

German Corporate and Government Officials' Involvement in Arms Trade with Countries of the Saudi-led Coalition in Yemen: A Link in the Supply Chain Leading to Criminal Liability for Alleged War Crimes?

HENNING BÜTTNER* AND NATHALIE JOYCE ZAVAZAVA**

In December 2019, the International Criminal Court's (ICC) Office of the Prosecutor (OTP) received a joint communication by five non-governmental organisations (NGOs), among them the German NGO 'European Centre for Constitutional Human Rights' (ECCHR).¹ In this 350-page communication, the NGOs argue that European arms companies and manufacturers, as well as high ranking government officials from Europe such as Germany and the UK, should be held criminally responsible for aiding and abetting war crimes (as articulated in Article 8(2) Rome Statute of the ICC)² that had been allegedly committed by the military coalition led by Saudi Arabia and the United Arab Emirates (UAE) in Yemen since the launching of their airstrikes intervention in March 2015.³

The purpose of this article is to evaluate the standing of this claim before the ICC. First, we will outline the relevant facts (I.) followed by an analysis of the underlying reasons for the submission of the joint communication to the OTP (II.). We will then briefly spotlight the procedural aspects of such a communication before the ICC (III.). In the main section of this article, we will address the substantive legal questions governing the corporate and government official's criminal responsibility by focusing on complicity in the sense of Article 25(3)(c) Rome Statute and the

* Doctoral Candidate and Research Associate at the Chair of Prof. Dr. Andreas von Arnould at the Walther Schücking Institute for International Law, University of Kiel.

** Legal professional at the Federal Ministry of Education and Research and former Student Assistant at the Walther-Schücking Institute for International Law, University of Kiel.

¹ Nicolas Richter and Ronen Steinke, *Kriegsverbrechen-Vorwürfe gegen Deutsche Waffenfirmen*, 11 December 2019, available at <https://www.sueddeutsche.de/politik/jemen-saudi-arabien-kriegsverbrechen-airbus-1.4718759>.

² Rome Statute of the International Criminal Court (Rome Statute) 1998, 2187 UNTS 3.

³ European Centre for Constitutional Human Rights (ECCHR) et al., *Case Report: Made in Europe, Bombed in Yemen: How the ICC Could Tackle the Responsibility of Arms Exporters and Government Officials*, February 2020, available at https://www.ecchr.eu/fileadmin/Fall_beschreibungen/CaseReport_ECCHR_Mwatana_Amnesty_CAAT_Delas_Rete.pdf, at 6.