



OUTSOURCING RESPONSIBILITY

HUMAN RIGHTS POLICIES IN THE DEFENCE SECTOR

AMNESTY
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Cover photo: A soldier stands guard before a Royal Saudi Air Force cargo plane at an airfield in Yemen's central Marib province, 12 March 2018, © ABDULLAH AL-QADRY/AFP/Getty Images

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GLOSSARY

ADS Group	Aerospace, Defence, Security and Space Group
ASD	AeroSpace and Defence Industries Association of Europe
EBIT	Earnings Before Interest and Taxes
EU	European Union
ICRC	International Committee of the Red Cross
IFBEC	International Forum on Business Ethical Conduct for the Aerospace and Defence Industry
ILO	International Labour Organization
MSF	Médecins Sans Frontières
OECD	Organisation for Economic Co-operation and Development
OHCHR	UN Office of the High Commissioner for Human Rights
SIPRI	Stockholm International Peace Research Institute
UAE	United Arab Emirates
UNGPs	UN Guiding Principles on Business and Human Rights

EXECUTIVE SUMMARY

“With regards to policy around defence exports it is a function of Governments – not of individual companies – to determine the markets to which it is acceptable for defence products to be exported.”

Spokesperson for Rolls-Royce regarding defence exports to the Philippines

Every year corporate actors supply large volumes of military equipment to some of the most violent and unstable parts of the world. This equipment is often used unlawfully in the context of armed conflicts and in political unrest marred by serious violations of international human rights and humanitarian law.

In the Yemen conflict, for instance, leading defence companies have continued to supply arms to the coalition led by Saudi Arabia and the United Arab Emirates (UAE), seemingly ignoring a litany of probable war crimes committed by coalition forces. Boeing, BAE Systems, Raytheon and Lockheed Martin, among others, have been integral to the coalition effort, supplying, servicing and arming a fleet of combat aircraft that has repeatedly struck civilian objects, including residential areas, schools, hospitals and marketplaces.

In Egypt, throughout the bloodiest period of the country’s recent upheavals, the French company Renault Trucks (now named Arquus) exported over 200 armoured vehicles to Egyptian security forces; these were used to crush dissent, contributing to the deaths of thousands of protesters. The Russian arms exporter Rosoboronexport has supplied military equipment to the Syrian armed forces – the same forces that have carried out indiscriminate aerial and artillery bombardments of residential areas across Syria. And in Cameroon, there have been repeated sightings of Serbian manufactured Zastava small arms and light weapons being used in extrajudicial executions and to intimidate villagers.

While the human rights obligations of states to regulate the international arms trade are now clearly defined under the Arms Trade Treaty and regional and domestic legislation, the crucial role of companies in the supply of military goods and services is often overlooked. Despite the often inherently dangerous nature of its business and products, the defence industry has not been the subject of the same level of scrutiny as other sectors – such as the extractive, agricultural, garment and tech industries – in relation to their human rights responsibilities. The defence sector has also been slow to acknowledge publicly its own responsibilities to prevent adverse human rights impacts in core areas of its business – namely the supply of arms to areas of conflict and upheaval.

There is now a clear global consensus that companies have a responsibility to respect all human rights wherever they operate. This is expressly recognized in global standards on business and human rights such as the UN Guiding Principles on Business and Human Rights (UNGPs), unanimously endorsed by the UN Human Rights Council in June 2011, and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.

According to the UNGPs, this responsibility applies “to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure”. Crucially, the prevention of adverse impacts on human rights includes not just addressing abuses that a company has caused or contributed to, but those which are directly linked to a company’s products or services through a

business relationship, *even if the company has neither caused nor contributed to the impact*. In other words, under the UNGPs and related standards, a defence company must address the risks involved not just in their company operations and across their supply chain, but in how their weapons are being and are likely to be used once they are deployed by armed forces or law enforcement – especially if they are being supplied to parties to armed conflict or to countries experiencing political upheaval.

Like all companies, corporates operating in the defence sector must put in place proactive preventive measures to address the human rights risks that the misuse of their products and services pose. These measures should include robust human rights due diligence policies and processes – separate from those of the state – to identify, prevent, mitigate and account for how companies address both their potential and actual human rights impacts. Effective due diligence must be commensurate with risk, adequately resourced and geared towards the prevention of harm to others. Should companies fail to take adequate preventive measures, they are opening themselves up not just to reputational risk but to potential legal liability.

Defence companies often claim that human rights due diligence functions are carried out on their behalf by state officials who license arms transfers. However, while the UNGPs do require states to protect against abuses by companies, they clearly 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. Properly conducted human rights due diligence might require defence companies to go beyond what is legally required in a given jurisdiction; it might also require them to refrain from engaging in business that would otherwise be permitted under state licensing laws.

Defence companies also claim that once their products are shipped, they have no control over how they are used by third parties. Indeed, they argue that attempting to assert control could result in violations of contractual terms and the principles of national sovereignty. However, arms corporates, like all companies, have at their disposal a range of measures to identify and address potential human rights risks before, during and after an arms transfer. These include vetting clients' past performance against human rights benchmarks; building high expectations of compliance with international human rights law into contracts; continuous monitoring and periodic auditing of client performance; and using leverage to influence the behaviour of clients up to and including suspending or even ceasing the business relationship where risks cannot be adequately mitigated. Moreover, many of these measures are already being used by defence companies to combat the risks of corruption and bribery by third party contractors.

Amnesty International contacted 22 leading arms companies, focusing on large corporations in the aerospace defence sector, but also including manufacturers of armoured vehicles and small arms. After setting out company responsibilities under the UNGPs, Amnesty International asked them to elaborate on their human rights due diligence policies and processes, posing specific questions, including how they assess risks of adverse human rights impacts in situations of conflict/upheaval; how they monitor those risks; and what actions they take to address them, including providing or cooperating in the provision of remedy. Where relevant, Amnesty International also highlighted specific concerns in relation to the use of the company's arms to commit serious violations of international human rights and humanitarian law.

This report focuses on Airbus, BAE Systems, Leonardo, Lockheed Martin, Raytheon, Rolls-Royce, Saab and Thales. All these companies supply military equipment and services to the Saudi Arabia/UAE-led coalition which is a party to the ongoing conflict in Yemen, supplying and servicing combat and surveillance aircraft, aircraft engines and bomb guidance and delivery systems.

While some of these companies responded by outlining broad human rights provisions in their policy positions and procedures, including those related to the supply chain, labour practices and internal company procedures, no company provided full responses to the specific questions asked

THIS REPORT FOCUSES ON COMPANIES THAT SUPPLY MILITARY EQUIPMENT AND SERVICES TO THE SAUDI ARABIA/UAE-LED COALITION

WHICH IS A PARTY TO THE ONGOING CONFLICT IN YEMEN, SUPPLYING AND SERVICING COMBAT AND SURVEILLANCE AIRCRAFT, AIRCRAFT ENGINES AND BOMB GUIDANCE AND DELIVERY SYSTEMS.



by Amnesty International. Importantly, most of the companies contacted by Amnesty International did not explicitly identify the misuse of products and services by third parties as an area of potential concern that needed to be addressed by human rights due diligence policies and procedures.

No company elaborated on human rights due diligence policies and procedures specific to situations of high risk, for example, in business relationships which involve parties to conflicts or governments responding to political upheaval. No company cited concrete cases in which preventive measures were taken or the supply of products and services withdrawn; nor did any company adequately address specific risks identified by Amnesty International, such as the repeated use of company products in serious human rights violations.

These responses reveal the enormous gap between the very real human rights risks the defence sector often runs – particularly in relation to the supply of weapons to countries affected by conflict or upheaval where human rights compliance is poor – and the measures taken to address these clear risks. On the basis of these responses, it is clear that these companies are failing to conduct adequate human rights due diligence as defined by the UNGPs. This failure increases both reputational and legal risks for an industry that supplies high-risk products to dangerous environments. Legal concepts of “corporate complicity” in and the “aiding and abetting” of international crimes continue to evolve and could in the future apply to arms companies that continue supplying weapons in the knowledge that they may be used to commit or facilitate serious violations of international human rights or humanitarian law.

States have also failed to compel defence companies in their jurisdictions to conduct human rights due diligence in their global operations, supply chains and in relation to the use and impact of their products and services. States must put in place and enforce a legislative framework which forces the industry to assess and address the human rights risks it faces and penalizes companies which fail to comply with their human rights responsibilities. States must not support companies that are involved in or linked to serious violations of international human rights and humanitarian law and, where appropriate, should investigate and prosecute instances of criminal behaviour on the part of corporate entities, including defence companies.

Nevertheless, whatever the failings of states, these do not absolve companies of their responsibilities to respect human rights. The defence sector has begun adopting the language of human rights in its corporate literature but has so far failed to give it any meaningful content. The sector urgently needs to develop robust human rights due diligence policies and processes that truly address these human rights risks. At a minimum, the sector must incorporate six key measures into their existing policies and processes in order to prevent adverse human rights impacts and avoid complicity in serious violations of international human rights and humanitarian law.

DEFENCE COMPANIES MUST:

1. **Commit to respect human rights** and create robust human rights due diligence policies and processes which cover human rights risks and abuses connected with the use of their products and services;
2. **Identify and assess the human rights impacts** of their products and services before, during and after transfer;
3. **Take action to address human rights risks and abuses**, including through mitigation and remediation;
4. **Publicly communicate the risks** identified and how they are being addressed as fully as possible;
5. **Refrain from lobbying** for the relaxation of licensing requirements where this risks increasing human rights abuses and against initiatives which could reduce arms-related abuses; and
6. **Enable reparation** where necessary.

States also have a vital role to play to ensure companies operate responsibly.

STATES WHERE DEFENCE COMPANIES ARE LOCATED OR OPERATE FROM MUST:

1. **Adopt and enforce a legal framework** requiring 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;
2. **Incorporate into the licensing process a mandatory requirement** for defence companies to identify and address the actual and potential human rights impacts of proposed transfers of military products and services;
3. **Withdraw support from defence companies which are** linked to gross human rights abuses and which refuse to cooperate in addressing the situation; and
4. Ensure that **all credible accusations against defence companies** of illegal conduct linked to human rights abuses are thoroughly investigated and, where appropriate, lead to criminal prosecutions.



METHODOLOGY

While Amnesty International acknowledges the key role of the state as the licensing authority for military goods and services,¹ this report focuses on the role and separate human rights responsibilities of corporations involved in the arms trade. It examines the defence industry's human rights responsibilities and the policies and procedures that the sector has in place for identifying, preventing, addressing or accounting for its human rights impacts – particularly in relation to the supply of arms to areas of armed conflict and political upheaval.

Between September and December 2018, Amnesty International reviewed the human rights policies and practices of 22 leading defence companies against the UN Guiding Principles on Business and Human Rights (UNGPs) and similar standards.² Amnesty International reviewed available information provided by companies on their corporate websites, including publications such as annual reports for investors, sustainability reports, specific human rights policy papers, corporate social responsibility policies that reference promotion and protection of human rights, and comments on human rights by senior company representatives quoted in the media.

Additionally, between September and October 2018, Amnesty International wrote letters to these companies asking them for further information about their human rights due diligence policies and processes and, in some instances, raising specific questions about the company's compliance with relevant international human rights standards. The letters were sent to the nine largest defence companies listed in the “top 100 arms companies and military producing companies 2017” compiled by the Stockholm International Peace Research Institute (SPIRI)³ along with a mix of leading companies across different jurisdictions and smaller companies producing armoured vehicles and small arms. While predominantly headquartered in the USA and Western Europe, Amnesty International also contacted companies in Brazil, China, Israel and Russia.

This report focuses on eight companies: Airbus SE (Airbus), BAE Systems plc (BAE Systems), Leonardo S.p.a (Leonardo), the Lockheed Martin Corporation (Lockheed Martin), the Raytheon Company (Raytheon), Rolls-Royce, the Saab Group (Saab) and the Thales Group (Thales). It presents and analyses information publicly available on these companies and provided by these companies in their responses to Amnesty International and in follow up communications. Amnesty International was not able to measure the actual effectiveness of these companies, stated policies and procedures for identifying, preventing, addressing or accounting for human rights abuses in practice.

Case studies presenting examples of arms transfers to Cameroon, Egypt, Syria and the coalition forces led by Saudi Arabia and the United Arab Emirate (UAE) engaged in the Yemen conflict, and related allegations of violations of international humanitarian and human rights law, are drawn from previously published Amnesty International research, UN Expert Panel reports and field and open source investigations by NGOs. Background and statistics on the defence industry are drawn from SIPRI; commercial manufacturing supply-chain directories, such as Airframer; academic industry overviews; and defence company publications.

Prior to publication, Amnesty International contacted the principle companies mentioned in this report, outlining its main findings and inviting responses. Five companies – Airbus, BAE Systems, Leonardo, Thales, and Rolls-Royce – responded. Their responses can be found in Annex 2; where appropriate, the report has been modified to reflect these companies' comments.

1 See, for instance, Amnesty International, *Arms trade in 2018: A year in arms supplies to the Saudi/UAE coalition*, December 2018, <https://www.amnesty.org/en/latest/research/2018/12/rights-today-2018-arms-trade/>

2 UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, UN Doc. HR/PUB/11/04, 2011; Organization for Economic Cooperation and Development (OECD), *OECD Due Diligence Guidance for Responsible Business Conduct*, 31 May 2018, pp. 16-17, <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

3 The Stockholm International Peace Research Institute (SPIRI), *Top 100 arms-producing and military services companies*, 2017, https://www.sipri.org/sites/default/files/2018-12/fs_arms_industry_2017_0.pdf

1. BACKGROUND

1.1 THE DEFENCE INDUSTRY

The defence industry is global in reach, with the top 15 companies responsible for US\$231.6 billion in arms sales in 2017.⁴ Large manufacturers rely on a complex web of international supply chains to provide parts and components for their products. Other companies specialize in the design, testing, overhaul, upgrading and maintenance of military equipment. In addition, arms transfers are facilitated by a network of ancillary corporate actors – from brokers and shipping agents to transport and insurance companies.⁵

In complex projects, like the manufacture of combat aircraft, companies such as the UK's BAE Systems and the USA's Lockheed Martin essentially operate as defence hubs, bringing together parts and services from multiple corporate actors spread across the world. Arms supply contracts for military forces often include technical assistance, maintenance, servicing and equipment upgrades in agreements that can involve multiple companies and extend for many years, in some cases for over a decade. For example, the UK's £4.43 billion Al Salam deal with Saudi Arabia for the supply of 72 Eurofighter Typhoon aircraft signed in 2007 was to last for 11 years. The deal included training, spare parts, ground support equipment and technical and manpower support. This is one of a series of contracts that the UK government has signed with the Saudi Arabian government over the last 40 years, involving the lead contractor BAE Systems (formerly known as the British Aircraft Corporation, BAC).⁶



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4 The Stockholm International Peace Research Institute, *Top 100 arms-producing and military services companies*, 2017, https://www.sipri.org/sites/default/files/2018-12/fs_arms_industry_2017_0.pdf (SIPRI, *Top 100 arms-producing companies*). For the global arms trade (as opposed to arms production), estimates range from US\$88.4 to US\$104.9 billion, see Sam Perlo Freeman, 'How big is the International Arms Trade?', *World Peace Foundation*, July 2018, <https://sites.tufts.edu/wp/2018/08/How-big-is-the-International-Arms-Trade-20180725-f.pdf>

5 This document focuses on the responsibility of arms manufacturers; for more on brokers and shipping agents, see Brian Wood and Johan Peleman, *The Arms Fixers: Controlling the Brokers and Shipping Agents*, 2000, NISAT/PRIO/BASIC Report, <https://www.prio.org/Publications/Publication/?x=658>
For more on financial institutions supporting the defence sector, see Amnesty International, *Banks, Arms and Human Rights Violations*, 2016, https://www.amnesty.lu/uploads/media/Banks_arms_and_human_rights_violations_FINAL_03.pdf

6 For a summary of what is known about these deals, see Nichols Gilby, *Deception in High Places: a history of Britain's arms trade*, Pluto Press, May 2014, <https://deceptioninhighplaces.com/arms-trade/summary-of-britains-biggest-arms-deals-with-saudi-arabia/>

ANATOMY OF A FIGHTER JET



The Royal Saudi Air Force, which has been in operation across Yemen since March 2015, is made up principally of combat aircraft supplied by the USA and the UK. However, many other companies across the world have contributed in some way to the Saudi air fleet.

The Eurofighter Typhoon, for example, is nominally produced by a pan-European consortium of three defence companies: BAE Systems, Airbus SE and Leonardo. However, according to Airframer, a commercial aerospace manufacturing supply-chain directory, over 80 companies based in more than a dozen jurisdictions are involved in the production of the Eurofighter.

They range from companies providing aircraft engines (such as Rolls-Royce), avionics (such as General Dynamics) and weapons systems (such as Raytheon). They also include companies involved in testing and post-production analysis.⁷

The Boeing F-15 combat aircraft (the latest batch of which was delivered to the Royal Saudi Air Force in April 2017) is nominally manufactured by Boeing, but includes major components made by BAE Systems, Raytheon, Lockheed Martin, Northrup Grumman, General Electric and Honeywell, among many other companies.⁸



Eurofighter Typhoon assembly plant in Manching, Germany.
© Eurofighter-Geoffrey Lee.

Lockheed Martin's F-35, which Saudi Arabia has expressed interest in buying, is an even more complex global project. Nine partner countries – Australia, Canada, Denmark, Italy, the Netherlands, Norway, Turkey, the UK and the USA – have contributed to the development and production of the jet fighter, along with over 300 contractors providing everything from design software and management services, to landing gear and power systems.⁹

Since the defence sector's restructuring and consolidation in the 1990s,¹⁰ the more sophisticated part of the industry has been dominated by a handful of large multinationals headquartered in the USA and Western Europe, along with major defence industries in Russia and China.¹¹ Defence sectors in developing countries such as Brazil, Turkey, South Africa and South Korea are also well established and growing.¹²

7 Airframer, *Entry for Eurofighter Typhoon*, http://www.airframer.com/aircraft_detail.html?model=Eurofighter_Typhoon (last checked 28 April 2019).

8 Airframer, *Entry for F-15*, http://www.airframer.com/aircraft_detail.html?model=F-15E%20Strike%20Eagle
The Aviationist, 'Third batch of F-15SA Advanced Eagles delivered to Saudi Arabia via RAF Lakenheath', 3 April 2017, <https://theaviationist.com/2017/04/03/third-batch-of-f-15sa-advanced-eagles-delivered-to-saudi-arabia-via-raf-lakenheath/>

9 Airframer, *Entry for F-35*, http://www.airframer.com/aircraft_detail.html?model=F-35_JSJF

10 PricewaterhouseCoopers, *The Defence Industry in the 21st Century*, 2005, pp. 13-14.

11 According to SIPRI's 2018 list of the top 100 arms-producing and military service companies, the top 10 companies had combined arms sales of US\$198.2 billion in 2017, just under half of the list's total sales; 80.7% of these sales were made by US or Western European companies, with 9.5% made by Russian companies in the top 100. The list excludes China, due to lack of data. SIPRI, *Top 100 arms-producing companies*.

12 The Defence Industry is also growing in the Middle East, see Florence Gaub and Zoe Stanley-Lockman, *Defence industries in Arab states: players and strategies*, Institute of Security Studies, Chaillot Paper No. 149, March 2017, https://www.iss.europa.eu/sites/default/files/EUISSFiles/CP_141_Arab_Defence.pdf

Following the collapse of the Soviet Union in 1989, many state-owned defence companies were part or wholly privatized. In the USA and the UK, defence companies are generally fully privatized, while in continental Europe, the state typically retains ownership of around 30% of the principle defence companies.¹³ There is also significant ownership overlap in the sector with major defence companies often holding large stakes in rival companies.¹⁴

RELATIONSHIP WITH HOME STATES

Although they are separate corporate entities, large arms companies maintain strong relationships with the states in which they are headquartered (their “home states”) which are usually their main customer.¹⁵ Home states often provide funds for research and development,¹⁶ promote defence companies in international markets and work closely with companies in the sector to establish defence procurement priorities and policies.¹⁷

These symbiotic relationships can involve the sharing of staff and office space and defence company lobbyists may be given special access to key government decision makers.¹⁸ This “revolving door” phenomenon can compromise the independence of both state and company officials, weakening regulation and creating a more permissive environment for the arms trade.¹⁹

Regional bodies, such as the European Union (EU), also subsidize the industry through research grants and projects. In April 2019, the European Parliament approved the creation of the European Defence Fund, which has allocated €13 billion for joint defence research and development across the EU for a seven-year period (2021-2027).²⁰



HOME STATES OFTEN PROVIDE FUNDS FOR RESEARCH AND DEVELOPMENT, PROMOTE DEFENCE COMPANIES IN INTERNATIONAL MARKETS AND WORK CLOSELY WITH COMPANIES IN THE SECTOR TO ESTABLISH DEFENCE PROCUREMENT PRIORITIES AND POLICES.

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- 13 Avascent, ‘State ownership in the European Defense Industry: change or continuity?’, European Defense Industrial Base Forum Occasional Paper, January 2013; see in particular the chart on p. 3 for an overview of the situation in 2012, <https://www.avascent.com/wp-content/uploads/2013/01/Avascent-State-Ownership.pdf>
- 14 For example, the French State and rival company Dassault Aviation own 35.71% and 28.42% of the shares in Thales respectively; while Airbus owns 10% of shares in Dassault Aviation. Thales, ‘Share and Shareholding’, <https://www.thalesgroup.com/en/investor/retail-investors/share-and-shareholding> and Dassault, ‘Shareholding Structure and Organisation Chart’, <https://www.dassault-aviation.com/en/group/about-us/shareholding-structure-and-organization-chart/>
- 15 According to the European Monitoring Centre on Change, “the defence industry... may be termed a ‘monopsony’ in that there are many suppliers (in this case, national arms producers) but only one customer (the national government) – in contrast to a monopoly, where there are many customers but only one supplier.” See Paul Dunne, ‘Defense Industry - what future?’, The European Monitoring Centre on Change, December 2015, <https://www.eurofound.europa.eu/observatories/emcc/articles/business/sector-futures-defence-industry>
- 16 In the USA this has amounted to an estimated US\$16 billion over the past five years. See Government Accountability Office, ‘Foreign Military Sales: DOD Should Take Additional Steps to Streamline Process for Assessing Potential Recovery of Certain Acquisition Costs?’ January 2018, <https://www.gao.gov/assets/690/689759.pdf>
- 17 SIPRI/CAAT, *Special Treatment: UK government support for the arms industry and trade*, November 2016, <https://www.sipri.org/sites/default/files/Special-treatment-report.pdf>
- 18 In relation to the UK, the former Foreign Secretary, Robin Cook, wrote in his memoirs: “I came to learn that the chairman of BAE appeared to have the key to the garden door to No 10.” He added, “Certainly I never knew No 10 to come up with any decision that would be incommensurate to BAE.”, Robin Cook, *The Point of Departure*, Simon and Schuster, 2003, p. 73. According to the Open Secrets database which draws on the Senate Office of Public Records, the defence aerospace industry spent US\$64,014,043 on lobbying in 2018 in the USA, Open Secrets, Defense Aerospace: Lobbying 2018 <https://www.opensecrets.org/industries/lobbying.php?cycle=2018&ind=D01> On staff sharing, see ‘Dozens of arms firm employees on MoD secondments’, *The Guardian*, 16 February 2015, <https://www.theguardian.com/uk-news/2015/feb/16/dozens-of-arms-firm-employees-on-mod-secondments>
- 19 See, *Revolving Door*, POGO (The Project on Government Oversight), <https://www.pogo.org/topics/revolving-door/> Revolving Door, CAAT, <https://www.caat.org.uk/resources/influence/revolvers>
- 20 European Commission, *European Defence Fund factsheet*, <https://ec.europa.eu/docsroom/documents/34509/attachments/1/translations/en/renditions/native>

1.2 STATE REGULATION OF THE ARMS TRADE

The defence sector is heavily regulated by home states through licensing bodies and processes, typically involving elaborate rules and regulations on licensing materiel for export and protecting national security. In many transactions, companies must comply with multiple laws and regulations across the different jurisdictions in which different systems, parts and components are manufactured.²¹ This can mean that, in theory, arms export policy in one jurisdiction may be used to block transfers in another jurisdiction.²²

ARMS CONTROL ACROSS DIFFERENT JURISDICTIONS

Germany's decision to suspend arms supplies to Saudi Arabia is impacting joint projects, such as the Eurofighter Typhoon combat aircraft, which rely on components manufactured in Germany. The airworthiness of Saudi Arabia's existing fleet of 72 Eurofighters could also be at risk as it is dependent on German-made spare parts.²³ Export of the Meteor air-to-air missile to Saudi Arabia is also affected; while the Meteor is assembled in the UK by the UK-headquartered company MBDA, it uses German manufactured warheads and propulsion systems. As a result, Germany has come under increasing pressure from European states and the arms industry to exempt joint projects from its embargo.²⁴

US arms export policies also affect other countries using US manufactured parts and components. For instance, France has been blocked by the US from transferring the Scalp missile to Egypt as the system contains US manufactured parts which are essential; the standoff is threatening further sales of the French manufactured Rafale combat aircraft to Egypt.²⁵

21 Elli Kytömäki, 'The Defence Industry, Investors and the Arms Trade Treaty', 15 December 2014, Chatham House, <https://www.chathamhouse.org/publication/defence-industry-investors-and-arms-trade-treaty>

22 See, for example, concerns about BAE Systems' ability to fulfil an order for 48 new Eurofighter Typhoon fighter jets after the German Chancellor's October 2018 announcement of a suspension of arms sales to Saudi Arabia; up to a third of the aircraft's components are sourced in Germany. 'German halt to Saudi arms sales could put squeeze on Eurofighter', *Reuters*, 23 October 2018, <https://www.reuters.com/article/us-saudi-khashoggi-germany-analysis/german-halt-to-saudi-arms-sales-could-put-squeeze-on-eurofighter-idUSKCN1MX2VG>

23 'German arms ban to Riyadh sparks UK concerns over BAE contract', *The Financial Times*, 17 February 2019, <https://www.ft.com/content/a0c7b5fa-329c-11e9-bd3a-8b2a211d90d5>

In BAE Systems' 2018 annual report, chairman Sir Roger Carr told investors: "It should be recognised...that the Company is reliant on the approval of export licences by a number of governments in order to continue supplies to Saudi Arabia. In this context, the current position on export licensing adopted by the German government may affect our ability to provide the required capability to the Kingdom," BAE Systems, Annual Report 2018, p. 10, <https://investors.baesystems.com/~media/Files/B/Bae-Systems-Investor-Relations-V3/PDFs/results-and-reports/results/2018/annual-report-2018.pdf>

On MBDA Meteor see: MBDA meteor datasheet, https://www.mbda-systems.com/?action=force-download-attachment&attachment_id=16346 and 'MBDA's Meteor—The Most Advanced Beyond-visual-range Air-to-Air Missile in the World', *Medium*, 24 May 2018, <https://medium.com/@skunkworksLH/mbdas-meteor-the-most-advanced-beyond-visual-range-air-to-air-missile-in-the-world-ed91913c183c>

24 See, for instance, 'Jeremy Hunt urges Germany to rethink Saudi arms sales ban', *The Guardian*, 20 February 2019, <https://www.theguardian.com/world/2019/feb/20/jeremy-hunt-urges-germany-to-rethink-saudi-arms-sales-ban>

25 'Missile sale from France to Egypt depends on US permission, Dassault head says', *Defense News*, 9 March 2018, <https://www.defensenews.com/global/europe/2018/03/09/missile-sale-from-france-to-egypt-depends-on-us-permission-dassault-head-says/> 'A jet sale to Egypt is being blocked by a US regulation, and France is over it', *Defense News*, 1 August, 2018, <https://www.defensenews.com/global/europe/2018/08/01/a-jet-sale-to-egypt-is-being-blocked-by-a-us-regulation-and-france-is-over-it/>

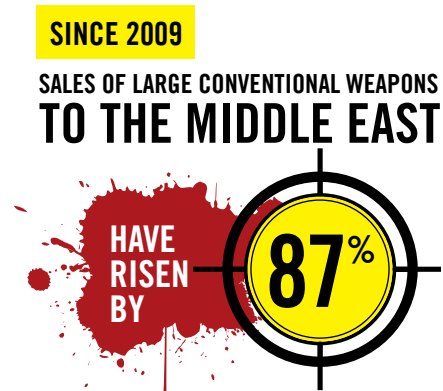
Governments are in turn subject to international, regional and domestic legal obligations and arms control regimes. State parties to the Arms Trade Treaty,²⁶ for instance, must not authorize transfers of arms where there is an overriding risk that they could be used to commit or facilitate serious violations of international human rights or humanitarian law. EU member states are bound by the eight criteria of the EU Common Position on controlling exports of military technology and equipment, which include Criterion 2: “Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law”. EU member states must “deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law”.²⁷

Many states’ domestic laws reflect or incorporate regional and international principles on arms control. In practice, however, these principles, which are designed to prevent violations of international human rights and humanitarian law, have routinely been subverted where the transfer supports longstanding alliances or geopolitical goals or is subject to industry pressure. The most egregious example of this is the continuing high volume of exports from Western states – particularly from the USA, the UK and France – to members of the Saudi Arabia/UAE-led coalition deployed in Yemen, despite a growing catalogue of serious violations of international human rights and humanitarian law by the coalition (see below).²⁸

1.3 HUMAN RIGHTS RISKS FACED BY THE DEFENCE INDUSTRY

The defence sector faces a range of risks of causing, contributing to or being directly linked to serious violations of international human rights or humanitarian law – particularly in relation to the export of military and security products and services to countries in conflict or experiencing civil upheaval and the repeated misuse of military goods and services by clients and third parties.

Global defence companies export military equipment to a variety of clients across the world. While much of this business may not pose significant human rights risks, there is high demand for military equipment in regions beset by conflict and political upheaval. Since 2009, for instance, sales of large conventional weapons to the Middle East have risen by 87%.²⁹ During this period, arms were used in multiple armed conflicts leading to serious human rights violations by various parties (state and non-state), widespread destruction of civilian infrastructure and the ongoing displacement of millions of civilians.³⁰ Saudi Arabia and Egypt, countries with extremely poor human rights records and which are actively involved in armed conflict or internal repression, were two of the three largest arms importers in the world between 2014 and 2018.³¹



26 The Arms Trade Treaty, <https://thearmstradetreaty.org/>

27 Official Journal of the European Union, Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

28 See Amnesty International, *Yemen: Three years on, US and UK arms supplies to Saudi Arabia-led coalition are devastating civilian lives* (Press release, 23 March 2018), <https://www.amnesty.org/en/latest/news/2018/03/yemen-three-years-on-us-and-uk-arms-supplies-to-saudi-arabia-led-coalition-are-devastating-civilian-lives/>

29 According to data from SIPRI, between 2009–13 and 2014–18 arms imports by states in the Middle East increased by 87%, SIPRI, ‘Trends in International Arms Transfers, 2018’, March 2019, https://www.sipri.org/sites/default/files/2019-03/fs_1903_at_2018.pdf (SIPRI, ‘Trends in International Arms Transfers’, 2018).

30 Amnesty International, *The State of the World’s Human Rights 2017-18*, 22 February 2018, (Index: POL 10/6700/2018), ‘Middle East and North Africa Regional Overview’, pp. 55-63, <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>

31 The other importer was India, SIPRI, ‘Trends in International Arms Transfers’, 2018.

THE DEFENCE INDUSTRY AND THE CONFLICT IN YEMEN



In March 2015, a coalition led by Saudi Arabia and the UAE intervened in support of the internationally recognized Yemeni government, after the Huthis and allied forces had taken control over large swathes of the country. As of August 2018, the Office of the High Commissioner for Human Rights (OHCHR) has documented a total of 17,062 civilian casualties – 6,592 dead and 10,470 injured; 10,471 of these civilian casualties were the result of airstrikes by the Saudi Arabia/UAE-led coalition.³² The conflict has displaced millions and put up to half of Yemen's population at risk of starvation.³³ Serious violations of international human rights and humanitarian law have been committed by all parties to the conflict. On the coalition side, this has involved air and ground attacks and a naval blockade which has arbitrarily restricted the import of essential goods and the delivery of humanitarian aid.³⁴

Many of the largest defence companies are major suppliers of a range of weapons – combat aircraft, armoured vehicles, naval vessels and munitions, among others – to the Saudi Arabia/UAE-led coalition.³⁵ They typically operate under long-term contracts and have Saudi Arabian-based subsidiaries which are used to maintain and service equipment. Despite mounting allegations over many years, defence companies have continued to deliver arms and services worth billions of dollars and to seek new contracts for future deliveries.³⁶

All the companies assessed in the following chapter – **Airbus, BAE Systems, Leonardo, Lockheed Martin, Raytheon, Rolls-Royce, Saab and Thales** – supply military equipment and services to the Saudi Arabia/UAE-led coalition. Some of these companies – for example, BAE Systems, Lockheed Martin, Raytheon, Rolls-Royce and Thales – are integral to the coalition air campaign, supplying and servicing combat aircraft, aircraft engines, guided bombs and delivery systems. Saab provides surveillance aircraft to the UAE.

Defence companies have already been linked to a number of specific attacks that may constitute war crimes and caused high civilian casualties. **On 25 August 2017, for example, a Paveway precision guided bomb struck a cluster of houses in Faj Attan, a residential neighbourhood in Yemen's largest city Sana'a, killing a family of six children aged between two and 10 and their parents; the sole survivor was a five-year-old girl, Buthaina.**³⁷ Amnesty International's analysis of a remnant of the bomb recovered from the site of the airstrike traced it to Raytheon's manufacturing plant in Tuscon, Arizona.³⁸

32 OHCHR, *Press briefing notes on Yemen civilian casualties*, 10 August 2018, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23439&LangID=E>

33 'Half the population of Yemen at risk of famine: UN emergency relief chief', *UN News*, 23 October 2018, <https://news.un.org/en/story/2018/10/1023962>

34 Amnesty International, *The State of the World's Human Rights 2017-18*, 22 February 2018, (Index: POL 10/6700/2018), 'Yemen entry', <https://www.amnesty.org/en/countries/middle-east-and-north-africa/yemen/report-yemen/>

35 Center for International Policy, *Arms Sales to Saudi Arabia: The Corporate Connection*, https://docs.wixstatic.com/ugd/488e54_c56ac4bc8f3443f8941e994f629af385.pdf
See also BAE Systems' own reporting which states that 16% of the company's sales were to Saudi Arabia and that the company has extended its partnership agreement with the Royal Saudi Air Force until the end of 2021, BAE Systems, *2017 Annual Report*, pp. 3 and 8, <https://investors.baesystems.com/-/media/Files/B/Bae-Systems-Investor-Relations-V3/PDFs/results-and-reports/results/2017-annual-report-2017.pdf>

36 See, for example, 'Saudi Arabia Archive', *Defense Industry Daily*, 25 February 2019, <https://www.defenseindustrydaily.com/cat/geographical-focus/middle-east-africa/saudi-arabia/>

37 Amnesty International, *Yemen: US-made bomb kills and maims children in deadly strike on residential homes*, (Press release, 22 September 2017), <https://www.amnesty.org/en/latest/news/2017/09/yemen-us-made-bomb-kills-and-maims-children-in-deadly-strike-on-residential-homes/>

38 Amnesty International wrote to Raytheon requesting further information about this incident. For a summary this correspondence, see Patrick Wilcken, 'Missing targets: the legal and ethical blind spots of arms manufacturers', *Medium*, <https://medium.com/@AmnestyInsights/missing-targets-the-legal-and-ethical-blind-spots-of-arms-manufacturers-989619d42b73>

The Faj Attan case was not an isolated incident. In another case, documented by Human Rights Watch, coalition fighter jets fired a Raytheon Paveway bomb into a water drilling rig near Beit Saadan village on 10 September 2016 killing at least 31 civilians and wounding 42 more.³⁹ On 15 August 2016, a bomb guided by the Paveway system – manufactured either by Raytheon or Lockheed Martin – hit a fully functioning Médecins Sans Frontières (MSF) hospital in the Abs district of Hajjah governorate, killing 11 people, including an MSF staff member, and injuring 19 others.⁴⁰ The report of the UN Panel of Experts on Yemen, published in January 2017, presented evidence of UK and US manufactured Paveways used in nine strikes. In this sample, UN experts documented 84 civilian deaths and 77 injuries. Among the dead were 33 people killed in a single incident when a high explosive bomb, assisted by a Paveway guidance kit, struck a motel in Arhab on 23 August 2017.⁴¹



*Residential building destroyed by an airstrike by the Saudi Arabia/UAE-led coalition on 25 August 2017 on Faj Attan, Sana'a, Yemen, killing 16 civilians and injuring 17 more.
© Rawan Shaif*

States have taken a variety of positions on the supply of military equipment to the Saudi Arabia/UAE-led coalition. For example, Austria, Denmark, Finland, Germany, Ireland, the Netherlands, Norway and Switzerland have ceased or heavily restricted the licensing of further sales of military equipment on human rights grounds.⁴² States continuing to supply arms to the coalition have been subject to a series of legal and administrative challenges leading to the suspension of some licences on human rights grounds (see Chapter 5). Amnesty International is not aware of any defence company that is permitted by its home state to export to the Saudi Arabia/UAE-led coalition taking the initiative to suspend or cease supplying the coalition because of concerns about how their products and services are being used in the conflict.

STATES HAVE TAKEN A VARIETY OF POSITIONS ON THE SUPPLY OF MILITARY EQUIPMENT TO **SAUDI ARABIA/UAE-LED COALITION, INCLUDING, AUSTRIA, DENMARK, FINLAND, GERMANY, IRELAND, THE NETHERLANDS, NORWAY AND SWITZERLAND**

CEASING OR HEAVILY RESTRICTING THE LICENCING OF FURTHER SALES OF MILITARY EQUIPMENT ON HUMAN RIGHTS GROUNDS



39 Human Rights Watch, *Yemen: US-Made Bombs Used in Unlawful Airstrikes*, 8 December 2016, <https://www.hrw.org/news/2016/12/08/yemen-us-made-bombs-used-unlawful-airstrikes>

40 Amnesty International, *Yemen: Evidence indicates US-made bomb was used in attack on MSF hospital* (Press Release, 19 September 2016), <https://www.amnesty.org/en/latest/news/2016/09/yemen-evidence-indicates-us-made-bomb-was-used-in-attack-on-msf-hospital/>

41 UN Security Council, *Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the Security Council*, (S/2017/81), pp. 48-53 and 197-234, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_81.pdf

Again, the Paveways could have been manufactured either by Raytheon or Lockheed Martin.

42 'Germany, Denmark, Netherlands and Finland stop weapons sales to Saudi Arabia in response to Yemen famine', *The Independent*, 23 November 2018, <https://www.independent.co.uk/news/world/europe/saudi-arabia-arms-embargo-weapons-europe-germany-denmark-uk-yemen-war-famine-a8648611.html>

2. THE HUMAN RIGHTS RESPONSIBILITIES OF COMPANIES AND STATES

2.1 THE HUMAN RIGHTS RESPONSIBILITIES OF COMPANIES

There is now a clear global consensus that companies have a responsibility to respect all human rights wherever they operate. This is expressly recognized in global standards on business and human rights such as the UNGPs,⁴³ unanimously endorsed by the UN Human Rights Council in June 2011, and the OECD Guidelines for Multinational Enterprises.⁴⁴ In situations of armed conflict, companies must also respect international humanitarian law.⁴⁵

Companies' responsibility to respect human rights is independent of a state's own human rights obligations and exists over and above compliance with national laws and regulations.⁴⁶ This means that, there are circumstances where, in order to meet this responsibility, companies need to go beyond what is legally required in the relevant jurisdiction, or refrain from engaging in business that would otherwise be permitted under that jurisdiction.

The responsibility to respect human rights requires companies to avoid causing or contributing to human rights abuses through their own business activities and to seek to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services (even if they have not contributed to those impacts).⁴⁷ They must carry out human rights due diligence. This requires developing an effective policy that not only includes a commitment to respect human rights, but also sets out how the policy will be put into practice and who will be ultimately responsible for its effective implementation.⁴⁸

43 OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, UN Doc. HR/PUB/11/04, 2011 (UNGPs), https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

44 On 25 May 2011, the 42 governments that had then adhered to the Declaration on International Investment and Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD) unanimously endorsed the principle that companies should respect all internationally recognized human rights wherever they operate when they approved a revised version of the OECD Guidelines for Multinational Enterprises which contain this principle.

45 See, for example, the Commentary to UNGP 12.

46 This principle is explicitly and prominently stated in the UNGPs: "The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists *independently of States' abilities and/or willingness to fulfil their own human rights obligations*, and does not diminish those obligations. And it exists *over and above compliance with national laws and regulations protecting human rights*." UNGP 11 in commentary (emphasis added).

47 See, for example, UNGP 13.

48 UNGP 15.

The responsibility to respect human rights requires companies to avoid causing or contributing to human rights abuses through their own business activities and to seek to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services.

COMPANIES AND INTERNATIONAL HUMANITARIAN LAW

Companies must take account of the fundamental rules of international humanitarian law in relation to the protection of civilians and cannot rely on states to fulfil this obligation.⁴⁹ The OHCHR has explained that business managers and staff have an obligation not to breach the rules of international humanitarian law.⁵⁰ These rules, which have been repeatedly violated in the conflicts in Yemen and Syria, prohibit direct attack on civilians and civilian objects, indiscriminate and disproportionate attacks and the use of prohibited means and methods of attack. Violations of these rules may amount to war crimes.⁵¹ Companies providing material assistance in the commission of a war crime can be found legally liable for such a crime (see Chapter 5).

49 UNGP, Commentary on Article 12.

50 OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2012, https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf
See also, ICRC, *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law*, 2006, <https://shop.icrc.org/les-entreprises-et-le-droit-international-humanitaire-introduction-aux-droits-et-obligations-des-entreprises-au-regard-du-droit-international-humanitaire-2580.html> (*Business and International Humanitarian Law*).

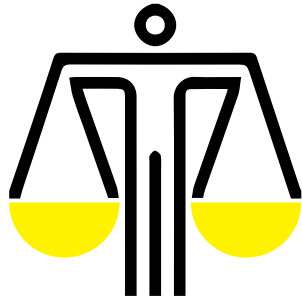
51 ICRC, *Customary International Humanitarian Law*, Chapter 44, 'War Crimes', Rule 156, pp. 568-603, <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>

2.2 THE STATE DUTY TO PROTECT

Under international human rights law, the state has a duty to protect against abuses by non-state actors, including companies, through regulation, oversight, investigation, adjudication and punishment. This obligation extends beyond borders (that is, extraterritorially) in circumstances where states can control or influence the conduct of corporations. States' obligations are based on the human rights treaties they have ratified and other international standards.

The UN Committee on Economic, Social and Cultural Rights, the expert body that monitors states' compliance with the International Covenant on Economic, Social and Cultural Rights, has recently stated that states' obligation to protect human rights entails a positive duty to adopt a legal framework requiring companies to exercise human rights due diligence in order to "identify, prevent and mitigate the risks of violations of Covenant rights, to avoid such rights being abused, and to account for the negative impacts caused or contributed to by their decisions and operations and those of entities they control on the enjoyment of Covenant rights".⁵² The Committee also stated that the state's duty, such as imposing due diligence requirements to prevent abuses of human rights, extends to a business entity's supply chain and business partners.

When human rights violations or abuses occur, international human rights law requires that states respond by investigating the facts, holding the perpetrators to account and ensuring effective remedy for the harm caused. States also have an obligation to investigate allegations of war crimes and, if there is sufficient admissible evidence, to prosecute the suspects.⁵³ The duty to ensure effective remedy is part of the broader duty to protect human rights from abuses committed by non-state actors including companies. As the state duty to protect extends extraterritorially, the duty to ensure effective remedy also applies to abuses that occur outside a state's territory if the abuse was reasonably foreseeable and the state has the legal capacity to act to prevent the abuse.



UNDER INTERNATIONAL HUMAN RIGHTS LAW

THE STATE HAS A DUTY TO PROTECT AGAINST ABUSES BY NON-STATE ACTORS, INCLUDING COMPANIES, THROUGH REGULATION, OVERSIGHT, INVESTIGATION, ADJUDICATION AND PUNISHMENT.

52 UN Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, UN Doc. E/C.12/GC/24, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E/C.12/GC/24&Lang=en

53 ICRC, *Customary International Humanitarian Law*, Vol. I (Rules), Rule 158.

3. THE DEFENCE SECTOR AND HUMAN RIGHTS

To assess whether defence companies are meeting their responsibility to respect human rights, Amnesty International reviewed publicly available material related to the human rights policies and practices of 22 defence companies⁵⁴ against the UNGPs and similar standards. Additionally, between September and October 2018, Amnesty International wrote letters to these companies asking them for further information about their human rights due diligence policies and processes. Eight companies responded: Airbus, BAE Systems, Leonardo, Lockheed Martin, Raytheon, Rolls-Royce, Saab and Thales. The other 14 companies – Arqus, Avibras, Boeing, Dassault Aviation, Elbit Systems, Embraer, Heckler and Koch, General Dynamics, Herstal Group, Norinco, Northrop Grumman, Remington Outdoor, Rosoboronexport and Zastava – did not respond.

COMPANY PROFILES

Airbus

Airbus is a multinational aerospace corporation headquartered in the Netherlands, with production facilities across Europe, China and the USA. In 2017, Airbus reported external revenues of around €67 billion, of which approximately 15% was related to defence.⁵⁵ This places Airbus among the top 10 defence companies – the second largest in Europe – with defence-related external revenues of €9.9 billion.⁵⁶ Airbus designs and manufactures fighter aircraft, aerial tankers, military transporters, helicopters and artillery systems, among other products, selling to markets which include Saudi Arabia and Egypt.⁵⁷ In 2017, Airbus reported adjusted earnings before interest and taxes (EBIT) of €4,253 million, including both its civil and defence activities.⁵⁸

BAE Systems

BAE Systems is a UK multinational manufacturing defence, security and aerospace products and providing related services. The largest defence contractor in Europe, BAE Systems is ranked fourth in SIPRI's top 100 arms producing and military service companies with sales of US\$22.94 billion in 2017.⁵⁹ BAE Systems Saudi Arabia, a wholly owned subsidiary of BAE Systems, employs 6,100 staff.⁶⁰ On 9 March 2018, the UK government signed a Memorandum of Intent with the Kingdom of Saudi Arabia aimed at finalizing discussions for the purchase of 48 Typhoon aircraft.⁶¹ BAE Systems reported pre-tax profits of £1.928 billion in 2018.⁶²

54 The companies contacted were in alphabetical order: Airbus, Arqus, Avibras, BAE Systems, Boeing, Dassault Aviation, Elbit Systems, Embraer, General Dynamics, Heckler and Koch, Herstal Group, Leonardo S.p.a, Lockheed Martin, Norinco, Northrop Grumman, Remington Outdoor, Raytheon, Rolls-Royce, Rosoboronexport, Saab, Thales and Zastava.

55 SIPRI, *Top 100 Arms-Producing Companies*, 2017, p. 9.

56 Email communication with Airbus, 6 May 2019, Annex 2.

57 Airbus, Airbus in Africa and the Middle East, <https://www.airbus.com/company/worldwide-presence/africa-middle-east.html>

58 Airbus, *Full-Year 2017 results: Airbus overachieved on all key performance indicators*, 15 February 2018, <https://www.airbus.com/newsroom/press-releases/en/2018/02/full-year-2017-results--airbus-overachieved-on-all-key-performan.html>

59 SIPRI, *Top 100 Arms-Producing Companies*, p. 9.

60 BAE Systems, *Annual Report 2017*, p. 3 <https://www.baesystems.com/en/download-en/20180328103020/1434594051696.pdf>

61 BAE Systems, 'Memorandum of Intent between the Kingdom of Saudi Arabia and the UK Government', 9 March 2018, <https://www.baesystems.com/en/article/memorandum-of-intent-between-the-kingdom-of-saudi-arabia-and-the-uk-government>

62 BAE Systems, *Annual report 2018*, p. 6 https://investors.baesystems.com/~/_media/Files/B/Bae-Systems-Investor-Relations-V3/PDFs/results-and-reports/results/2018/annual-report-2018.pdf

Leonardo

Leonardo (formerly Finmeccanica) manufactures a range of aerospace, security and defence equipment, including helicopters, aircraft systems, naval and land weapons and military electronics. Headquartered in Italy, Leonardo is 30.2% state-owned.⁶³ It ranks eighth in SIPRI's top 100 defence companies list with arms sales of US\$8.86 billion in 2017.⁶⁴ According to Leonardo, its Electronics and Cyber Security divisions are an established supplier to the defence sector in Saudi Arabia, providing a range of services, including support for the Eurofighter Typhoon.⁶⁵ Leonardo reported pre-tax profits of €1.12 billion in 2018.⁶⁶

Lockheed Martin

With arms sales of US\$44.92 billion in 2017, Lockheed Martin is the largest defence company in the world by some distance.⁶⁷ Headquartered in the USA, it manufactures the full range of military equipment from fighter aircraft, including the F-35, naval destroyers, missile systems and missile defence.⁶⁸ In 2017, Lockheed Martin reported the potential for the sale to Saudi Arabia of "US\$28 billion of Lockheed Martin technologies over the next decade".⁶⁹ Lockheed Martin reported an operating profit of US\$5.921 billion in 2017.⁷⁰

14 COMPANIES

**ARQUUS, AVIBRAS, BOEING, DASSAULT AVIATION,
ELBIT SYSTEMS, EMBRAER, HECKLER AND KOCH,
GENERAL DYNAMICS, HERSTAL GROUP, NORINCO,
NORTHROP GRUMMAN, REMINGTON OUTDOOR,
ROSOBORONEXPORT AND ZASTAVA**

**DID NOT
RESPOND**

63 Leonardo, 'Our Structure', <https://www.leonardocompany.com/en/chi-siamo-about-us/profilo-profile-chisiamo-aboutus-2/nostra-struttura-our-structures>

64 SIPRI, *Top 100 Arms Companies*, p. 9.

65 Leonardo, 'Electronics, Defence & Security Systems: Saudi Arabia', <https://www.leonardocompany.com/global/middle-east/saudi-arabia>

66 Leonardo, *Annual Report at 31 December 2018*, p. 9, <https://www.leonardocompany.com/investors/results-and-reports>

67 SIPRI, *Top 100 Arms Companies*, p. 9.

68 Lockheed Martin, 'Products', <https://www.lockheedmartin.com/en-us/products.html>

69 Lockheed Martin CEO, Marillyn A. Hewson said: "One of the most important examples of this potential is our central role in the security cooperation agreements signed between the United States and the Kingdom of Saudi Arabia last May. The historic agreements opened up the potential for the sale of \$28 billion of Lockheed Martin technologies over the next decade. Saudi Arabia has expressed its intent to procure integrated air and missile defense systems, combat ships, helicopters, surveillance systems, and tactical aircraft in the coming years." Lockheed Martin, '2018 Lockheed Martin Media Day: Remarks as Delivered by Chairman, President & CEO Marillyn A. Hewson, Arlington', Virginia, 5 March 2018, <https://www.lockheedmartin.com/en-us/news/statements-speeches/2018/2018-lockheed-martin-media-day.html>

70 Lockheed Martin, *Annual Report 2017: Lockheed Martin Corporation*, p. 22, <https://www.lockheedmartin.com/content/dam/lockheed-martin/eo/documents/annual-reports/2017-annual-report.pdf>

Rolls-Royce

Rolls-Royce, which describes itself as an “engineering company focused on world-class power and propulsion systems”, manufactures aircraft engines for the civilian and defence aerospace industry, among other products.⁷¹ Ranked by SIPRI as the world’s 16th largest defence company (and second largest UK defence company behind BAE Systems), Rolls-Royce had defence sales of US\$4.42 billion in 2017, representing 23% of its total sales.⁷² In 2013 Rolls-Royce won a four-year engine support contract to provide the repair of modules, accessories and components and new spare parts for the Royal Saudi Air Forces’ Tornado RB199 engines, which have been used in the Yemen conflict.⁷³ Rolls-Royce earned £1.107 billion in revenue from its operations in Saudi Arabia from 2015 to 2017; the company reported a total pre-tax profit of £4.897 billion in 2017.⁷⁴

Raytheon

Raytheon is a US-headquartered defence multinational that manufactures precision weapons, missile defence and cyber security systems, among other military products. It is the third largest defence company in the world with sales of US\$25.348 billion in 2017.⁷⁵ In May 2017, Raytheon established Raytheon Saudi Arabia, a Saudi legal entity wholly owned by Raytheon and signed a memorandum of understanding with the Saudi Arabian government to “help build world-class defense and cyber capabilities in the Kingdom of Saudi Arabia”.⁷⁶ Raytheon reported a pre-tax operating profit of US\$3.318 billion in 2017.⁷⁷

Saab

The Swedish defence company Saab manufactures fighter and surveillance aircraft – including the Gripen and GlobalEye - radar systems and combat weapons. With defence sales of US\$2.67 billion, it ranks 36th on the SIPRI top 100 list – the highest ranking Swedish defence company.⁷⁸ Saab sells the GlobalEye surveillance aircraft to the UAE, where in December 2017 it set up a production facility for the “development and production of a variety of defence and security products with an initial focus on sensor systems”.⁷⁹ Saab reported pre-tax profits of 3,182 million Swedish Kroner (approximately US\$344.78 million) in 2018.⁸⁰

71 Rolls-Royce, *Focus, Transform, Deliver*, Annual Report 2016, <https://www.rolls-royce.com/~media/Files/R/Rolls-Royce/documents/investors/annual-reports/annual-report-2016.pdf>

72 SIPRI, *Top 100 Arms-Producing Companies*, 2017.

73 At the time, Nick Durham, Rolls-Royce President of Customer Business – Defence, said: “We are delighted to have concluded this agreement which will provide the Royal Saudi Air Force with support for its fleet of RB199 engines over the next four years. The Air Force is a longstanding and valued customer and we will continue to work together to provide the best possible support for its expanding Rolls-Royce engine fleet.” Rolls-Royce, ‘Rolls-Royce wins new engine support contract in Saudi Arabia’, 16 January 2013, <https://www.rolls-royce.com/media/press-releases/2013/160113-saudi-arabia.aspx>

74 Rolls-Royce, *Annual Report 2016*, p. 82, <https://www.rolls-royce.com/~media/Files/R/Rolls-Royce/documents/investors/annual-reports/annual-report-2016.pdf> and *Annual Report 2017*, <https://www.rolls-royce.com/~media/Files/R/Rolls-Royce/documents/annual-report/2017/rr-plc-annual-report-2017.pdf>, pp. 1, 90.

75 SIPRI, *Top 100 Arms-Producing Companies*, 2017.

76 Raytheon, ‘Arabia Military Industries announce strategic partnership’, 20 May 2017, <http://raytheon.mediaroom.com/2017-05-20-Raytheon-and-Saudi-Arabia-Military-Industries-announce-strategic-partnership>

77 Raytheon, *Engineering a Safer World: Annual Report 2017*, p. 31, <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NDAYODM0fENoaWxkSUQ9LTF8VHlwZT0z&t=1&cb=636594794745022990>

78 SIPRI, *Top 100 Arms Companies*, p. 9.

79 Saab, ‘Defence and security company Saab grows its presence in the United Arab Emirates (UAE) by establishing development and production in Abu Dhabi’, 14 December 2017, <https://saabgroup.com/media/news-press/news/2017-12/saab-starts-development-and-production-in-the-united-arab-emirates/>

80 Saab, *Key Figures*, 2018, <https://saabgroup.com/investor-relations/financial-data/key-figures/>

Thales

Thales is a defence multinational headquartered in France which manufactures missile systems, avionics, armoured vehicles, mortars, assault rifles and small arms ammunition, among other products, and exports them globally, including to Saudi Arabia, the UAE and Egypt.⁸¹ It is France's largest defence company and ninth largest in the SIPRI top 100 list, with arms sales of US\$9 billion.⁸² Some 25.8% of its shares are owned by the French state, with 24.7% owned by Dassault Aviation.⁸³ Thales recorded pre-tax profits of €1.543 billion in 2017.⁸⁴

OVERVIEW

Over the last decade, many of the world's largest defence companies have begun adopting and publishing standards of conduct which include references to human rights. These are variously called "Human Rights Policy" (Northrop Grumman, Rolls-Royce); "Code of Basic Working Conditions and Human Rights" (Boeing); "Code of Conduct" (Raytheon, BAE Systems); "Standards of Business Conduct" (Airbus); or "Code of Ethics and Business Conduct" (Lockheed Martin).⁸⁵

The main elements in these policy documents, some of which are very similar in content, are commitments to high standards of:

- a) **business ethics**, particularly in relation to probity around procurement processes/anti-bribery measures (for example, declaring conflicts of interest/not accepting improper gifts) and compliance with export control laws and regulations;
- b) **employment conditions**, for example relating to diversity/equality, health and safety, competitive pay and the prohibition of child and forced labour;
- c) **supplier conduct**, for example, upholding high standards, especially in relation to the prohibition of child and forced labour and use of conflict minerals;
- d) **environmental protection**, for example commitments to reduce the overall environmental footprint of the business, including reducing energy consumption and water usage.

Many defence companies reference their adherence to key international human rights law, standards and initiatives such as the Universal Declaration of Human Rights (Northrop Grumman, Leonardo, Boeing); UN Global Compact (Airbus, Leonardo, Thales); International Labour Organization (ILO) Conventions (Leonardo, Boeing); various anti-slavery and conflict minerals laws and standards (Rolls-Royce, Lockheed Martin, among others); as well as the OECD Guidelines for Multinational Enterprises (Leonardo, Thales); and the UNGPs (Thales).

81 Thales, 'Weapon systems and munitions', <https://www.thalesgroup.com/en/global/activities/defence/air-forces/weapon-systems-munitions>

82 SIPRI, *Top 100 Arms Companies*, p. 9.

83 Thales, *About us*, <https://www.thalesgroup.com/en/global/about-us>

84 Thales, *Full year results*, 2017, <https://www.thalesgroup.com/en/worldwide/press-release/2017-full-year-results>

85 Northrop Grumman, *Human Rights Policy*, <http://www.northropgrumman.com/CorporateResponsibility/Pages/HumanRightsPolicy.aspx>
Rolls-Royce, *Human Rights Policy*, <https://www.rolls-royce.com/-/media/Files/R/Rolls-Royce/documents/sustainability/global-human-rights-policy-2017.pdf>
Boeing, *Code of Basic Working Conditions and Human Rights*, <https://www.boeing.com/principles/human-rights.page>
Raytheon, *Code of Conduct*, https://www.raytheon.com/sites/default/files/pdf/conduct/Code_of_Conduct.pdf
Airbus, *Standards of Business Conduct*, <https://www.airbus.com/content/dam/corporate-topics/corporate-social-responsibility/ethics-and-compliance/Airbus-Ethics-Compliance-Code-Conduct-EN.pdf>
BAE, *Code of Conduct*, <https://www.baesystems.com/en-us/download-en-us/20180312155407/1434611361853.pdf>
Lockheed Martin, *Code of Ethics and Business Conduct*, <https://www.lockheedmartin.com/content/dam/lockheed-martin/eo/documents/ethics/code-of-conduct.pdf>

However, references to human rights as such are generally fleeting⁸⁶ and focus on the company's suppliers and employees rather than on the human rights impact of its products and services.

HUMAN RIGHTS INITIATIVES

Parts of the defence industry have begun to develop common standards on ethical conduct. The International Forum on Business Ethical Conduct for the Aerospace and Defence Industry (IFBEC) was formed in 2010, following the adoption of the Global Principles of Business Ethics in October 2009.⁸⁷ It currently has 30 members, including the leading companies in the sector.⁸⁸ Although largely devoted to anti-bribery and corruption measures, IFBEC's Model Supplier Code of Conduct does contain a short section on human rights, committing members to comply with "the relevant International Labor Organization (ILO) Conventions" and ensure suppliers "refrain from violating the rights of others and address any adverse human rights impacts of their operations".⁸⁹

The AeroSpace and Defence Industries Association of Europe (ASD) represents over 3,000 companies in the European aeronautics, space, defence and security industries sector.⁹⁰ Its policy on business ethics focuses on promoting industry-wide integrity and combatting corruption.⁹¹ In 2014, the ASD supported the adoption of the Arms Trade Treaty, issuing a statement which included: "measures specifically aimed at preventing the illicit trade or diversion of conventional arms are important in ensuring that legitimate trade not is [sic] tarnished in any way, particularly where there is a clear risk that they would be used in ways that would result in serious breaches of international humanitarian and human rights law."⁹²

The UK-based Aerospace, Defence, Security and Space (ADS) Group is a trade organization for companies in the UK aerospace, defence, security and space sectors. Over 1,000 UK registered businesses are members of the ADS Group, including the UK's largest defence companies such as BAE Systems, Rolls-Royce, Boeing UK, Leonardo UK and Airbus UK.⁹³ Among its many initiatives to promote the sector, it states it aims to improve corporate integrity and business ethics through its business ethics toolkit.⁹⁴ This includes a commitment to adhere "to all relevant government guidelines designed to ensure that products are not incorporated into weapons or other equipment used for the purposes of terrorism, internal repression or abuse of human rights" and "to uphold all internationally recognized human rights wherever its operations are based."⁹⁵



86 For instance, Northrop Grumman's policy states: "Company policies, practices and procedures reflect a strong commitment to human rights as set forth in the Universal Declaration of Human Rights," and "human rights is grounded in Northrop Grumman core values" but does not elaborate further. See <http://www.northropgrumman.com/CorporateResponsibility/Pages/HumanRightsPolicy.aspx>

87 The International Forum on Business Ethical Conduct (IFBEC), <https://ifbec.info/about/>

88 IFBEC, Members, <https://ifbec.info/members-gallery/>

89 IFBEC, 'Model supplier code of conduct, II Human Rights', p. 3, <https://ifbec.info/wp-content/uploads/2018/04/Final-IFBEC-Model-Supplier-Code.pdf>

90 ASD Group, <https://www.asd-europe.org/>

91 ASD Group, *Global Principles of Business ethics for the Aerospace and Defence Industry*, https://www.asd-europe.org/sites/default/files/atoms/files/Ethics_Global_Principles.pdf

92 ASD Group, 'ASD Supports the Role of Industry in the U.N. Arms Trade Treaty Process', 12 September 2017, <https://www.asd-europe.org/asd-supports-the-role-of-industry-in-the-un-arms-trade-treaty-process>

93 ADS Group, <https://www.adsgroup.org.uk/>

94 ADS Group, *Business Ethics: a toolkit*, https://www.adsgroup.org.uk/wp-content/uploads/sites/21/2016/01/BusinessEthicsToolkit_2015.pdf

95 ADS Group, *Business Ethics: a toolkit*, p. 61.

3.1 HUMAN RIGHTS POLICIES IN THE DEFENCE SECTOR

Between September and October 2018 Amnesty International wrote letters to 22 companies⁹⁶ asking them for further information about their human rights due diligence policies and processes. The letters raised concerns about aspects of individual company businesses and, where relevant, highlighted specific concerns in relation to the use of the company's arms in the commission of serious violations of international human rights and humanitarian law.

The letters asked 12 specific questions related to human rights due diligence policies and procedures and how they were applied in situations of high risk, including how the companies assess risks of adverse human rights impacts in situations of conflict/upheaval; how they monitor those risks; and what actions they take to address them, including providing or cooperating in the provision of remedy.⁹⁷ None of the eight companies that responded attempted to answer the 12 specific questions or gave concrete examples of cases demonstrating how their human rights policies and procedures related to arms exports worked in the real world.

Airbus, BAE Systems, Lockheed Martin, Rolls-Royce and Saab gave short, general responses which underlined their commitment to human rights, the lawfulness of their businesses, the dialogue they have with home state institutions that regulate arms sales and the highly regulated environment in which they operate. Raytheon referred Amnesty International back to previous correspondence⁹⁸ which made similar points and which is discussed below. Saab also enclosed their Sustainability Fact Book 2017,⁹⁹ which references the company's efforts to comply with export control laws and to promote responsible supplier relationships.

Thales and Leonardo gave longer and more detailed responses. After outlining its compliance with national laws in France and the many other jurisdictions in which it operates, Thales expressed its commitment to compliance with the UNGPs and the OECD Guidelines for Multinational Enterprises, as well as its active participation in the development of the Arms Trade Treaty and the EU Common Position defining common rules governing control of exports of military technology and equipment.¹⁰⁰ Thales also referred to the creation of an ad hoc working group tasked with creating a due diligence plan to comply with France's new Vigilance Law¹⁰¹ (see Chapter 4). The plan includes "risk mapping", including for those risks "related to severe abuses of Human Rights", though no further detail was provided in Thales' correspondence with Amnesty International or in Thales' first formal report on compliance with the new law.¹⁰²

96 The companies contacted were in alphabetical order: Airbus, Arqus, Avibras, BAE Systems, Boeing, Dassault Aviation, Elbit Systems, Embraer, Heckler and Koch, General Dynamics, Herstal Group, Leonardo S.p.a, Lockheed Martin, Norinco, Northrop Grumman, Remington Outdoor, Raytheon, Rolls-Royce, Rosoboronexport, Saab, Thales and Zastava. Letters were sent recorded delivery to CEOs and were followed by chaser emails.

97 See example letter in Annex 1.

98 Timothy F. Schultz, Vice President, Ethics and Business Conduct, Raytheon to Amnesty International, 15 December 2017, on file. The letter was a response to Amnesty International's allegations of the misuse of the Paveway guided munition system in Yemen, see below.

99 Saab, *Sustainability Factbook 2017*, https://saabgroup.com/globalassets/corporate/responsibility/sustainability-reports/2017/fact-book_2017_eng_180319.pdf

100 The Arms Trade Treaty, <https://thearmstradetreaty.org/> and the *Official Journal of the European Union*, Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

101 LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, JORF n°0074 du 28 mars 2017, LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>

102 Thales, *2017 Registration Document*, https://www.thalesgroup.com/sites/default/files/database/document/2018-05/2017_registration_document.pdf, p.233 (Section 5.3.3.3).

Leonardo referred extensively to its Trade Compliance Program, which it said includes due diligence tools and processes for analysing potential clients and end users and screening their activities and additional checks in the case of transactions with “sensitive countries”, which it stated are constantly reviewed and updated.¹⁰³ Leonardo also said its policies include a regularly reviewed risk analysis supported by external data providers and constant monitoring of the effectiveness of mitigation measures. Leonardo’s Trade Compliance Program is aimed at preventing “risks of illicit practices” and “complying with applicable laws and regulations” governing arms exports, rather than preventing adverse human rights impacts.¹⁰⁴

The following table summarizes the main points raised by each company.

COMPANY	RESPONSE – KEY QUOTES
Airbus	<p>“Airbus will always conduct our 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.”</p> <p>“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.”</p>
BAE Systems	<p>“We trade with legitimate governments and comply fully with all applicable defence export controls, which are subject to ongoing assessment.”</p> <p>“We assess potential sales against our own responsible trading principles and we do not proceed with new business opportunities if they do not meet our strict criteria.”</p> <p>“Our activities in Saudi Arabia are subject to UK government approval and oversight.”</p>
Leonardo	<p>“Leonardo... is committed to upholding the human rights based on the United Nations’ Universal Declaration of Human Rights, the ILO’s (International Labour Organisation) Conventions, the OECD guidelines, the Charter of Fundamental Right of European Union and other relevant regulations.”</p> <p>“Leonardo has explicitly identified three important areas related to human rights: i. management of employees, ii. relations with suppliers and iii. aspects related to the sale and distribution of products, considering the specific features of the business.”</p> <p>“Leonardo uses due diligence tools and screening processes before any sale, within the sensitive countries, including the preliminary analysis of potential clients and end users, to check for example the type of entity, the ownership structure and any other information on the customers’ reputation and integrity, as well as whether they are on ‘black lists’.”</p> <p>“Leonardo has recently joined the United Nations Global Compact, the world’s largest business sustainability initiative, confirming the Company commitment to uphold and respect human rights, labour rights, the environment and anti-corruption.”</p>

103 See Leonardo, ‘Controls on exports and sensitive countries’, <https://www.leonardocompany.com/en/chi-siamo-about-us/etica-compliance/controlli-sulle-esportazioni-e-paesi-sensibili>. The list includes Yemen, but does not include Saudi Arabia or the UAE, both of which have been engaged in an armed conflict in Yemen in which Amnesty has documented serious violations of international human rights and humanitarian law perpetrated by all parties to the conflict, see Amnesty International, *The State of the World’s Human Rights 2017-18*, 22 February 2018, (Index: POL 10/6700/2018), ‘Yemen entry’, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/yemen/report-yemen/>

In a follow up email, Amnesty International asked what criteria were used for inclusion on the list and why Saudi Arabia or the UAE were not listed. Leonardo had not responded on this point at the time of writing.

104 Leonardo disputes this statement, saying that these “tools and processes go beyond compliance, as not all of them are required by national licensing law and regulations”, see full response in Annex 2.

COMPANY	RESPONSE – KEY QUOTES
Lockheed Martin	<p>“Lockheed Martin seeks continuously to advance standards and controls for ethical business conduct, which includes respecting a broad spectrum of human rights across our business activities.”</p> <p>“Lockheed Martin evaluates its efforts to ensure business is conducted ethically and fairly, with careful consideration for export controls and trade policies, products’ intended use and impact on civilian needs.”</p> <p>“Defence exports are regulated by the US government and approved by both the Executive Branch and Congress to ensure that they support U.S. national security and foreign policy objectives.”</p>
Raytheon¹⁰⁵	<p>“Raytheon has a strong commitment to, and respect for, human rights. Our company has implemented robust policies, procedures, and practices to ensure compliance with laws of each of the many jurisdictions around the world where we do business.”</p> <p>“Raytheon’s sale of precision-guided munitions to Saudi Arabia have been and remain in compliance with U.S. law.”</p>
Rolls-Royce	<p>“We are committed to maintaining the highest ethical standards to avoid any potential complicity in human rights violations related to our operations and supply chains.”</p> <p>“We work with government and respected NGOs to raise awareness and advice on the need for mechanisms to promote a responsible arms trade.”</p> <p>“We act with integrity by working within the export control laws that apply to our operations.”</p>
Saab	<p>“In the assessment of new business opportunities and markets, Saab weighs several factors, including human rights and make an overall assessment.”</p> <p>“Saab operates in line with Swedish export policy.”</p> <p>“Saab believes trade can be a way to promote democratic values; and that countries have a right and an obligation to protect their citizens and borders.”</p>
Thales	<p>“Thales pays very close attention to human rights and is closely involved in a number of human rights initiatives.”</p> <p>“...we would emphasise the paramount importance of export control laws which ensure the extremely strict and rigorous regulation of this area in our business.”</p> <p>“Thales is [also] committed to complying with...the OECD Guidelines for Multinational Enterprises and the OHCHR Guiding Principles on Business and Human Rights.”</p> <p>“Thales is fully committed with working within the United Nations ‘Protect, Respect and Remedy’ framework”.</p>

105 Timothy F. Schultz, Vice President, Ethics and Business Conduct, Raytheon to Amnesty International, 15 December 2017, on file. Raytheon’s response to Amnesty International’s 3 September 2018 letter requesting information on the company’s human rights policies referred Amnesty International back to this previous correspondence.

In November 2018, Amnesty International sent a series of follow-up questions by email to the eight companies that responded to the organization's original correspondence asking:

- Do you consider the addressing of human rights risks associated with the misuse of your company's products and services by third parties as a part of your human rights due diligence responsibilities – as separate from government licensing processes?
- Or put another way, if a military or law enforcement body was repeatedly misusing your company's equipment/technology for serious human rights violations/abuses and all forms of risk mitigation had been exhausted, how would your company address this? Would measures include ceasing to supply products and services, irrespective of the position taken by government licensing authorities?
- Do you have any examples of this type of action being taken by your company?

THREE COMPANIES – SAAB, THALES AND BAE SYSTEMS – RESPONDED.

Saab stressed that any potential export was “handled on a case-by-case basis in the dialogue between Saab and the authorizing government”. Saab added that: “the export of defence products creates long-term relationships between the countries involved and the industry. This mutual dependency creates both risks, as for example the potential misuse of products, and leverage, which can be used to influence the customer in a positive direction.”¹⁰⁶ However, Saab did not cite any specific cases in which this “mutual dependency” had created risks or in which it had used its leverage to address any specific human rights risks.

Thales reiterated that the company complies fully with export control processes which it said are “rigorous”, and that states such as “France, the UK, the USA, the EU have the full expertise to address this issue”. However, Thales stated that: “once delivered to a customer, our company has no control at all over the use – or misuse – that could be made of our technologies. We have no capability to ‘recall’ products delivered, to stop or control their use by technological means... Any attempt whatsoever by us would be perceived as an unacceptable breach of sovereignty.”¹⁰⁷

BAE Systems referred Amnesty International to their Product Trading Policy,¹⁰⁸ which requires employees to assess risks associated with the type of product and its intended use, the end user and the country of sale. This poses a series of assessment questions which include: “Can the product's end use reasonably be expected to violate civil liberties or human rights?” and “Is there a significant, specific and foreseeable risk of the product being diverted or transferred to an unapproved user or utilised for an unauthorised purpose?” Transfers identified as posing “risks associated with the product and its intended end use, the country of origin and delivery, and the customer” must be approved at a more senior level of the company, up to and including the Chief Executive.¹⁰⁹ However, on the specific issue of its substantial trade in military equipment with Saudi Arabia, the company responded that its “activities in Saudi Arabia are subject to UK government approval and oversight.”¹¹⁰

106 Email communication, 5 December 2018. Held on file by Amnesty International.

107 Email communication, 21 December 2008. Held on file by Amnesty International.

108 BAE Systems, 'Product Trading Policy', <https://www.baesystems.com/en/our-company/corporate-responsibility/useful-links/policy-summaries/product-trading-summary-policy>

109 BAE System, *Product Trading Policy*, <https://www.baesystems.com/en/our-company/corporate-responsibility/useful-links/policy-summaries/product-trading-summary-policy>

110 Email from BAE Systems to Amnesty International, 18 September 2018, on file.

Corporate controls on the use of products: lessons from the pharmaceutical industry

Some sectors, such as the pharmaceutical industry have taken measures to control the misuse of their products and services by third parties.

China, Thailand, the USA and Viet Nam continue to use pharmaceutical drugs to carry out executions; more than 1,300 people in the USA have been executed using lethal injections since 1976.¹¹¹ Binding measures to control the export from all EU Member States of certain drugs – such as sodium thiopental and pentobarbital – were introduced by the European Commission in 2011.¹¹² Since then, over 50 healthcare companies have taken unilateral action to stop the use of their products in executions.¹¹³

Some of the measures pharmaceutical companies have introduced include: making strong public statements against the use of their products in lethal injection protocols to carry out the death penalty; refusing to sell products to correctional facilities where there is a risk that they will be used for lethal injections; restricting the sale of known components of lethal injection protocols to select wholesalers who agree not to sell on to correctional facilities; monitoring the distribution of products; informing wholesalers that they will cut supply if there is evidence that drugs are being passed on to correctional facilities; and regularly auditing for compliance with manufacturer contracts and policies.¹¹⁴

As a result of industry-wide action and campaigning, led by the British NGO Reprive, the supply of pharmaceutical drugs for carrying out executions has dried up across the USA.¹¹⁵ While these measures have had some unintended consequences – some US states have amended their execution protocols to allow the use of alternative substances or methods, such as electrocution, or to conceal the source of the chemicals¹¹⁶ – it does show that there are ways for sectors to control the use of their products to minimize the risks that they will be used by third parties in human rights violations.

111 Amnesty International, *Death Sentences and Executions 2018*, (Index: ACT 50/9870/2019), <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF> and Reprive, *Lethal Injection*, <https://reprive.org.uk/topic/lethal-injection/>

112 European Commission, Commission Implementing Regulation (EU) No: 1352/2011 of 20 December 2011, amending Council Regulation (EC) No 1236/2005 concerning the trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, *Official Journal of the European Union*, 21 December 2011, L.338/31, (Annex III (4))

113 Reprive, 'Topic: Lethal Injection', <https://reprive.org.uk/topic/lethal-injection/>

114 See Lethal Injection Information Centre: preventing the misuse of medicines in lethal injections, *Industry Opposition to the Misuse of Medicines in Executions*, July 2018, <https://lethalinjectioninfo.org/wp-content/uploads/2018/12/Industry-statements-FINAL-E-COPY.pdf>

115 'The End of the Open Market for Lethal-Injection Drugs', *New Yorker*, 21 May 2016, <https://www.newyorker.com/news/news-desk/the-end-of-the-open-market-for-lethal-injection-drugs>

116 In 2018 two men were executed in Tennessee by electrocution, the first time this method was used in the USA since 2013, Death Penalty Information Center, <https://deathpenaltyinfo.org/>



Paveway bomb fragment from the airstrike on Faj Attan in Sana'a, Yemen, in August 2017. © Rawan Shaif

RAYTHEON AND THE EXPORT OF PAVEWAY GUIDED BOMBS

Raytheon's response to Amnesty International's request for information referred the organization back to earlier correspondence¹¹⁷ which related to the specific incident in which a Raytheon Paveway precision guided bomb struck a cluster of houses in Faj Attan, a residential neighbourhood in Sana'a, Yemen, killing 16 civilians and injuring 17 more.¹¹⁸

In December 2017, Amnesty International contacted Raytheon, asking what steps the company had taken to investigate and respond to this incident and what due diligence policies and processes they had in place to ensure the company meets its responsibility to respect human rights set out in the UNGPs. Raytheon replied that "due to legal constraints, customer relations issues... Raytheon does not provide information on our products, customers or operational issues." Raytheon added that prior to export, military and security equipment is "subject to a multifaceted review by the US Department of State, Department of Defence and Congress" which includes "consideration of international human rights and international law."

Given the gravity of the human rights violations, their ongoing nature and the close and enduring relationship that Raytheon, among many other companies, has forged with the Saudi Arabian armed forces, there can be no doubt that in the case of Raytheon, these adverse human rights impacts "are directly linked to their...products or services by their business relationships".¹¹⁹ Given the enduring nature of both the business relationship and the violations, under the UNGPs Raytheon could be said to be contributing to an adverse human rights impact. Raytheon's response – effectively ascribing responsibility for human rights risk assessments to state institutions – is therefore wholly inadequate and represents a complete failure on the part of the company to undertake even the most basic level of human rights due diligence.

In this Raytheon is not alone; none of the companies surveyed by Amnesty International that supply equipment to the Saudi Arabia/UAE-led coalition operating in Yemen have publicly available information on any form of human rights due diligence undertaken to assess and address the risks of supplying arms to the coalition, nor have they adequately responded to any of the allegations that their products are being used in the conflict for serious human rights violations.

¹¹⁷ Letter from Timothy F. Schultz, Vice President, Ethics and Business Conduct, Raytheon, to Amnesty International, 15 December 2017, on file.

¹¹⁸ See Amnesty International, *Yemen: US-made bomb kills and maims children in deadly strike on residential homes*, (Press Release, 22 September 2017), <https://www.amnesty.org/en/latest/news/2017/09/yemen-us-made-bomb-kills-and-maims-children-in-deadly-strike-on-residential-homes/>

¹¹⁹ UNGP, Principle 13 (b), p. 14.

3.2 PUBLIC COMMENT BY DEFENCE COMPANY REPRESENTATIVES

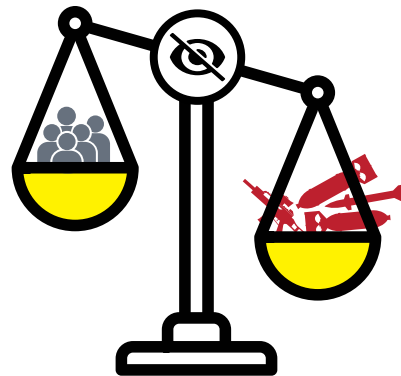
Given the seriousness of the issues at stake, senior representatives of large arms companies have an essential role to play in publicly stating what steps they have put in place to identify, prevent and mitigate adverse human rights impacts, particularly in relation to the transfer of products and services. However, in practice, when challenged on the human rights impacts of arms transfers, spokespeople for large defence companies have typically sidestepped the issue by saying that their activities comply with all export control laws and regulations.

For instance, when asked if Rolls-Royce was selling military equipment to the Philippines and what rules or guidelines they had in place to ensure its equipment was not used to commit human rights abuses, a company spokesperson responded: “With regards to policy around defence exports it is a function of Governments – not of individual companies – to determine the markets to which it is acceptable for defence products to be exported. This government policy translates into export control law with which the company fully complies.”¹²⁰

Asked the same questions, a spokesperson from Thales responded that the company “fully complies with national and international regulations related to export control. Thales works within an international framework of treaties, and the UK export control regime is one of the most robust and transparent in the world.”¹²¹ In a similar vein, a spokesperson for Thales UK commenting on arms transfers and the situation in Yemen said: “We will only sell to places that the UK Government feel are appropriate to sell to, so I don't have any qualms about that.”¹²²

Commenting on arms transfers to Saudi Arabia, Sir Roger Carr, Chairman BAE Systems, told activist shareholders in May 2016: “We will stop doing it when they [the UK government] tell us to stop doing it”.¹²³ At the company's May 2019 Annual General Meeting, Sir Roger Carr reiterated that it was not BAE Systems' responsibility to investigate how its products were being used in Yemen. He told shareholders: “We look to the government who are the people who can do the investigation, who can ask the questions who can demand answers”.¹²⁴

“WE ARE NOT HERE TO JUDGE THE WAY THAT OTHER GOVERNMENTS WORK, WE ARE HERE TO DO A JOB UNDER THE RULES AND REGULATIONS WE ARE GIVEN.”



Sir Roger Carr, Chairman of the UK's largest arms company, BAE Systems, responding to activist shareholders in May 2016.

120 ‘How Britain offered the murderous President Duterte materials for “urban warfare”’, *New Statesman*, 8 May 2018, <https://www.newstatesman.com/politics/uk/2018/05/how-britain-offered-murderous-president-duterte-materials-urban-warfare>

121 ‘How Britain offered the murderous President Duterte materials for “urban warfare”’, *New Statesman*, 8 May 2018, <https://www.newstatesman.com/politics/uk/2018/05/how-britain-offered-murderous-president-duterte-materials-urban-warfare>

122 ‘Minister defends UK arms sales to Saudi Arabia’, *Belfast Telegraph*, 26 October 2018, <https://www.belfasttelegraph.co.uk/business/minister-defends-uk-arms-sales-to-saudi-arabia-37459036.html>

123 ‘Britain's biggest arms dealer tells peace activists selling weapons “encourages peace”’, *The Independent*, 5 May 2016, <https://www.independent.co.uk/news/uk/home-news/britains-biggest-arms-dealer-bae-systems-chairman-sir-roger-carr-tells-peace-activists-weapons-sales-a7014436.html>

124 ‘Arms supplier BAE denies it has any responsibility to investigate Yemen atrocities’, *The Independent*, 24 June, 2019, <https://www.independent.co.uk/news/uk/home-news/bae-arms-supplier-yemen-shareholders-saudi-coalition-uk-a8967791.html>

In their public pronouncements, defence company CEOs and spokespeople must not criticize or undermine initiatives designed to enhance human rights protections. However, when Germany suspended arms sales to Saudi Arabia after the killing of the journalist Jamal Khashoggi, affecting parts and components for systems manufactured in other countries, Airbus CEO Tom Enders was reported as saying that by showing “a kind of moral superelevation” on arms exports, Germany was frustrating the UK, France and Spain. The comment, which was widely reported, was clearly aimed at undermining Germany’s policy of applying robust human rights safeguards on arms transfers.¹²⁵ Similarly, the CEO of Leonardo, Alessandro Profumo, has publicly criticized Germany’s suspension of arms sales to Saudi Arabia and described it as an impediment to the creation of a European defence system.¹²⁶ These statements underline the fact that defence companies are not only failing to do human rights due diligence, but are actively lobbying against legitimate human rights protections.

3.3 ASSESSMENT OF HUMAN RIGHTS POLICIES

From Amnesty International’s analysis of the policies and standards of conduct published by the defence industry and the responses received to the organization’s questions, it is clear that each of the companies surveyed is failing to take adequate steps to meet its responsibility to respect human rights. Fourteen companies failed to engage at all with Amnesty International, despite repeated attempts to elicit a response. Of the companies that did respond, none explored the question of their human rights responsibilities in concrete situations, such as in the Yemen conflict, where exports of military equipment are being repeatedly used by clients to violate human rights.

No company demonstrated how they addressed the significant human rights risks in situations of conflict and internal unrest – contexts in which most defence companies’ businesses are routinely involved – or showed that they had ways of mitigating these risks. And the issue of providing for or cooperating in the provision of remediation where companies identify that they have caused or contributed to adverse impacts was not referred to in any company response. While two companies – BAE Systems and Leonardo – referred in very broad terms to their due diligence policies and procedures, which do include references to human rights, in both instances these policies appear to be designed in practice to meet government licensing laws and regulations rather than to prevent human rights abuses, regardless of government policies.

Of the companies that did respond, none explored the question of their human rights responsibilities in concrete situations, such as in the Yemen conflict, where exports of military equipment are being repeatedly used by clients to violate human rights.

125 ‘Airbus CEO tells Germany to reform arms policy for good of Europe’, *Reuters*, 16 February 2019, <https://uk.reuters.com/article/uk-germany-security-airbus/airbus-ceo-tells-germany-to-reform-arms-policy-for-good-of-europe-idUKKCN1Q506C>

126 ‘Leonardo boss warns Germany’s Saudi embargo will damage European industry’, *Defense News*, 18 April, <https://www.defensenews.com/global/europe/2019/04/18/leonardo-boss-warns-germanys-saudi-embargo-will-damage-european-industry/>

Common to all the responses received by Amnesty International was the idea that defence companies discharge their responsibility to respect human rights by operating lawfully in their home state and following state arms control laws and regulations in other states in which they operate. This falls far short of their human rights responsibilities under the UNGPs.

It is clear that the companies surveyed did not understand or view human rights as a free-standing legal compliance issue. They considered it sufficient that they were complying with domestic and regional legal requirements on the sale and transfer of weapons and were conducting business in accordance with their own internal policies and values. This is contrary to the UNGPs, which clearly state that companies should “Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate” and note that: “Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties”.¹²⁷

**“QUESTIONS OF COMPLICITY
MAY ARISE WHEN A BUSINESS ENTERPRISE
CONTRIBUTES TO, OR IS SEEN AS CONTRIBUTING TO,
ADVERSE HUMAN RIGHTS IMPACTS
CAUSED BY OTHER PARTIES”.**



These failures have very specific consequences. For example, it may mean that – due to a long-term lack of action despite knowing of specific human rights harms linked to its operations – a company is considered to be contributing to, rather than directly linked to, that harm. This has repercussions in terms of the steps the company should take to address and remediate the harm. It may also mean that the company is exposing itself to legal risk and potential criminal liability.

As the research for this report confirms, the defence sector needs to take urgent action on the potential and actual human rights impacts associated with a significant proportion of their businesses – particularly in connection with the supply of weapons to parties to armed conflicts, or to countries experiencing high levels of internal unrest.

127 UNGP 23 and Commentary to Principle 17.

4. HUMAN RIGHTS DUE DILIGENCE AND THE DEFENCE SECTOR

The nature, scope and operating context of the defence sector mean that it is particularly at risk of contributing to or being directly linked to human rights abuses associated with the misuse of its products and services by third parties – typically armed forces or law enforcement agencies.

This chapter looks at some of the key elements that the defence industry should incorporate into its policies and processes to meet its responsibility to respect human rights and to develop and implement robust and effective human rights due diligence in line with the UNGPs and similar standards. It also includes illustrative examples of transfers of military equipment to Syria, Cameroon and Egypt which have resulted in serious violations of international human rights and humanitarian law.

4.1 HUMAN RIGHTS DUE DILIGENCE STANDARDS

Arms companies must thoroughly vet prospective end users and consider the likely end use of their products and services. This requires them to identify, prevent, address and account for potential human rights impacts before agreeing to any arms sales. High expectations of compliance with international human rights law and standards should be built into defence contracts and regularly monitored.

Arms companies should conduct due diligence on their products or services on a proactive and ongoing basis to identify whether they are or may be causing, contributing to or directly linked to adverse human rights impacts and to address evolving risks. Companies need to assess systemic risks such as regional instability, the robustness of local governance structures and the importing country's track record in respecting and protecting human rights before entering into long-term maintenance and supply contracts.

Defence companies should ensure their human rights due diligence is commensurate with the significant human rights risks of their operations and that it is adequately resourced to identify and address them. This applies particularly when supplying arms, including law enforcement equipment, expertise and support to conflict zones or states experiencing internal crises. It is also especially relevant in relation to types of military and policing equipment that are typically used to violate international human rights and humanitarian law and related standards (see below on how to identify and address specific risks relating to armed conflict and weapon types).¹²⁸

Given the potentially very serious human rights abuses related to certain products in certain contexts, any assessment of the human rights impacts of the company's product or services should not just be the responsibility of the companies' ethics departments but should be part of the senior leadership/CEO remit.¹²⁹

¹²⁸ For example, conventional arms listed in the Arms Trade Treaty Article 2.1 <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf> and armed Unmanned Aerial Vehicles (drones) and policing equipment, including "less lethal" riot control equipment. Related standards would include, for instance, the UN Basic Principles on the Use of Force and Firearms, <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>

¹²⁹ UNGP 16.



Men wait by the side of the road for casual labour in Raqqa, Syria. Many end up clearing partially destroyed or damaged buildings, a very risky endeavour as many buildings were mined by IS and civilians are frequently killed and injured by mines, February 2018. © Amnesty International

ZASTAVA SMALL ARMS AND LIGHT WEAPONS IN CAMEROON

In August 2018, Amnesty International obtained shocking video of Cameroonian security forces shooting at least a dozen unarmed people during a military operation in the village of Achigaya in the Far North Region of the country.¹³⁰ Some of the men were armed with Serbian M21 rifles manufactured by Zastava.

This followed horrific footage of the extrajudicial executions of two women and two young children by Cameroonian soldiers using a Zastava M21 as well as Kalashnikov-style rifles. A pickup truck mounted with a Zastava M02 Coyote light machine gun also appears in BBC footage of a militia group burning the village of Kuke Mbomo in Anglophone Cameroon, where security forces have unlawfully killed, arbitrarily detained and tortured people during military operations which have also displaced thousands.¹³¹

Serbia reported transfers of 8,500 assault rifles and 210 heavy machine guns to Cameroon to the Arms Trade Treaty in 2015.¹³² Amnesty International contacted Zastava presenting the company with the above information and asking what preventive due diligence policies and processes it had in place to identify and address human rights risks – particularly in situations such as Cameroon in which those risks are considerably heightened.¹³³ At time of writing the company had not responded.

130 Amnesty International, 'Cameroon: New video shows more brutal killings by armed forces' (Press release, 10 August 2018), <https://www.amnesty.org/en/latest/news/2018/08/cameroon-new-video-shows-more-brutal-killings-by-armed-forces/>

131 BBC, 'Cameroon Burning: The unseen war', 00:52, 07 February 2019, <https://www.bbc.co.uk/programmes/p070615g> and Amnesty International, 'Cameroon: Anglophone regions gripped by deadly violence', (Press release, 11 June 2018), <https://www.amnesty.org/en/latest/news/2018/06/cameroon-anglophone-regions-gripped-by-deadly-violence/>

132 Serbia's report to the Arms Trade Treaty, 2015, <https://www.thearmstradetreaty.org/images/Scan.pdf>

133 Letter from Amnesty International to Milojko Brzakovic (Director General of Zastava), 10 October 2018, copy on file.

4.2 ARMED CONFLICT

“The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond.”¹³⁴

In situations of armed conflict, arms companies should not rely solely on information provided by their home states, parties to the conflict or their allies or those providing military assistance to parties to the conflict. They should rather review reports and seek independent assessments from inter-governmental organizations, international and local NGOs, independent military experts, community groups and trusted local contacts. Companies should use up-to-date information on international human rights and international humanitarian law and standards and on the incidence and nature of relevant violations to ensure they are properly and effectively identifying, assessing and addressing human rights risks and abuses.¹³⁵

Arms companies should seek the fullest possible data on the use and impact of their products and services in conflict/crisis zones, logging all instances of involvement of products and services in incidents of suspected violations of international human rights and humanitarian law. Assessments should be continuously updated to map behaviour and assess risk over time. They should include assessments of those at heightened risk of vulnerability or marginalization¹³⁶ in the context of conflict situations (for example, civilian populations in conflict areas, particularly those at risk of gender-based violence and internally displaced people and refugees driven from conflict areas). They should also include assessments of the risk of arms diversion,¹³⁷ which is typically associated with regions experiencing armed conflict or political instability.

Risk assessments should be undertaken *before* agreeing contracts to supply military equipment and/or services. A condition that end users will comply with international human rights and humanitarian law in using the company’s products and services should be built into commercial contracts, with the possibility of products and services being suspended or withdrawn if this condition is not clearly met.¹³⁸ Contracts, and compliance with them, should be regularly reviewed.

134 UNGP 19.

135 This assessment should include a variety of credible, reliable and verifiable information sources, including: documentation from the UN human rights bodies, the ICRC and other international and regional bodies; reports from UN Security Council sanctions committees; human rights reports by states, including domestic human rights commissions’ reports; relevant UN Secretary-General’s thematic reports such as those on conflict-related sexual violence, children and armed conflict, and small arms; reports from credible international human rights NGOs; reports from reliable local sources, including local NGOs; and reliable media reports. See Amnesty International, *Applying the Arms Trade Treaty to ensure the protection of human rights*, p. 8, <https://www.amnesty.org/download/Documents/ACT3000032015ENGLISH.PDF> The ICRC has concluded that “an understanding of international humanitarian law and an interest in the conduct of potential purchasers are essential to the risk management of manufacturers and suppliers of weapons and facilitate greater respect for international humanitarian law.” See ICRC, *Business and International Humanitarian Law: an introduction to the rights and obligations of business enterprises under international humanitarian law*, p. 25, <https://shop.icrc.org/skin/frontend/icrc/default/images/see-pdf.png>

136 UNGPs, p. 1.

137 See, for instance, detailed diversion prevention measures are outlined in *Preventing Diversion in Conventional Arms Transfers: Exploring Contributions of Industry and Private Sector Actors*, 2019, <http://unidir.org/files/publications/pdfs/preventing-diversion-in-conventional-arms-transfers-exploring-contributions-of-industry-and-private-sector-actors-en-776.pdf>

138 OECD, *Due Diligence Guidance for Responsible Business Conduct*, p. 78.

The scope and thoroughness of the company's human rights due diligence must be proportionate to the risks faced. For example, a company identifying and assessing the risks of selling equipment/ services to a party to a conflict should undertake a detailed examination of the end users' record of human rights compliance, its accountability mechanisms and the level of training/preparedness of its armed forces. It should also assess the receiving state's adherence to international human rights and humanitarian law treaties and to monitoring and enforcement mechanisms; whether the military/police forces, standard operating procedures comply with international law and standards; and how these procedures are applied in practice and how infractions are dealt with. This assessment process must be undertaken *independently* of state licensing authorization procedures.

Once risks are identified and assessed, the company must then act upon their findings. For example, if a company identifies that it is at risk of contributing to a serious human rights abuse through an activity, such as the supply of arms, and that it cannot prevent or mitigate that abuse, it should not undertake that activity. And, where a company identifies that it has contributed to a human rights abuse, it must provide for or cooperate in remediation through legitimate processes, for example by providing compensation and cooperating with any judicial mechanisms.¹³⁹

None of the companies assessed in the research for this report gave specific information about how they addressed potential and actual human rights risks and abuses involved in the supply of military equipment and services to countries involved in armed conflict or political upheaval. As mentioned above, BAE Systems' trading policy sets out in broad terms requirements for line leaders and employees to assess risks associated with the type of product and its intended use, the end user and the country of sale, with specific reference to the risk of diversion. According to the policy, contracts identified as posing a possible trading risk must be approved at a more senior level of the company, up to and including the CEO. BAE Systems also said that the company applies a "measured and appropriate policy and process of its own in respect of compliance with laws and regulation".¹⁴⁰ Leonardo's Trade Compliance Program includes due diligence tools and processes for analysing potential clients and end users, screening their activities and additional checks in the case of transactions with "sensitive countries", which they said are constantly reviewed and updated. However, neither company answered Amnesty International's specific questions related to how these policies work in practice in concrete situations - for example, in exports to the Saudi Arabia/UAE coalition for use in the Yemen conflict.

None of the companies assessed in the research for this report gave specific information about how they addressed potential and actual human rights risks and abuses involved in the supply of military equipment and services to countries involved in armed conflict or political upheaval.

139 UNGP 22, Remediation. See also, Amnesty International, *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy*, 7 March 2014, (Index: POL 30/001/2014).

140 See BAE Systems response, 3 May 2019, Annex 2.

ROSOBORONEXPORT AND THE SUPPLY OF WEAPONS TO SYRIA

Throughout the Syrian crisis, which began in 2011 with the violent repression of peaceful protests and escalated into an armed conflict, Russia has transferred arms, training and logistical support to the Syrian armed forces who stand accused of war crimes and crimes against humanity.¹⁴¹

Rosoboronexport is a Russian joint stock company whose sole shareholder is the Russian State Corporation Rostec. Rosoboronexport describes its role as “the only state-controlled intermediary in carrying out foreign trade operations with respect to the entire range of military goods.”¹⁴² As noted above, state-owned companies have the same responsibility to respect human rights as privately owned companies and states should be taking steps to protect against human rights abuses by those companies. Additionally, depending on the circumstances, human rights abuses by a state-owned or state-controlled company could amount to a violation of a state’s own obligations under international human rights law.¹⁴³

Throughout the conflict in Syria, Rosoboronexport has been instrumental in supplying and servicing military equipment manufactured by Russian companies for the Syrian armed forces. According to the company’s website, there is an office of the State Corporation Rostec in Syria, which “ensures the interests of Rosoboronexport”.¹⁴⁴ Rosoboronexport states that its operations “are carried out in full compliance with rules of international law and provisions of the UN Charter, international commitments in the field of arms export control assumed by the Russian Federation.”¹⁴⁵

While it is difficult to assess the precise types and quantities of Russian military equipment flowing to Syria – neither the company nor the state publish data on military transfers – Russian representatives of the company have said publicly on several occasions that Rosoboronexport was providing military equipment to the Syrian armed forces.¹⁴⁶ In addition, fresh supplies of Russian military equipment – such as T-90 main battle tanks, armoured personnel carriers, rocket launchers, anti-tank missiles and other missile systems – have been widely documented during the conflict.¹⁴⁷ Russia also continued overhauling and upgrading the Syrian air fleet, much of which was not airworthy at the beginning of the conflict.¹⁴⁸ Military equipment and assistance has been provided continuously over a period of eight years, in spite of clear and copious evidence of war crimes and crimes against humanity.

141 See for instance: Amnesty International, *Syria: Relentless bombing of civilians in Eastern Ghouta amounts to war crimes*, (Press release, 20 February 2018), <https://www.amnesty.org/en/latest/news/2018/02/syria-relentless-bombing-of-civilians-in-eastern-ghouta-amounts-to-war-crimes/>

142 Rosoboronexport, ‘History of the Company’, <http://roe.ru/eng/rosoboronexport/history/>

143 International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, 2001, pp. 40-43, legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

144 Rosoboronexport, ‘Cooperation with Syria’, <http://roe.ru/eng/export/siriya/>

145 Rosoboronexport, ‘Status’, <http://roe.ru/eng/rosoboronexport/status/>

146 ‘Russian arms exporter says supplies to Syria will go on’, *Reuters*, 13 February 2013, <https://www.reuters.com/article/us-syria-crisis-russia/russia-arms-exporter-says-supplies-to-syria-will-go-on-idUSBRE91COKH20130213>

147 Douglas Barrie, ‘Russian weapons in the Syrian conflict’, 8 May 2018, International Institute for Strategic Studies, <https://www.iiss.org/-/media/images/comment/analysis/2018/may/documents/nato-russian-weapons-in-the-syrian-conflict.ashx?la=en&hash=FD476607EAF600AE5DE547756FDD284DF6BA47D2>

148 See, for instance, ‘The Syrian Arab Air Force, beware of its wings’, Oryx blog, 15 January 2015, <http://spioenkop.blogspot.com/2015/01/the-syrian-arab-air-force-beware-of-its.html>



A survivor of an airstrike on Ma'adi neighbourhood, Aleppo, Syria, 11 July 2014. © Amnesty International (Photo: Mujahid Abu al-Joud)

During this period, Amnesty International has documented a wide range of human rights abuses and violations of international humanitarian law by all parties to the conflict.¹⁴⁹ Syrian forces, for example, have carried out indiscriminate attacks and direct attacks on civilians and civilian objects using aerial and artillery bombing; repeatedly used banned weapon types, including cluster munitions and chemical weapons; and maintained lengthy sieges on densely populated areas, restricting the access of thousands of civilians to humanitarian and medical aid.¹⁵⁰

There is no evidence that Rosobronexport has taken any measures to ensure that military equipment it supplies to Syria is being used in full compliance with relevant international laws and commitments. In these circumstances, the company is failing to respect human rights. Given the ongoing nature of the conflict and knowledge about crimes against civilians committed by the Syrian armed forces in contravention of humanitarian law, the company is arguably complicit in the human rights crimes committed which can be linked to their equipment.

Amnesty International contacted Rosobronexport asking the company what steps it had taken to ensure the products and services it provided were not used for serious violations of international human rights and humanitarian law. At the time of writing, no response had been received.

149 See, for example, Amnesty International, *The State of the World's Human Rights 2017-18*, 22 February 2018, (Index: POL 10/6700/2018), pp. 349-53, <https://www.amnesty.org/en/documents/pol10/6700/2018/en/> and *Syria: Indiscriminate attacks kill, terrorize and displace civilians*, (Index: MDE 24/078/2012), 19 September 2012, <https://www.amnesty.org/download/Documents/24000/mde240782012en.pdf>

150 Amnesty International, *Syria: Unlawful attacks using cluster munitions and unguided barrel bombs intensify as Idlib offensive looms*, (Press Release, 14 September 2018), <https://www.amnesty.org/en/latest/news/2018/09/syria-unlawful-attacks-using-cluster-munitions-and-unguided-barrel-bombs-intensify-as-idlib-offensive-looms/> and *Syria: 'Surrender or starve' strategy displacing thousands amounts to crimes against humanity*, (Press Release, 13 November 2017), <https://www.amnesty.org/en/latest/news/2017/11/syria-surrender-or-starve-strategy-displacing-thousands-amounts-to-crimes-against-humanity/>

4.3 ASSESSING AND ADDRESSING THE RISKS POSED BY PARTICULAR WEAPON TYPES

Certain weapon types carry far higher human rights risks than others. For example, multiple rocket launchers and incendiary weapons are prone to having indiscriminate effects, would require a high degree of expertise to use lawfully and could only be used in very limited circumstances if compliance with international humanitarian law is to be ensured.¹⁵¹

Other weapon types – for example anti-personnel landmines, cluster munitions and laser weapons specifically designed to cause permanent blindness – are internationally banned and should not be manufactured, stockpiled, transferred or used in any circumstances.¹⁵²

Rapid technological advances are leading to the development of new weapon types, including fully autonomous weapons systems, which pose fundamental and ultimately intractable human rights risks, such as their inability to comply fully with international human rights and humanitarian law and the impossibility of designing adequate accountability mechanisms.¹⁵³ Autonomous weapon systems which can select, attack, kill and injure human targets without meaningful human control, should be prohibited.

Some classes of weapons carry very high human rights risks in specific circumstances. For example, armoured vehicles supplied to security forces with a poor human rights track record engaged in internal repression (see box on next page).¹⁵⁴

No companies assessed for this report manufacture or trade in internationally banned weapons, such as anti-personnel landmines or cluster munitions. At the Thales Media Day held in Montreal on 24 January 2019, in a discussion on the theme of Artificial Intelligence, Thales CEO Patrice Caine said: “It’s not that difficult to say ‘no’ to killer robots... At Thales we have decided to set clear red lines on this topic.”¹⁵⁵ However, none of the companies surveyed outlined policies related to high-risk conventional weapon types, such as multiple rocket launchers and incendiary weapons.

151 ICRC/ARES, *Explosive weapons in populated areas: Technical considerations relevant to their use and effects*, May 2016, <https://www.icrc.org/en/download/file/23603/aresweb-generic.pdf>

152 Convention on the Prohibition Of The Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, http://www.un.org/Depts/mine/UNDocs/ban_trty.htm and the Cluster Munitions Convention, <http://www.clusterconvention.org/> None of the companies surveyed manufactures these products – several companies, including Thales and Leonardo, explicitly mentioned this fact in their responses to Amnesty International.

153 Amnesty International, *Autonomous Weapons Systems: five key human rights issues for consideration*, Index: ACT 30/1401/2015, <https://www.amnesty.org/download/Documents/ACT3014012015ENGLISH.pdf> Amnesty International is part of the Campaign to Stop Killer Robots, which is working to ban fully autonomous weapons and thereby retain meaningful human control over the use of force. See <https://www.stopkillerrobots.org>

154 Amnesty International, *Egypt: How French arms were used to crush dissent*, 16 October 2018, (Index: EUR 21/9038/2018).

155 Thales, ‘Thales Media Day: AI in Decisive Moments’, Montreal, 24 January, 33:48, <https://www.youtube.com/watch?v=ExeYwB-W7v0>

TRANSFERS TO EGYPT BY RENAULT TRUCKS DEFENCE

Between 2012 and 2014, France delivered 191 armoured vehicles from the Sherpa family of light armoured vehicles and several dozen MIDS armoured vehicles manufactured by Renault Trucks Defence to Egypt.¹⁵⁶ This was a period of extreme political turbulence during which the Egyptian security forces were carrying out a range of serious human rights violations, including unlawful killings, arbitrary detentions and torture, against protesters and political opposition groups.

Although the French authorities claimed that these transfers were to the Egyptian Ministry of Defence for use in the “fight against terrorism” in Sinai and not for law enforcement operations, from 5 December 2012 onwards the vehicles began appearing in footage and images of law enforcement operations in Cairo. Amnesty International compiled visual evidence of the use of both Sherpas and MIDS armoured vehicles, with the insignia of the Ministry of the Interior Special-Operation Forces and Central Security Forces on their bodywork, in subsequent crack downs that left thousands dead and injured.¹⁵⁷

Renault Trucks Defence (now named Arquus) is a subsidiary of the Swedish-headquartered multinational, the Volvo Group. The Volvo Group responded to criticism from human rights organizations by saying: “the sales have been made in compliance with applicable laws and regulations, including export control requirements” and that the “Volvo Group engages in continuous evaluation of its group policies and procedures, including with respect to human rights impacts.”¹⁵⁸

Amnesty International wrote to Renault Trucks/Arquus on a number of occasions requesting information about the transfers. The company initially confirmed the transfer of armoured vehicles to the Egyptian Ministry of Defence, but when pressed for further details replied that “a contractual confidentiality obligation prohibits us from communicating on [the contract’s] content”.¹⁵⁹ At the time of writing, no response had been received to another request for information about the company’s due diligence processes and practices.¹⁶⁰

156 Amnesty International, *Egypt: How French arms were used to crush dissent*, 16 October 2018, (Index: EUR 21/9038/2018), pp. 20-21, <https://www.amnesty.org/download/Documents/EUR2190382018ENGLISH.PDF>

157 Amnesty International, *Egypt: How French Arms were used to crush dissent*, 16 October 2018, (Index: EUR 21/9038/2018), pp. 20-21, <https://www.amnesty.org/download/Documents/EUR2190382018ENGLISH.PDF>

158 For the full response, see, Business and Human Rights Resource Centre, Letter from Malin Ripa Senior Vice President, Corporate Responsibility at Volvo Group, 16 July 2018, https://www.business-humanrights.org/sites/default/files/documents/BHRRRC%20Response_2018-07-18.pdf

159 Letter from Amnesty International France Executive Director to Arquus Defence Chair, (SF18E054 MDE-ARM), 27 June 2018, copy on file.

160 Letter from Amnesty International, 11 October 2018, copy on file.



Sherpa LSW armoured vehicles deployed in the neighbourhood of Sidi Gaber (Alexandria) by Ministry of the Interior forces, You Tube, 5 July 2013.¹⁶¹

4.4 USING LEVERAGE TO PREVENT ADVERSE HUMAN RIGHTS IMPACTS

Companies are expected to use leverage in their business relationships to prevent or mitigate potential and actual human rights abuses. There are two situations in which a company is expected to use its leverage. The first is where it has contributed or may contribute to an abuse. In this case, the company must cease or prevent its own contribution to the abuse and use its leverage to mitigate any remaining harm. The second is where the company is or may be directly linked to an abuse. In that case, the company should use – and in some cases increase – its leverage in that relationship to prevent or mitigate the impact. This is particularly the case with large, influential companies. Leverage is effectively about the ability of a company to influence behaviour and effect change.¹⁶²

From the very start of any potential business relationship, defence companies – and particularly large, influential companies – can and should be using their leverage to influence the behaviour of clients. As noted above, any commercial contract should include conditions on compliance with international human rights and humanitarian law and be regularly reviewed, with the possibility of suspending or withdrawing products and services for non-compliance. Companies can rely on those terms and conditions to ensure companies in their supply chain take preventative or mitigating action on human rights impacts. They give companies the option of not providing products or services if a customer fails to take adequate action and this is the only appropriate course of action.

In such circumstances, arms companies are in a strong position to influence the behaviour of their clients. Large corporations in particular can play a pivotal role in developing and enforcing regulations and standards throughout their supply chains. As the provider of often essential equipment and support services to militaries which may lack indigenous manufacturing capabilities, threats of withdrawing products or services or their actual withdrawal can provide a powerful incentive in receiving countries

¹⁶¹ YouTube, 'Alexandria ... Police assaults and thugs on supporters of legitimacy in Sidi Gaber' (English translation of the original title in Arabic), Amlalomah TV, date of capture 5 July 2013.

¹⁶² UNGP, Commentary to Principle 19.

for positive behavioural change. Large defence companies typically service a wide range of clients – most of whom are not engaged in active conflicts – making it potentially easier for them to adapt business relationships away from areas of conflict or crisis.

None of the companies assessed for this report gave concrete examples of leverage that they had applied to clients or cases in which they had taken the initiative to modify, suspend or cease business with a client because of human rights concerns. As mentioned above, Saab said that leverage “can be used to influence the customer in a positive direction”, but did not elaborate. Companies reviewed by Amnesty International have therefore failed to demonstrate whether or how they use their often considerable potential leverage to influence the behaviour of their clients in order to prevent or mitigate potential and actual human rights abuses.

DUE DILIGENCE POLICIES AND PROCEDURES: THE FIGHT AGAINST CORRUPTION

Over the last decade the large corporates in the defence sector have developed strict due diligence policies and procedures for combatting corruption and bribery.¹⁶³ This followed state anti-corruption and bribery legislation flowing from the adoption of conventions by the UN and the OECD.¹⁶⁴ Policies include vetting of third-party contractors, building high expectations of probity into contracts, continuous monitoring and periodic auditing of performance, using leverage to influence behaviour and mitigate risks and ceasing business relationship where risks cannot be adequately mitigated. For instance, Lockheed Martin’s responsible business initiative includes “tailored risk assessments and audit plans” to maintain “a robust compliance program for our international business” and concludes, “we would rather walk away from business than risk violating...anti-corruption laws and our corporate values.”¹⁶⁵ Financial contracts with business partners are typically short, running on two-year cycles – even where the work is likely to take considerably longer – so that formal due diligence processes can be repeated regularly.

These principles, which echo aspects of human rights due diligence, could be used to develop policies and procedures to control human rights risks posed by the supply of military products and services to third parties. The industry response to laws on bribery and corruption also shows the impact of legislation on corporate behaviour.

163 See for instance: Raytheon, ‘Company Policy: corruption’, RP-OGC-019, 26 November 2018, https://www.raytheon.com/sites/default/files/ourcompany/rtnwcm/groups/gallery/documents/digitalasset/rtn_160603.pdf and Lockheed Martin, ‘Compliance with Anti-Corruption Laws’, CPS-730, 6 December 2018, <https://www.lockheedmartin.com/content/dam/lockheed-martin/eo/documents/ethics/cps-730.pdf>

164 UN Convention against Corruption, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

For a summary of anti-corruption laws in the UK, see Transparency International, *Corruption Laws: A non-lawyers’ guide to laws and offences in the UK relating to corrupt behaviour*, <https://www.transparency.org.uk/wp-content/plugins/download-attachments/includes/download.php?id=5414>

165 Lockheed Martin, *2017 Sustainability report*, ‘The Science of Citizenship’, p. 20, https://www.lockheedmartin.com/content/dam/lockheed-martin/eo/documents/sustainability/Lockheed_Martin_Sustainability_Report_Full_2017.pdf?&ga=2.99741660.372989612.1538495234-1539752607.1525795442#page=20

4.5 COMMUNICATION: OPENNESS AND TRANSPARENCY

Communication is a vital part of the corporate responsibility to respect human rights; companies must “know and show” that they respect human rights.¹⁶⁶ However, companies in the defence sector have shown a reluctance to disclose information that relates to their human rights impacts, perceiving this as potentially damaging to their reputations. Arms companies often cite legal restrictions, commercial confidentiality and security concerns as reasons for not releasing information about the transfer of equipment and technical expertise. This lack of information makes it hard to assess how or whether arms companies respect human rights and inhibits accountability for those who are impacted by their operations.

To the greatest extent possible, while managing legal restrictions and confidentiality considerations, arms companies should report openly and transparently on their policies and processes for respecting human rights. In particular, there should be transparency in relation to how the company has identified and addressed the specific human rights risks and abuses arising in connection with its products, services and operations. In active, fast-moving conflict situations arms companies need to issue frequent updates on human rights impacts and the measures adopted to address them.

Non-disclosure should be the exception rather than the rule for defence companies. In this regard, the OECD’s new due diligence guidance on responsible business conduct outlines various strategies that companies can use to disclose information to the greatest extent possible while managing confidentiality considerations.¹⁶⁷

The companies surveyed for this report have publicly available policies referencing human rights, but do not report publicly on how those policies are implemented in practice. None of the companies cited any concrete cases of human rights assessments, specific risks identified, or measures taken to prevent or mitigate adverse human rights impacts, nor was this information available in the company literature reviewed. None of the companies answered Amnesty International’s requests for information about human rights due diligence carried out in specific cases. The fact that 14 defence and small arms companies contacted by Amnesty International did not even respond to a request for information regarding their human rights policies and procedures shows a lack of interest in any form of communication related to human rights due diligence from some leading companies in the sector. This highlights the failure on the part of defence companies to communicate what assessments have been made and preventive measure taken to address human rights risks.

The fact that 14 defence and small arms companies contacted by Amnesty International did not even respond to a request for information regarding their human rights policies and procedures shows a lack of interest in any form of communication related to human rights due diligence from some leading companies in the sector.

166 UNGP, Commentary to Principle 21.

167 OECD, *Due Diligence Guidance for Responsible Business Conduct*, p. 19 and Question 47 of the Annex.

4.6 STATE OBLIGATION TO REGULATE THE DEFENCE INDUSTRY

States have an obligation to protect human rights in the context of corporate activities through regulation, oversight, investigation, adjudication and punishment. But because of the history and nature of the defence industry – in particular its national security role and the fact that some states retain a substantial stake in key defence companies – states and arms companies often work hand in glove.¹⁶⁸ In theory, this closeness could give states opportunities to force the defence industry to address human rights risks associated with their business operations. But in practice, beyond applying export controls and other domestic and international restrictions,¹⁶⁹ most states have not required defence companies to conduct human rights due diligence in their global operations and supply chains. To date, efforts to require defence companies to carry out human rights due diligence have been poorly implemented, as has been the case, for example, with the Vigilance Law in France.

FRANCE: THE VIGILANCE LAW

In February 2017, the French National Parliament adopted a law imposing human rights due diligence obligations on large companies and their supply chains.¹⁷⁰ The new law imposes a duty of care, establishing an obligation of vigilance (*devoir de vigilance*). It applies to companies incorporated or registered in France employing at least 5,000 people through their own operations and their French subsidiaries or at least 10,000 people inclusive of their subsidiaries located abroad.

The duty of vigilance under the French law is threefold: the writing, disclosure and effective implementation of a “vigilance plan” (*plan de vigilance*). This plan includes “reasonable vigilance measures to adequately identify risks and prevent serious violations of human rights and fundamental freedoms, risks and serious harms to health and safety and the environment”.¹⁷¹

The law lists five measures: 1. a mapping that identifies, analyses and ranks risks; 2. procedures for assessing the situation of certain subsidiaries, subcontractors or suppliers; 3. actions to prevent and mitigate risks and serious harms; 4. an alert mechanism; and 5. a monitoring scheme to follow up on the plan’s implementation and efficiency.

The duty of vigilance must cover risks and serious harms that derive from the activities of the parent and subcontracting companies, the activities of companies controlled directly or indirectly by the company and, further down the supply chain, the activities of subcontractors and suppliers “with which the company maintains an established commercial relationship”.¹⁷² Failure to comply with the law can result in large fines.

Many large French defence multinationals, such as Thales and Dassault Aviation, are covered by the new legislation and have published their first reports.¹⁷³ However, these reports have been notably lacking in detail such as risk mapping that analyses specific risk factors, concrete plans to address risks, implementation deadlines, allocated resources and indicators of successful implementation.¹⁷⁴

168 In relation to the UK, see SIPRI/CAAT, *Special treatment: UK Government support for the arms industry and trade*, November 2016, <https://www.sipri.org/publications/2016/other-publications/special-treatment-uk-government-support-arms-industry-and-trade>

169 Such as complying with international and regional sanctions regimes, including arms embargoes, and other export related laws and regulations.

170 LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, JORF n°0074 du 28 mars 2017, LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>

171 LOI n° 2017-399, Art. L. 225-102-4.-I.

172 LOI n° 2017-399, Art. L. 225-102-4.-I.

173 See Dassault Aviation, *Rapport annuel 2017*, p. 65, 2.5, https://www.dassault-aviation.com/wp-content/blogs.dir/1/files/2018/05/BAT_DAS_86_RA_2017_VF_BD_sans.pdf and Thales 2017 Registration Document, https://www.thalesgroup.com/sites/default/files/database/document/2018-05/2017_registration_document.pdf, p. 233, Section 5.3.3.3.

174 For a full analysis, see: Amnesty International et al, *Loi sur la devoir de vigilance : Année 1 : entreprises doivent mieux faire*, https://amnestyfr.cdn.prismic.io/amnestyfr%2F10195ba5-2cc6-4505-8865-6588c05c0b2a_190222_etude_devoir_de_vigilance.pdf

Any failure by states to regulate defence companies or require them to identify and address the human rights impacts of their operations, products or services, does not absolve a company of its own responsibility to respect human rights and to take concrete steps to meet that responsibility.

States with substantial stakes in defence companies and which provide them with advice, trade promotion and financial assistance should take steps to protect against human rights abuses by the corporate actors they are supporting.¹⁷⁵ Such steps could include requiring businesses to commit to the UNGPs; creating laws that require defence companies to conduct human rights due diligence in their global operations and supply chains, and to report on the steps taken; and considering withdrawing support from companies with inadequate human rights due diligence policies and processes, or companies found to have contributed to or been linked to human rights abuses.

One way of compelling the defence sector to carry out human rights due diligence would be to incorporate this as requirement in the licensing process. For each potential transfer, companies could be required to demonstrate that they have thoroughly identified and addressed their human rights impacts. Failure to do so would result in a refusal to license the trade.

Nevertheless, it is important to underline that any failure by states to regulate defence companies or require them to identify and address the human rights impacts of their operations, products or services, does not absolve a company of its own responsibility to respect human rights and to take concrete steps to meet that responsibility.

¹⁷⁵ See UN Human Rights Council, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, A/HRC/38/48, 2 May 2018, <https://undocs.org/A/HRC/38/48>

5. CORPORATE COMPLICITY IN SERIOUS VIOLATIONS OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

As this report shows, many companies in the defence sector are failing to carry out even basic steps to meet their responsibility to respect human rights. It is clear from the responses to Amnesty International's questions that the defence companies surveyed did see human rights as a free-standing legal compliance issue and considered it sufficient to comply with domestic and regional legal requirements on the sale and transfer of weapons. With respect to the Yemen conflict, for example, leading defence companies have continued to supply arms to the Saudi Arabia/UAE-led coalition on the basis that this is allowed under national laws, despite the known risk that those arms could potentially be used by coalition forces in the commission of war crimes. As a result, defence companies are exposing themselves to a number of potential legal risks, including criminal liability for complicity.¹⁷⁶

Acts that could amount to aiding and abetting war crimes include knowingly providing practical assistance or encouragement in the commission of these crimes.¹⁷⁷ In many national jurisdictions, complicity in war crimes is a distinct serious criminal offence for which individuals, including business directors and managers, can be held criminally liable.¹⁷⁸ And some jurisdictions allow for the criminal liability of businesses themselves in such cases.¹⁷⁹ Defence companies carrying out activities that contribute to serious violations of international humanitarian law, such as direct attacks on civilians, expose themselves, or their individual directors and managers, to the risk of prosecution for complicity in war crimes.

The International Committee of the Red Cross (ICRC) has argued that arms companies “may indeed play a part in exacerbating violations of international humanitarian law” and concluded that “an arms dealer who sells weapons to a client knowing that the weapons are to be used to commit war crimes is complicit in the crimes, regardless of whether he or she shares the client's motivations.”¹⁸⁰

176 According to the UNGPs, “questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties...most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases.” Commentary to Principle 17.

177 UNGP, Commentary on Article 17.

178 ICRC, *Customary International Humanitarian Law database*, Practice relating to Rule 156,

179 UNGP, Commentary on Art 17.

180 ICRC, *Business and International Humanitarian Law*, December 2006, p. 26.



A Eurofighter Typhoon flies over Abu Dhabi, the capital of the United Arab Emirates, © 2011 Eurofighter - K. Tokunaga

DEFENCE COMPANIES CARRYING OUT ACTIVITIES THAT

**CONTRIBUTE TO SERIOUS VIOLATIONS
OF INTERNATIONAL HUMANITARIAN LAW
(SUCH AS DIRECT ATTACKS ON CIVILIANS);**

**EXPOSE THEMSELVES, OR THEIR INDIVIDUAL
DIRECTORS AND MANAGERS, TO THE RISK OF
PROSECUTION FOR COMPLICITY IN WAR CRIMES.**



SUPPORT SERVICES FOR THE ROYAL SAUDI AIR FORCE

Complex arms transfers, such as those involving aircraft and related munitions, require sophisticated support services, including maintenance, provision of spare parts, overhaul and testing of equipment. Contractors may also provide training and ground support for combat operations.

BAE Systems, for instance, has 6,100 staff based in Saudi Arabia providing an array of support services, including “maintenance, support and training for Typhoon aircraft” in service with the Royal Saudi Air Force.¹⁸¹ Raytheon, Boeing and Lockheed Martin all have subsidiaries based in the Kingdom.¹⁸² Specialized contractor companies, such as Vinnell Arabia (a subsidiary of the US-headquartered Northrup Grumman) and Mantech also provide military support services. Recent advertisements for roles in these companies in Saudi Arabia include maintaining and inspecting combat aircraft bomb racks, pylons, launchers and adapters; maintaining F-15 avionic systems; fighter pilot training; weapons instructors; and military planning.¹⁸³

According to the OHCHR, Saudi Arabia/UAE-led coalition airstrikes are the leading cause of civilian casualties in the conflict.¹⁸⁴ Since March 2015, when the air campaign over Yemen led by the Royal Saudi Air Force began, Amnesty International has documented at least 35 coalition airstrikes that appear to have violated international humanitarian law.¹⁸⁵ In November 2017, the UK government reported to parliament that they had been “tracking 318 incidents of potential concern since 2015”, incidents which according to the UK government’s submissions to the 2017 Judicial Review into the UK’s decision to license arms to Saudi Arabia involved “allegations of breaches of International Humanitarian Law”.¹⁸⁶

By providing support services in this situation, these companies and their employees have placed themselves in a legal grey area. In this context, companies and their employees are in essential supporting roles to military operations which might result in serious violations of international human rights and humanitarian law.

181 BAE Systems Annual Report 2017, pp. 3 and 6, <https://www.baesystems.com/en/download-en/20180328103020/1434594051696.pdf>

182 See: Raytheon Saudi Arabia https://www.raytheon.com/ourcompany/global/middle_east/raytheon_saudi_arabia ; Boeing in Saudi Arabia: <https://www.boeing-me.com/en/boeing-in-the-middle-east/partnerships-in-the-middle-east/ksa/history.page?> ; and Lockheed Martin in Saudi Arabia, <https://www.lockheedmartin.com/en-us/who-we-are/international/saudi-arabia.html>

183 See for instance: F-15 Aircraft Armament System Specialist, Saudi Arabia, <https://success.recruitmilitary.com/job/29692984> and Tornado TSP2 Instructor WSO, https://www.glassdoor.co.uk/Job/riyadh-weapons-jobs-SRCH_IL06_IC3110290_KO7,14.htm

184 OHCHR, Report of the High Commissioner for Human Rights on Yemen, 5 September 2017, UN Doc. A/HRC/36/33, <http://www.ohchr.org/EN/Countries/MENARegion/Pages/YemenReport2017.aspx>

185 See, for instance, Amnesty International, *Yemen: Airstrike and weapon analysis shows Saudi Arabia-led forces killed scores of civilians*, (Press release, 2 July 2015), <https://www.amnesty.org/en/latest/news/2015/07/yemen-airstrike-analysis-shows-saudi-arabia-killed-scores-of-civilians/> ; *Yemen: Amnesty International response to the Saudi Arabia-led coalition’s investigations*, 16 January 2017, (Index: MDE 31/5494/2017), <https://www.amnesty.org/en/documents/mde31/5494/2017/en/> ; *The State of the World’s Human Rights 2017-18*, 22 February 2018, (Index: POL 10/6700/2018), ‘Yemen entry’, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/yemen/report-yemen/>

186 Alistair Burt, *Hansard*, 30 November 2017, Volume 632, Column 511, <https://hansard.parliament.uk/Commons/2017-11-30/debates/1C24E14B-85C7-4C5C-9013-091AC89936F1/Yemen?highlight=%22318%20incidents%20of%20potential%20concern%22#contribution-38B3AFB6-78E6-4175-9EAC-02F86D1958E8> –The Queen on the application of claimant Campaign Against Arms Trade and the defendant Secretary of State for International Trade, Case No: CO/1306/2016, para. 105, <https://www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2017-07-10.judgment.pdf>

Service contracts can also give major companies strong and enduring links to armed forces engaged in serious violations of human rights.¹⁸⁷ The ICRC has concluded that in some circumstances business “personnel, products and services may become part of the ongoing conflict” and that “the provision on a commercial basis of logistical support that is likely to facilitate the commission of violations of international humanitarian law may attract legal liability.”¹⁸⁸ Alternatively, the strength and proximity of these relationships would in theory greatly increase the company’s potential for leverage over clients.

5.1 LEGAL CASES AND COMPLAINTS

There is growing interest among legal firms and NGOs in using litigation as a tool to ensure the arms trade is conducted lawfully by government and corporate actors.

In the UK, Amnesty International was involved as an intervenor in a Judicial Review brought by the Campaign against the Arms Trade (CAAT), a UK-based NGO, against the Secretary of State for International Trade. This sought to challenge the UK government’s decision to continue to license the export of military equipment to Saudi Arabia. Both BAE Systems and Raytheon were listed as interested parties.¹⁸⁹ The claim was initially dismissed,¹⁹⁰ but on 20 June 2019, the Court of Appeal ruled that the UK government’s decision to license military equipment for Saudi Arabia was “irrational and therefore unlawful” as the government had not assessed whether the Saudi Arabia-led coalition had committed violations of international humanitarian law in the past.¹⁹¹ In response, the UK government suspended future licences for arms exports to Saudi Arabia and its coalition partners (the UAE, Kuwait, Bahrain and Egypt) which might be used in the conflict in Yemen.¹⁹² The UK government has been given permission to appeal to the Supreme Court.¹⁹³

NGOs have begun bringing court cases against arms companies in France and Italy for supplying equipment which was used by third parties to commit serious violations of international human rights and humanitarian law. NGOs have also brought a complaint in the USA against Boeing and Lockheed Martin for failing to carry out human rights due diligence in relation to supplying military equipment to Saudi Arabia. And in the Walloon region of Belgium, NGOs have successfully challenged arms licensing decisions related to Belgian exports to Saudi Arabia. The following box summaries these cases.

187 See Mike Lewis and Katherine Templar, *UK: personnel supporting the Saudi armed forces – risk, knowledge and accountability*, <http://www.mikelewisresearch.com/RSAFinal.pdf>

188 ICRC, *Business and International Humanitarian Law: an introduction to the rights and obligations of business enterprises under international humanitarian law*, December 2006, p. 26, http://www.icrc.org/en/doc/assets/files/other/icrc_002_0882.pdf

189 See Sealed Order from the High Court, 11 January 2015, <https://www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2016-07-11.sealed-order.pdf>

190 Judgment, Case No: CO/1306/2016, 10 July 2017, <https://www.judiciary.uk/wp-content/uploads/2017/07/r-oao-campaign-against-arms-trade-v-ssfit-and-others1.pdf> – a press summary of the judgment can be viewed at <https://www.judiciary.uk/wp-content/uploads/2017/07/r-oao-campaign-against-arms-trade-v-ssfit-and-others-summary.pdf>

191 Court of Appeal, Case No: T3/2017/2079, Judgement, 20 June 2019, <https://www.judiciary.uk/wp-content/uploads/2019/06/CAAT-v-Secretary-of-State-and-Others-Open-12-June-2019.pdf>; for press summary of judgement, see: <https://www.judiciary.uk/wp-content/uploads/2019/06/R-CAAT-v-SSIT-Press-Summary-v3.pdf>

192 Department for International Trade Export Control Joint Unit, ‘Notice to exporters 2019/09: Court of Appeal judgment about military exports to Saudi Arabia’, 25 June 2019, <https://www.gov.uk/government/publications/notice-to-exporters-201909-court-of-appeal-judgment-about-military-exports-to-saudi-arabia/notice-to-exporters-201909-court-of-appeal-judgment-about-military-exports-to-saudi-arabia>

193 The Court of Appeal, 9 July, 2019, <https://www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/appeal/2019-07-09.order-granting-appeal-permission.pdf>



Amnesty International marked the fourth anniversary of the Yemen conflict by driving a 1/6th scale replica Eurofighter Typhoon jet with Paveway IV missiles around the UK Parliament. © Jon Cornejo

EUROPEAN CENTRE FOR CONSTITUTIONAL AND HUMAN RIGHTS ET AL V. RWM ITALIA S.P.A. AND ITALIAN EXPORT OFFICIALS



On 17 April 2018, a coalition of human rights organizations from Germany, Italy and Yemen filed a criminal complaint against the managers of RWM Italia S.p.A. and senior officials of Italy's National Authority for the Export of Armaments with the public prosecutor in Rome.¹⁹⁴ The case relates to the Deir al-Hajari strike in Yemen on 8 October 2016 using an RWM-manufactured MK 80 series bomb in which six civilians were killed. The case argues that both the company managers and the Italian authorities sent (and continue to send) air-launched munitions to coalition members in the full knowledge that they may be used to violate international human rights and humanitarian law.

ANCILE-AVOCATS (SUPPORTED BY THE ASSOCIATION CONTRE LA TORTURE, ACAT) VS EXXELIA TECHNOLOGIES

On 17 July 2014, an Israeli missile, probably fired from a drone, hit the roof of the Shuheibar family's house in Gaza City, killing their eight-year-old daughter and their two sons, aged nine and 10. A component manufactured by the French company Eurofarad (now called Exxelia Technologies) was recovered from the rubble. The family, supported by the Association Contre la Torture (ACAT) and the Paris-based law firm Ancile-avocats, filed a criminal complaint of complicity in a war crime and manslaughter against the company.¹⁹⁵ A criminal enquiry (*instruction*) for complicity in a war crime was continuing at the time of writing.

194 European Centre for Constitutional and Human Rights, *Case Report: European Responsibility for War Crimes in Yemen – Complicity of Italian Subsidiary of German Arms Manufacturer and of Italian Arms Export Authority*, April 2018, https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CaseReport_Yemen_Italy_Arms_ECCHR_Mwatana_ReteDisarmo_20180418.pdf

195 Association Contre la Torture, 'Plainte pour complicité de crimes de guerre à Gaza contre l'entreprise française Exxelia Technologies', 29 June, 2016.

CHALLENGERS TO BELGIAN LICENSING DECISIONS



In December 2017, two NGOs – the Coordination nationale d’action pour la paix et la démocratie and the Ligue des droits humains – supported by Amnesty International, filed a series of administrative appeals against decisions by the Minister-President of the Walloon Region to grant export licences to Saudi Arabia. This resulted in the suspension of six licences by the Council of State on 29 June 2018. The Council of State concluded that the Minister-President did not “proceed to a careful and prudent examination of some of the criteria” provided for in the EU Common Position defining common rules governing control of exports of military technology and equipment.¹⁹⁶

On 14 June 2019, the Council of State annulled the licences. It found that the Walloon Region had “failed to examine one of the criteria laid down by the legislation, which is to verify the behaviour of the buyer country towards the international community and in particular its attitude towards terrorism, the nature of its alliances and respect for international law.”¹⁹⁷ On 19 February 2019, the same NGOs requested the opening of a judicial inquiry into FN Herstal and CMI Defence (now John Cockerill), as well as a third unnamed company, in relation to arms exports to Saudi Arabia under licences which stipulate that they are not valid when the country of destination is involved in an international or internal conflict.

EUROPEAN CENTRE FOR DEMOCRACY AND HUMAN RIGHTS ET AL VS BOEING AND LOCKHEED MARTIN

In June 2016, three NGOs – the European Centre for Democracy and Human Rights, Defenders for Medical Impartiality and the Arabian Rights Watch Association – brought a complaint against Boeing and Lockheed Martin before the US National Contact Point.¹⁹⁸ They argued that by supplying arms to Saudi Arabia for use in Yemen, the companies were in breach of the OECD Guidelines for Multinational Enterprises – which include a set of standards on human rights similar to the UNGPs – because the companies failed to carry out human rights due diligence regarding the sale of their products to Saudi Arabia, and failed to take appropriate steps to ensure that their products did not cause or contribute to human rights violations in Yemen.

The US National Contact Point decided not to offer mediation in the case on the grounds that the companies’ conduct was “inextricably intertwined with the practices of specific states, including Saudi Arabia and the United States” through the US licensing process and Saudi Arabia’s decision to use the arms, placing the case outside the scope of the OECD Guidelines.¹⁹⁹ The decision exposes the key problem with ensuring respect for human rights in the defence sector: namely, the fact that the industry outsources its responsibility to states, even when those states are acting irresponsibly, and, in some instances, illegally.

196 Conseil d’Etat, ‘Licences d’exportation d’armes et de matériel lié à la défense vers l’Arabie Saoudite’, 29 June 2018, <http://www.raadvst-consetat.be/?page=news&lang=fr&newsitem=489>

197 “Le Conseil d’Etat a constaté que la Région wallonne a omis d’examiner un des critères prévus par la législation qui consiste à vérifier le comportement du pays acheteur à l’égard de la communauté internationale et notamment son attitude envers le terrorisme, la nature de ses alliances et le respect du droit international”, Conseil d’Etat, ‘Licences d’exportation d’armes vers l’Arabie Saoudite: Annulation,’ 14 June 2019, <http://www.raadvst-consetat.be/?page=news&lang=fr&newsitem=541>

198 OECD Watch, *ECDHR et al vs Boeing & Lockheed Martin* case summary, https://www.oecdwatch.org/cases/Case_474

199 US National Contact Point for the OECD Guidelines for Multinational Enterprises, ‘Final Statement Specific Instance between European Centre for Democracy and Human Rights, Defenders for Medical Impartiality, and Arabian Rights Watch Association, and The Boeing Company and Lockheed Martin Corporation’, 18 November 2016, https://www.oecdwatch.org/cases/Case_474/1610/at_download/file

These cases demonstrate how defence companies are exposing themselves to legal liability and other challenges by failing to identify, prevent and address the human rights impacts of their products and services and failing to view respect for human rights as a compliance issue. With growing awareness of the role of defence companies in the conflict in Yemen, these cases are surely only the beginning of sustained efforts to hold the defence sector accountable for the industry's impact in armed conflicts. So long as they continue to put off serious efforts to address these risks, including through robust human rights due diligence policies and processes, arms companies will exacerbate their exposure to these mounting legal challenges.



6. CONCLUSIONS AND RECOMMENDATIONS

Questions over the responsibilities and potential legal liabilities of major arms companies have been thrown into stark relief by the events in Yemen. As the fragile peace negotiations proceed, there is an ever-mounting body of evidence of serious violations and abuses committed by all parties to the conflict in the country. Amnesty International, along with many other credible organizations, inter-governmental bodies and governments have now been documenting these violations for more than three years and their findings have been widely reported.

Yet major arms companies have continued to supply and maintain large volumes of military equipment that is integral to the Saudi Arabia/UAE-led coalition's continuing offensives. In other states, including Syria, Egypt and Cameroon, there has also been a pattern of serious human rights abuses committed using the products of arms companies which have continued supplies despite publicly available information on the abuses being committed.

Despite the fact that the sector is now generally made up of corporate entities that are either wholly or predominantly privately owned, the assessments of the human rights risk of potential arms transfers are for the most part devolved to state licensing authorities. This is contrary to established international standards on business and human rights, including the UNGPs, which many companies in the defence sector profess to abide by. The UNGPs make clear that companies have an individual responsibility to respect human rights that is distinct and separate from that of the state.

Corporates operating in the defence sector that continue to supply equipment and services knowing of, or having failed to take reasonable steps to identify and mitigate, the risk that they are likely to be used in serious violations of international human rights and humanitarian law are opening themselves up to both reputational risk and potential legal liability.

States where companies are located or operate from have a vital role to play. They must not only force companies to put in place effective human rights due diligence policies and procedures, but also provide adequate oversight of the industry through the licensing system. Exports licences should only be issued to companies which can demonstrate that they have adequately assessed all human rights impacts of proposed exports, and have developed detailed plans to prevent and mitigate actual and potential human rights risks.

If companies are to begin addressing the significant human rights risks and abuses that their products often give rise to, they must at a minimum, incorporate six key measures into their existing policies and processes:

6.1 RECOMMENDATIONS

TO DEFENCE COMPANIES:

1. COMMIT TO RESPECT HUMAN RIGHTS AND CREATE ROBUST HUMAN RIGHTS DUE DILIGENCE POLICIES AND PROCESSES WHICH COVER HUMAN RIGHTS RISKS AND ABUSES CONNECTED WITH THE USE OF COMPANY PRODUCTS AND SERVICES.

Companies have responsibilities, independent of legal obligations imposed by home states, to identify and address the potential and actual human rights risks connected with the use of their products and services, such as arms and related servicing contracts.

2. IDENTIFY AND ASSESS THE HUMAN RIGHTS IMPACTS OF COMPANY PRODUCTS AND SERVICES BEFORE, DURING AND AFTER TRANSFER.

The implementation of human rights policies and processes through due diligence needs to be ongoing, proactive and dynamic, covering all aspects of the business relationship and product lifecycle (including end-use). Risks in countries experiencing conflict and internal upheaval can change rapidly and arms companies must have policies and processes in place that allow them to adapt and respond to potential and emerging human rights threats. Expectations of compliance with human rights law need to be built into the way commercial contracts are drawn up and then tracked through product transfer and use.

3. TAKE ACTION TO ADDRESS HUMAN RIGHTS RISKS AND ABUSES INCLUDING THROUGH REMEDIATION.

Once risks or abuses are identified, they need to be addressed through concrete actions. These could include consultations with relevant stakeholders and applying leverage to clients, including threatening to suspend, suspending or ceasing supply. Where a company has caused or contributed to an abuse, it has a responsibility to provide for or cooperate in its remediation, even if it has already withdrawn products and services.

4. PUBLICLY COMMUNICATE RISKS IDENTIFIED AND HOW THEY ARE BEING ADDRESSED IN THE FULLEST WAY POSSIBLE.

Companies should be as transparent as possible about their human rights impacts and the measures they are taking to identify and address them. This must include information on the company's policies and processes and how it has identified and addressed specific human rights risks and abuses arising in its operations. It must also include regular updates – particularly in relation to situations of heightened risk, such as countries involved in armed conflicts or internal upheaval.

5. REFRAIN FROM LOBBYING FOR RELAXATION OF LICENSING REQUIREMENTS WHERE SUCH A RELAXATION RISKS INCREASED HUMAN RIGHTS ABUSES OR AGAINST INITIATIVES WHICH COULD REDUCE ARMS-RELATED ABUSES.

In their efforts to respect human rights, companies should strive for policy coherence and not undermine states' abilities to meet their own human rights obligations.

6. ENABLE REPARATION WHERE NECESSARY.

If a company's product does contribute to gross human rights violations or serious violations of international humanitarian law, the company must endeavour to provide or facilitate prompt and effective reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

TO STATES WHERE DEFENCE COMPANIES ARE LOCATED OR OPERATE FROM:

- 1. Adopt and enforce a legal framework requiring 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.
- 2. 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 actual and potential human rights impacts.
- 3. Withdraw support from defence companies** which are involved with gross human rights abuses and which refuse to cooperate in addressing the situation.
- 4. Ensure that all credible accusations of illegal conduct** on the part of defence companies that is linked to a human rights abuses are thoroughly investigated and, where appropriate, lead to criminal prosecutions.



ANNEX 1: LETTER TO DEFENCE COMPANIES TEMPLATE

Dear COMPANY CEO,

RE: REQUEST FOR INFORMATION REGARDING COMPANY NAME'S HUMAN RIGHTS DUE DILIGENCE POLICIES AND PRACTICES

Amnesty International is a global movement of more than seven million people campaigning for a world where human rights are enjoyed by all. Amnesty International is currently conducting research into whether companies producing military equipment, technology and related products and services are fulfilling their responsibility to respect human rights. We would be grateful if you could provide us with information regarding COMPANY NAME's human rights due diligence policies and practices by answering the questions at the end of this letter, and providing us with any further relevant information and documentation.

BACKGROUND: THE HUMAN RIGHTS RESPONSIBILITIES OF COMPANIES

Amnesty International has a long history of research into violations of international human rights and humanitarian law in countries involved in armed conflict and/or internal repression. Frequently, these violations are committed or facilitated by security forces using a range of military and law enforcement equipment manufactured, supplied and serviced by corporate entities in the defence sector.

Amnesty International also has a long history of research into corporate human rights abuses, working to prevent abuse and to hold companies to account for causing or contributing to abuse. Companies can and do have a significant impact on the enjoyment of human rights. In recognition of this, there is now a clear global consensus that companies have a responsibility to respect all human rights wherever they operate. This is expressly recognised in global standards on business and human rights such as the UN Guiding Principles on Business and Human Rights (UNGPs), unanimously endorsed by the UN Human Rights Council in June 2011, and the OECD Guidelines for Multinational Enterprises. In situations of armed conflict, companies must also respect international humanitarian law.

The responsibility to respect human rights requires companies to avoid causing or contributing to human rights abuses through their own business activities, and to seek to prevent or mitigate adverse human rights impacts directly linked to their operations or services by their business relationships (even if they have not contributed to those impacts). Where a company does cause or contribute to abuse, it must provide for or cooperate in its remediation. Companies are also encouraged to play a role in remediation of abuses by business relationships, even if a company has not caused or contributed to that abuse. The responsibility to respect is independent of a state's own human rights responsibilities and exists over and above compliance with national laws and regulations protecting human rights.

To meet their responsibility to respect human rights, companies must put in place a human rights due diligence policy and processes to identify, prevent, mitigate and account for how they address both their potential and actual human rights impacts. This is an ongoing and not a one-off responsibility, as human rights risks can change over time. Companies must also account for (i.e., be transparent in) how they identify and address their human rights risks, for example through communication with affected stakeholders and formal reporting, especially where there is a risk of serious human rights abuse.

In May 2018, the OECD adopted the OECD Due Diligence Guidance for Responsible Business Conduct, which aims to help companies understand and implement their due diligence responsibilities as set out in the OECD Guidelines as well as the UNGPs. The OECD's Guidance makes clear that the purpose of due diligence is first and foremost to prevent harm to others and that – to be effective – due diligence must be commensurate with risk and adequately resourced. As such, where the risk of an adverse impact is “too high” (i.e. prevention might be difficult or impossible), the only appropriate course of action might be to avoid an activity or relationship in the first place, or discontinue it if already underway.

HUMAN RIGHTS DUE DILIGENCE AND THE DEFENCE SECTOR

The responsibility to respect, and the corresponding responsibility to carry out human rights due diligence, therefore have several important and specific implications for the defence sector:

1. They cover not just human rights abuses that are or may be caused by defence companies themselves, but also the company's potential or actual contribution to human rights abuses by others through the provision of products and services, such as military equipment, to clients such as military or police forces.
2. The nature, scope and operating context of the defence sector bring particular risks and corresponding responsibilities. These include the often highly unstable environments that defence companies operate in; their close relationships with parties to conflicts or security forces which operating in these contexts necessitates; the lethality of the products they produce; and the enduring nature of many modern servicing and maintenance contracts. These can all heighten risks of causing or contributing to human rights abuses.
3. While defence sector companies are generally subject to state export licence control systems that in many instances will, at least in theory, take into consideration the likely human rights impacts of arms transfers, this does not exempt these companies from undertaking their own human rights due diligence in line with international standards on business and human rights.
4. To address these risks, companies operating in the defence sector, such as COMPANY NAME, need correspondingly thorough policies and processes, designed to effectively identify and then prevent or mitigate (as appropriate) actual and potential human rights abuses. Given the high risks related to certain defence products and services in certain contexts, responsibility for identifying and addressing these impacts should not just be left to companies' ethics and compliance departments, but should be part of the remit of the company's board and senior leadership (including the CEO), and be adequately resourced.
5. Given the risk of serious harm in connection with their products and services, defence companies must be transparent in how they identify and address their human rights risks – covering specific risks and how they were dealt with in sufficient detail to allow an analysis of the adequacy of their response to those risks.
6. Given the high risks of harm in the defence sector, there may be circumstances where it is not possible for a company to prevent or adequately mitigate risks of adverse human rights impacts. In that case, the company should not supply or should cease the supply of the relevant goods or services.

COMPANY NAME'S HUMAN RIGHTS POLICY

- INFORMATION TAILORED TO COMPANY'S HUMAN RIGHTS POLICIES AND POSSIBLE LINKS TO HUMAN RIGHTS VIOLATIONS.

REQUEST FOR INFORMATION

In the light of the above, Amnesty International would be grateful if you could elaborate on COMPANY NAME's published Human Rights Policy and related codes of conduct, and provide any further information and documentation regarding the policies and processes your company has in place to ensure its compliance with global standards on business and human rights – particularly in relation to identifying and addressing the adverse human rights impacts associated with the use or misuse of COMPANY NAME's products and services in armed conflict.

Specifically, Amnesty International would like to know:

HUMAN RIGHTS DUE DILIGENCE POLICIES AND PROCEDURES

1. Does COMPANY NAME have human rights due diligence policies and procedures other than those covered in its Human Rights Policy and related codes of conduct mentioned above?
2. Do these due diligence policies and processes cover not just adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, but those which are directly linked to the use or misuse of its products or services by their business relationships (such as the use or misuse of military equipment by a party to an international armed conflict)?
3. If so, how does COMPANY NAME identify and address these adverse human rights impacts? Could you provide us with a typical case study?
4. Does COMPANY NAME conduct human rights due diligence on an ongoing basis, i.e. before, during and after the provision of goods and services? Is it based on qualitative and quantitative indicators? Is this information made public? Could you provide us with examples of these processes and the indicators used?
5. Who, at the management level, is responsible for the monitoring of COMPANY NAME's human rights impacts and overall implementation of this policy? Where is this stated?

HUMAN RIGHTS DUE DILIGENCE PROCESSES IN SITUATIONS OF HIGH RISK

6. Does COMPANY NAME provide equipment, technological assistance, or other military services to parties involved in armed conflicts and/or security forces in situations of civil upheaval?
7. Does COMPANY NAME assess the adverse human rights impacts of the use or misuse of its products or services by parties to a conflict, or security forces dealing with internal unrest, independently of government licencing assessments? Is this assessment ongoing?
8. What sources of information does COMPANY NAME use to assess the adverse human rights impacts of the use or misuse of its equipment in situations of conflict/ internal unrest?
9. Does COMPANY NAME draw on independent external human rights expertise to identify and address its adverse human rights impacts?
10. Can you provide specific evidence or information of instances where COMPANY NAME has taken action to identify and address human rights risks and abuses by third parties such as military forces using the company's products or services?
11. Where COMPANY NAME identifies that they have caused or contributed to adverse impacts, does it provide for or cooperate in their remediation? If so, how? Can you cite a concrete example of an instance in which the company has provided for or cooperated in remediation?
12. Has COMPANY NAME ever withdrawn from providing products or services on the grounds of adverse human rights impacts as a result of its own analysis, independent of external government requirements; legal and/or administrative requirements; or international/ regional arms embargoes? Could you provide examples of such withdrawal of products or services?

We would be grateful to receive answers to our questions, as well as any relevant information or documents that you may have, by 25 September 2018. We will be contacting a number of other leading companies in the defence sector requesting the same information. Please note that we intend to reflect any information we receive from you in our published materials, as appropriate (which may include quoting your responses verbatim).

ANNEX 2: COMPANY RESPONSES TO PRE-PUBLICATION REPORT SUMMARY

RESPONSE FROM THALES Sent: 26 April 15:35

Dear Patrick,

I am writing to you in response to your letter untitled “*Opportunity to respond to upcoming Amnesty International publication*”, addressed to Patrice Caine, Chairman and CEO of Thales, on April 18th, 2019.

As we underlined it in our previous letter, Thales's basic operating principle is strict compliance with both the national laws in each of our countries of operation and the provisions of international regulations and treaties. This policy is part of a comprehensive approach to ethical practices and corporate responsibility that meets the highest standards in the industry.

The basic principle for selling defence technologies abroad is very clear: as a rule, it is prohibited, and any such exports are considered an exception subject to authorisation from the French and other relevant governments. Thales adheres strictly to all legal frameworks.

Therefore, we do not agree with the conclusion of your report, which does not reflect this position.

Apart from that, on page 4, the third bullet point, you underline the fact we would have indicated “OECD Guidelines Multinational Organisations” instead of “Multinational Enterprises”. That could have been possible given the fact that the letter was initially translated from French, however after having reviewed the letter sent to you on Oct. 16th (enclosed) we have not identified this mistake.

Best regards,

Emmanuel BLOCH
Director, Corporate Responsibility
Tour Carpe Diem
31, place des Corolles
92098 – Paris, La Défense

The Thales logo is displayed in a blue, sans-serif font. It is positioned to the right of a thick blue horizontal line that spans the width of the page. A grey, tapered graphic element is visible behind the logo, extending downwards from the blue line.

Dear Patrick,

Regarding your letter dated 18th April 2019 related to the upcoming Amnesty International publication, we provide you with some comments and observations.

First of all, we would like to remark that at Leonardo we view the respect of human rights as a fundamental issue, as well as we recognize the role of the public authorities and of internationally-recognized organizations committed on this issue.

From our point of view, saying that Leonardo “did not explain how this concern was specifically addressed, other than through compliance with national licensing law” is not completely fair.

We explained that Leonardo has undertaken human rights due diligence to identify potential risk areas (people management, relationships with suppliers and aspects related to the sale and distribution of products).

These three areas resulted from an analysis based on the ISO 26000 guidelines, aimed at identifying the areas potentially exposed to the risk of violations of human rights and the existing measures to manage and mitigate the related risks.

Regarding sale and distribution of products, Leonardo uses due diligence tools and processes, including the preliminary analysis of potential clients and end users, screening activities to check whether they are on black lists - for example list of proscribed persons, subject to trade restrictions or prohibitions, including lists from government authorities worldwide, as well as global lists maintained by multinational bodies such as United Nations and the World Bank - and other checks in the case of transactions with Sensitive Countries. The screening is supported by external data provider and provides for qualitative and quantitative results.

All the above mentioned tools and processes go beyond compliance, as not all of them are required by national licensing law and regulations.

By means of the Trade Compliance Program, Leonardo ensures full compliance with the applicable laws and regulations laid down by the competent authorities regarding export, import, transit, brokering, re-export, transfer or use of defence and dual use products and services, of commercial products and services subject to regulations as well as obligations related to embargoes, sanctions or other trade restrictions. But it is worth mentioning that the governmental authorities in charge of export licensing do take into account aspects related to the respect of human rights in providing their evaluations and authorizations. As an example, focusing on Italy, according to the Italian Law n. 185/1990 export and transit of military goods and technologies are forbidden towards Countries whose governments are responsible for ascertained violations of the international conventions on human rights.

Confirming our commitment to responsible business conduct, Leonardo joined the United Nations Global Compact, the world's largest business sustainability initiative focused on human rights, labour rights, the environment and anti-corruption.

Finally, please note that some links provided in the letter are outdated:

- The correct link to the 2018 Annual Financial Report is the following <https://www.leonardocompany.com/investors/results-and-reports>;
- The correct link to the Saudi Arabia page is <https://www.leonardocompany.com/global/middle-east/saudi-arabia> , you should amend the sentence reported regarding Electronics, Defence & Security Systems division accordingly and with the new divisions' names (“Electronics division” and “Cyber Security division”);

The 2018 Sustainability and Innovation Report is available online, please refer to this instead of the 2017 report (see link in the below mail).

We hope this helps you in understanding Leonardo's position and kindly ask you to inform us when the final publication will be online.

Best regards

Manuel

Dear Mr Wilcken,

Thank you for your letter dated 18 April addressed to Mr Woodburn. You have asked the company for comments or clarifications on extracts from a report that you are preparing.

By way of clarification, I have attached to this message a mark-up of the text of your letter with updated information relating to your references to BAE Systems.

At this stage, we have three principal comments on the information that you have provided concerning your report.

1. The text that you have provided for our comment includes the following statement: *"In the UK, Amnesty International was involved as an intervenor in a Judicial Review brought by the UK-based NGO the Campaign against the Arms Trade (CAAT) against the Secretary of State for International Trade, challenging the UK government's decision to continue to licence the export of military equipment to Saudi Arabia. Both BAE Systems and Raytheon were listed as interested parties.²⁰⁰¹¹"* In order to ensure that your proposed report is balanced and fair, our suggestion is that you at least provide a link to the Press Summary on the outcome of these proceedings as published by the High Court, which is highly relevant to the subject matter of your report. I have attached a copy of the Summary for ease of reference.
2. You state in your letter that *"..the report's overall conclusion is that each of the companies surveyed is failing to meet its responsibility to respect human rights as set out in the UNGPs, and are instead effectively outsourcing that responsibility to states.."*. Any such conclusion relating to BAE Systems is misleading. The Company's commitment to compliance with the laws and regulations relating to its business, including humanitarian law, is clearly and publicly documented as is the Company's commitment to respecting human rights. Further, to suggest that the Company is *"..outsourcing.."* its legal and regulatory compliance responsibility to national Governments is both false and misleading. It is for National Governments to pass laws and regulations and for Companies and others to comply with them.
3. In the context of arms export control regulation, Governments have reserved to themselves the final determination on compliance with internationally agreed criteria applying to arms exports, as the High Court makes clear in the UK legal proceedings to which you refer. Furthermore, BAE Systems does itself apply measured and appropriate policy and process of its own in respect of compliance with laws and regulation and you acknowledge that in your letter where you refer to the requirements of BAE Systems' Product Trading Policy. The assertion in your report that BAE Systems is amongst a group of companies which fail to undertake adequate human rights due diligence is false.

I would be grateful if you would confirm to me in writing by return that your report will not include either express or implied false and misleading statements relating to BAE Systems, including, in particular, those referred to above.

We look forward to receiving your response.

Yours sincerely,

Deborah

Dr Deborah Allen

MD Operational Governance

BAE Systems

200¹¹ See Sealed Order from the High Court, 11 January 2015, <https://www.caat.org.uk/resources/countries/saudi-arabia/legal-2016/2016-07-11.sealed-order.pdf>



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T + 44 (0) 20 7222 9020

30/04/2019

Patrick Wilcken
Researcher
Military, Security and Policing Issues
Amnesty International

RE: OPPORTUNITY TO RESPOND TO UPCOMING AMNESTY INTERNATIONAL PUBLICATION

Dear Mr. Wilcken,

I am writing to respond to your letter to Warren East dated 18 April 2019. Thank you for the opportunity to comment on some of the points you plan to make in your upcoming publication.

Please would you take the following into account:

1. Firstly, we would like to reiterate our commitment to maintaining the highest ethical standards, and to maintaining and improving global policies and processes to avoid any potential complicity in human rights violations. The potential impacts from the use of our products are not taken lightly, and we value the work of organisations such as Amnesty International in holding businesses and governments to account.
2. I would like to clarify Rolls-Royce's position within the defence sector. As noted in your report, we are an engineering company focused on power and propulsion systems, manufacturing gas turbine and reciprocating engines for the civil aviation, defence, power generation and industrial markets. For these reasons we do not consider ourselves to be an 'arms company'.
3. Our human rights policy was not developed in response to the bribery and corruption investigations initiated by the company in 2012. We have a long-standing commitment to preserving the human rights of our employees and those impacted by our operations, demonstrated by the fact we have had a published human rights policy since 2008.

Further, I would like to reiterate our statement that our human rights due diligence processes are embedded within our operating and decision making practices, and do not exist as a standalone procedure. We believe this a mature approach and should not be misinterpreted as lacking appropriate attention.

rolls-royce.com Rolls-Royce plc. Registered office: 62 Buckingham Gate, London SW1E 6AT. Registered Company 1003142, United Kingdom



4. As stated in our previous communication, we do rely on the export control laws that apply to our operations. In the UK, those laws require us to seek permission from the government before we can export military engines, parts and services to the end-customer, including to the armed forces of governments.

We do believe that it is reasonable for a company such as Rolls-Royce to rely on the UK government's position on relevant export control licences. Primarily, this is because we do not always have a relationship with end-customers in defence export activity, and we do not have the access to the same level of information as held by governments, therefore governments are better placed than the private sector to form views on relevant issues. We stand by the belief that it is the responsibility of elected governmental officials to determine whether or not to do business with other nations' governments.

However, we do not accept the allegation that the decision of state officials is accepted uncritically. As previously stated, we work closely with government, respected NGOs and trade associations to raise awareness and advice on the need for mechanisms to promote responsible arms trade. This includes raising concerns where appropriate. We were also heavily involved in support of the UN Arms Trade Treaty, and continue to be so.

Please let me know if you require any further information. If possible, we would appreciate advance notification of the intended publication date and, if appropriate, a copy of the full report once finalised.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Gregory'.

Mark Gregory
General Counsel, Rolls-Royce plc

Dear Patrick

In response to your correspondence and specifically with reference to Airbus, we have reviewed your draft and have made the following comments below, embedded in your initial text:

Airbus Group is a multinational aerospace corporation headquartered in the Netherlands, with production facilities across Europe, China and the USA. In 2017, Airbus reported external revenues of around € 67 billion, of which only ~15% were related to defence production is for military aviation goods and services. Nevertheless, this still places Airbus among the top ten defence companies – the second largest in Europe - with defence-related external revenues of € 9.9 billion arms sales of US\$11.29 billion in 2017.^[2] Airbus designs and manufactures fighter aircraft, aerial tankers, military transporters, military attack helicopters and artillery systems, among other products, selling to markets which include Saudi Arabia and Egypt.^[3] In 2017, Airbus reported an EBIT Adjusted of € 4,253 million, including both its civil and defence activities. Airbus reported pre-tax profits of € 5 billion for 2018.^[4]

We would also like to reiterate:

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.

Regards


Andrea DEBBANE


Vice President Responsibility & Sustainability
Executive Director, Airbus Foundation



**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

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OUTSOURCING RESPONSIBILITY

HUMAN RIGHTS POLICIES IN THE DEFENCE SECTOR

There is now a clear global consensus that companies have a responsibility to respect all human rights wherever they operate. Yet every year corporate actors supply large volumes of military equipment to some of the most violent and unstable parts of the world. This equipment is often used unlawfully in contexts of armed conflicts and political unrest marred by serious violations of international human rights and humanitarian law. The sector urgently needs to develop robust human rights due diligence policies and processes, separate from those undertaken as part of government licensing assessments, that truly address the very serious human rights risks the industry routinely runs. States where companies are located or operate from must force companies to put in place human rights due diligence policies and procedures and effectively oversee the industry to ensure that its operations are not linked to serious violations of international human rights and humanitarian law.