

Between 2014-2018, the United States, China, Russia, France and Germany were the largest arms exporters in the world. Four other European states, the UK, Spain, Italy and the Netherlands, also secured a spot in the top ten. Combined exports by the top five West European arms exporting states – France, Germany, the UK, Spain and Italy – accounted for 23% of the global total over the last five years. Germany's arms exports during 2018 amounted to 5.8% of the world's total.

The United Nations' Arms Trade Treaty prohibits the 104 state parties to: *"(...) authorize any transfer of conventional arms (...) if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party."* Similar prohibitions can be found in the European Union Council Common Position 2008/944/CFSP. Here, export licences should be denied if *"there is a clear risk that the military technology or equipment to be exported might be used for internal repression."*

Regardless of these laws, arms are still exported to countries where human rights violations or violations of international humanitarian law have been widely documented, such as Mexico, Colombia and Saudi Arabia. In Europe, civil society is challenging problematic arms export authorizations through advocacy and legal proceedings. For example, in the UK the Court of Appeals ruled that the government's decision-making process was flawed in authorizing arms exports to Saudi Arabia. In Belgium, a court suspended and later cancelled licenses for arms exports to Saudi Arabia.

While the examples of cases against governments who authorize the exports show some degree of success, one urgent question remains: What about the liability of the companies involved? This question especially concerns companies that manufacture and export arms to states where they know or should have known that the equipment might be used for internal repression, the commission of human rights or international humanitarian law violations. Certain large arms manufacturing companies find that they do not have any responsibility in that regard as shown by the following statements. The CEO of a large defence company states: *"We do not account for the customer's use of our products. [...] We cannot assume responsibility for the utilization of our military equipment."* And a CEO of another large defence company remarks: *"It is a matter of fact we're not involved in any part of prosecuting, planning or executing the war. We are a defence company. We are not an aggressive company. We don't conduct wars."*

These companies apparently forget that under the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, they are obliged to make a human rights risk assessment for their transactions. Looking at defence companies' Codes of Conduct and their non-financial reporting it is impossible to find a meaningful impact analysis of whether their export products could be used for violations of human rights or humanitarian law. Of course, even less so are any concrete measures taken.

ECCHR argues that under certain circumstances, these can be held criminally liable. In April 2018, ECCHR together with other NGOs – Mwatana (Yemen) and Rete Disarmo (Italy) – filed a criminal complaint before the Italian prosecutor in Rome. They requested an investigation into the liability of RWM Italia S.p.A.'s officers, a subsidiary of German Rheinmetall AG, for exports of arms to Saudi Arabia that were used in airstrikes in Yemen. In another case, concerning arms exports by UK companies to Saudi Arabia, a UK barrister asserts: *"Suppose you were planning to rob a bank and I knew you were planning to rob a bank and I prepared a car for you, that makes me guilty of robbery. If [company x] conclude that international humanitarian law is being breached then criminal liability stares them in the face. If they've come to those conclusions then they shouldn't be involved in this conflict. If they haven't come to those conclusions then the question is whether they should have."*

In Germany, employees of arms manufacturing companies Heckler & Koch and Sig Sauer have stood trial and were found guilty, in first instance, of violating export control laws. In both cases the courts also sanctioned the companies for the illegal export by ordering a fine. Both companies appealed. In the press release of the court in Stuttgart that dealt with exports to Mexico, the judge highlighted that *"subject of this case was only the illegal arms trade, not the use of those weapons in Mexico."* It is noteworthy, however, that in another case concerning arms supply of a dark-net trader, a court in Munich concluded that the trader is criminally liable for negligent homicide. What makes this dark-net trader so different from a professional defence company that has a steady business relationship with its partners and at times year-long insights into their practice of using the arms supplied?

Why do European governments continue to authorize arms exports to problematic purchasing countries, and why do corporations continue to export arms regardless of knowing that their products would be used to commit human rights violations? A former UK Air Vice Marshall gave the following explanation for the UK's exports to Saudi Arabia: *"It's about balance of payments. It's about influence in the Middle East. It's around stability [of] oil prices that dancing with the devil sometimes is worth it."* None of these reasons shield from responsibility.