights and liberties recognised by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international

treaties and agreements thereon ratified by Spain". <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>.

135. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02008E0944-20190917&from=EN>.

136. Council of the European Union, COARM 172 CFSP/PESC 393, User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, as endorsed by the Council on 20 July 2015, Section 6.8.

137. Ibid, pp. 40-41.

138. Royal Decree 679/2014 of 1 August 2014, <https://www.boe.es/eli/es/rd/2014/08/01/679/con>.

139. Applying the Arms Trade Treaty to ensure the Protection of Human Rights. Amnesty International (2015) <https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT3000032015ENGLISH.pdf>.

This is a significant departure from the usual cautious approach states have often applied when faced with serious human rights crises involving the use of arms transfers for international crimes. The legality of an arms transfer is now explicitly linked to human rights and international humanitarian law (IHL) rules.

*State parties 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 that would violate UN Security Council Chapter VII measures (including arms embargoes), or a state party's existing relevant treaty obligations (such as a prohibition on the transfer of landmines under the Landmines Convention). In addition, transfers are prohibited where a state has knowledge that the arms being considered for authorisation would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or any other war crime, as defined by international agreements to which the state is a party. Crimes against humanity are distinguished from genocide in that they do not require the specific intent to destroy a target population group.<sup>140</sup>*

The relevance of the wording of Article 6 of the ATT has been highlighted. In the words of Brian Wood, the originator of the ATT concept in Amnesty International in the 1990s:

*The term "would" places a level of probability of the breaches outlined in Article 6 akin to a reasonable basis or substantial grounds for believing that the arms would be used for that illegal purpose [...] a breach of Article 6 would include cases where a state party should have known about the illegal use of the arms, but there was a failure to follow up reasonable suspicions by seeking further information. Authorisation procedures required by the ATT oblige applicants to disclose all relevant information, so it is almost inconceivable that a state that is properly implementing the ATT will neither have considered actual relevant knowledge nor knowledge of the circumstances that are widely known or are reasonably suspected.<sup>141</sup>*

It should be noted that 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."<sup>142</sup>

140. For a detailed analysis of Article 6 of the ATT, see Clare da Silva and Penelope Nevill, "Article 6 Prohibitions," in *Weapons and International Law. The Arms Trade Treaty*, ed. Clare da Silva and Brian Wood, Ghent: Larcier Group, August 2015, pp. 88–115.

141. Brian Wood & Rasha Abdul-Rahim, *The Birth and the Heart of the Arms Trade Treaty*, <https://sur.conectas.org/en/birth-heart-arms-trade-treaty/>.

142. Understanding the Arms Trade Treaty from a Humanitarian Perspective. ICRC, September 2016, [https://icrcndresourcecentre.org/wp-content/uploads/2016/11/4252\\_002\\_Understanding-arms-trade\\_WEB.pdf](https://icrcndresourcecentre.org/wp-content/uploads/2016/11/4252_002_Understanding-arms-trade_WEB.pdf).

In this regard, Section VI.C on "Third States – Arms Transfers and Other Support to Parties to the Conflict" in the 2020 GGE Report on Yemen<sup>143</sup> is particularly helpful. Accordingly, 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.<sup>144</sup> It went on to state that:

*Pursuant to this, states may not encourage violations of international humanitarian law by parties to an armed conflict, and they must exert their influence, to the degree possible, to stop such violations. The measures that third states are expected to take differ according to the level of influence that a state exercises on the party to the conflict.<sup>145</sup> In the context of Yemen, those states that have a specific influence are those that provide support (directly or indirectly) to any party to the conflict.*

This applies to Spain and its arms exports to the Coalition.

The GGE report noted that the "obligation to ensure respect" under international humanitarian law 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." This obligation requires an assessment to be made prior to any arms transfer.<sup>146</sup> It also highlighted that

*other related positive measures include conditioning, limiting or refusing such arms transfers.<sup>147</sup> With the number of public reports establishing serious violations of international humanitarian law, no state can claim not to be aware of such violations being perpetrated in Yemen.*

It is remarkable that the Spanish government has, so far, consistently ignored this approach, despite Amnesty's calls for it to be implemented.<sup>148</sup> The GGE expressed its concern that

*States are failing in their duty to ensure respect for international humanitarian law and that some of those states transferring weapons may be doing so in violation of their obligations under the 2013 Arms Trade Treaty (ATT).<sup>149</sup>*

This also applies to Spain. It is actually striking that the Spanish government has failed to pay sufficient attention to the GEE reports and their recommenda-

143. Detailed findings of the Group of Eminent International and Regional Experts on Yemen, supra note 25, pp. 105–107.

144. Ibid, para. 412.

145. Ibid.

146. Ibid.

147. Ibid.

148. See supra note 64, p. 18.

149. Detailed findings of the Group of Eminent International and Regional Experts on Yemen, supra note 25, para. 413.

tions when applying the ATT to arms transfers to the Coalition.

As Amnesty pointed out in the abovementioned guide on ATT implementation:

*For exports not falling under the prohibition under Article 6, the ATT requires state parties to conduct an assessment of whether an export of conventional arms or related ammunition/munitions and parts and components "would" undermine or contribute to peace and security. A state is then required to assess the potential that these arms or related items "could" be used to commit or facilitate a serious violation of international human rights law or of international humanitarian law, or an act constituting an offence under the exporting state's international conventions and protocols relating to terrorism, or to transnational organised crime. Exporting state parties must also take into account the risk of the arms or related items being used to "commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children", which also constitute serious violations of international human rights law or international humanitarian law. They must also assess the risk of diversion of the conventional arms. Measures to mitigate the risks of any of the negative consequences outlined above are to be considered by the exporter. When it is determined that there is an overriding risk of the negative consequences, then no export authorisation can be given.*

Another obligation under international law is that under Article 16 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, as prepared by the International Law Commission (ILC) and annexed to a resolution by the UN General Assembly in 2001: any state that aids or assists another state to facilitate or further its violations of international law is itself committing a violation of international law.<sup>150</sup> In the modern digital age, few assisting states can reasonably hide behind ignorance when credible and extensive information is widely and readily available from a multiplicity of sources. For clarification purposes, it is worth quoting David, Turp, Wood and Azarova directly from their publication on the legality of arms transfers to Yemen:<sup>151</sup>

*Legal experts generally agree that the knowledge test can be met when a state considering aid or assistance to another state has either actual or almost certain knowledge or awareness, inferred from relevant facts and circumstances that an internationally unlawful act entailed by its assistance would result. The obligation to inquire, discover and possess relevant knowledge of the foreseeable consequen-*

*ces, which is a part of the procedural obligations incumbent on states in the arms export licensing process gives rise to a presumption of construed knowledge of what that state not only had the ability to know, but indeed also bore an obligation to make sure it knows. This view is based on the leading international jurisprudence and the works of leading publicists in international law. The most recent expert consultation on the subject of aiding and abetting and the law of state responsibility at Chatham House reached a similar conclusion; namely, that intent is satisfied by "knowledge or virtual certainty that the recipient state will use the assistance unlawfully".*

Prevailing state practice shows that "knowledge or virtual certainty that the recipient state will use the assistance unlawfully is capable of satisfying the intent element under Article 16, whatever its desire or purpose."<sup>152</sup>

Once licences have been granted, a reassessment of the authorisation can be requested if the circumstances under which a licence was granted change. Under Article 7(7) of the ATT, states are encouraged to reassess licences if new, relevant information comes to light. In addition, as mentioned previously, Art. 7(a) of Regulation 2014 on arms exports control in Spain also establishes that a licence may be revoked at a later point in time.

Reporting by UN bodies and credible NGOs on Coalition violations in Yemen began directly after military intervention in March 2015. Furthermore, the use of A330-MRTTs for the refuelling of combat aircrafts operated by the Coalition for airstrikes that could be considered as war crimes in Yemen has been covered by the media since the beginning of the conflict, as noted above.

When answering questions from MPs in Parliament in June 2021, the Secretary of State for Trade showed that there is a lack of understanding with respect to the **preventative nature of the ATT** and the shift of paradigm this represents for Spanish officials, which is also a common occurrence in several other arms-exporting countries. Her words, in reference to Spanish weapons found in Yemen during the conflict, show the confusion between evidence of misuse, knowledge of use for international crimes and the substantial risk of misuse regarding serious violations of IHRL and IHL:

*With regard to the various investigations - and here I refer to an older one, for example, by the consultancy firm Ares, back in 2015, which also led to a United Nations investiga-*

150. <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F56%2F83&Language=E&DeviceType=Desktop&LangRequested=False>

151. Éric David, Daniel Turp, Brian Wood and Valentina Azarova: The Conflict in Yemen and the Legality of Arms Transfers, supra note 2, pp. 66-74.

152. Harriet Moynihan, 'Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism', Chatham House Research paper, November 2016.

tion that determined that the Spanish Government was not responsible at all - those referring to Instalaza, for example, and others that have been mentioned today regarding Alakran mortars, I also clearly state that there is no evidence from any ministerial department participating in the JIMDDU on the use of these materials in the conflict in Yemen. Nor is there any evidence, nor has any Spanish material been found on Yemeni territory belonging to the legitimate government of Yemen. Otherwise, logically, if we had evidence, we would have to apply Article 8 of Law 53/2007, which entails the revocation of these licences, but this has not taken place.

The lack of a smoking-gun linking the Coalition's use of Spanish-made weapons to international crimes in Yemen does not mean that there is no evidence that the transfers of Spanish weapons are in line with the ATT. As noted, with respect to non-prohibited transfers, the ATT requires a risk assessment showing that arms exports could be used to commit or facilitate a serious violation of IHL and IHRL. Three key elements show that such a risk exists when considering arms exports: first, the poor record of the Coalition with regard to IHL, as shown by its conduct in the conflict in Yemen; second, the fact that the use of Spanish-made weapons in Yemen has been documented since 2015; third, the mitigation measures under Article 7.2 of the ATT that have been adopted to date by the Spanish government in terms of end-use monitoring are insufficient to remove or substantially mitigate the overriding risk of the "negative consequences" (in accordance with Article 7.1 of the ATT) that these weapons could be used to commit or facilitate violations of IHL (or IHRL) in Yemen.

As indicated by David, Wood *et alia* in their article Opinion on the Legality of Arms transfers to Yemen:

*In the case of Yemen-related arms transfers [...] the lawfulness of such export authorisations can be rebutted by demonstrating that the exporting states had prior knowledge of the pattern of persistent and serious breaches and alleged breaches of international law perpetrated by the Coalition, using similar weapons and munitions. It can be shown that the supplying states were aware, or at least should reasonably have been aware, that by providing similar arms and munitions to the alleged perpetrators, the supplies would contribute further to such violations and therefore should have been refused.*

A plethora of reports from credible sources, including the UN, international and independent Yemeni organisations show a clear record of persistent and serious violations of IHL and IHRL by members of the armed forces of both Yemen and the Coalition, especially since March 2015. Credible reports since mid-2014 show that all parties to the conflicts in Yemen have a record of general disrespect for and non-compliance

with their obligations under IHL and IHRL. In December 2015, a mere nine months into the Coalition being involved in bombing Yemen, credible reports indicated the Coalition's breach of international standards. A legal opinion<sup>153</sup> by eminent international law experts that was commissioned by Amnesty International UK and Saferworld concluded that the UK Government was breaching UK, EU and international law and policy by supplying weapons to Saudi Arabia in the context of its military intervention and bombing campaign in Yemen. The legal analysis published by Matrix Chambers included ten reported incidents between as early as the 30 March and late October 2015, which illustrated the nature of the attacks that had raised international concerns. Therefore, the knowledge of the situation at that time, and information on the Coalition's disregard for international law was available to arms companies and government officials.

In the light of this information, it is reasonable to assume that Coalition armed forces operating in Yemen will almost certainly use any supplies of aircraft, aerial munitions, armoured vehicles and other weapons to conduct presumptively unlawful attacks that are indiscriminate or disproportionate and that cause serious harm to civilians and civilian objects, and that they will be used in gross violations of human rights, including by diverting arms to Yemeni irregular units and rebel fighters.<sup>154</sup> The Coalition's long-standing practice of conducting these unlawful attacks should serve as a clear signal to supplier states that if and when they authorise such exports, they may well be providing the means to commit or facilitate serious violations of IHL and IHRL.

In addition to official, civil society and media reports, parliamentary questions were addressed to the Spanish Government on the responsibility of Spain with respect arms exports. Several parliamentary questions and motions were made between 2015 and 2021 in an effort to stop arms sales to Saudi Arabia. For instance, on 10 June 2015, the Secretary of State for Trade (García-Legaz Ponce) reported to the Defence Committee of the Congress that among the main operations undertaken in 2014 was the delivery of an aerial refuelling plane to Saudi Arabia. He stated that Spain rigorously reviews exports to Coalition members due to their intervention in Yemen. MPs expressed their concern for the human rights violations occurring in both Saudi Arabia and Yemen, noting that this risk is being overlooked by the government in terms of arms

153. [https://www.amnesty.org.uk/files/webfm/Documents/issues/final\\_legal\\_opinion\\_saudi\\_arabia\\_18\\_december\\_2015\\_-\\_final.pdf?VersionId=MVeekX\\_yJqbWF213Ug5zllO\\_zC6yeyok](https://www.amnesty.org.uk/files/webfm/Documents/issues/final_legal_opinion_saudi_arabia_18_december_2015_-_final.pdf?VersionId=MVeekX_yJqbWF213Ug5zllO_zC6yeyok).

154. See, for example, Amnesty International, "Yemen: UAE recklessly supplying Militias with Windfall of Western Arms," 6 February 2019, <https://www.amnesty.org/en/latest/news/2019/02/yemen-uae-recklessly-supplying-militias-with-windfall-of-western-arms>.

export authorisations.<sup>155</sup> On 1 September 2016 parliamentary questions were asked about the government's intention to stop authorisation of the exports to parties in the Yemen conflict.<sup>156</sup> On 13 October 2016 another parliamentary question was posed regarding possible measures against Saudi Arabia respecting the use of Spanish arms in Yemen. And, on 20 December 2016 parliamentarians called on the government to stop granting arms exports to countries that violate human rights, such as Saudi Arabia.<sup>157</sup>

On 26 January 2017, a motion was presented to the Spanish Parliament calling on the Spanish Government, which should have had reliable information about serious violations of IHL committed by the Saudi coalition in Yemen, to deny arms export authorisations to Saudi Arabia.<sup>158</sup> On 13 March 2017, in answer to a parliamentary question, the Spanish Government said it was deeply concerned about "*the degradation of the humanitarian situation arising from the conflict in Yemen*". With respect to the export of spare parts for A330-MRTT jets to Saudi Arabia, in September 2018, the Secretary of State for Commerce, Xiana Méndez, reported to the Spanish Parliament that during 2017, exports to Arab League countries had amounted to 450 million euros.

Since 2015, when Spanish MP's challenged Spanish licences and exports to Coalition member countries, the Spanish government has consistently used the following response:

*If the Spanish Government had knowledge that there was a risk of misuse of the exported materials, it would apply Article 8 of Law 53/2007 of 28 December 2007 on the control of foreign trade in defence and dual-use material, which allows for the suspension or revocation of a previously granted authorisation.*

As demonstrated above, there is ample knowledge concerning a range of allegedly serious violations of international humanitarian and human rights law, which would indicate that there is an overriding risk that certain classes of transfers would be misused. The repeated use of the governmental statement cited above begs a number of questions, including on what grounds it reaches the conclusion that Article 6 of the ATT is not applicable; to what extent does the JIMDDU reassess its decisions, based on the large volume of information available; why it is failing to

apply the provisions of Article 6.3 of the ATT appropriately; and how does it assesses the overriding risk of exports to the Coalition? In all events, this matter reveals the need for an improvement in the risk-assessment of Spanish arms exports, along the lines of the objective and preventive system followed by the ATT. The fact that the export details are shrouded in secrecy is particularly unhelpful, however with enough political determination this wall of silence could be torn down.

Against the background of the factual information provided in the previous sections, granting licences for the export of military equipment to members of the Saudi/Emirati-led coalition seems to be at odds with the applicable provisions. This holds true especially with regard to those products that are used for aerial warfare, regarding which numerous international reports from both official and civil society have documented their indiscriminate use with respect to the protection of civilians and civilian infrastructure. Yet, as the export data shows, Spanish authorities have granted licences throughout the period of the ongoing war in Yemen, and companies such as Airbus Defence and Space S.A. have consistently made use of such licences. The improved end-use monitoring measures adopted by the government in 2020 are a welcome first step, although they are insufficient when it comes to ensuring that no Spanish arms are transferred to prevent them from facilitating or contributing to international crimes, and as a consequence these measures should be strengthened. Further steps should be taken to suspend any such transfers.

### 3.2 CORPORATE RESPONSIBILITY WITH RESPECT TO HUMAN RIGHTS IN THE CONTEXT OF ARMS EXPORTS

The United Nations Guiding Principles for Business and Human Rights (UNGPs) – which were unanimously endorsed at the United Nations Human Rights Council in 2011<sup>159</sup> – 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 by virtue of their business relationships, even if they have not contributed to those impacts directly.<sup>160</sup> In order to do this, companies should establish human rights due diligence policies and processes so as to identify, prevent, mitigate and account for how they address

155. Diario de sesiones del congreso de los diputados, Comisiones, Defensa, Sesión núm. 44, 10 June 2015.

156. Written question by Spanish MP D. Ignasi Candela Serna on 01.09.2016.

157. Diario de sesiones del congreso de los diputados, Comisiones, Defensa, Sesión núm. 3, 20 December 2016.

158. Proposición de Ley Núm. 161/001179 presentada por el Grupo Parlamentario de Esquerra Republicana, sobre el embargo de armas a los países implicados y otras medidas sobre la resolución del conflicto en Yemen.

159. UNHRC, Guiding Principles on Business and Human Rights: Implementing the United Nations, Protect, Respect and Remedy Framework", Final Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Doc. A/HRC/17/31 (2011).

160. Ibid, Principle 13 UNGP.

their impacts on human rights. Consequently, when corporate officers are aware that the corporation's activities are contributing to, or may be contributing to an adverse human rights impact, they should take the necessary steps to cease or prevent their contribution and use their leverage to mitigate any remaining impact to the greatest extent possible.<sup>161</sup> Where a company has caused or contributed to an abuse, it has a responsibility to provide remediation or cooperate with actions that seek remediation.

In 2019, Amnesty International published a report<sup>162</sup> that revealed how major industry players, including Airbus, BAE Systems and Raytheon have failed to undertake adequate due diligence in human rights that could have prevented their products from being used in potential human rights violations and war crimes. Amnesty called on the sector to urgently develop robust human rights due diligence policies and processes, separate from those undertaken as part of government licensing assessments that truly address the highly serious human rights risks that the industry routinely faces as a consequence of its activities.<sup>163</sup> Amnesty International also called on arms companies to provide or facilitate prompt and effective reparation in situations in which their products have contributed to gross human rights violations or serious violations of international humanitarian law.<sup>164</sup>

Amnesty International contacted Airbus and asked them to elaborate on their human rights due diligence policies and processes, including how they assess the risks of adverse human rights impacts in situations of conflict. Airbus did not answer Amnesty International's questions, but rather provided a short, general response that underlined their commitment to human rights and the lawful nature of their businesses. The company informed Amnesty International that:

*Airbus will always conduct its business ethically, based on Airbus values, and in compliance with all applicable laws and regulations. As part of this commitment, Airbus supports the principles of the UN Global Compact. Airbus constantly monitors changes to international law to ensure that all sales are in compliance with any applicable legal requirements with regard to transactions with countries under UN, EU, UK and US sanctions.*<sup>165</sup>

The response falls well short of Airbus' responsibilities under the UNGPs, which establish that companies have

their own distinct responsibilities to respect human rights that are independent of a state's ability and/or willingness to fulfil its human rights obligations.

From the outset, it should be emphasised that the measures an enterprise takes in pursuit of due diligence should be "commensurate to the severity and likelihood of the adverse impact. When the likelihood and severity of an adverse impact is high, then due diligence should be more extensive."<sup>166</sup> Given the sector-specific risks that are characteristic of the arms trade, in which the likelihood and severity of adverse impacts is high, extensive human rights due diligence is therefore required. As a consequence, Principle 23 of the UNGPs recognises that some operating environments might increase the risk of liability being imposed on both the corporation and its officers, as it states:

*In all contexts, business enterprises should: (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue, wherever they operate [and] 'corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses.'*<sup>167</sup>

Any company providing materials or equipment to end-users that are known to be involved in serious human rights and humanitarian law violations, including war crimes, would risk being in breach of these standards. Moreover, individuals involved in the sale of such materials or equipment may be complicit in any subsequent violation of human rights and humanitarian law in which the materials or equipment were used. The provision of aircrafts and parts or components thereof, which the providers know are to be used to commit or facilitate international crimes that are being used in a conflict in which there has been mounting evidence of probable war crimes being committed may therefore involve criminal responsibility on the part of the suppliers.

Corporations operating in the arms industry and their corporate officers therefore have a specific duty of care that includes the human rights and humanitarian consequences of their supply decisions. The reason for this specific duty of care lies firstly in the military nature of the products sold by the corporation that carries the risk of complicity in crimes. Secondly, the special vigilance required from arms manufacturing companies lies in the context in which they undertake their supplies. In cases where the purchaser of their weapons is supplying or partaking in an armed

161. Ibid, Commentary of Principle 19 UNGP.

162. Amnesty International, Outsourcing Responsibility: Human Rights Policies in the Defence Sector, 19 September 2019, <https://www.amnesty.org/en/documents/act30/0893/2019/en/>.

163. <https://www.amnesty.org/en/latest/news/2019/09/arms-companies-failing-to-address-human-rights-risks-2/>.

164. <https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT3008932019ENGLISH.pdf>.

165. Ibid. p. 63.

166. OECD (2019), OECD Due Diligence Guidance for Responsible Business Conduct OECD Publishing; <https://www.oecd.org/daf/inv/mne/due-diligence-guidance-for-responsible-business-conduct.htm>, p. 17.

167. Principle 23 UNGPs, supra note 158, Also refer to Principle 7 Pertaining to the state's duty to assist and guide corporate conduct in a conflict-affected area.

conflict, the potential for the use of manufactured military products in order to commit crimes is further increased. The military tribunal in the Nuremberg Trials highlighted:

*Commercial transactions entered into by private individuals which might be entirely permissible and legal in times of peace or non-belligerent occupation may assume an entirely different aspect during belligerent occupation.*<sup>168</sup>

According to the ICTR<sup>169</sup> the act of a businessperson supplying arms could amount to aiding and abetting in the preparation for and the perpetration of international humanitarian law violations. Therefore, as the ICRC noted, and considering the risk of complicity, the supply decision must include an assessment of the end-user's adherence to human rights and humanitarian law, given that an arms supplier who "knowingly supplies weapons to end-users who use them to violate international humanitarian law" certainly risks being legally liable.<sup>170</sup>

### 3.3 LEGAL REQUIREMENTS FOR CRIMINAL LIABILITY UNDER INTERNATIONAL CRIMINAL LAW

As noted in the previous section on the due diligence required from arms manufacturing companies, and in addition to the legal licensing framework, both government officials and company agents need to carefully review their actions against the background of applicable criminal law. This report focuses on criminal liability according to international standards, in the shape of the Statute of the International Criminal Court and is supported, where necessary with the decisions made by international ad-hoc tribunals.

As was mentioned at the beginning of this report, a communication to the International Criminal Court was submitted by several NGOs in December 2019. It addressed the responsibility of various companies and government officials from five countries. In this report we will focus on Spanish actors alone. Since neither the Spanish government officials, nor corporate actors directly committed war crimes in Yemen, any possible criminal liability can only be attached to the assistance they provided. The Rome Statute also covers criminal liability for such acts of assistance. The most relevant article for the group of actors un-

der consideration is Art. 25 (3) (c) of the Rome Statute, which states:

*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 its attempted commission, including providing the means for its commission.*

The report will briefly explain when the ICC has jurisdiction of certain crimes, what crimes are covered by the statute and what exactly the assistance of the aider and abettor needs to consist of both in terms of the factual contribution and in terms of the mental element an aider and abettor needs to display.

#### 3.3.1 JURISDICTION

Article 12 of the Rome Statute sets out the preconditions for the exercise of territorial or personal jurisdiction. Since Yemen has yet to ratify the Rome Statute, the ICC has no jurisdiction over crimes committed on Yemeni soil based on Article 12(1) Rome Statute. However, according to Article 12(2) (a) and (b) of the Rome Statute, the Court may exercise jurisdiction if

*[...] one or more of the following states are parties to this statute or have accepted the jurisdiction of the Court [...]: The state on the territory of which the conduct in question occurred [...]; The state of which the person accused of the crime is a national.*

Both situations apply to the conduct of Spanish corporate actors and government officials, Spain has ratified the Rome Statute and the corporate actors and the government officials are Spanish nationals. Moreover, the relevant conduct (the granting of the licence and the exportation of goods) was carried out on Spanish territory. The ICC would thus have personal jurisdiction over Spanish government officials and corporate actors who are complicit in the commission of war crimes.

#### 3.3.2 THE PRINCIPAL CRIMES COMMITTED

The Rome Statute distinguishes between those crimes committed in an international armed conflict and those of a non-international armed conflict. The current conflict in Yemen is an armed conflict that is not of an international character (NIAC) and it fulfils the two threshold requirements established in Article 8(d) and (f) of the Rome Statute: organisation and intensity.

With regards to the first criterion, Article 8(d) provides that armed actions should be either (i) between gov-

168. Law Review of the Trials of War Criminals, Volume X, The IG Farben and Krupp Trials, p. 47.

169. *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Judgement and sentence, Case no. ICTR-96-3-T, T.Ch. I, 6 December 1999, paras. 385-387.

170. ICRC, 'Business and International Humanitarian Law, an Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law', 11 September 2006, at 25, <https://www.icrc.org/en/publication/0882-business-and-international-humanitarian-law-introduction-rights-and-obligations>, p. 25.

ernmental authorities and organised armed groups, or (ii) between organised armed groups. The armed conflict in Yemen is between the Yemeni government and other armed groups, of which the organised armed group Ansar Allah, are the largest group.<sup>171</sup>

Article 8 (f) of the Rome Statute requires the level of intensity in the hostilities to be equivalent to a protracted armed conflict, one that surmounts '*situations of internal disturbances and tensions*'. Within this framework, the exact threshold of intensity is decided on a case-to-case basis.<sup>172</sup> Nevertheless, a number of possible indicators of intensity were proposed by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in *Prosecutor v. Milošević*: the length or protracted nature of the conflict, the seriousness of the hostilities, the spread of hostilities, the number of forces deployed, and the type of arms used.<sup>173</sup> The conflict has been ongoing since March 2015, affecting a large proportion of the population in Yemen, especially in the north. The situation has been declared as a humanitarian and economic catastrophe<sup>174</sup> due to high death tolls, injuries, famine,<sup>175</sup> and damage to the infrastructure.<sup>176</sup> The extent of the damage is an indicator of the variety of weapons used in the conflict, thereby affirming its intense nature.

In such a non-international armed conflict, certain crimes are penalised by the ICC Statute, among them are several that are highly relevant in the framework of the conflict in Yemen. These are:

- Article 8 (2)(c)(i) The War Crime of Murder
- Article 8 (2)(e)(i) Intentionally directing attacks against the civilian population as such, or against individual civilians not taking direct part in hostilities
- Article 8(2)(e)(ii) Attacking objects or persons using the distinctive emblems of the Geneva Convention
- Article 8(2)(e)(iii) Attacking personnel or objects involved in a humanitarian assistance or peace-keeping missions
- Article 8(2)(e)(iv) Attacks against cultural objects, places of worship and similar institutions

In order to accept that any of the above crimes has

been committed, several elements need to be present in an attack/airstrike carried out during a non-international armed conflict. As mentioned above, based on the information gathered, official reports by (for example) the Panel of Experts on Yemen and the Group of Eminent Regional Experts have consistently stated that all parties, including the Coalition have violated the principles of International Humanitarian Law.<sup>177</sup> Bryk and Saage-Maasz note that "In some instances, the UN Panel of Experts and the Group of Eminent Experts on Yemen concluded that the documented violations may even amount to war crimes."<sup>178</sup>

### 3.3.3 ACTUS REUS OR THE BEHAVIOURAL ELEMENT OF AIDING AND ABETTING WAR CRIMES

If principal crimes were committed and the assistance to such acts falls under the jurisdiction of the ICC as argued above, the actions of the assistant further need to fulfil certain requirements to assume criminal liability. This relates first and foremost to the conduct of the assistant itself.

According to Art. 25 (3) (c) a person must have aided, abetted or otherwise assisted the commission of the crime. The jurisprudence that stems from the ICC on this aspect is itself very limited. In fact, only the Trial Chamber in the Bemba Case has made declarations on this specific requirement. It concluded that the standard captures both tangible and intangible assistance, and therefore a wide range of acts that heighten the risk of the commission of a crime.<sup>179</sup> It further held that the contribution under Art. 25 (3) (c) "*does not require the meeting of any specific threshold*" or specific qualitative elements.<sup>180</sup> "*Under this standard, criminal assistance does not need to contribute substantially to the commission of the crime; effect on the crime should suffice*" as Bryk and Saage-Maasz conclude.<sup>181</sup>

This standard is confirmed for the context of the arms trade in past jurisprudence of international ad-hoc tribunals and national courts, where individuals responsible for trading arms and equipment to parties engaged in armed conflict have been held criminally liable when the weapons in question were used to com-

171. Reports of the involvement of Al Qaeda, The Islamic State of Syria and Iraq, I.C. Ahmed, the Secretary-General's Special Envoy for Yemen briefs to UN Security Council, 17 February 2016. <https://www.un.org/undpa/en/speeches-statements/17022016/yemen>.

172. *Rutaganda v. Prosecutor*, Judgment, ICTR-96-3, 26 May 2003, § 93.

173. *Prosecutor v. Milošević*, Decision on Motion for Judgment of Acquittal, ICTY, 16 June 2004, §§ 28-31. Later referred to in *Limaj et al.*, ICTY Judgment, Trial Chamber, §§ 135-43. Also refer to the indicators in *Prosecutor v. Haradinaj et al.*, Judgment, Trial Chamber I, IT-04-84, 3 April 2008, § 49.

174. UN Panel of Experts on Yemen 2018 Report, supra note 24, p. 1.

175. Group of Eminent Experts Report 2018, supra note 13, p. 2.

176. UN Panel of Experts on Yemen 2017 Report, supra note 10, p. 2.

177. See Section I of this report.

178. L. Bryk & M. Saage-Maasz, Individual Criminal Liability for Arms Exports under the ICC Statute, *Journal of International Criminal Justice* 0 (2019), 1-21, 8.

179. L. Bryk & M. Saage-Maasz, Individual Criminal Liability for Arms Exports under the ICC Statute, *Journal of International Criminal Justice* 0 (2019), 1-21, 11.

180. Judgment pursuant to Article 74 of the Statute, *Prosecutor vs Bemba Gombo et al.*, (ICC-01/05-01/13), Trial Chamber VII, 19 October 2016, § 88 and 89.

181. L. Bryk & M. Saage-Maasz, Individual Criminal Liability for Arms Exports under the ICC Statute, *Journal of International Criminal Justice* 0 (2019), 1-21, 11.

mit international crimes,<sup>182</sup> however, and of particular relevance here, this standard has also been applied in cases where there was no evidence that a specific weapon supplied was subsequently used to commit a specific crime, as in the case of the Taylor Judgment, made by the Special Court for Sierra Leone.<sup>183</sup>

### 3.3.4 MENS REA OR THE MENTAL ELEMENT IN AIDING AND ABETTING WAR CRIMES

In addition to the factual conduct, the assistant also needs to carry out the assistance with a specific mental attitude. According to Art. 25 (3) (c) ICC Statute, the individual must act "*for the purpose of facilitating*" a crime to be criminally liable. As others have pointed out, the scope of this mental element is debatable, since the wording in the abovementioned statute differs from that in the statutes and jurisprudence of ad-hoc tribunals. Without entering into details, the main problem is that the standard seemingly adopted by the ICC Statute is narrower than that of the ad-hoc tribunals that have operated following a standard of simple knowledge. It was thus sufficient that the assistant had possessed knowledge of the principal crime, but did not need a specific intent that such

principal crime was committed. In ICC jurisprudence it is again only the Bemba Case that has explicitly dealt with the mental element under Art. 25 (3) (c) ICC Statute. The Trial chamber seemed to reject the lower standard relying on the knowledge but instead held that unlike other international instruments Art. 25 (3) (c) expressly sets forth a specific "purpose" requirement for criminal assistance.<sup>184</sup>

The debate about the correct interpretation is still ongoing and it will be up to the ICC to provide a final interpretation of the mental element required under Art. 25 (3) (c). Until then, it is prudent to rely on the currently applicable standard under international customary law, according to which it is sufficient that in relation to the principal crime, the person either meant to cause the crime or was aware that it would have occurred in the ordinary course of events.<sup>185</sup>

By way of conclusion, the mental element for the secondary liability under Art. 25 (3) (c) in our view requires the following: that the person meant to engage in the specific conduct of assistance and was at least aware that in the ordinary course of events the principal crime would occur.

182. For more information on such cases see: Christian Schliemann & Linde Bryk, Arms Trade and Corporate Responsibility, Liability, Litigation and Legislative Reform, November 2019, FES Study, pp. 11-16.

183. L. Bryk & M. Saage-Maasz, Individual Criminal Liability for Arms Exports under the ICC Statute, Journal of International Criminal Justice 0 (2019), 1-21, 11.

184. L. Bryk & M. Saage-Maasz, Individual Criminal Liability for Arms Exports under the ICC Statute, Journal of International Criminal Justice 0 (2019), 1-21, 13.

185. For more info on this debate see: L. Bryk & M. Saage-Maasz, Individual Criminal Liability for Arms Exports under the ICC Statute, Journal of International Criminal Justice 0 (2019), 1-21, pp 13 et seq.



## 4. ASSESSING THE CRIMINAL RESPONSIBILITY OF CORPORATE OFFICERS AND SPANISH OFFICIALS

Having explained the applicable standards on criminal liability and after providing the necessary factual information on licences, exports and the documentation of alleged war crimes committed in the conflict in Yemen, it is possible to tentatively assess the criminal liability of Spanish officials and corporate actors at Airbus Defence and Space S.A.

### 4.1 ACTUS REUS

Spanish contributions to air warfare in Yemen consist of parts and components, as well as maintenance for the Eurofighter Typhoon and the A330 MRTT fuelling plane. Airbus Defence and Space S.A. and in this respect, its upper management officers, provided practical assistance –namely Eurofighter aircraft, and continuous spare parts for Eurofighter aircraft as well as maintenance, training and support services – not to mention encouragement to Coalition members. Airbus Defence & Space Spain has also exported several A330-MRTT refuelling planes and corresponding spare parts and has provided maintenance services to Saudi Arabia over the course of the armed conflict in Yemen. At least three of the six planes exported to Saudi Arabia were delivered after the Coalition had intervened in Yemen.

Although it is difficult to obtain detailed information on specific licences provided by Spanish government officials for the export of spare parts and components for Eurofighters jets and A330-MRTT refuelling jets to the UAE and Saudi Arabia, as well as spare parts to the latter, it is clear that licences were granted, as otherwise no export could have taken place. What is lacking is concrete information on the timing and the exact scope of the licences, rather than information on if they were granted at all. Obtaining further information on this matter could be undertaken by competent prosecution authorities, either internationally or nationally.

Both aircrafts play a significant role in aerial warfare in Yemen, given that the Eurofighter plays a far-from negligible part in the Saudi Arabian air fleet. The A330 MRTTs were also used for both the refuelling of Saudi and Emirati aircrafts. In addition to the initial delivery of the aircraft and the subsequent provision of spare parts and components, maintenance activities for these aircrafts were documented during the Yemeni conflict.

The use of these aircrafts in Yemeni air space in the context of aerial operations has been documented in imagery and videos recorded that have been published online. Their use for airstrikes was also confirmed by various government sources. Given the high rate of airstrikes documented by UN agencies and NGOs that have been described as possible war

crimes, the involvement of Eurofighters in such airstrikes is highly likely.

While, in our view, the supply of Eurofighters and A330 MRTTs needs to be considered as substantial for air warfare in Yemen, this matter is not even necessary under applicable International criminal law standards. Moreover, as it is widely recognised that 'practical assistance, encouragement, or moral support' can equally constitute assistance,<sup>186</sup> the analysis presented describes conduct that constitutes encouragement. In this respect, not only does the supply of arms provide the means to commit war crimes; the fact that a warring party is certain to receive arms supplies, training and technical assistance, and will continue to do so, encourages this party to continue its manner of waging war. Furthermore, one does not need to show a specific relationship between the delivery of a specific product and an individualised war crime in order to reach the conclusion that criminal aiding and abetting have taken place. Even in the absence, of proven use of the Eurofighter, or the A330 MRTT in a specific airstrike, the *actus reus* requirement has been met.

On the basis of all the publicly available information on licences, exports and the subsequent use of the products, the conduct of both Airbus officers and Spanish government officials appears to meet the *actus reus* definitions regarding aiding and abetting.

## 4.2 MENS REA

The mental element involved in criminal liability under Art. 25 (3) (c) is fulfilled if the assistant is aware that in the ordinary course of events the principal crime will occur, or that the assistant intended such a crime to be committed.

Both government officials and corporate actors require certain pieces of information, documents need to be analysed before engaging in the conduct qualified as contribution to the crime (the licences and the export).

Spanish Government officials are bound by a specific legal framework on arms export controls when determining the approval of a licences for arms exports. Under this legal framework, a government official is required - before granting a licences - to actively seek information concerning the recipient State's 'IHL re-

186. Among several others: *Prosecutor v Blagojević and Jokić* (Judgment) IT-02-60-T (ICTY, TC I) (17 January 2005), [782]; *Prosecutor v Brđanin* (Judgment) IT-99-36-T (ICTY, TC II) (1 September 2004), [729]; *Prosecutor v Blaškić* (Judgment) IT-95-14-A (ICTY, AC) (29 July 2004), [46].

cord' and to look into the possibility that the arms concerned will be used in violation of IHL. Moreover, Spanish Officials have access to different reports and are expected to be up to date in terms of this type of information.

Due to the high risks inherent to the nature of the arms industry, Airbus officers have a heightened duty of care, an increased vigilance that includes the human rights and humanitarian consequences of their supply decisions. In this respect, Airbus Officers are expected to carry out an assessment of (i) who their purchaser is, and (ii) whether their purchaser is involved in human rights or international humanitarian law violations. This implies a comprehensive assessment that ensures that Airbus officers are informed of current issues and that they monitor credible and reliable (inter)national media on the conduct of Coalition members.

Such information was forthcoming throughout the entire period of the Yemen conflict. Official documents from UN agencies, the European Parliament and civil society reports constantly and repeatedly asserted evidence-based information that war crimes were being committed in Yemen. Various judicial proceedings took place in those European states where the production partners of the Spanish corporations involved are established. In Belgium, licences for exports to Yemen were even suspended on the basis of court orders. Similarly, several European countries decided to independently stop and suspend the granting of licences and exports to Saudi Arabia and the UAE, precisely because of the risk of the misuse of military equipment in committing war crimes. 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. Among all of this, company officials from Airbus SE were asked several questions about Airbus product deliveries and product use in the Yemen War.<sup>187</sup>

Yet, despite the abundance of reporting on the violations of international humanitarian law by the Coalition, some of which may amount to war crimes, Airbus Spain continued to supply military equipment related to the A330-MRTT refuelling jets and the Eurofighter to Coalition members, as well as the necessary spare parts and maintenance to keep the aircrafts operational. Given the obligation to review existing risks on the basis of available documentation, this can only

187. Questions asked by the Association of Ethical Shareholders at the Annual Shareholder Meeting 27 May 2020, protocol from the replies on file with the authors.

have happened with full awareness (if not with the intent) that the alleged crimes were being committed by the Coalition forces. The requisite mental element was expressly manifested by Airbus's CEO, Tom Enders who, as reported by 'El País' in February 2019, went so far as to threaten to manufacture equipment "*without German components*", if Berlin continued to exhibit "*a kind of moral superiority*", after Germany's decision to halt arms exports to Saudi Arabia.<sup>188</sup>

The same assessment would apply to the Spanish government officials, who despite the wealth of documentation, still granted licences after 2015, or who omitted to revoke or suspend older licences.

---

188. [https://elpais.com/politica/2019/02/25/actualidad/1551119731\\_006430.html](https://elpais.com/politica/2019/02/25/actualidad/1551119731_006430.html).



## 5. CONCLUSIONS

Based on the above, we can conclude that serious violations of international humanitarian law, some of which could have amounted to war crimes within the jurisdiction of the International Criminal Court have been committed by the Coalition in Yemen between March 2015 and the date of writing this report.

In relation to the alleged war crimes, it seems that the Coalition has ignored the civilian nature of various objects and buildings and the fact that at certain sites no military target was present, only civilians. This resulted in numerous attacks on schools, hospitals, cultural property or critical infrastructure, as well as civilian housing, and which were documented by national and international sources. Also funerals and weddings have been subject to intentional attacks and these may amount to further war crimes under Articles 8(2)(c)(i), 8(2)(e)(ii), and (iv) of the Rome Statute.

The widespread nature of reports on such strikes and the apparent patterns underlying the attacks on civilians demonstrate an unwillingness or the inability to comply with the requirements of international humanitarian law by the Coalition forces.

The report has focused on the role that Spanish arms and those manufacturing and exporting them play in the conflict in Yemen, and the war crimes allegedly committed.

- Spanish arms exports to Saudi Arabia and the UAE in the period from 2015 to the 1<sup>st</sup> semester of 2021 reached an amount of €1,306,980,202 and €311,219,441, respectively.
- Spain has continued selling weapons to Saudi Arabia and the UAE at least until June 2021, despite the continuous demands from civil society and parliamentarians to suspend transfers.
- A continuous stream of licences was granted in the Spain and for arms exports to Saudi Arabia and the UAE, both benefitted Airbus Defence and Space S.A.
- These supplies provide the basis for the Coalition's aerial warfare, in the form of components, spare parts and maintenance for the Eurofighter aircrafts, in addition to several A330 MRTT fuelling planes and components, spare parts and maintenance activities thereof.

It may therefore be concluded that airstrikes, alleged to be war crimes, could have been enabled by the supply of arms from Spain and the provision of maintenance, training and support services. The export of these products was authorised by Spanish administrative bodies.

Amnesty International wrote to the then CEO of the company, Dirk Hoke on 3 September 2019: "Amnesty

International understands that Airbus supplies combat aircraft and related services to the Saudi Arabian-led coalition that is currently engaged in a conflict in Yemen. Amnesty International has documented 36 coalition airstrikes that appear to have violated International Humanitarian Law (IHL) and that have resulted in 513 civilian deaths (including at least 157 children). Other reputable bodies, including the UN Expert Panel on Yemen and the Group of Regional and International Eminent Experts on Yemen, have documented many more violations perpetrated by Saudi Arabian-led coalition aircraft."

In February 2022, ECHCR, Centre Delàs and Amnesty International Spain wrote a letter to Airbus Spain to share with the company the report's central findings and conclusions concerning Airbus Spain. In late February, the company replied to the organisations. For further information, see the company's reply in the annex of this report.

Both corporate and government actors need to review their actions against the standard of international criminal law as established by the Rome Statute, domestic Spanish law and standards on corporate due diligence with respect to human rights. These standards require a thorough analysis of the available information on the risk of the misuse of potential military equipment exports. Given the abundance of available information in today's world, no argument can be made to support the idea that officials and corporate actors cannot be aware that military supplies might be used in the commission of alleged war crimes.

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



## 6. RECOMMENDATIONS

In light of the above, we make the following recommendations:

### TO THE SPANISH GOVERNMENT

#### ON TRANSPARENCY:

- Make publicly available the **essential details of the risk assessments** of MRTT refuelling jets and parts and components for the Eurofighter Typhoon combat aircraft to MPs belonging to the Official Secrets Committee.
- In future annual reports on Spanish arms exports, include **specific details on the export licences granted for parts for the Eurofighter Typhoon for the UK**, including those of parts and components.
- Promptly enact the new Classified Information Act to ensure that any restrictions on the right of access to information comply with the principles of legality, necessity and proportionality, in line with international standards.

#### ON END-USE MONITORING:

- Set up an **independent enquiry** involving renowned experts in IHL and IHR into the **use of the A330 MRTT refuelling jets and the Eurofighter Typhoon combat aircraft by the Coalition** to determine whe-

ther they have contributed to or facilitated the commission of alleged war crimes in Yemen. The terms of reference, composition and final report of this enquiry should be made public, including the provision of adequate resources to carry out its tasks.

Pending the publication of the above report and its findings and recommendations:

- **Suspend any licences for the provision of maintenance, training and other associated services** related to the A330 MRTT refuelling jets, such as that carried out by Iberia in Madrid. Where appropriate, any such licences should be revoked.
- **Suspend any export licences of (spare) parts and components for the Eurofighter Typhoon** until the Saudi/Emirati-led Coalition cease its indiscriminate or disproportionate attacks and those attacks that deliberately target civilians or civilian objects and that amount to international crimes, in Yemen. End the naval and air blockade of Yemen and take strong measures to end impunity.
- **Clarify** whether the government considers the above indicated **technical assistance** to fall within the definition established in Article 3.2 of Law 53/2007 and should therefore be subject to administrative authorisation. If so, revoke any such licences.
- **Improve** the latest 2020 **end-use monitoring measures** ensuring the incorporation in the latest end-

use certificate of an additional clause, with legally binding effect, on assurances on the use of the products exported, whereby the importing authorities certify that the imported goods shall not be used to commit or facilitate serious violations of international human rights and humanitarian law.

#### **ON THE ENFORCEMENT OF THE ATT AND OTHER STANDARDS:**

- Properly enforce Articles 6.3 and 7 of the ATT and suspend and/or revoke, as appropriate, any licences and shipments of parts and components where it may be reasonably assumed that they will either contribute to or facilitate serious violations of IHRL and/or IHL.

#### **ON MITIGATING THE IMPACT OF THE SUSPENSION OF TRANSFERS:**

- Establish a working group on the conversion of the defence industry in the Spanish Ministry of Industry, Trade and Industry, including representatives of the administration, companies in the sector, trade unions representing workers, as well as experts from civil society. The scope of this working group should include those cases in which the suspension of Spanish arms transfers would have a significant economic effect, so as to mitigate the impact of suspension on the employment of workers in the arms manufacturing industry and to propose measures for them to benefit from, among others, the implementation of the Government's Recovery, Transformation and Resiliency Plan.

#### **TO DEFENCE AND ARMS-MANUFACTURING COMPANIES**

- Adopt and enforce a legal framework requiring all companies, including defence companies, to conduct human rights due diligence in their global operations, supply chains, and in relation to the use of their products and services. Under this legislation, defence companies should be compelled to identify, prevent and mitigate the human rights-related risks of their activities and business relationships.
- Incorporate company human rights due diligence assessments into the licensing process. For each potential transfer, companies should have to demonstrate that they have thoroughly identified and addressed their current and potential human rights impacts.
- Expedite the adoption of an EU mandatory due diligence legislation to promote business respect for human rights and the environment. New legislation is urgently needed to establish clear, robust and enforceable cross-sectoral requirements on bu-

siness enterprises, including defence companies, to respect human rights and the environment and to carry out due diligence.

#### **TO THE SPANISH PROSECUTOR'S OFFICE AND JUDICIAL AUTHORITIES**

- In relation to the alleged war crimes committed in Yemen:
  - With respect to individuals under Spanish jurisdiction; exercise investigative powers and cooperate fully with and support any potential investigations at the level of the International Criminal Court.
- Generally, ensure that all credible accusations of illegal conduct on the part of defence companies that are linked to a human rights abuses are thoroughly investigated and, where appropriate, lead to criminal prosecutions.

#### **TO AIRBUS**

- A commitment to respect human rights and create robust human rights due diligence policies and processes that cover human rights risks and abuses connected with the use of company products and services.
- Identify and assess the human rights impacts of company products and services before, during and after transfer, especially in terms of transfers of military equipment and services to end-users engaged in armed conflict or internal repression.
- Publicly communicate those risks identified and how they are being addressed in the fullest manner possible.
- Vet clients' past performance against human rights benchmarks.
- Build high expectations of compliance with international human rights law into contracts and continuously monitor through product transfer and use and periodic audits of client performance.
- Use leverage to influence the behaviour of clients up to and including suspending, or even ceasing the business relationship where risks cannot be adequately mitigated.
- Refrain from lobbying for relaxation of licensing requirements where this may risk an increase in human rights abuses or against initiatives which could reduce arms-related abuses.
- Enable reparations where necessary.

## ANNEX

### Right of Reply to Upcoming Publication on Spanish Arms Exports and Alleged War Crimes in Yemen and Responsibility of Airbus Defence and Space

# EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



Mr. Alberto Gutiérrez  
President Airbus Spain  
Avenida Aragon, 4040 – 1º Planta  
28022, Madrid

*Cc: José María Palomino, corporate social responsibility director.*

Via mail to: [jose.palomino@airbus.com](mailto:jose.palomino@airbus.com)

**Madrid/Berlin, 14 February 2022**

Dear Mr. Gutiérrez,  
Dear Mr. Palomino,

**RE: RIGHT OF REPLY TO UPCOMING PUBLICATION ON  
SPANISH ARMS EXPORTS AND ALLEGED WAR CRIMES IN  
YEMEN AND RESPONSIBILITY OF AIRBUS DEFENCE AND  
SPACE**

The European Center for Constitutional and Human Rights (ECCHR), the Centre Delàs for Peace Studies, and Amnesty International Spain write to you concerning an upcoming report that has been drafted by ECCHR and Centre Delàs with the support of Amnesty International. The report that will be published in the coming weeks maps the links between Spanish arms transfers and alleged war crimes in the Yemen war between 2015 and the first quarter of 2021 (latest period with official data) and addresses the responsibility of various companies, including Airbus, and government officials.

The aforementioned organizations would like to share with you the report's central findings and conclusions that concern Airbus Spain, in order to provide your company with a right of reply prior to publication. We would be very grateful for your comments on the information and conclusions below, so that we may include them in the publication of the report and other published materials as appropriate.

**The report – topics and conclusions:**

- The report documents Spanish arms exports to the Kingdom of Saudi Arabia (KSA) and the United Arab Emirates (UAE), highlighting Spain's role in the production, export and maintenance of both combat aircrafts, the Eurofighter Typhoon, as well as the aerial refueling tanker plane, the A330 MRTT. It identifies the

—  
EUROPEAN CENTER FOR  
CONSTITUTIONAL AND  
HUMAN RIGHTS e.V.

—  
ZOSSENER STR. 55-58  
AUFGANG D  
10961 BERLIN, GERMANY

—  
PHONE +49.(030).40 04 85 90  
FAX +49.(030).40 04 85 92  
MAIL INFO@ECCHR.EU  
WEB WWW.ECCHR.EU

—  
AMTSGERICHT  
BERLIN-CHARLOTTENBURG  
VR 26608

—  
VORSTAND:  
DIETER HUMMEL  
LOTTE LEICHT  
TOBIAS SINGELNSTEIN

—  
GENERALSEKRETÄR:  
WOLFGANG KALECK

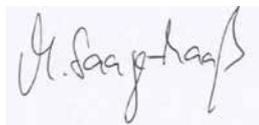
companies involved in the production and export of combat aircrafts to the KSA and the UAE, focusing on the Spanish company Airbus Defence and Space S.A. in Spain. The report contains parts of the research conducted by ECCHR in collaboration with Centre Delàs for Peace Studies (for the Spanish chapter) for the communication submitted to the Prosecutor's Office of the International Criminal Court (ICC) in December 2019, which covers information on arms transfers from five countries (United Kingdom, Germany, Spain, France and Italy).<sup>1</sup>

- The report focuses on the role that Spanish arms, along with those who manufacture and export them, play in the war in Yemen and the war crimes allegedly committed there, highlighting that:
  - Spain has continued selling weapons to Saudi Arabia and the UAE at least until June 2021.
  - A continuous stream of licences granted in Spain for arms exports to Saudi Arabia and the UAE has benefited Airbus Defence and Space S.A.
  - These supplies provide the basis for the Saudi-UAE-led Coalition's aerial warfare, in the form of components, spare parts and maintenance for the Eurofighter aircraft, as well as several A330 MRTT fueling planes and components, spare parts and the maintenance activities thereof.
- Coalition airstrikes in Yemen, alleged to be war crimes, were enabled by the supply of arms from Spain and the provision of maintenance, training and support services. The export of these products has been authorised by Spanish administrative bodies.
- Violations of International Humanitarian Law were committed by Coalition forces in Yemen, and the activities of both Spanish government officials and decision-making staff of Airbus Defence may be considered as aiding and abetting such alleged war crimes in the sense of Art. 25. (3) (c) of the International Criminal Court Statute.
- Both corporate and government actors need to review their actions against the standards of international criminal law as established by the Rome Statute, domestic Spanish law, as well as the legal framework for corporate human rights due diligence. These standards require a thorough analysis of available information on the risks of misuse of potential exports of military equipment.

A full, footnoted Airbus assessment can be found in the annex.

Should you have any comments or clarifications regarding the information provided in this communication, we would be grateful if you could respond by 24 February 2022 to [schliemann@ecchr.eu](mailto:schliemann@ecchr.eu) and [jcalvo@centredelas.org](mailto:jcalvo@centredelas.org). Please do not hesitate to contact us if you require any further information regarding this request or our work. Please note that we intend to convey any information we receive from you in published materials as appropriate (which may include quoting your responses verbatim).

Kind regards,



Dr. Miriam Saage-Maasz  
Legal Director  
Business and Human Rights  
ECCHR



Jordi Calvo Rufanges  
Coordinator  
Centre Delàs d'Estudis per la Pau



Esteban Beltrán  
Director  
Amnesty International Spain

<sup>1</sup> <https://www.amnesty.org/en/latest/press-release/2019/12/icc-investigate-arms-companies-yemen-war-crimes-allegations/>

## ANNEX: INFORMATION ON AIRBUS

### 1- AIRBUS DEFENCE AND SPACE S.A. AS MAIN CONTRIBUTOR TO EUROPEAN EXPORTS TO THE KSA AND UAE:

- The Eurofighter and the A330 MRTT fueling plane are of high relevance to the fleets of the KSA and the UAE. Spanish parts and components are essential for both these planes.
- The Eurofighter Typhoon combat aircraft, indispensable for the air warfare in Yemen, is the result of joint production schemes including several European companies. For the Eurofighter Typhoon the key companies involved are BAE Systems headquartered in the United Kingdom, Airbus Space & Defence GmbH (Germany), Airbus Space & Defence S.A. (Spain) with its joint parent company Airbus SE headquartered in the Netherlands, and Leonardo headquartered in Italy.
- Eurofighter Jagdflugzeug GmbH<sup>2</sup> is a limited liability company (based in Munich). At this moment, BAE (33%), Airbus GE (33%), Airbus SP (13%), and Leonardo (21%) own Eurofighter Jagdflugzeug GmbH,<sup>3</sup> the composition of ownership shares having changed over time. When it comes to exports to Saudi Arabia, Eurofighter Jagdflugzeug GmbH acts as a subcontractor for BAE, which means that BAE is the main contract partner with Saudi Arabia.<sup>4</sup>
- In-flight fueling of both the Typhoon and the Tornado combat aircraft (also used by the Saudi-led-Coalition) can be carried out by the A330 MRTTs. The A330 MRTT is the result of a collaborative effort by several companies from different countries.

### 2- AIRBUS CONTRIBUTION TO THE EUROFIGHTER AIRCRAFT:

- Parts for the Eurofighter are produced by Airbus Spain in Illescas (Toledo/Spain) and in Getafe (Madrid region/Spain). According to Airbus "Illescas is responsible for manufacturing the components of the empennage and aft fuselage for all Airbus aircraft versions and for the Eurofighter combat aircraft." "Airbus undertakes parts manufacturing and the assembly for the Eurofighter also at the Getafe site."<sup>5</sup> The left wing, the right wing and the nose of the Eurofighters are assembled in Getafe. 6
- In relation to the licensing of Eurofighter for export from Airbus Spain to the UK for final assembly or onward exports to Saudi Arabia, it has been difficult to access information on when exactly which parts and components were licenced. There is also no information on when exactly which parts and components were licenced and delivered from Airbus Spain to prepare the final assembly in the UK. A freedom of information request made by Centre Delàs on 17 July 2019 with the Ministry of Industry, Commerce and Tourism to obtain access to the licences of exports of parts for the Tornado, was denied on 26 July 2019 as it was stated that all information regarding licences was covered under the 1968 Official Secrets Act.

### 3- USE OF THE EUROFIGHTER IN THE WAR IN YEMEN:

- Deliveries of the Eurofighter Typhoon combat aircraft from BAE to Saudi Arabia in the relevant time period are based on a purchase agreement for the so-called Project Salamin of September

<sup>2</sup> Eurofighter Jagdflugzeug GmbH, Am Söldnermoos 17, D-85399 Hallbergmoos Germany, Tel: +49 811 801222.

<sup>3</sup> <https://www.eurofighter.com/about-us>.

<sup>4</sup> "Eurofighter Jagdflugzeug GmbH generates its operating profit through management activities such as: -general contractor to NETMA and Austria for the Eurofighter Typhoon programme-subcontractor of BAE for the Export Saudi Arabia and Oman Project-Leonardo subcontractor for the initial phase of the Kuwait project". Lagebericht für das Geschäftsjahr 2017' pp. 3-4; Unternehmensregister, Eurofighter Jagdflugzeug GmbH, 'Jahresabschluss zum Geschäftsjahr vom 01.01.2017 bis zum 31.12.2017. Available at <https://www.bundesanzeiger.de/ebanzwww/wexsservlet>.

<sup>5</sup> Airbus Official Website, "Airbus in Spain", <https://www.airbus.com/company/worldwide-presence/spain.html>.

<sup>6</sup> <https://abcblogs.abc.es/tierra-mar-aire/otros-temas/eurofighter-caza-construy.html>.

2007 comprising the delivery of 72 Eurofighter Typhoon aircrafts. The Al Salam deal consists of two main programmes: aircraft deliveries (72 Eurofighter aircraft), and the Saudi Arabia support programme (“air crew and ground crew training, maintenance facilities, technical support, spares and repairs, aircraft availability, and aircraft capability upgrades”).<sup>7</sup> Financing of the Al Salam deal was finalised in 2014. Based on company and public information, 12 Eurofighter aircraft were delivered in 2015, 11 in 2016 and 4 in 2017, the other jets had been exported prior to April 2015. However, concrete dates for the licence granted to BAE to export assembled Eurofighter aircrafts to Saudi Arabia cannot be retrieved.

- Several sources have confirmed the use of the Eurofighter Typhoon in airstrikes carried out by the Coalition in Yemen since March 2015.<sup>8</sup> Pointing to specific airstrikes in which the Eurofighter Typhoon was used is, however, difficult. Yet, given the high percentage of Eurofighters in the air fleet of the coalition and their ability to carry various types of ammunition/munitions it is highly likely that the Eurofighter Typhoon would be involved in many of the airstrikes carried out by the Coalition. These airstrikes include the attacks on Médecins Sans Frontières hospitals with protected status.<sup>9 10 11</sup> There have also been attacks on schools, documented by Mwatana for Human Rights.<sup>12</sup> There are also series of cases of attacks against civilians documented by the UN Panel of Experts on Yemen, Reuters, Mwatana, Human Rights Watch, Amnesty International and other NGOs including: the case of Al Hudaydah warehouses,<sup>13</sup> the attack on a civilian house in Mahala in 2016,<sup>14</sup> on Radfan water bottling factory,<sup>15</sup> on Alsonidar Factory,<sup>16</sup> among others.

#### 4- PRODUCTION AND EXPORT OF THE AIRBUS A330-MRTT REFUELLING JET:

- Saudi Arabia and the UAE have ordered and received several A330 MRTT, with Saudi Arabia receiving six A330 MRTT from Airbus Spain. As Defence News sources show that the last one of the three planes of the second batch was delivered after the beginning of the Operation “decisive storm” in March 2015.<sup>17</sup>
- The German government confirmed that, between July 2015 and December 2015, licences were granted for exports of components produced for the fueling plane A330 MRTT assembled in and exported to Saudi Arabia from Spain.<sup>18</sup> Moreover, since the beginning of the war in 2015

<sup>7</sup> David Wearing, ‘A Shameful Relationship. UK Complicity in Saudi State Violence’, CAAT, April 2016, p. 22, <https://www.caat.org.uk/campaigns/stop-arming-saudi/a-shameful-relationship.pdf>.

<sup>8</sup> Reply to parliamentary question of May 2015, BT Drucksache 18/4824, answer to question 10, (hereinafter German Gov. Reply 18/4824) <https://dipbt.bundestag.de/doc/btd/18/048/1804824.pdf>; UK Minister of Defence reply to written parliamentary question no. 38591 on Yemen: Military Intervention, <https://web.archive.org/web/20190130130928/https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-05-25/38591/>; UK Minister of Defence reply to written parliamentary question no. 64277 on Yemen: Military Intervention, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-02-17/64277/>; Hekman Ludo, “#GermanArms Jets over Yemen”, 27 February 2019, video clip, [https://www.youtube.com/watch?time\\_continue=154&v=An8B62toSgq](https://www.youtube.com/watch?time_continue=154&v=An8B62toSgq); On Lighthouse reports, see <https://www.lighthousereports.nl/>.

<sup>9</sup> Human Rights Watch, Yemen: Coalition Airstrikes Hit Hospital, 27 October 2015, <https://www.hrw.org/news/2015/10/27/yemen-coalition-airstrikes-hit-hospital> and UN Panel of Experts on Yemen 2016 Report, p. 191, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3->

<sup>10</sup> MSF incident report: Airstrike on the Taiz Health Clinic, Houban District, Taiz City, 2 December 2015, at 1, [https://reliefweb.int/sites/reliefweb.int/files/resources/Yemen\\_Taiz\\_investigation\\_summary\\_final.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Yemen_Taiz_investigation_summary_final.pdf).

<sup>11</sup> MSF International investigation of the 15 August attack on Abs hospital Yemen, Summary of Findings, 27 September 2016, [https://www.msf.org/sites/msf.org/files/yemen\\_abs\\_investigation.pdf](https://www.msf.org/sites/msf.org/files/yemen_abs_investigation.pdf), p. 2.

<sup>12</sup> Mwatana for Human Rights, August 2020, Undermining our Future – Attacks on Yemen’s Schools March 2015 – December 2019.

<sup>13</sup> Documentary produced by Mwatana, ‘From the Margin of Life, into the Heart of the War’; <https://www.youtube.com/watch?v=m-UAy5Tc1Hg&feature=youtu.be>.

<sup>14</sup> Final Report of the Panel of Experts on Yemen, UN Doc. S/2018/193 (2017), p. 206, <https://www.undocs.org/S/2018/193>.

<sup>15</sup> Final Report of the Panel of Experts on Yemen, UN Doc. S/2018/594 (2018), p. 279, <https://undocs.org/S/2018/594>.

<sup>16</sup> Ibid, p. 266.

<sup>17</sup> Airforcesmonthly, José Ramón Valero, “Saudi A330 MRTT Programme Almost Complete”.

<sup>18</sup> Reply of German Government/Ministry for Economics to written question by MP Jan van Aken on 13 January 2016, p. 3.

up to 2020 spare parts for in-flight refuelling were exported from Spain to Saudi Arabia<sup>19</sup>. It is very likely that these included the exports of spare parts for the A330-MRTTs.

- Spanish Government officials authorised Airbus Spain to export ready-made A330-MRTT refuelling jets to Saudi Arabia. These exports appear to have been licenced before the Coalition's intervention in Yemen in March 2015. It is unclear when the exports of spare parts were licenced. Moreover, it is highly likely that Spanish government officials have also authorised the export of parts and components of Eurofighter Typhoon jets to Saudi Arabia. These exports enabled the Coalition members to conduct aerial attacks over Yemen in a systematic manner since the beginning of Operation Decisive Storm.
- In relation to maintenance of the A330-MRTT, in June 2017 it was reported that an A330-MRTT landing in Madrid Barajas with registration 2401 was undergoing maintenance.<sup>20</sup> Subsequently, between 18 February 2019 and 24 May 2019 a Saudi Arabian A330-MRTT with registration 2403 was spotted. From this information it appears that 2 Saudi A330-MRTT jets have returned to Madrid in 2017 and 2019 and spotted close to the maintenance site in La Munoza from Iberia. It is likely that the planes were there for maintenance. Iberia has stated that it has a contract with Airbus and that some of the Saudi planes had returned for small modifications after 2013. According to an Airbus Spain spokesperson the majority of the checks and maintenance is done in Saudi Arabia, but the 'heavy checks' meaning maintenance checks that need to be carried out every x amount of flight hours, is done in Spain.<sup>21</sup> This type of maintenance appears to be performed by Iberia under a contract with Airbus.

#### **4- USE OF THE AIRBUS A330-MRTT REFUELING JET FOR THE YEMEN ARMED CONFLICT:**

- Defence News sources confirm that the refueling plane A330 MRTT produced by Airbus Spain is being used by both the UAE and Saudi Arabia in their air campaign over Yemen generally<sup>22</sup> and concretely for the fact that of one of the 30 planes deployed by the UAE in the operation "Decisive Storm" was a A330 multi-role tanker transport aircraft.<sup>23</sup> On 26th June 2017, the media outlet *Defensa.com* published a news article reporting the first Airbus 330 MRTT returning from Saudi Arabia to Spain for maintenance<sup>24</sup>. According to this media outlet, the 330 MRTT refueling jet was back to the Airbus' Station 'La Muñoza', to undergo maintenance operations and improvement in its military systems, after an intense operative period in the Saudi Arabian intervention in Yemen. Similarly, a leaked French government document also confirms the use of the Emirati A330 MRTT most probably from the Jeddah air base.<sup>25</sup>
- Fueling planes are central to the air campaign by the Coalition given their unique capacities. The A330-MRTT allows for "Air-to-Air refueling missions without the need for an additional fuel tank". More fuel on-board means more flexibility, more range and longer time on station for the coalition.
- After the Coalition intervened in Yemen A330-MRTT refueling jets have been delivered to Saudi Arabia. Additional sources indicate the likelihood that spare parts for the A330-MRTT jets were also delivered at least in 2016. And, in 2017 and 2019 open source data and new reporting indicates that A330-MRTT jets were undergoing maintenance in Spain. At the same time, French government documents confirm that the A330-MRTTs are being used by the Coalition in Yemen.

<sup>19</sup> Full information and sources in section Spanish Arms Exports fueling the war in Yemen of this report.

<sup>20</sup> Julio Maiz Sanz, "El Primer A330 MRTT Saudita vuelve a España para tareas de mantenimiento", *Defensa.com*, 26 June 2017, <https://www.defensa.com/aeronautica-y-espacio/primer-a330-mrta-saudita-vuelve-espana-para-tareas-mantenimiento>.

<sup>21</sup> Pol Pareja, "Airbus e Iberia realizan en Barajas tareas de mantenimiento para aviones militares de Arabia Saudí", *El Diario*, 25 November 2019, [https://www.eldiario.es/politica/iberia-realiza-mantenimiento-aviones-madrid\\_1\\_1164060.html](https://www.eldiario.es/politica/iberia-realiza-mantenimiento-aviones-madrid_1_1164060.html).

<sup>22</sup> "Paris Air Show 2015: Saudis take delivery of final MRTT", 17 June 2015, at 2, <https://world-defense.com/threads/paris-air-show-2015-saudis-take-delivery-of-final-mrta.2321/>.

<sup>23</sup> Jon Lake, (2015, June) Yemen on the Edge, *Airforces Monthly*, 36-40, at 40, <https://pocketmags.com/us/airforces-monthly-magazine/june-2015>.

<sup>24</sup> <https://www.defensa.com/aeronautica-y-espacio/primer-a330-mrta-saudita-vuelve-espana-para-tareas-mantenimiento>.

<sup>25</sup> Direction du renseignement militaire, Yémen - situation sécuritaire, Note à destination des hautes autorités dans le cadre du conseil restreint du 3 Octobre 2018, 25 September 2018, p. 10, <https://made-in-france.disclose.ngo/en/documents>.

## 5- AIRBUS RESPONSIBILITY TO RESPECT HUMAN RIGHTS IN THE CONTEXT OF ARM EXPORTS:

- The United Nations Guiding Principles for Business and Human Rights (UNGPs) - unanimously endorsed at the United Nations Human Rights Council in 2011<sup>26</sup> - 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 by virtue of their business relationships, even if they have not contributed to those impacts directly.<sup>27</sup> 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. Consequently, 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 and use their leverage to mitigate any remaining impact to the greatest extent possible.<sup>28</sup> Where a company has caused or contributed to an abuse, it has a responsibility to provide for or cooperate in its remediation.
- In 2019, Amnesty International published a report<sup>29</sup> showing how major industry players including Airbus, BAE Systems and Raytheon have failed to undertake adequate human rights due diligence which could prevent their products from being used in potential human rights violations and war crimes. Amnesty International contacted Airbus and asked to elaborate on their human rights due diligence policies and processes, including how they assess risks of adverse human rights impacts in situations of conflict. Airbus did not answer Amnesty International's questions but instead provided a short, general response which underlined their commitment to human rights, the lawfulness of their businesses. The company told Amnesty International that: "Airbus will always conduct its business ethically, based on Airbus values, and in compliance with all applicable laws and regulations. As part of this commitment, Airbus supports the principles of the UN Global Compact. Airbus constantly monitors changes to international law to ensure that all sales are in compliance with any applicable legal requirements with regard to transactions with countries under UN, EU, UK and US sanctions."<sup>30</sup> The response falls well short of Airbus' responsibilities under the UNGPs which establish that companies have their own distinct responsibilities to respect human rights, independent of states' abilities and/or willingness to fulfil their human rights obligations.
- The measures an enterprise takes in pursuit of due diligence should be "commensurate to the severity and likelihood of the adverse impact. When the likelihood and severity of an adverse impact is high, then due diligence should be more extensive".<sup>31</sup> Given the sector-specific risks characteristic of the arms trade, in which the likelihood and severity of adverse impacts is high, extensive human rights due diligence is required. As a consequence, Principle 23 of the UNGPs recognises that some operating environments might increase the risk of liability being imposed on both the corporation and its officers.<sup>32</sup> Corporations operating in the arms industry and their corporate officers thus have a particular duty of care that includes the human rights and humanitarian consequences of their supply decisions. The reason for this particular duty of care lies first in the military nature of the products sold by the corporation that carries the risk of complicity in crimes. Secondly, the special vigilance required from arms manufacturing

<sup>26</sup> UNHRC, Guiding Principles on Business and Human Rights: Implementing the United Nations, Protect, Respect and Remedy Framework" (hereafter UNGPs), Final Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/17/31 (2011).

<sup>27</sup> Ibid, Principle 13, UNGPs.

<sup>28</sup> Ibid, Commentary to Principle 19, UNGPs.

<sup>29</sup> 19 September, 2019 Outsourcing responsibility: Human rights policies in the defence sector <https://www.amnesty.org/en/documents/act30/0893/2019/en/>.

<sup>30</sup> Ibid. p.63.

<sup>31</sup> OECD (2019), OECD Due Diligence Guidance for Responsible Business Conduct OECD Publishing; <https://www.oecd.org/daf/inv/mne/ due-diligence-guidance-for-responsible-business-conduct.htm>, p.17.

<sup>32</sup> Ibid, Principle 23, UNGPs. With a similar message also Principle 7 Pertaining to the state's duty to assist and guide corporate conduct in conflict affected area.

companies lies in the context in which they supply. 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.

**6- CRIMINAL LIABILITY OF AIRBUS CORPORATE OFFICERS:** This report focuses on criminal liability according to international standards as contained in the Statute of the International Criminal Court.

- 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 covers in its article 25 the criminal liability for such acts of assistance “if that person [...] aids, abets or otherwise assists in its commission or is attempted commission, including providing the means for its commission”.
  - Airbus Defence and Space S.A. and in that respect, its upper management officers, provided practical assistance –namely Eurofighter aircraft and continuous spare parts for Eurofighter aircraft and maintenance, training and support services- and encouragement to members of the Coalition. In addition, Airbus Defence & Space Spain has exported several A330-MRTT refueling planes and correspondent spare parts as well as provided maintenance services to Saudi Arabia over the course of the armed conflict in Yemen. At least three of the six planes for export to Saudi Arabia were delivered after the Coalition had intervened in Yemen.
  - Although it is difficult to obtain detailed information on concrete licence provided by Spanish government officials for the export of spare parts and components of Eurofighters jets and A330-MRTT refueling jets to the UAE and Saudi Arabia, as well as spare parts to the latter, it is clear that licences have been granted, since otherwise no export could have taken place. What is lacking is concrete information on the timing and the exact scope of the licence rather than information on if they were granted at all.
  - Both aircrafts play a significant role for the aerial warfare in Yemen, since the Eurofighter presents a non negligible part of the Saudi Arabian air fleet. In addition, the A330 MRTTs were used both for the refueling of Saudi and Emirati aircrafts. Next to the initial delivery of the aircrafts and the subsequent provision of spare parts and components also maintenance activities for those aircrafts were documented within the time frame of the ongoing Yemeni conflict. The use of those aircrafts has been documented in the air space over Yemen in the context of aerial operations in imagery and videos recorded and published online. Given the high rate of airstrikes that are documented by UN agencies and NGOs and qualified as possible war crimes the involvement of Eurofighters in such airstrikes is highly likely.
  - While, the supply of the Eurofighter and A330 MRTT needs to be considered substantial for the air warfare in Yemen, this is not even necessary under the applicable International criminal law standards. Moreover, since it is widely recognised that ‘*practical assistance, encouragement, or moral support*’ can equally constitute assistance,<sup>33</sup> the analysis presented includes conduct that constitutes encouragement. In that respect, not only does the supply of arms give the means to commit war crimes, also the fact that a warring party can be sure to receive arms supplies, trainings and technical assistance and will continue to do so, encourages this party to continue its way of waging war. Furthermore, one must not show a specific relationship between the delivery of a particular good and an individualised war crime in order to arrive at the criminal liability of an aidor and abettor. Even in the absence, of a proven use of the Eurofighter or the A330 MRTT in a particular airstrike, the *actus reus* requirement is fulfilled.
  - On the basis of all the publicly available information on licences, exports and subsequent use of the products, both Airbus officers and Spanish Government Officials’s conduct seem to meet the *actus reus* requirement of **aiding and abetting** (art. 25.3 ICC Statute).

<sup>33</sup> Among several others: *Prosecutor v Blagojević and Jokić* (Judgment) IT-02-60-T (ICTY, TC I) (17 January 2005), [782]; *Prosecutor v Brđanin* (Judgment) IT-99-36-T (ICTY, TC II) (1 September 2004), [729]; *Prosecutor v Blaškić* (Judgment) IT-95-14-A (ICTY, AC) (29 July 2004), [46].

- Furthermore, according to Art. 25 (3) (c) 30 of the Rome Statute “a person shall be criminally responsible and liable for punishment for a crime if that person for the purpose of facilitating the commission of such crime [..]” carries out above activities of assistance.
  - Due to the high risks inherent to the nature of the arms industry, Airbus’ officers have a heightened duty of care, an increased vigilance that includes the human rights and humanitarian consequences of their supply decisions. In that respect Airbus’ Officers are expected to carry out an assessment of (i) who their purchaser is, and (ii) whether their purchaser is involved in human rights or international humanitarian law violations. This implies a comprehensive assessment that Airbus’ officers ensured to be up to date and monitor credible and reliable (inter)national media on the conduct of members of the Coalition.
  - Such information 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 collected evidence that war crimes are being committed in Yemen. Various judicial proceedings were carried out in European states where production partners of Spanish corporations are seated. In Belgium, licences for exports to Yemen were even suspended on the basis of court orders. Similarly several European countries decided in their own right to stop and suspend the granting of licences and exports to Saudi Arabia and the UAE precisely because of the risk of the misuse of military equipment in the commission of war crimes. 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 on violations of international humanitarian law by the Coalition some of which may amount to war crimes Airbus Spain continued to supply military equipment related to the A330-MRTT refueling jets and the Eurofighter to Coalition members as well as the necessary spare parts and maintenance to keep the aircrafts operational. 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. The requisite mental element was expressly manifested by Airbus’s CEO, Tom Enders who, as reported by ‘El País’ on February 2019, has gone so far as to threaten to manufacture equipment *“without German components”*, if Berlin continues to exhibit *“a kind of moral superiority”*, after Germany’s decision to halt arms exports to Saudi Arabia<sup>34</sup>.
- Based on the above, 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.

<sup>34</sup> [https://elpais.com/politica/2019/02/25/actualidad/1551119731\\_006430.html](https://elpais.com/politica/2019/02/25/actualidad/1551119731_006430.html).

## Airbus Official Response

### **Official Airbus response to ECCHR letter:**

Airbus welcomes the opportunity to reply to the ECCHR's allegations prior to publication of its upcoming report.

Airbus is firmly committed to conducting its business ethically, based on its Company values, and in compliance with all applicable laws and regulations. As part of this commitment, Airbus supports the principles of the UN Global Compact which includes respect for human rights.

Airbus constantly monitors changes to international law to ensure that all sales are in compliance with any applicable legal requirements with regard to transactions with countries under the UN, EU, UK and US sanctions.

Airbus does not agree with the report's central findings and conclusions concerning Airbus Spain and rejects the accusation that "decision-making staff of Airbus Defence and Spanish government officials may have aided and abetted such alleged war crimes in the sense of Art. 25. (3) (c) ICC Statute."

Airbus kindly requests that you convey the entirety of Airbus' reply in your published materials.

### **Signed by:**

Alvaro Beteta Meredith  
Head of Communications Spain  
AIRBUS DEFENCE AND SPACE S.A.U.

Pedro Blanco Manchado  
Head of Legal Department  
AIRBUS DEFENCE AND SPACE, S.A.U.

**AMNISTIA**  
INTERNACIONAL



**EUROPEAN CENTER FOR  
CONSTITUTIONAL AND  
HUMAN RIGHTS**

---

**CENTRE DELÀS**  
D'ESTUDIS  
PER LA PAU