

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

Ref.: AL OTH 131/2023
(Please use this reference in your reply)

16 October 2023

Dear Mr. Levy,

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 are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 59 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your company information we have received concerning **reports that the 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.

The Special Rapporteur on the situation of human rights in Myanmar previously reported on the shipment of arms from Israel Aerospace Industries Ltd. 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 Israel Aerospace Industries Ltd reportedly delivered attack frigates to

Israel Aerospace Industries Limited

the Myanmar military in 2017 and possibly as late as 2019,¹ the paper also noted that your 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.

According to the 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 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."³ 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."⁴

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.

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/>.

³ The Situation in Myanmar, G.A. Res 287. UN Doc. A/RES/75/287 (25 Jun 2021).

⁴ 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>.

Without wishing to prejudge the accuracy of these allegations, we wish to express deep concern that Israel Aerospace Industries Ltd. appears to have been providing equipment to Myanmar's military junta even as it has engaged in a massive campaign of violence targeting civilians. This includes the extensive use of military aircraft that might make use of the parts sold by Israel Aerospace Industries Ltd. to the military junta.

The Special Rapporteur on the situation of human rights in 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 2021.⁵ 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 Israeli government supported.⁶

Given the military regime's illegal coup and involvement in probable crimes against humanity and war crimes, international businesses, including Israel Aerospace Industries Ltd. have an obligation to conduct business responsibly and avoid engaging in activities that legitimize the junta or contribute to its human rights abuses, in accordance with the UN Guiding Principles on Business and Human Rights.

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 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 your clarification on the information provided above and your observations on the following matters:

1. Please indicate whether the above information is accurate and complete and provide any additional information or context that would be useful for our understanding of the situation.
2. Please indicate whether there have been other transfers of arms or related materials by Israel Aerospace Industries Ltd. to entities in Myanmar since the 1 February 2021 coup.
3. Please also clarify whether Israel Aerospace Industries Ltd. has plans to make future sales to the Directorate for Defence Procurement, any other entities controlled by the State Administration Council or Myanmar military, or individuals connected to the military, including arms dealers or other intermediaries.
4. Please provide information as to the steps your company has taken, or is considering, to ensure that your sales are in line with United Nations

⁵ 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>.

⁶ The Situation in Myanmar, G.A. Res 287. UN Doc. A/RES/75/287 (25 Jun 2021).

Guiding Principles on Business and Human Rights as well as controls on arms sales to Myanmar put in place by the Government of Israel.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your company 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 you 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 the Government of Israel.

Please accept, Mr. Levy, 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

Companies, such as Israel Aerospace Industries Inc., must abide by the laws of the states in which they operate while also remaining conscious of international law. The United Nations Guiding Principles on Business and Human Rights (“UN Guiding Principles”) present another source of authority for corporate entities.

The UN Guiding Principles call on businesses to prevent or mitigate adverse human rights impacts that are directly linked to their operations. The UN Human Rights Council had stressed the importance of applying the Guiding Principles in Myanmar prior to the coup. In resolution 40/L.19 (2019), the Council encouraged “all business enterprises, including transnational corporations and domestic enterprises, to respect human rights in accordance with the UN Guiding Principles on Business and Human Rights.”

The need for companies to adhere to the UN Guiding Principles has only grown more urgent in the wake of the coup as the Myanmar military junta has made extensive use of aircraft to commit well-documented atrocity crimes against Myanmar civilians. Any companies engaged in the sale of aircraft parts to the Myanmar military are at extremely high risk of violating these UN Guiding Principles.

Two of the UN Guiding Principles have particular relevance for business entities providing arms and associated materials to the Myanmar military:⁷

1. UN Guiding Principle 13 requires that business enterprises: “Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;” and “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”

2. UN Guiding Principle 17 states that in order to identify, prevent, mitigate and account for how the business addresses their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

International criminal law similarly should also be considered by Israel Aerospace Industries Ltd. as it considers further sales to the Myanmar military junta. Under international criminal law, individuals (such as corporate officers) can be held criminally liable for aiding and abetting crimes against humanity, war crimes, and genocide, including by providing arms used in the commission of the crimes. This principle is laid out in Article 25(3) of the Rome Statute, which established the International Criminal Court:

⁷ Guiding Principles on Business and Human Rights, U.N. Doc. A/HRC/17/31, 21 March 2011

“In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(c) for the purpose of facilitating the commission of such a crime, aids, abets, or otherwise assists in the commission or its attempted commission, *including providing the means for its commission*

(d) in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either be made with the aim of furthering the criminal activity or purpose of the group ... or be made in the knowledge of the intention of the group to commit the crime[.]”⁸

In addition, national prosecutors with universal jurisdiction laws mirroring the Rome Statute, could bring cases against arms dealers, assuming relevant jurisdictional requirements are meant. Moreover, the Independent Investigative Mechanism on Myanmar (IIMM) could begin assembling case files on known arms dealers supporting the Myanmar military in preparation for potential future cases.

⁸ Article 25(3)(c) and (d) of the Rome Statute (emphasis added)