

Mandates of the Special Rapporteur on the situation of human rights in Myanmar and the Working Group on the issue of human rights and transnational corporations and other business enterprises

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(Please use this reference in your reply)

16 October 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Myanmar and Working Group on the issue of human rights and transnational corporations and other business enterprises, pursuant to Human Rights Council resolutions 49/23 and 53/3.

We would like to bring to your attention information we have received concerning **reports that an Israeli State-owned enterprise, Israel Aerospace Industries Limited**, has sold and shipped aerospace technology to Myanmar's military, including after the February 2021 military coup that overthrew the democratically elected government. These alleged sales include eight discrete shipments of aerospace parts to the Myanmar military regime's Directorate for Defence Procurement from 2019 to 2022.

Shipments of arms from by Israel to Myanmar were the subject of exchange between the mandate of the Special Rapporteur on Myanmar and Your Excellency's government, and were included in his 2021 Conference Room Paper, "Enabling Atrocities: UN Member States' Arms Transfers to the Myanmar Military" (A/HRC/49/CRP.1). In that paper, paragraphs 105 –109 examined Israeli transfers of military equipment to the Myanmar military. Observing that an Israeli state-owned enterprise reportedly delivered attack frigates to the Myanmar military in 2017 and possibly as late as 2019,¹ the paper also noted that the company had agreed to sell six Super Dvora Mk III gunboats to Myanmar.² At the time of publication, the Paper noted that Myanmar had received at least two of the Super Dvora Mk III gunboats out of the six ordered. The Super Dvora Mk III is a jet-powered craft used for patrols or combat missions. Prior to publishing the paper, the Special Rapporteur on Myanmar contacted Your Excellency's Government to request a comment, but did not receive a reply to my communication requesting clarification of Israel's policy concerning weapons transfers to Myanmar.³

According to the new information received:

Israel Aerospace Industries Ltd. is the State of Israel's major state-owned aerospace and aviation manufacturer and seller. It manufactures and sells a

¹ SIPRI Arms Transfers Database, Transfers of major weapons: Deals with deliveries or orders made for 2015 to 2020, Recipient: Myanmar, Supplier: Israel, Information generated: 21 Jan 2022, https://armstrade.sipri.org/armstrade/page/trade_register.php.

² IAI, Super Dvora MK3 Multimission Fast Patrol Craft, Technical Data, <https://www.iai.co.il/p/super-dvora-mk3>; "Super Dvora MKIII Patrol Boats," *Naval Technology*, 12 May 2015, <https://www.naval-technology.com/projects/super-dvora-mkiii-patrol-boats/>.

range of products for civilian and military use, including drones, fighter aircraft, missiles, and other high-end electronic systems.

Israel Aerospace Industries Ltd. has reportedly made eight discrete shipments of aerospace parts. to the Myanmar military regime’s Directorate for Defence Procurement, 2019 and 2022. The shipments were of “metal plates” that could be used in aerospace products or potentially to outfit the Dvora-class patrol boats that Israel Aerospace Industries Ltd. previously sold to Myanmar in 2017.

Four of these shipments occurred prior to February 2021, but well after the genocidal attacks against the Rohingya of 2017: two in July and August 2019 and two more in March and April 2020.

Credible information further indicates that four more shipments reportedly occurred after the coup – two in March and April 2021 and two final ones in February and March 2022.

The final two shipments occurred after the Government of Israel supported United Nations General Assembly Resolution 75/287, which called on UN member states to “prevent the flow of arms into Myanmar.”⁴ These final two shipments also occurred while the recipient – the Directorate of Defence Procurement of the Commander-in-Chief – was subject to numerous international sanctions for its involvement in actions that may be considered crimes against humanity and war crimes. All eight shipments also occurred after a spokesperson for Israel’s Foreign Ministry stated, in June 2019, that “Israel does not sell arms to Myanmar and this policy has not changed.”⁵

In addition to the allegations above, I also note that a coalition of Israeli human rights attorneys and advocates have submitted three separate requests to the Attorney General of the Government of Israel, requesting investigations be conducted into sales of weapons, dual-use technologies, and surveillance software by Israeli companies to the Government of Myanmar after the attacks against the Rohingya in 2017.

The first request, dated 3 October 2022, requests the Government of Israel to examine allegations that Israel Aerospace Industries Inc, Elbit Systems, and Israel Shipyards engaged in corrupt acts related to the sale of arms to Myanmar prior to the coup.⁶

A second request, dated 2 January 2023, requested the Government of Israel open an investigation into the company Cognyte Software Ltd. to determine if the tender it won to provide a communications interceptions system to the

⁴ The Situation in Myanmar, G.A. Res 287. UN Doc. A/RES/75/287 (25 Jun 2021).

⁵ Noa Landau, “Israel to Bar Myanmar Officials From Arms Expos,” *Haaretz*, 17 Jul 2019, <https://www.haaretz.com/israel-news/premium-israel-to-bar-myanmar-officials-from-arms-expos-1.7532506>.

⁶ Eitay Mack. “Demand to open criminal investigation against the companies IAI, Elbit and Israel Shipyards, and against the officials in the MOD and MFA because of suspicion for their involvement in corruption in Myanmar.” 3 October 2022. https://global-uploads.webflow.com/5e691d0b7de02f1fd6919876/63589d962749b8e39efc8e49_Complaint-Myanmar-3.10.2022.pdf

Government of Myanmar in 2020 has been used to aid and abet crimes against humanity committed by the Myanmar military.⁷

The final request, dated 6 June 2023, requested the Government of Israel to open an investigation into CAA Industries Ltd., an Israeli manufacturer that allegedly sold injection moulds and upgrades for the Myanmar military's small arms manufacturing tools in 2019 prior to the coup.⁸

The latter two sales both occurred after the September 2017 case in the High Court of the State of Israel regarding whether or not Israeli companies could export arms to Myanmar. The decision in the case has not yet been made public.⁹

The Special Rapporteur on Myanmar has previously reported on the strong evidence that the Myanmar armed forces have committed war crimes and crimes against humanity, including acts of murder, persecution, imprisonment, sexual violence, enforced disappearance, deportation and forcible transfer, and torture since the military coup in 2021.¹⁰ The UN General Assembly passed Resolution 75/287 on 25 June 2021 calling on UN member states to "prevent the flow of arms into Myanmar," a resolution that the Your Excellency's government supported.¹¹

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to International Human Rights Law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the United Nations Human Rights Council, to seek to clarify cases brought to our attention, and in order to ensure the accuracy of our future reporting, we seek clarification from Your Excellency's Government on the information provided above and your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations, including whether the above information is accurate and complete. Please also provide any additional information or context you think is relevant to our inquiry.

⁷ Eitay Mack. "Demand to open criminal investigation against the company Cognyte Software Ltd, and against the officials in the MOD and MFA because of suspicion of them aiding and abetting crimes against humanity in Myanmar." 2 January 2023. https://global-uploads.webflow.com/5e691d0b7de02f1fd6919876/63c25fdedd3beb51c44dce61_Complaint%20Cognyte%20Myanmar-2.1.2023.pdf

⁸ Eitay Mack. "Demand to open criminal investigation against CAA Industries Ltd. and against the officials in the MOD and MFA because of suspicion of them aiding and abetting crimes against humanity and war crimes in Myanmar." 6 June 2023. https://global-uploads.webflow.com/5e691d0b7de02f1fd6919876/64814b11c8e2ed2234ba798d_Complaint-%20CAA%20Myanmar-6.6.2023.pdf

⁹ Oded Yaron. "Israel Sold Arms to Myanmar Even After the 2021 Military Coup." *Haaretz*. 5 September 2023.

¹⁰ See, e.g., Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews, UN Doc. A/HRC/52/66, 9 March 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5266-situation-human-rights-myanmar-report-special-rapporteur>.

¹¹ The Situation in Myanmar, G.A. Res 287. UN Doc. A/RES/75/287 (25 Jun 2021).

2. Please clarify Israel's policy concerning weapons transfers to Myanmar and whether the transfers by Israel Aerospace Industries Ltd. violated such policies.
3. Please provide further details on the 2017 court case referenced above in which the High Court of the State of Israel ruled on the lawfulness of arms transfers by Israeli companies to the Government of Myanmar, including any justification of why the decision remains classified.
4. Please clarify on the status of investigations into Israel Aerospace Industries, Ltd., Elbit Systems, Israel Shipyards, Cognyte Software Ltd., and CAA Industries Ltd. for their involvement in the transfer of arms and dual-use technologies to the Myanmar military before and after the coup.
5. Please indicate whether the Israeli government has authorized the transfer of any other arms or dual-use technologies from other Israeli companies to Myanmar's military junta since the 1 February 2021 coup.
6. Please provide information on concrete progress made by the government of your Excellency in requiring or encouraging companies domiciled in your territory and/or jurisdiction to implement human rights due diligence processes, that would be complemented by a conflict-sensitive approach when needed.
7. Please provide information on how your Excellency's Government has taken additional steps to ensure that States owned and controlled business enterprises, in particular Israel Aerospace Industries Limited, respect human rights, including requiring human rights due diligence and providing remediation for any human rights abuses linked to its activities.
8. Please provide information on the steps the Government of your excellency is taking or considering taking to ensure that individuals affected by the activities of business enterprises domiciled in your jurisdiction have access to remedy in your country, through judicial or extrajudicial State mechanisms.

Please provide information on additional steps taken by your Excellency's government to protect against human rights abuses by this company as a state-owned enterprise, including by requiring human rights due diligence

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While we are awaiting a reply, we urge Your Excellency's Government to take all necessary interim measures to ensure that no products or services relating to

weapons or dual-use technologies are provided to the Myanmar military junta or its proxies and ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a letter on the same subject has also been addressed to Israel Aerospace Industries Ltd.

Please accept, Excellency, the assurances of our highest consideration.

Thomas Andrews
Special Rapporteur on the situation of human rights in Myanmar

Damilola S. Olawuyi
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Annex

Reference to international human rights law

Examining instances of the transfer, or authorization of private sector transfers, of arms from one United Nations member state to another requires examining international humanitarian law, as codified in the Geneva Conventions, customary international law related to State responsibility, and the Arms Trade Treaty. We have outlined UN member state obligations in detail in my two reports titled “Enabling Atrocities” and “The Billion Dollar Death Trade,” which I presented to the 49th and 53rd sessions, respectively, of the UN Human Rights Council.¹²

The Government of Israel supported the 18 June 2021 General Assembly Resolution 75/287 that called upon “all Member States to prevent the flow of arms into Myanmar.” Resolution 75/287 passed by a vote of 119 in favor, one against (Belarus), and 36 abstentions. General Assembly resolutions reflect the views of Member States and provide policy recommendations but are non-binding. The implementation of the recommendations contained in resolutions is the responsibility of each Member State. Member States impose arms embargos under their domestic legal frameworks, where such frameworks exist.

In the absence of a global sanctions regime imposed by the Security Council, States have other obligations under international humanitarian law, as expressed in the Geneva Conventions, that are triggered in the context of a non-international armed conflict. There is now little doubt that the situation in Myanmar involves several non-international armed conflicts.¹³

Member States that continue to provide weapons and associated equipment to another State that is engaged in violations of international humanitarian law in many cases violate international humanitarian law. Common Article 1 to the Four Geneva Conventions requires States to “undertake to respect and to ensure respect for the present Convention in all circumstances.”¹⁴ The International Committee of the Red Cross’s (ICRC) authoritative commentary on Article 1 further requires that States “refrain from transferring weapons if there is an expectation, based on facts or knowledge of past patterns, that such weapons would be used to violate the Conventions.”¹⁵ Thus, if a transferring state knows that the state receiving the weapons systematically commits violations of international humanitarian law using certain

¹² Special Rapporteur on the situation of human rights in Myanmar, “Enabling Atrocities: UN Member States’ Arms Transfers to the Myanmar Military.” UN Doc. A/HRC/49/CRP.1. 22 February 2022.

Special Rapporteur on the situation of human rights in Myanmar, “The Billion Dollar Death Trade: The International Arms Networks that Enable Human Rights Violations in Myanmar.” UN Doc. A/HRC/53/CRP.2, 17 May 2023.

¹³ The existence of non-international armed conflicts in Myanmar is widely accepted, including by the IIMM. Report of the Independent International Investigative Mechanism for Myanmar, U.N. Doc. A/HRC/51/4, 12 July 2022 (“The information collected by the Mechanism this past year indicates that several armed conflicts are ongoing and intensifying on the territory of Myanmar. This triggers the application of international humanitarian law and obligates all parties to the conflicts to ensure that their forces comply with the applicable laws of war.”).

¹⁴ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 Aug 1949, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.30_GC-IEN.pdf

¹⁵ Commentary of 2016, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, Article 1: Respect for the Convention, International Committee of the Red Cross, para. 153 and 168, https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1#83_B

weapons, the transferring state must deny further transfers of those weapons, even if those weapons could also be used lawfully.¹⁶

Under customary international law concerning State responsibility, any state that continues to sell arms to another state with knowledge of “internationally wrongful acts” the recipient state is committing with those arms is itself likely aiding and abetting in those wrongs. As articulated in Article 16 of the International Law Commission’s (ILC) draft Articles on Responsibility of States for Internationally Wrongful Acts, “a State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.”¹⁷ “Internationally wrongful act[s],” include, but are not limited to, crimes against humanity, genocide, and war crimes.¹⁸ The Myanmar military has been credibly accused of committing all of these “internationally wrongful acts.”

The United Nations Arms Trade Treaty (ATT) provides a global set of rules governing the trade in conventional weapons. The ATT’s goals include “reducing human suffering” and “contributing to international and regional peace, security and stability.”¹⁹ It was adopted at the UN General Assembly in April 2013 and entered into force in December 2014.

Article 6 of the ATT prohibits Member States who accede to or ratify it from transferring the covered categories of 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.”²⁰ Where exports are not prohibited under Article 6, Article 7 of the ATT prohibits Member States from transferring arms where it assesses there is an unmitigable risk that those arms “could be used to commit or facilitate a serious violation of international humanitarian law” or “international human rights law.” Article 3 applies the provisions of Article 6 and Article 7 to munitions and ammunition used in the conventional arms covered by the ATT.

We would like to highlight the UN Guiding Principles on **Business and Human Rights**, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) after years of consultations with governments, civil society and the business community. The Guiding Principles were established as the authoritative global standard for all states and companies to prevent and address the

¹⁶ Harriet Moynihan, “Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism,” Chatham House, November 2016, at 27, <https://www.chathamhouse.org/sites/default/files/publications/research/2016-1111-aiding-assisting-challenges-armed-conflict-moynihan.pdf>. Common Article 1 applies to non-international armed conflicts and international armed conflicts equally. See Commentary of 2016, Convention (I), supra note 22, para. 125.

¹⁷ Report of the International Law Commission on the work of its fifty-third session, U.N. Doc. A/56/10, 23 April – 1 June and 2 July – 10 August 2001, Official Records of the General Assembly, Fifty-sixth session, Supplement No.10, Draft Articles on Responsibility of States for Internationally Wrongful Acts, art. 16 (2001), https://legal.un.org/ilc/documentation/english/reports/a_56_10.pdf.

¹⁸ Ibid., commentary to art. 15, para. 2 at 62 (citing genocide, crimes against humanity, and other “composite acts” that, through a series of aggregated actions constitute an international wrongful act).

¹⁹ The Arms Trade Treaty, Article 1,

https://thearmstradetreaty.org/hyperimages/file/ATT_English/ATT_English.pdf?templateId=137253

²⁰ Ibid., Article 6 .

negative impacts of business on human rights. The Guidelines are based on the recognition that:

- a."The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms;
- b.The role of business enterprises as specialised bodies or companies performing specialised functions, which must comply with all applicable laws and respect human rights;
- c.The need for appropriate and effective remedies for rights and obligations when they are violated.

The Guiding Principle 1 reiterates the State's duty to "protect against human rights abuses by business enterprises on its territory and/or under its jurisdiction". The Guiding Principle 2 provides that States should make clear that all companies domiciled on their territory and/or under their jurisdiction are expected to respect human rights in all their activities. In addition, the Guiding Principle 3 reiterates that States must take appropriate measures to "prevent, investigate, punish and remedy such abuses through effective policies, laws, regulations and adjudication". In addition, it requires, among other things, that a State "provide effective guidance to business enterprises on how to respect human rights throughout their operations".

Furthermore, the Guiding Principles 4 requires States to take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, including, where appropriate, by requiring human rights due diligence.

In addition, the UN Working Group on Business and Human Rights, in its report "A/75/212" on "business, human rights and conflict-affected regions: towards heightened action" urges home and host States to use their key policy tools and levers to ensure that business engages in conflict-sensitive heightened due diligence when operating in conflict-affected areas.

The Guidelines also state that business enterprises have an independent responsibility to respect human rights. Principles 11 to 24 and 29 to 31 provide guidance to companies on how to fulfil their responsibility to respect human rights, including through human rights due diligence processes.

Furthermore, according to Guiding Principle 26, States should take appropriate measures to ensure the effectiveness of domestic judicial mechanisms when dealing with business-related human rights abuses, including by considering how to limit legal, practical and other obstacles that may lead to denial of access to remedy. The commentary states that it should ensure that judicial corruption does not impede the administration of justice, that courts are independent of economic or political pressures from other state actors and companies, and that obstacles are not placed in the way of legitimate and peaceful activities of human rights defenders.

It is also important to recall that the Committee on Economic, Social and Cultural Rights, in its general recommendation 24 (2017), states that "the extraterritorial obligation to protect requires States parties to take steps to prevent and remedy violations of Covenant rights that occur outside their territory as a result of the activities of business entities over which they may exercise control, in particular in cases where

remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective ".