

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 11/2024
(Please use this reference in your reply)

28 February 2024

Dear Mr. Levy and Ms. Luz,

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 52/31 and 53/3.

Thank you for your response dated 15 December 2023 to our communication ([OTH 131/2023](#), dated 15 October 2023) regarding the transfer of aerospace technology to the Myanmar military's Directorate for Defence Procurement up to and including 2022.

You claim that our description of specific transfers is inaccurate and that you have not made such transfers for "several years now". You do not, however, indicate whether or not these transfers occurred, what is inaccurate about the reported findings, nor what you mean by "several years".

Our communication was very clear and specific: Of the eight shipments of aerospace parts sent to the Myanmar military's Directorate of Defence Procurement, four of the shipments occurred between July 2019 and April 2020, prior to Myanmar's February 2021 coup, while the remaining four occurred between March 2021 and March 2022, following Myanmar's coup. Our communication also noted that the delivery of some of the Dvora-class patrol boats took place following the August 2017 "clearance operations" undertaken by Myanmar's military targeting the Rohingya people, operations that have since been recognized as a genocide¹ and which are the subject of an ongoing trial at the International Criminal Court where the court has already found it plausible that Myanmar has committed the crime of genocide.²

We note your claim that Israel Aerospace Industries "is committed to observing the highest standards of responsible business conduct, including with respect to human rights consistent with the UN Guiding Principles on Business and Human Rights".

A commitment to the highest standards of responsible business conduct with respect to human rights requires an honest accounting of practices that contribute to gross violations of these rights. We therefore respectfully request that you address the specific information that we have presented of your business transactions with the Myanmar military.

¹ <https://www.state.gov/burma-genocide/>

² <https://www.icj-cij.org/sites/default/files/case-related/178/178-20200123-ORD-01-00-EN.pdf>

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Is Israel Aerospace Industries Limited categorically denying that it sold and exported shipments of aerospace parts to the Myanmar military's Directorate for Defence Procurement between 2019 and 2022 or Dvora-class patrol boats to the Myanmar military and between 2017 and 2019?
2. What did the most recent transfer to the Myanmar military include and when did it occur?
3. What, specifically, was inaccurate about the findings that were forwarded to you in our communication [OTH 131/2023](#), dated 15 October 2023?

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.

Please accept, Mr. Levy and Ms. Luz, the assurances of our highest consideration.

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

Robert McCorquodale
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:

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:

“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[.]”

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.