

איתי מק, עו"ד
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October 3, 2022

To:
Gali Baharav-Miara, Adv.
Attorney General of Israel

Re: 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

1. I apply to you on behalf of Avrum Burg, Prof. Eva Illouz, Prof. Louise Bethlehem, Shirli Nadav, Dr. Ran Sahuli, Vardit Goldner, Prof. Ruth HaCohen Pinczower, Shaul Tcherikover, Itamar Feigenbaum, Prof. Yigal Bronner, Yaniv Yurkevitz, Dr. Ruchama Marton, Tuly Flint, Guy Butavia, Tamar Cohen, Tal Nitzan, Dalia Kerstein, Meira Asher, Shoshana London Sappir, Naftali Sappir, Prof. Ben-Tzion Munitz, Bilha Sündermann Golan, Revital Elkayam, Or Ben David, Naomi Kirshner, Dr. Anat Matar, Nora Bendersky, Prof. Gideon Freudenthal, Sharon Gamzo, Raya Rotem, Ofer Neiman, Omer Arvili, Oded Efrati, Roni Segoly, Claudio Kogon, Dr. Yonatan Nissim Gez, Amnon Lotanberg, Dr. Gilad Liberman, Nuni Tal, Ariel Niezna, Tsili Goldenberg, Prof. Veronika Cohen, Dr. Elliot Cohen, Rela Mazali, Yehudit Elkana, Alona Cohen, Naomi Schor, Efrat Levy, Dubi Moran, Mieko Galiko, Rachela Hayut, Dr. Tzvia Shappira, Daphne Banai, Edith Breslauer, Chaya Ofek, Prof. Daphne Golan, and myself.
2. As you know, on August 30, 2018, I submitted to former Attorney General, Avichai Mandelblit, a request to open a criminal investigation, for aiding and abetting crimes against humanity and genocide, against the Israelis who exported military exports to Myanmar, as well as against the government officials who were responsible for approving military exports during the period relevant to the civil war and genocide there, starting in 2015.
3. Although two complaints I submitted to the Ombudsman of the State Representatives in the Courts, regarding your office's handling of the request,

were found to be justified, more than four years have passed and no decision has yet been made if to open a criminal investigation.

4. The reason we are contacting you now with another request, is because recently we received from activists in the group "Justice For Myanmar" documents from Myanmar that are raising suspicion of Israeli involvement in a corruption scandal.
5. According to the documents that will be presented below, the companies IAI, Elbit and Israel Shipyards used the marketing and brokerage services of a local company known to be involved in crime, money laundering, illegal casino, and drug trafficking, called the Star Sapphire Group. Top officials of this local company are related by family and business to the senior officials and officers in the military and its proxy government who purchased the military equipment from the Israeli companies.
6. In the first place, there is no logic that in arms deal between two governments, Israeli companies, including a government company (IAI), should use the marketing and brokerage services of a local company for the purpose of selling their products. It is likely that the local company did not act altruistically but for a fee. Why should Israeli companies pay fees when the Israeli government does the marketing and brokerage for them directly with the Myanmar government? Among other things, on June 27, 2016, the head of the Israeli Defense Export Division of the Ministry of Defense (SIBAT), Brigadier General Michel Ben Baruch, visited Burma and met with the heads of the junta there, including General Min Aung Hlaing and his deputy Soe Win.

Senior General Min Aung Hlaing

June 28 -

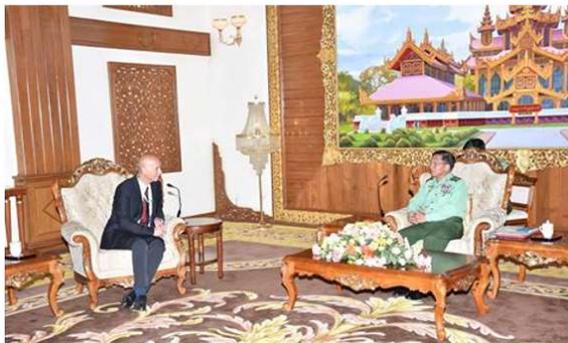
Senior General Min Aung Hlaing receives Director of SIBAT (Israel MOD International Defense Cooperation Directorate) of Israeli Ministry of Defense

Nay Pyi Taw June 27

Commander-in-Chief of Defence Services Senior General Min Aung Hlaing received Brigadier General (Ret.) Michel Ben Baruch, Director of SIBAT (Israel MOD International Defense Cooperation Directorate) of the Ministry of Defense of Israel at Bayintnaung Parlour, here, at 10 am today.

They frankly exchanged views on promotion of cooperation in friendly relations and defence between armed forces of the two countries, progress of Myanmar in multiparty democracy and peace processes, cooperation with Directorate of Resettlement in agriculture tasks, and future cooperation in health sector.

Also present at the call were Deputy Commander-in-Chief of Defence Services Commander-in-Chief (Army) Vice-Senior General Soe Win and senior military officers of the Office of the Commander-in-Chief (Army). Brigadier General (Ret.) Michel Ben Baruch of the Israeli Ministry of Defense was accompanied by Israeli Ambassador to Myanmar H.E. Mr. Daniel Zohar Zonshine and officials. After the meeting, they posed for documentary photo.



7. One of the top officials of Star Sapphire Group, Tun Min Latt, was arrested two weeks ago in Thailand for drug trafficking and money laundering¹. He is the son of Khin Maung Latt, a former lieutenant colonel of the Myanmar Air Force, who also served as director-general of the Ministry of Hotels and Tourism². Both father and son were formerly sanctioned by the European Union³.
8. Another top official of Star Sapphire Group is Htet Aung, son of a brigadier general Zin Yaw, who was formerly Chief of Staff (Air) and a former director of the military conglomerate Myanmar Economic Holdings Public Company Limited (MEHL)⁴. Zin Yaw was also the deputy minister of foreign affairs from 2012-13⁵ and then deputy minister of transport from 2013 to 2016. Zin Yaw also ran as a candidate in the 2015 election for the military's proxy party⁶. Both father and son were formerly sanctioned by the European Union⁷.
9. Both Tun Min Latt and Htet Aung are considered close associate of Myanmar junta leader Senior General Min Aung Hlaing⁸, and his daughter Khin Thiri Thet Mon was a top official in a sub-company of the Star Sapphire Group, called Star Thiri Investment Limited, which was renamed Royal Mawtaung Mining Company Limited. As explained in the first complaint we filed, Senior General Min Aung Hlaing was the leader of the military delegation to Israel on September 2015, who signed the arms deal with Israel.
10. Both Tun Min Latt and Htet Aung were removed from the European Union's sanctions list before the activity in question, with Zin Yaw only removed in 2013 as part of efforts to encourage the military to facilitate political reform in the country. But the arms embargo and the ban on conducting military business with them, which began in the early 1990s by the countries of the European Union and the United States, were not lifted⁹.
11. According to the latest decision of the Ombudsman of the State Representatives in the Courts, already on January 30, 2022, the documents from the Ministry of Defense relevant to the military export to Burma were transferred to your Office.

¹ <https://www.reuters.com/world/asia-pacific/thailand-arrests-myanmar-military-linked-businessman-suspected-drug-trafficking-2022-09-21/>

² <https://www.travel-impact-newswire.com/2016/12/u-khin-maung-latt-director-general-directorate-of-hotels-and-tourism-myanmar/>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004R0798&from=en>

⁴ <https://www.legislation.gov.uk/eur/2008/194/2010-05-13?>

⁵ <https://journals.sagepub.com/doi/10.1177/186810341603500105>

⁶ <https://www.rfa.org/burmese/news/usdp-2008-constitution-amendment-09282015105221.html>

⁷ <https://www.legislation.gov.uk/eur/2008/194/2010-05-13?timeline=false>

⁸ <https://www.reuters.com/world/asia-pacific/thailand-arrests-myanmar-military-linked-businessman-suspected-drug-trafficking-2022-09-21/>

⁹ <https://www.gpo.gov/fdsys/pkg/FR-2016-12-06/pdf/2016-29171.pdf>; <https://www.pmdtc.state.gov/FR/1993/58FR39280.pdf>; https://www.pmdtc.state.gov/embargoed_countries/; <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0627&from=EN>

12. Although it is likely that the documents regarding the operation of the Israeli companies through the marketing and brokerage of Star Sapphire Group are already in your possession, below are the documents that "Justice For Myanmar" managed to obtain on the Burmese side and their unofficial translation to English. The documents detail a series of marketing and brokerage operations that the Star Sapphire Group carried out. It is explicitly written in the documents that the Burmese company operates with the approval of the Israeli Ministry of Defense:

a) Israel Shipyards:

[Classified]
 Republic of Myanmar Commander-in-Chief (Navy)
 [Logo of Commander-in-Chief of Navy]

[Initials]

Letter No.: 156 / 067 / 29 / U8 Date: 2017 August 28th

To

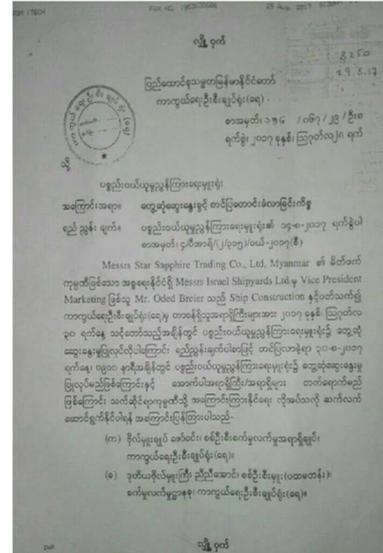
Office of the Directorate of Procurement

Subject: Regarding Meeting Request

Reference: Letter No. 4/PR (2/305) Procure-2017 (C) dated on 14-8-2017

We would like the office to inform the relevant company that a meeting will be held at 9:00 am on 30.8.2017 in the office of Directorate of Procurement and the following officers will be in attendance regarding the matter of Vice President of Marketing Mr. Oded Breier of Israel Shipyards Ltd, a partner of Messrs Star Sapphire Trading Limited, Myanmar, who requested a meeting with the Commander-in-Chief of Navy concerning Ship Construction on August 30, 2017 at an appropriate time in the Directorate of Procurement Office;

- (a) Brigadier General Zaw Win, Chief of Industry, Office of Commander-in-Chief (Navy)
- (b) Lieutenant Colonel Nyi Nyi Aung, General Staff Officer (Grade 1), Industry Platoon, Office of Commander-in-Chief (Navy)



b) IAI:

[Letter head of Star Sapphire Trading Co., Ltd]

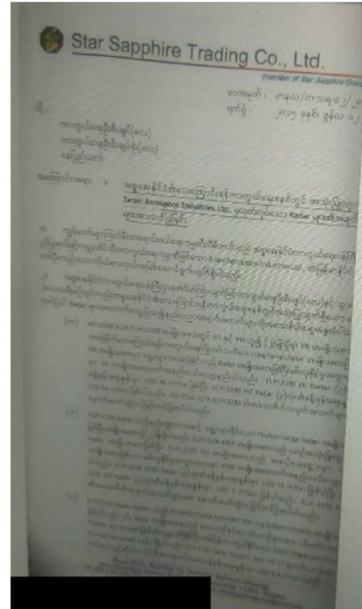
(member of Star Sapphire Group)

Letter No: KaNaLa/ KaThaYa-02/ 2015
 Date: 2015 June 12

To
 Commander-in-Chief (Air)
 Office of the Commander-in-Chief (Air)
 Nay Pyi Taw

Subject: Presenting information on radars manufactured by Israel Aerospace Industries Ltd. which are used in Israel's air defense system

1. We, Star Sapphire Trading Co., Ltd. are acting as Myanmar's sole representative of Israel Aerospace Industries Limited, the world's leading defense company, with the approval of the Ministry of Defense of Israel.
2. The following radars, which are also used in the Israeli Air Force, were shown in practice and technical information discussed in detail during the visit together with the Commander-in-Chief (Air) by invitation of the Ministry of Defense of Israel.
 - (a) AD-STAR ELTA ELM-2288 has two types: ER and MR, where the ER type is a base air defence early warning Long Range Radar type, and the MR type is a radar type with the capture distance slightly less than the ER type. It is USD 49 million for three ELM- 2288 ER Radars and USD 42 million for three ELM-2288 MR Radar. The details of AD-STAR ELTA ELM-2288 are presented in Appendix (A).
 - (b) ELM-2106 Radar is a type of medium range radar that can move at the tactical level, and there are two types. The ELM-2106 ATAR type is a type of radar equipment carried by vehicle, while the ELM- 2106 NG type is a light radar type with the detection range slightly less than that of the ATAR type. The estimated price of three ELM-2106 ATAR Radars is USD 15 million, and the three 2106 NG Radars would cost USD 5 million. Details of the ELM-2106 Radar are shown in Appendix (B).
 - (c) The ELM-2160 Radar System is a type of Airborne Missile Approach Warning System (MAWS). This type of radar is equipped with an ECCM (electronic counter- countermeasures) system that can accurately detect and counter missiles that attack aircraft and helicopters. If the ELM-2160 Radar System is installed on Mi-17 helicopters, the estimated price of six units is USD 8.9 million.



c) Elbit:

[Letter head of Star Sapphire Trading Co., Ltd]

(member of Star Sapphire Group)

Letter No: KaNaLa/ KaThaYa-02/ 2015 (054[unclear])
Date: 2015 June 12

To
Commander-in-Chief (Air)
Office of the Commander-in-Chief (Air)
Nay Pyi Taw

Subject: Presenting information on defense equipment manufactured by Elbit Systems Ltd., used by the Israel Defense Force

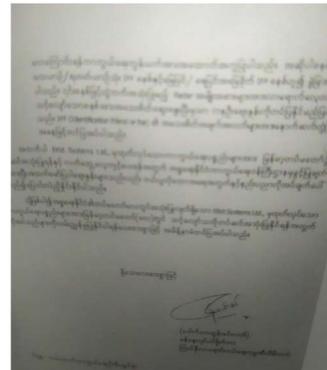
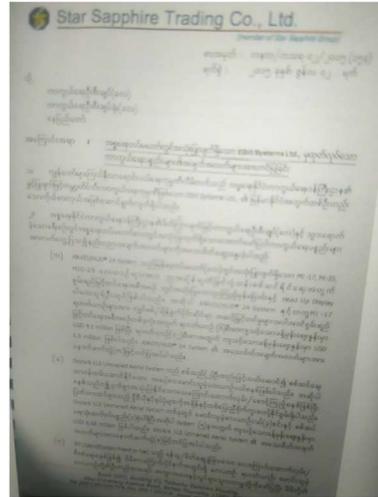
1. We, Star Sapphire Trading Co., Ltd, are Myanmar's sole representative of Elbit Systems Ltd, the world's top defense company, with the approval of the Ministry of Defense of Israel.
2. The following defense equipment, which are also used in the Israeli Air Force, were shown in practice and technical information discussed in detail during the visit together with the Commander-in-Chief (Air) by invitation of the Ministry of Defense of Israel.
 - (a) ANVIS HUD 24 System is a pilot product with night vision binoculars and Head Up Display used in the capability improvement plan to be able to fly visually at night instead of the Mi-17, Mi-35, MiG-29 aircraft used by the Myanmar Air Force. The estimated cost of six helicopters for the entire upgrade program including electrical instrument upgrades to the Mi-17 helicopters with the ANVIS HUD 24 System is USD 4.1 million, and USD 6.5 million for 12 helicopters. The detailed information of ANVIS HUD 24 System is presented in Appendix (A).
 - (b) Skylark ILE Unmanned Aerial Systems is a light unmanned aerial system that be operated by only two soldiers. The system is a stealth aerial surveillance system capable of capturing high-resolution video and images in real-time. Skylark ILE Unmanned Aerial System consists of three small unmanned aerial vehicles and one set of operational accessories, with an estimated price of US\$6.65 million for the five. Details of Skylark ILE Unmanned Aerial Systems are given in Appendix (B).
 - (c) IFF (Identification Friend or Foe) is a foe/friend identification military air defense system that indicates the direction, distance and movement of aircraft and drones within its air network and supports its air defense network. The system is divided into air/helicopter IFF system and land/water based IFF system. An initial price can only be presented after a suitable system has been discussed in detail.
3. The above defense equipment manufactured by Elbit Systems Ltd, has been approved by the Israeli Ministry of Defense for installation and practical training by the Myanmar Armed Forces and the above prices are subject to change based on the quantity of procured items and technical requirements.
4. Therefore, the above defense equipment manufactured by Elbit Systems Ltd, which is used in the Israeli Air Force, is respectfully submitted to the Myanmar Air Force to be properly installed and we request the necessary guidance.

Respectfully,

[Signature]

Dr. Tan Min Lat
Managing Director
Star Sapphire Trading Co., Ltd

Copied
Office of Commander-in-Chief of the Defense Services



The director of the MOD's DECA Unit responsibility to revoke or suspend or grant defence export and marketing licences, or to refrain from granting a new licence

13. Among other things, an investigation is needed against the director of the Defense Exports Control Agency (DECA) in the MOD, and the head of the defense exports unit in the MFA, who were together responsible on regulating the marketing and export of the military systems of IAI, Elbit and Israel Shipyards to Myanmar (the details of the identity of all the officials involved in the marketing and export licenses approval procedure, can be ascertained by your requirement from the MFA and MOD to obtain the documents).

14. In spite of the many faults inherent to the Israeli Defence Exports Control Law, entering into effect in late 2007¹⁰ (the Control Law), this law regularizes licensing protocols and decision-making processes. The law sets criteria for the receipt of licences, setting civil and criminal sanctions to be enforced on those found in breach of the law's provisions, or those of the licences' terms.
15. The Control Law's application is very extensive, applying to any Israeli citizen and/or resident and/or corporation under Israeli control (see article 2, Definition, in said law). Moreover, contrary to common public conception according to which defence export pertains solely to the trade of arms, the Control Law defines defence export at a much broader definition of export of equipment, know-how and provision of defence services. Very broad definitions are similarly applied to defence marketing activity (article 14 of the Control Law) and brokering activities (article 21 of the Control Law).
16. As a prerequisite to receiving a licence, the requesting party must be registered in the defence export registry, and comply with the stipulations established in Chapter C of the Control Law. Moreover, the applicant/receiver of such licence must comply with the specific provisions for each licence type, and the general provisions set forth in Chapter D of the Control Law.
17. The director of DECA is in charge with the implementation of the Control Law's articles, with the administration of the defence export registry and with granting licences for defence export. The responsibility for enforcing the Control Law's provisions lies with DECA, where the Control Law vests authorities with DECA to check and ensure that the export activity is conducted according to the law's provisions, and that the exporter complies with the terms stipulated in the granted licences, in order to prevent equipment, know-how and technologies from leaking to undesirable entities.
18. Article 9 of the Control Law, on "Licence revocation and suspension or restriction of a licence", states the following:
 - (a) **The licensing authority is authorized to revoke a license that is granted pursuant to this chapter or to suspend it, including on probation or according to stipulations it shall set forth, as well as to restrict the license, taking into account, amongst others, the considerations listed in Section 8 above.**

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http://www.exportctrl.mod.gov.il/Documents/%D7%97%D7%95%D7%A7%20%D7%94%D7%A4%D7%99%D7%A7%D7%95%D7%97%20+%20%D7%A6%D7%95%D7%95%D7%99%D7%9D%20+%20%D7%AA%D7%A7%D7%A0%D7%95%D7%AA/Defense_Export_Control_Law.pdf

- (b) **The licensing authority shall not revoke, suspend or restrict a license, prior to affording the license holder the opportunity to voice their arguments.**
 - (c) **Despite the provisions in subsection (b), under special circumstances and due to urgency, the licensing authority may suspend or restrict a license prior to affording the license holder to voice their arguments.**
 - (d) **Reasons of state security, foreign relations considerations or international obligations will not constitute as an argument against the licensing authority's decision under this section.**
 - (e) **An announcement regarding a decision by the licensing authority under this section will be made known to the applicant in a manner and time period as set forth by the minister in regulations.**
19. Article 8(7) of the Control Law determines the director of DECA authority to refuse granting the licence due to "**considerations regarding the end-user or the end-use.**"
 20. Articles 25-27 define the status of the head of the defence exports unit in the MFA, as an advisor to the director of DECA in the regulation on defence exports.
 21. The director of DECA is no different than any other administrative authority in the State of Israel, to which the rules of Administrative Law apply. One of the basic concepts are that, once an administrative entity is vested with authority, it carries the continuous obligation to consider the need to execute said authority (see HCJ 4374/15 Movement for Quality Government in Israel (R.A.) v. Prime Minister of the State of Israel (published in Nevo, 27.3.2016); HCJ 297/82 Ezra Berger v. Minister of Interior (published in Nevo, 12.6.1983); and also, Daphne Barak-Erez, Administrative Law, book 1, p. 201-202 (2010)).
 22. In order to make an adequate administrative decision on granting, suspending or revoking a defence export and marketing licences for military systems to Myanmar, the director of DECA should have formulate sufficient factual basis for making the decision, review all applicable considerations and enact the judgement he/she was endowed with in a reasonable, proportional manner, taking into account all relevant considerations. Additionally, he/she should have justified his/her rationales for the decision, and this obligation also gives rise to his/her obligation to present the public with the factual basis upon which his/her decision was made. These are all, as aforementioned, basic principles of the Israeli Administrative Law (see paragraphs 32 and 41 in the judgement of Chief Justice (retired) President M. Naor on AAP 8101/15 Almasjad Griusos Tzagatz v. Minister of Interior (published in Nevo, 28.8.2017)).

23. There is no doubt that the systems of IAI, Elbit and Israel Shipyards are considered defence equipment as defined in section 2 of the Control Law. Any export of defence equipment, defence knowledge or defence service requires an export license.
24. Also, the marketing and brokerage actions done for these Israeli companies by the Star Sapphire Group, as detailed in the attached documents, required marketing licenses. Article 14 of the Control Law, defines "Defense marketing activity" as, "**An activity aimed at promoting a defense export transaction, including brokering activity towards a defense export transaction, whether in Israel or outside of Israel, in writing or orally or via any other means, directly or indirectly, in exchange for remuneration or not, whether transfer of defense know-how occurs or not, or the holding of negotiations towards such transaction; the activity can be geared toward a certain customer or toward a general public, and may or may not result in a defense export transaction**".

IAI, Elbit and Israel Shipyards and the Israeli officials in the MFA and MOD are suspected in committing offences according to Israeli criminal laws

25. As explained above, IAI, Elbit and Israel Shipyards and the officials in the MOD and MFA knew or should have known that they are involved in corruption and conspiracy in Myanmar. The authorization by the director of DECA Unit in the MOD, and the head of defense exports unit in the MFA, to these companies' systems marketing and export to Myanmar and/or them turning a blind eye towards the possible corruption and bribery, seems to be in breach of Israeli criminal law.
26. As mentioned, there is no logic that in arms deal between two governments, Israeli companies, including a government company (IAI), should use the marketing and brokerage services of a local company for the purpose of selling their products.
27. Especially relevant article 291A of the Israeli Penal Law, 1977¹¹, which prohibits "Bribing a Foreign Public Official":
(a) A person who gives a bribe to a foreign public official for an act in relation with his functions, in order to obtain, to assure or to promote business activity or other advantage in relation to business activity, shall be treated in the same manner as a person who commits an offence under Article 291.

¹¹ <https://www.oecd.org/investment/anti-bribery/anti-briberyconvention/43289694.pdf>

(b) No indictment shall be issued in respect to an offence under this article unless given written consent from the Attorney General.

(c) For the purpose of this article: "foreign country" includes, but not limited to, any governmental unit in the foreign country, including national district or local unit. "Foreign public official" includes any of these: (1) An employee of a foreign country and any person holding a public office or exercising a public function on behalf of a foreign country; including in the legislative, executive or judiciary branch of the foreign country, whether by appointment, by election or by agreement;

28. In recent years, the international community has decided to combat the phenomenon of corruption, among other things, by writing and ratifying conventions at the UN and the OECD. The State of Israel, a member of these bodies, has committed itself to the UN Convention against Corruption¹² and to the OECD Convention¹³ and has adopted what is stated in it. Thus, in 2008 it enacted section 291A of the Penal Code which provides for a criminal prohibition on bribery of a foreign public servant¹⁴.
29. On the official website of DECA a warning is published¹⁵: **"A businessman, including an Israeli exporter, or an Israeli company, who offers bribes or tries to pay bribes to a foreign public servant, even if through intermediaries, and even if the offense or some of it was committed abroad, risks criminal prosecution in an Israeli court, in addition to exposure to criminal proceedings in the country Foreign."**
30. The first criminal charges of offence according to article 291A, were filed in November 2016, against an Israeli company that in order to advance its affairs, hired the services of a local agent who was close to the person who at the time served as the director general of the Interior Ministry of the Lesotho. At the beginning of 2012, the company reached an agreement with the director general promoting its interests in exchange for financial benefits that would be transferred from the company to him through the intermediary (Case No. 57177-11-16 Tel Aviv District Attorney's Office Taxation and Economics v. Nip Global Ltd. (published in Nevo, December 15, 2016¹⁶)).¹⁷
31. Article 293 of the Israeli Penal Law, 1977, defines "Methods of bribery":
**In connection with a bribe, it is immaterial –
(1) whether it was in cash or in kind, a service or any other benefit;**

¹² <https://www.unodc.org/unodc/en/treaties/CAC/>

¹³ <https://www.oecd.org/corruption/oecdantibriberyconvention.htm>

¹⁴ https://www.ashra.gov.il/_Uploads/dbsAttachedFiles/BriberyBulletinHebrew102010.pdf

¹⁵ <http://www.exportctrl.mod.gov.il/International/Pages/%D7%90%D7%99%D7%A1%D7%95%D7%A8-%D7%9E%D7%AA%D7%9F-%D7%A9%D7%95%D7%97%D7%93-%D7%9C%D7%A2%D7%95%D7%91%D7%93%D7%99-%D7%A6%D7%99%D7%91%D7%95%D7%A8-%D7%96%D7%A8%D7%99%D7%9D-%D7%91%D7%A2%D7%A1%D7%A7%D7%90%D7%95%D7%AA-%D7%91%D7%99%D7%A0%D7%9C%D7%90%D7%95%D7%9E%D7%99%D7%95%D7%AA-.aspx>

¹⁶ https://www.nevo.co.il/psika_html/shalom/SH-16-11-57177-55.htm

¹⁷ <https://www.timesofisrael.com/in-first-israeli-company-convicted-of-bribing-foreign-official/>

(2) whether it was given for an act or an omission, or for a delay, acceleration or impediment, for preference or for discrimination;
(3) whether it was for a specific act or to obtain preferential treatment in general; (4) whether it was for an act of the person who took it or for his influence on the act of another person;
(5) whether it was given by the person himself or through another person; whether it was given directly to the person who took it or to another for him; whether in advance or after the event; and whether it is enjoyed by the person who took it or by another;
(6) whether the function of the person who took was one of authority or service, permanent or temporary, general or specific, and whether its performance was with or without remuneration, voluntarily or in the discharge of an obligation; (7) whether it was taken for a deviation from the performance of his obligation or for an act which the public servant must perform by virtue of his position.

32. Article 29(b) of the Israeli Penal Law, 1977, defines a "joint perpetrator": **"Participants in the commission of an offense, who perform acts for its commission, are joint perpetrators, and it is immaterial whether all acts were performed jointly, or some were performed by one person and some by another."**
33. Because the Israeli officials in the MOD and MFA knew or should have known the gravity of the risks, but still didn't take the necessary precautions, also seems relevant article 262 of the Israeli Penal Law, 1977, which determines that: **"a person who knows that a certain person plans to commit an offense and has not taken all reasonable actions to prevent its commission or completion, then he is liable to two years imprisonment."**
34. According to the Israeli law, IAI, Elbit and Israel Shipyards and the Israeli officials in the MOD and MFA don't have immunity because the offenses were done outside of the State of Israel – Article 16(a) of the Israeli Penal Code, 1977, stipulates that **"Israel's penal laws shall apply to foreign offenses which the State of Israel has undertaken, in multilateral and open conventions to join, to punish; This will apply even if they were committed by someone who is not an Israeli citizen or a resident of Israel, regardless of where the offense was committed."**; Article 15(a) of the Israeli Penal Code, 1977, stipulates that: **"Israel's penal law shall apply to a foreign offense of a crime or misdemeanor committed by a person who was, at the time of the offense or thereafter, an Israeli citizen or resident of Israel; if a person was extradited from Israel to another country for the same offense and was prosecuted there, Israel's penal laws will no longer apply to it."**
35. The Israeli officials in the MOD and MFA who approved the use by the Israeli companies of the Star Sapphire Group's services, are suspected at the very least of assisting a crime. Article 31 of the Israeli Penal Law, 1977, defines an "Accessory": **"a person who does anything – before an offense is committed or during its commission – to make its commission possible, to support or**

protect it, or to prevent the perpetrator from being taken or the offense or its loot from being discovered, or if he contributes in any other way to the creation of conditions for the commission of the offense, then he is an accessory."

36. The "accessory" is a secondary and indirect party in the commission of the offense. While another commits the offense, the accomplice acts to enable the commission of the principal offense, facilitate it, secure it or otherwise contribute to it. Accordingly, the penalty imposed on the accessory is equal to half the penalty for committing the same offense (article 32 of the Israeli Penal Code).
37. The elements of the offense of being an accessory were defined in the guiding judgment given in Case 320/99 Plonit v. State of Israel (published in Nevo, February 15, 2001).
38. As part of the factual component in the definition of the offense, auxiliary conduct is required, that is, conduct which has the potential to create the conditions for the commission of the offense by the principal perpetrator in one of the ways listed in article 31 of the Penal Code. The law does not require that without the assistance the principal offense would not have been materialized. It is not necessary that in his conduct the accessory should make an effective contribution to the commission of the principal offense. The demand is, so it was ruled, merely for the conduct to carry the potential to assist in the commission of the main offense (see Cf. 4317/97 Polyakov v. State of Israel (published in Nevo, 21.1.1999); Cf. 11131/02 Yusupov v. State of Israel (Published in Nevo, 15.3.2004)). The emergence of the factual basis does not depend on the completion of the main offense, and it is sufficient that the main offender approaches its commission (see the judgment of the President Esther Hayut in case 2219/14 Ploni v. State of Israel (published in Nevo, 16.11.2014)).
39. The mental element includes three components: Awareness of the nature of the assistive behavior, that is, that the act contributes to the commission of the principal offense; Awareness that the main perpetrator is about to commit an offense "with a tangible purpose", when it is not enough to know about a theoretical possibility or willingness to commit an offense; And a purpose for the assistance.
40. In Case 320/99, with regard to the mental element, it was determined that a basic element of purpose is required of the accessory to assist the main offender. Regarding the mental attitude to the offense being committed, or about to be committed, it was determined that beyond the cognitive element no volitional element is required in relation to the commission of the offense, that is, the accessory is not required to intend for the main perpetrator to fulfill his scheme.
41. According to paragraph 9 of the judgment of the Vice President (retired) Eliezer Rivlin in case 11131/02 Yusupov, the awareness - both of the nature of the auxiliary behavior and of the circumstance of the commission of the main

offense - may be replaced by suspicion as to the auxiliary nature of the behavior and awareness of the possibility of the existence of the circumstance of the commission of the offense by the principal offender, in accordance with the provisions of section 20 (c)(1) of the Penal Code ("closing one's eyes"). In addition, according to the "rule of predictability", the element of intention to serve as an accomplice takes place even where the intention of the accomplice is not to assist the main offender, but he is aware that his behavior may, in all probability, contribute to the commission of the offense by the main perpetrator.

42. The component of intent to serve as an accessory is realized even when the assistant does not want the offense to materialize, including a case in which he acts **"out of social pressure or out of greed, even though he does not want this offense to materialize"** (see the judgment of the President Esther Hayut in case 2219/14 above).
43. It was further determined that although in the normal case the auxiliary act will be carried out by way of an active act, there is no impediment to recognizing the assistance to an offense by way of default (paragraph 23 of the judgment of the Vice President (retired) Elyakim Rubinstein in case 2219/14).
44. Because of all the mentioned above, we ask you to open a criminal investigation against IAI, Elbit and Israel Shipyards and the relevant officials in the MOD and MFA.
45. In the first stage and to avoid concealing evidence and disrupting the investigation (in a complaint I filed on exports to Guatemala, the MOD refused to provide relevant documents to the Ministry of Justice), I ask you to order the immediate seizure of all existing documents in the offices of the MOD and MFA, and in the offices of IAI, Elbit and Israel Shipyards, about their marketing and export licenses to Myanmar, the minutes from the discussions that preceded the approval of the licenses, and their agreements and payments to Star Sapphire Group.
46. In drawing lessons from your office handling of previous complaints about military exports to Rwanda and South Sudan, we expect that this time all investigative actions as well as the decisions made will be reasoned and in writing (neither orally nor without documentation), so that, if necessary, we may subsequently be able to file an appeal.
47. We would appreciate your prompt response.



Eitay Mack, Adv.