



**SLDP**

Syrian Legal Development Programme  
البرنامج السوري للتطوير القانوني

# Chemical Weapons in Syria: Business Responsibility

A Brief by the Syrian Legal Development Programme

2024

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## The Syrian Legal Development Programme (SLDP)



A non-aligned and non-governmental organization established in 2013 - registered in the UK in 2014 - **to respond to complex human rights matters triggered by the Syrian conflict that erupted in 2011**, through the utilization of international law. SLDP has a highly qualified team of Syrian and international researchers and analysts in various aspects of international law, who enjoys a unique skill set and a comprehensive understanding of the Syrian political and strategic dynamics at the local, regional, and international levels with strong access to the ground and to policymakers.

The Human Rights & Business Unit's mandate is to increase the ability of Syrian CSOs and duty bearers, including State actors, policy makers, businesses, INGOs, and UN agencies, to indicate, highlight, and influence accountability measures against entities and businesses involved in human rights abuses in Syria.

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## I. Introduction

Business responsibility in relation to atrocity crimes is often overlooked. Most activists and civil society members advocating for accountability and justice efforts often focus on state actors and members of non-state armed groups. This is either due to a lack of awareness of the fact that **businesses bear a responsibility to respect human rights**, or of the ways in which to pursue accountability against economic actors for their failure to fulfil this responsibility.

It is critical that such actors are not excluded from the scope of justice and are held to account. **The Syrian regime, under heavy international sanctions, could not have manufactured chemical weapons without the support of commercial actors, whether foreign or domestic.**

This brief aims to shed light on the responsibilities of businesses and business actors under international law, highlight the businesses involved in the export of chemical weapons precursors to Syria, and outline pathways to accountability.



## II. The History of Corporate Accountability under International Criminal Law

Holding corporate actors (individuals) accountable under international law is not a new phenomenon. After WWII, the Allies established the Nuremberg trials where members of the Nazi German regime were prosecuted. This marked the contemporary birth of international criminal law.

In addition to regime members in subsequent Nuremberg trials, **many companies in industries such as steel, chemicals, and weapons were charged with complicity in atrocity crimes for supporting the Nazi war effort.** IG Farben, for instance, was a German chemical and pharmaceutical conglomerate<sup>1</sup> whose subsidiary supplied the poison gas known as Zyklon B, which killed scores of civilians in gas chambers. The trial saw 23 IG Farben directors prosecuted for war crimes, 13 of whom were convicted.<sup>2</sup>

More contemporary examples of accountability for corporate executives include the Lundin trial in Sweden involving war crimes in what is now South Sudan.<sup>3</sup>

In 2023, former Lundin executives were charged with complicity in war crimes between 1999 and 2003. Lundin had signed a contract in 1997 with the Government of Sudan, amidst Sudan's civil war, to exploit oil in an area that was not under Government control. Parties to the subsequent war routinely committed atrocities against civilians. The war for control over Lundin's concession area killed thousands of civilians, displaced hundreds of thousands, and plunged those who lived in the area into deep poverty.<sup>4</sup>

<sup>1</sup> See, e.g., Wollheim Memorial, 'Postwar Trials for Supplying Zyklon B to the SS (1946–1955)' <[http://www.wollheim-memorial.de/en/prozesse\\_wegen\\_der\\_lieferung\\_von\\_zyklon\\_b\\_an\\_die\\_ss\\_19461955](http://www.wollheim-memorial.de/en/prozesse_wegen_der_lieferung_von_zyklon_b_an_die_ss_19461955)>

<sup>2</sup> See The I.G. Farben Trial of Carl Krauch and Twenty-Two Others, United States Military Tribunal, Nuremberg, 14 August 1947 - 29 July 1948, <[https://www.worldcourts.com/imt/eng/decisions/1948.07.29\\_United\\_States\\_v\\_Krauch.pdf](https://www.worldcourts.com/imt/eng/decisions/1948.07.29_United_States_v_Krauch.pdf)>

<sup>3</sup> See, e.g., Pax for Peace, 'Lundin Case' <<https://paxforpeace.nl/what-we-do/programmes/lundin-case/>>

<sup>4</sup> See generally Human Rights Watch, 'Sudan, Oil, and Human Rights' (2003) <<https://www.hrw.org/reports/2003/sudan1103/sudanprint.pdf>>

The Supreme Court allowed the Swedish Courts to try one of Lundin's executives, a foreign (Swiss) national, based on universal jurisdiction.<sup>5</sup>

An example of corporate accountability in the Syrian context is the Lafarge case.<sup>6</sup> In November 2016, a criminal complaint was filed before French courts against the cement company for alleged abuses committed in Syria by its subsidiary. In order to maintain its operations, the company allegedly bought raw material from ISIS and other groups and allegedly negotiated safe passage of its workers and products in exchange for compensations amounting to 13 million euros.

In January 2024, the French Supreme Court confirmed charges of complicity in crimes against humanity.<sup>7</sup> In February 2024, French prosecutors recommended that Lafarge and nine of its former managers stand trial on charges of terrorism financing.<sup>8</sup>

In the US case, Lafarge pleaded guilty to the charge of conspiring to provide material support to a foreign terrorist organization and was ordered to pay \$778 million.<sup>9</sup>



### III. Relevant International Legal Frameworks

#### A. International Humanitarian Law

International humanitarian law (IHL), the body of law which regulates the rules of war, prohibits the use of chemical weapons in both international and non-international armed conflicts.<sup>10</sup> Chemical weapons, by their very nature, do not allow for a distinction between civilian and military objects, nor can their effects be limited. Their use would thus violate the cardinal IHL rule of distinction, which requires that parties to an armed conflict distinguish between civilians and combatants and between civilian objects and military objectives.<sup>11</sup>

The prohibition on chemical weapons under international law is also found in specific conventions, such as the 1925 Geneva Protocol. The Protocol reflects customary international law<sup>12</sup>, which is binding on all states, regardless of whether they ratified the instrument or not. This prohibition was consolidated by the Biological Weapons Convention of 1972 and the Chemical Weapons Convention (CWC) of 1993. The Syrian regime acceded to the CWC in October 2013. Article 1 of the Convention reads:<sup>13</sup>

<sup>5</sup> See Business and Human Rights Compliance, 'Lundin Trial: Case Updates by GRC's Correspondent in Sweden' (6 September 2023)

<<https://beyondhumanrightscapability.co.uk/undin-trial-case-updates-by-grcs-correspondent-in-sweden#:~:text=The%20legality%20of%20the%20prosecutor%27s,Schneider%20based%20on%20universal%20jurisdiction>>

<sup>6</sup> See Business & Human Rights Resource Centre, 'Lafarge lawsuit (re complicity in crimes against humanity in Syria)' <<https://www.business-humanrights.org/en/latest-news/lafarge-lawsuit-re-complicity-in-crimes-against-humanity-in-syria/>>

<sup>7</sup> Sherpa, 'Lafarge in Syria: French Supreme Court issues decisive ruling on charges faced by the multinational' (16 January 2024)

<<https://www.asso-sherpa.org/lafarge-in-syria-french-supreme-court-issues-decisive-ruling-on-charges-faced-by-the-multinational>>

<sup>8</sup> See (n 6).

<sup>9</sup> U.S. Department of Justice, Office of Public Affairs, 'Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations' (18 October 2022)

<<https://www.justice.gov/opa/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations>>

<sup>10</sup> See ICRC, Rule 74, 'Customary International Humanitarian Law', Volume I: Rules, Jean-Marie Henckaerts and Louise Doswald-Beck (2005)

<<https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/customary-international-humanitarian-law-icrc-eng.pdf>>

<sup>11</sup> Ibid, Rule 1.

<sup>12</sup> See, e.g., Michael Bothe, 'The 1925 Geneva Protocol', in Research Handbook on International Arms Control Law (ed. Eric Myjer and Thilo Maruhn), 251-258.

<sup>13</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Jan. 13, 1993, 1974 UNTS 45; 32 ILM 800 (1993)

1. Each State Party to this Convention undertakes never under any circumstances:

- (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
- (b) To use chemical weapons;
- (c) To engage in any military preparations to use chemical weapons;
- (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.

## **B. The UN Guiding Principles on Business & Human Rights (UNGPs)<sup>14</sup>**

11. Business enterprises should **respect human rights**.<sup>15</sup>

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights ... in situations of armed conflict, **enterprises should respect the standards of international humanitarian law**.<sup>16</sup>

13. The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) 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.<sup>17</sup>

## **C. International Criminal Law**

**This body of law applies to individuals rather than businesses.** Individuals within businesses, such as executives, may be held accountable under international criminal law for their business conduct and be charged with aiding and abetting international crimes.

<sup>14</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework (2011) <[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)>

<sup>15</sup> Ibid, Principle 11.

<sup>16</sup> Ibid, Principle 12.

<sup>17</sup> Ibid, Principle 13.

Violations of IHL amount to war crimes.<sup>18</sup> The deployment of chemical weapons may also amount to crimes against humanity, if the acts committed are part of a widespread and systematic attack directed against the civilian population.

What amounts to aiding and abetting:<sup>19</sup>

### **Actus reus** (criminal conduct)

**Providing practical assistance, encouragement, or moral support to a principal offender of a crime, which substantially contributes to the perpetration of the crime. The assistance may:**

- consist of an act or omission;
- occur before, during, or after the act of the principal offender; and
- be removed in time and place from the actual crime. The principal offender does not need to be aware of the accomplice's contribution. The material elements of the crime committed by the direct perpetrator, the commission of which have been aided or abetted by the accused, must be established.<sup>20</sup>

### **Mens rea** (criminal intent)

**Knowledge or awareness that the acts or omissions performed by the aider and abettor assist in the commission of a crime by the principal offender.**

- The aider and abettor must be aware of the essential elements of the crime committed by the principal offender, including the principal offender's state of mind. However, he or she need not share the intent of the principal offender.
- The aider and abettor need not have knowledge of the precise crime that was intended or that was actually committed, as long as he or she was aware that one of a number of crimes would probably be committed, including the one actually perpetrated.<sup>21</sup>

<sup>18</sup> See also Statute of the International Criminal Court (1998), Article 8(2)(e)(xiv), as amended in 2010 by Resolution RC/Res.5, "[e]mploying asphyxiating, poisonous or other gases, and all analogous liquids, materials and devices" constitutes a war crime also in non-international armed conflicts.

<sup>19</sup> International Criminal Law Services – OSCE-ODIHR, 'International Criminal Law & Practice Training Materials Modes of Liability: Commission & Participation', 9 <<https://icj.global/wp-content/uploads/2024/05/icls-training-materials-sec-9-modes-of-liability.pdf>>

<sup>20</sup> Ibid.

<sup>21</sup> Ibid, 10.



## IV. The Development of Chemical Weapons in Syria

The Syrian Scientific Studies and Research Center<sup>22</sup>, also known as the SSRC, is the government body that oversees the production of Syria's chemical weapons, including the import of chemical precursors and other materials.

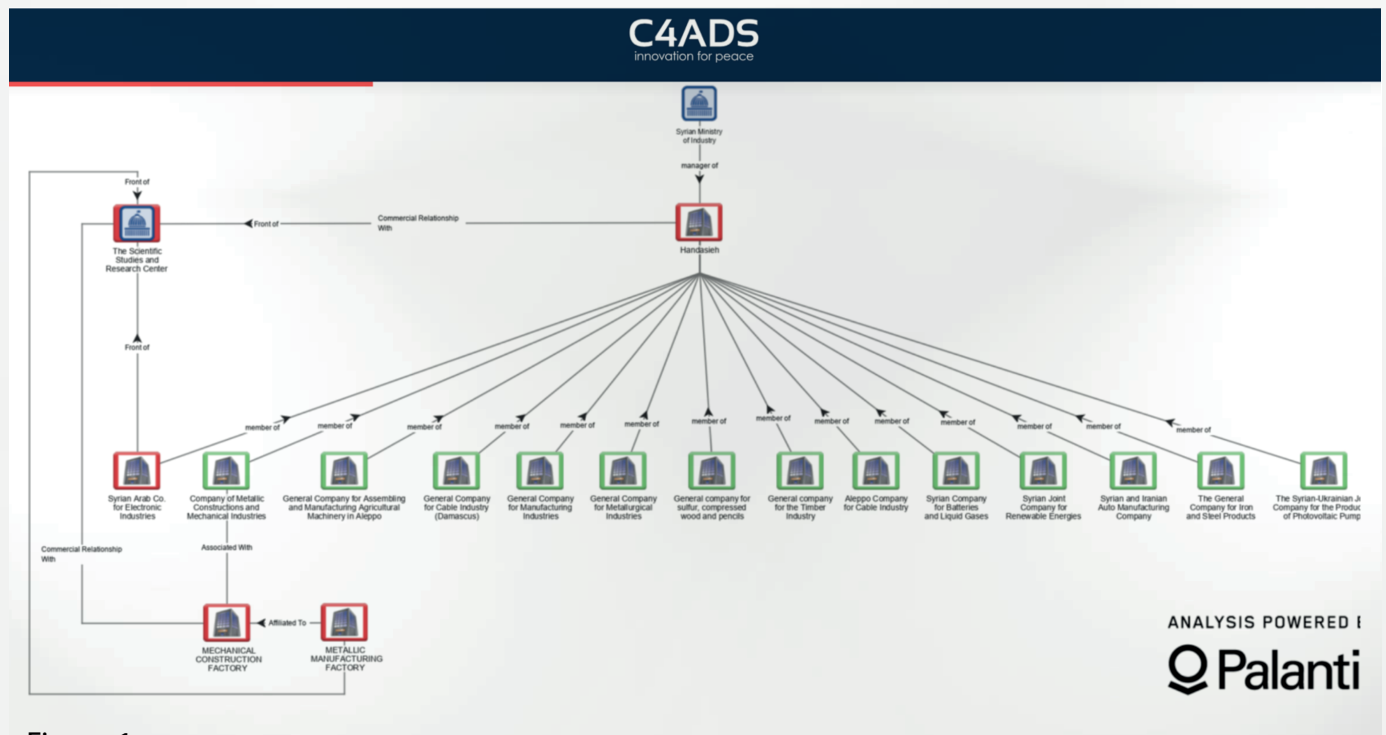


Figure 1

According to C4ADS<sup>23</sup>, Syria's General Organization for Engineering Industries is a sprawling state-owned conglomerate under the authority of the Syrian Ministry of Industry which supervises public companies active in the construction and industrial sectors (see Figure 1). It is also known as the **'Handasieh'** network.<sup>24</sup>

The Handasieh was sanctioned by the US Office of Foreign Assets Control (OFAC) in July 2012 for "acting for or on behalf of Syria's SSRC" and "contribut[ing] materially to the proliferation of WMD or the means of their delivery".<sup>25</sup>

<sup>22</sup> See, e.g., Jonathan McLaughlin, 'A Resilient Threat: SSRC's Role in Syria's Chemical Weapon Program', Wisconsin Project on Nuclear Arms Control (9 February 2018) <<https://www.wisconsinproject.org/a-resilient-threat-ssrcs-role-in-syrias-chemical-weapon-program/>>

<sup>23</sup> Irina Bukharin, 'The Handasieh Network: Investigating Chemical Weapons Procurement in Syria', C4ADS (25 June 2019) <<https://c4ads.org/commentary/2019-6-25-the-handasieh-network/>>

<sup>24</sup> See <<http://www.handasieh.sy/>>

<sup>25</sup> U.S. Department of the Treasury, 'Treasury Increases Sanctions Against Syria' (18 July 2012) <<https://home.treasury.gov/news/press-releases/tg1642>>



As C4ADS's investigation uncovered, the Handasieh network is comprised of at least fourteen subsidiaries operating directly under it that produce everything from steel to renewable energy to pencils.<sup>26</sup> If these companies are 50% or more owned by Handasieh, they are legally sanctioned under OFAC's current regulations. **At present, only one of Handasieh's direct subsidiaries, the Syrian Arab Electronic Industries Company (Syronics), has been explicitly sanctioned by OFAC, while two additional entities that share identifiers with one of Handasieh's subsidiaries have also been sanctioned.**<sup>27</sup>

There are at least thirteen countries from which Handasieh subsidiaries have allegedly procured, are procuring, or have attempted to procure materials after OFAC sanctioned Handasieh in 2012: Belarus, China, Egypt, France, Germany, India, Iran, Jordan, Lebanon, Malaysia, North Korea, South Korea, and Ukraine.<sup>28</sup>



## V. Foreign Companies Involved in the Trade of Chemical Weapons Material to Syria

### Belgian

In 2018, three Flemish firms – AAE Chemie Trading, Anex Customs, and Danmar Logistics – along with a managing director and a manager – **were prosecuted for exporting isopropanol to Syria**, a precursor chemical which could be used in the production of sarin gas.<sup>29</sup>

In February 2019, the Antwerp Criminal court convicted the three Flemish companies and two directors for shipping 168 tonnes of the chemical to Syria between 2014 and 2016 without submitting the appropriate export licences.<sup>30</sup>

### German

Despite EU sanctions, German chemical wholesaler Brenntag AG allegedly sold **the chemicals isopropanol and diethylamine to Syria in 2014** using a subsidiary in Switzerland.<sup>31</sup> The recipient was a Syrian pharmaceutical company with ties to the Syrian regime.

In 2019, German prosecutors stated they had found no grounds to investigate Brenntag, the world's largest chemicals distributor, over the sale to a company in Syria of substances that can be used in chemical weapons. Prosecutors said there were no sufficient signs of wrongdoing that would justify an investigation into Brenntag.<sup>32</sup>

<sup>26</sup> See <<https://perma.cc/8YBR-P8AB>>

<sup>27</sup> U.S. Department of the Treasury, Office of Foreign Assets Control, 'Syria Designations; Non-proliferation Designations' (18 July 2012) <<https://ofac.treasury.gov/recent-actions/20120718>>

<sup>28</sup> See (n 23).

<sup>29</sup> Daniel Boffey, 'Belgian firms prosecuted over Syria chemical exports' (18 April 2018) <<https://www.theguardian.com/world/2018/apr/18/belgian-firms-prosecuted-over-chemicals-exports-to-syria-sarin>>

<sup>30</sup> Syrian Archive, 'Antwerp court convicts three Flemish firms for shipping 168 tonnes of isopropanol to Syria' (7 February 2019) <<https://syrianarchive.org/en/investigations/BI-sentencing>>

<sup>31</sup> The New Arab, 'German company accused of sending 'weapons-grade' chemicals to Syria' (27 June 2019) <<https://www.newarab.com/news/german-company-accused-sending-weapons-grade-chemicals-syria>>

<sup>32</sup> Reuters, 'German prosecutors won't probe Brenntag over chemicals sale to Syria' (13 August 2019) <<https://www.reuters.com/article/idUSKCN1V3124/>>

## Indian

Commercial trade data indicates that the Handasieh-linked General Company for Iron and Steel Products **has received multiple shipments of industrial parts and equipment from Apollo International Limited, an Indian company.**<sup>33</sup>

## Canadian

A family business owned by Canadians, MHD Nazier Houranieh & Sons Co., allegedly **purchases metals and alloys from foreign suppliers for the SSRC.** The allegations have landed the company and its owners, Chadi and Mohammad Houranieh, on EU sanctions lists.<sup>34</sup>

## Syrian, Lebanese, British, & Chinese

In January 2018, France sanctioned 25 people and companies over **their links to Syria's chemical weapons programme.**<sup>35</sup> The businesses include Sigmatec and the Al Mahrous Group, both based in Damascus, Technolab in Lebanon, and a trading company in Guangzhou, China.<sup>36</sup>

A UN report revealed that a Chinese trading firm working on behalf of North Korea made five shipments in late 2016 and early 2017 of high-heat, acid-resistant tiles, stainless-steel pipes, and valves to Damascus, which could be used to produce chemical weapons.<sup>37</sup>

A British company is suspected of shipping chemical weapons supplies from North Korea to the Syrian regime.<sup>38</sup>



## VI. Corporate Complicity in Chemical Weapons in Iraq

Frans van Anraat was a Dutch businessman who purchased large quantities of the chemical thiodiglycol from the United States and Japan in the 1980s. This chemical was then sold, through a number of different companies located in different countries, to Saddam Hussein's regime.<sup>39</sup>

After 1984, Van Anraat was the government's sole supplier of the chemical. The chemical is a key component in the manufacture of mustard and nerve gas and was **deployed by Hussein's regime against Iranian military and civilians in the Iran-Iraq war, as well as against the Kurdish population in northern Iraq.**<sup>40</sup>

In 2005, Van Anraat was convicted by the District Court of The Hague as accessory to war crimes committed by Hussein and his men.<sup>41</sup> His conviction was upheld on appeal by the Court of Appeal of The Hague and the Supreme Court of The Netherlands. He was sentenced to 16 years and 6 months' imprisonment.<sup>42</sup>

<sup>33</sup> See (n 23).

<sup>34</sup> Stewart Bell, 'Canadian-owned company accused of supplying Syria's chemical weapons program', Global News (15 June 2023) <<https://globalnews.ca/news/9755313/canadian-company-syria-chemical-weapons-ssrc-cers-houranieh/>>

<sup>35</sup> France 24, 'France sanctions businesses, traders linked to Syria chemical weapons' (23 January 2018) <<https://www.france24.com/en/20180123-france-syria-chemical-attacks-sanctions-businesses>>

<sup>36</sup> See 'The International Partnership against Impunity for the Use of Chemical Weapons' <[https://www.noimpunitychemicalweapons.org/en.html#sanctions\\_list](https://www.noimpunitychemicalweapons.org/en.html#sanctions_list)>

<sup>37</sup> Casey Quackenbush, 'North Korea Has Been Sending Chemical Weapons Supplies to Syria, U.N. Report Finds', TIME, (27 February 2018) <<https://time.com/5178695/north-korea-syria-chemical-weapons-un/>>

<sup>38</sup> Dipesh Gadhur, 'British firm 'masks' Kim Jong-un's chemical weapons supply to Syria', The Sunday Times (29 April 2018) <<https://www.thetimes.com/uk/politics/article/british-firm-masks-kim-jong-un-s-chemical-weapons-supply-to-syria-0fkq2rqfm>>

<sup>39</sup> Jonathan B. Tucker, 'Trafficking Networks for Chemical Weapons Precursors: Lessons from the Iran-Iraq War of the 1980s', James Martin Center for Nonproliferation Studies (2008) <<https://www.jstor.org/stable/pdf/resrep09911.8.pdf>>

<sup>40</sup> Ibid.

<sup>41</sup> Public Prosecutor v. Frans Cornelis Adrianus van Anraat, 23 December 2005, District Court of The Hague, The Netherlands, 09/751003-04. See summary at <<https://www.internationalcrimesdatabase.org/Case/178/Van-Anraat/>>

<sup>42</sup> Ibid.

In April 2013, a Dutch court ruled that Frans van Anraat must pay 25,000 euros plus interest to each of the 16 plaintiffs in the case, which amounted to 400,000 euros.<sup>43</sup>

With regards to **German involvement** in supplying the Iraqi regime, officials of a German company designed four plants capable of producing hundreds of tons of deadly poison gases, while at least three other German companies manufactured equipment the Hussein regime needed to fill chemical rockets, bombs, and ballistic missile warheads.<sup>44</sup>



## VII. Accountability Efforts by Iraqi and Iranian Victims

In 2013, a group of Iraqi Kurds took legal action to hold French firms who supplied poison gas to Saddam Hussein in the 1980s accountable. **The plaintiffs were among the victims of a chemical weapon attack that killed 5,000 in the town of Halabja in 1988.**<sup>45</sup>

The victims' lawyers say that two French companies were among the 20 or more companies that aided the Hussein regime in the development of a chemical weapons arsenal. Although the trial is ongoing in Iraqi Kurdistan, no defendants have shown up so far.<sup>46</sup>

In November 2023, a Dutch court ruled that a company must pay compensation to five Iranian victims of chemical weapons attacks by Iraq in the 1980s after the company did not show up in court to defend itself against civil claims it supplied raw materials for poison gas.<sup>47</sup>

The Iranian plaintiffs claimed that they were injured and suffered permanent health damage as a result of Iraqi attacks with mustard gas that was produced with raw materials supplied by Dutch companies Forafina and Otjiaha. However, Forafina did not raise a defence and thus was ordered to pay damages.<sup>48</sup>



**The Iranian plaintiffs claimed that they were injured and suffered permanent health damage as a result of Iraqi attacks with mustard gas that was produced with raw materials**



<sup>43</sup> Capital FM, 'Dutch Court Orders Chemical Trader To Pay Saddam Gas Victims' (24 April 2013) <<https://www.capitalfm.co.ke/news/2013/04/dutch-court-orders-chemical-trader-to-pay-saddam-gas-victims/>>

<sup>44</sup> R. Jeffrey Smith and Marc Fisher, 'GERMAN FIRMS PRIMED IRAQ'S WAR MACHINE', The Washington Post (22 July 1992)

<<https://www.washingtonpost.com/archive/politics/1992/07/23/german-firms-primed-iraqs-war-machine/09371363-d003-4a78-88ef-476c183b21dc/>>

<sup>45</sup> RFI, 'Iraqi Kurds sue French companies for Halabja chemical attack' (2013) <<https://www.rfi.fr/en/france/20130611-iraqi-kurds-sue-french-companies-halabja-chemical-attack>>

<sup>46</sup> Rebecca Holland, 'Kurds in Iraq and Nashville hope trial brings closure three decades after deadly chemical attack', The Tennessean (19 October 2022)

<<https://www.tennessean.com/story/news/local/2022/10/20/halabja-attack-trial-underway-has-kurds-in-iraq-nashville-hopeful/69569013007/>>

<sup>47</sup> AP News, 'Dutch Court Orders Chemical Trader To Pay Saddam Gas Victims' (15 November 2023) <<https://apnews.com/article/iraq-iran-mustard-gas-netherlands-court-compensation-aeca7355d8a7417749d9216d9dae5ca>>

<sup>48</sup> Bennink Amar, 'Sanctions & Export Controls: Dutch liability case for gas attacks during Iran-Iraq War, 40 years ago' (1 December 2023)

<<https://batradelaw.com/sanctions-export-controls-dutch-liability-case-for-gas-attacks-during-iran-iraq-war-40-years-ago-2/>>



## VIII. Accountability Pathways

<b>Criminal</b>	<ul style="list-style-type: none"> <li>o <b>Universal jurisdiction for individuals within companies</b></li> <li>o <b>Active personality principle</b></li> </ul>
<b>Civil</b>	<ul style="list-style-type: none"> <li>o <b>Domestic and regional export control legislation</b></li> <li>o <b>Due diligence laws</b></li> <li>o <b>Tort law</b></li> </ul>
<b>Non-litigation</b>	<ul style="list-style-type: none"> <li>o <b>OECD National Contact Points (NCPs)</b></li> </ul>

### Criminal

- **Universal jurisdiction for individuals within companies**
- **Active personality principle** – where the state of the nationality of the perpetrator (e.g., the corporate executive) exercises jurisdiction thereover

The most pertinent example of the exercise of both types of jurisdictions above is the Lundin case discussed in Part II. One of the two company executives on trial, Ian Lundin, is a Swedish national, over whom Sweden is exercising jurisdiction on the basis of active personality, i.e. on the basis of his Swedish nationality. The other executive on trial, Alexandre Schneider, is a Swiss national whom Sweden is prosecuting on the basis of universal jurisdiction.

The responsibility of businesses to respect human rights should not be conflated with issues of legal liability, which are largely defined by domestic law provisions in different jurisdictions.

### Civil

- **Domestic and regional export control legislation**

Most states and regional organizations have export control legislation in place that governs how and to whom arms sector products and services can be sold and exported.<sup>49</sup> Some legislation also includes specific export control rules for dual-use products and services, which may be listed on separate dual use lists.<sup>50</sup>

<sup>49</sup> OHCHR, 'Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights', Information Note by the UN Working Group on Business and Human Rights (2022) <<https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>>

<sup>50</sup> Ibid, 3.

## ● Due diligence laws

The emergence of various laws on business and human rights – such as the European Union’s Corporate Sustainability Due Diligence Directive; the French law on the duty of vigilance of parent and outsourcing companies; the German law on the corporate duty of care in supply chains – **create more opportunities for victims of human rights abuses in the context of armed conflict to pursue remedy and accountability.**<sup>51</sup>

## ● Tort law

Companies could be held liable under general tort doctrines for harm ensuing from due diligence failures. In particular, the duty of care, as it is applied in, for instance, English and Dutch tort law, may be availed of to litigate alleged corporate due diligence failures. **Corporations could be held liable in negligence for breaching a duty of care if it becomes apparent that they failed to exercise due diligence in accordance with the UNGPs, sectoral guidance, or any other normative expectations.**<sup>52</sup>

## Non-litigation

### ● OECD National Contact Points (NCPs)

The OECD NCPs provide a quasi-judicial international mediation and conciliation platform for resolving issues that arise from the alleged nonobservance of the OECD Guidelines on Multinational Enterprises in specific instances. Whereas NCPs do not offer a formal accountability process, their final statements may suggest important ways of improving responsible business conduct.<sup>53</sup>

OECD NCPs do not possess the mandate to hold companies legally liable. **In order to determine the legal consequences of corporate due diligence failures, regard must be had to domestic law.**

<sup>51</sup> Ibid, 6.

<sup>52</sup> Flemish Peace Institute, ‘Due diligence and corporate liability of the defence industry Arms exports, end use and corporate responsibility’ (May 2023), 24, <<https://vlaamsvredeinstituut.eu/wp-content/uploads/2023/05/VVI-Rapport-Due-Diligence-WEB-new.pdf>

<sup>53</sup> Ibid, 21.



## IX. Additional Information

### A. The Development of Chemical Weapons by ISIS

This brief has focused on the Syrian regime's development of chemical weapons rather than that of any other entity in Syria. This is due to the fact that very little has been revealed about other entities, such as ISIS, procurement of material from businesses or traders.

Following the OPCW's arrival to Baghdad to investigate the reported attacks on Kurdish forces, it was found that the chemical weapons deployed were neither Syrian nor Iraqi.<sup>54</sup> This indicated that ISIS, either in Syria or Iraq, was manufacturing its own chemical weapons. Mustard gas or chlorine is a common industrial compound widely available in both countries.<sup>55</sup>

According to the Combating Terrorism Center, the precursors required for the production of chemical agents that have been used as weapons by ISIS, primarily chlorine and sulfur mustard, were available at industrial plants located in the territory it controlled.<sup>56</sup>



## X. Recommendations

### To states:

- **Hold domestic companies and corporate actors accountable** for their complicity in development of Syria's chemical weapons arsenal, including by violating export legislation, sanctions, and/or international law.
- **Facilitate the meaningful participation of victims in proceedings** against corporate entities or actors.
- **Ensure the availability of effective accountability avenues and remedies** for victims of chemical weapons in Syria, and facilitate their access to such mechanisms.
- **Enact mandatory human rights due diligence legislation** that will encompass within its scope commercial entities allegedly responsible for exporting chemical weapons precursors to Syria.

<sup>54</sup> Joby Warrick, 'How the Pentagon Got Inside ISIS' Chemical Weapons Operation—and Ended It', POLITICO (27 February 2021) <<https://www.politico.com/news/magazine/2021/02/27/red-line-book-excerpt-chemical-weapons-syria-47178>>

<sup>55</sup> Joby Warrick, 'ISIS planned chemical attacks in Europe, new details on weapons program reveal' (11 July 2022) <<https://www.washingtonpost.com/national-security/2022/07/11/isis-chemical-biological-weapons/>>

<sup>56</sup> Columb Strack, 'The Evolution of the Islamic State's Chemical Weapons Efforts' (October 2017) 10(9) Combating Terrorism Center <<https://ctc.westpoint.edu/the-evolution-of-the-islamic-states-chemical-weapons-efforts/>>

## To businesses:

- **Ensure the thorough implementation of human rights** due diligence practices on an ongoing basis. Businesses should identify, prevent, mitigate, and account for their activities with adverse impact on human rights and seek to remedy them.
- **Implement policies and processes to enable the remediation of any adverse human rights** impacts businesses cause or contribute to
- **Enable victims' effective access to remediation** and work to eliminate all substantive and procedural obstacles thereto.

## To civil society:

- **Pursue businesses and business actors** for their complicity in international crimes and human rights violations. Seeking accountability for only state and non-state armed actors obscures the contributory and/or causal links between atrocities and commercial entities/actors, and enables atrocity facilitators to evade the net of justice.
- **Facilitate capacity building and awareness raising** on business responsibility under international law, as well as business complicity in the development of chemical weapons in Syria.
- **Ensure that victims are empowered with sufficient knowledge** on the responsibility of businesses to respect human rights, as well as the liability of businesses and individuals for failure thereof, and are supported to pursue relevant justice paths in accordance with their justice interests.



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