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Amsterdam Court of Appeal
customs room
PO Box 1312
1000 BH Amsterdam

Also by fax: 088- 36 10037

Haarlem, October 3, 2016

RE:
Our file: JK
NJCM, PAX and Stop Wapenhandel/ State of the Netherlands
Your feature:

APPEAL also APPLICATION to make a
PRELIMINARY INJUNCTION

Dear Sir / Madam,

On behalf of the Peace Movement Foundation PAX Netherlands *(hereinafter: PAX)*[1], the Netherlands Lawyers Committee for Human Rights *(hereinafter: NJCM)*[2] and the Foundation Campaign against Arms Trade, also known as Stop Wapenhandel *(hereinafter: Stop Wapenhandel)*[3] will appeal the decision of the Noord-Holland District Court of 25 August 2016 **(see Appendix** 1). Extracts from the commercial register are attached **(appendices** 2).

I declare that I have been specifically authorized by the three organizations to file this appeal and the request.4

1 Address: Peace Movement Foundation PAX Netherlands, Godebaldkwartier 74, 3511 DZ Utrecht.
2Address: Netherlands Lawyers Committee for Human Rights, Sterrenwachtlaan 11, 2311 GW Leiden.

3Address: Campaign Against Arms Trade Foundation, Anna Spenglerstraat 71, 1054 NH Amsterdam.
4 The authorized representative is project coordinator of the Public Interest Litigation Project *(hereinafter: PILP)* of the NJCM, which focuses on setting up and conducting strategic proceedings on human rights in the Netherlands. The authorized representative is also a lawyer with the Fischer Groep in Haarlem. In the latter capacity, the authorized representative acts here.

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1) Process

The letter of 1 September 2015 from the ministers Ploumen (Foreign Trade and Development Cooperation) and Koenders (Foreign Affairs) informed the House of Representatives that a license had been issued to a Dutch company for the supply of military equipment, worth E. 34,050,000.00 to Egypt (via France).

On October 12, 2015, an objection was lodged against this decision on behalf of Pax, Stop Wapenhandel and the NJCM (hereinafter: *the NGOs)* .

Further grounds were submitted on 17 February 2016 (about the statutes, the actual activities and the legal proceedings of the NGOs).

On 15 April 2016, the ministry was asked for the documents on behalf of the NGOs.

The hearing took place on April 22, 2016.
The notes of the plea made on behalf of the NGOs have been submitted here as further grounds.

On 1 June 2016, the objection was declared inadmissible.

Appeal was filed on July 6, 2016.

On 6 July 2016, a request was also made for a preliminary injunction.

On July 19, 2016, the ministry sent a statement of defense.

On 21 July 2016, a letter was sent to the court about the lack of substantive documents.

The case was heard in court on August 15, 2016.

With the judgment of 25 August 2016, the appeal was dismissed as unfounded.

This appeal is directed against this.

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2) Introduction

The NGOs want to be able to discuss and contest a weapons license for delivery to Egypt (via France), which has been issued by the Dutch government to a Dutch company.

The NGOs are concerned about arms supplies to a country that, according to the ministry, is seriously violating human rights. The NGOs also fear that the use of the weapons will deteriorate regional stability. The NGOs fear that the weapons could be used against refugee boats or used in the blockade of Yemen.

The NJCM is of the opinion that the ministry has not applied the international and human rights treaties that apply to arms exports, or has not correctly applied this licence.

In its objection and appeal, the ministry has taken the position that the NGOs would not be admissible on the basis of Article 1:2 of the General Administrative Law Act *(hereinafter: Awb).*

This is a strange position, partly because the ministry argued earlier, in a 2002 case, that two of the three NGOs would actually be interested in decisions on arms exports.[5]

In the objection and appeal, on behalf of the NGOs, it has been explained in detail why they are interested parties pursuant to Article 1:2 Awb.

However, the court came up with a different position for both the NGOs and the Ministry: the customs law of the European Union would apply and under that customs law the NGOs could not be interested parties.

Indeed, the customs law of the European Union would require that the authorization should have legal effects for the NGOs as a result of which they should be directly and individually concerned. And that would not be the case, according to the court.

The NGOs do not agree with this consideration.
The NGOs are indeed an interested party under EU law
to notice. The court ignores this without real motivation, which also makes the decision unmotivated.

5The Hague District Court, 29 May 2002, ECLI:NL:RBSGR:2002:AE3271.

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In addition to the grievances about admissibility, I will add a few comments about the substantive side of the permit, as we have made some requests via a Wob request have received documents and now know more about the decision-making process.

3) Urgency

At the court hearing, the ministry indicated that half of the military goods had already been delivered.

We assume that the delivery is still not fully completed.

Every piece of military equipment delivered to Egypt (via France) violates human rights and international law. Until the delivery is complete, it is in the interest of the NGOs to freeze it.

In addition, the freeze would make a reversal of the supply less drastic in the event that the NGOs are ultimately proved right.

4) Grounds

4.1. Stakeholders under EU law

Right entrance not closed

The reason that the NGOs have started administrative proceedings to challenge the arms export license lies in the fact that both the Civil Chamber of the District Court of The Hague and the State had explicitly stated that proceedings on arms exports must be conducted through administrative law.[6]

On the basis of Article 1:2 Awb, interested organizations are given the opportunity to stand up for matters of general interest. It is therefore not an incomprehensible position that the administrative law route would be open to NGOs.

However, the Noord-Holland District Court states in its judgment of 25 August 2016 that EU law would apply instead of Article 1:2 Awb. The court interprets EU law in such a way that administrative legal action is practically and effectively not open to NGOs.

However, that does not mean that NGOs can no longer stand up to arms export licenses. If the administrative law route would really be as closed for interested organizations as the court has stated, then the civil route pursuant to Section 3:305a of the Dutch Civil Code *(hereinafter: Dutch Civil Code)* will be open again.

6The Hague District Court, 29 May 2002, ECLI:NL:RBSGR:2002:AE3271.

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What then is the rationale behind closing the administrative law route for NGOs, which the court has decided?

An obvious explanation for the restrictive concept of interested parties, which the Court of Justice of the European Union uses for cases that may be brought there, is that the Court of Justice does not want to be inundated with procedures.

The question is whether this automatically means that NGOs in the national legal spheres, in national proceedings in which EU law is applied, would no longer be able to defend public interests.
In the United Kingdom, in any case, it has been decided to give NGOs access to national courts, even when it comes to EU provisions relating to arms exports.7

Due to the court ruling, it seems that access to the national court when it comes to EU provisions relating to arms exports in the Netherlands is no longer possible for NGOs: we had a clear formal law (Article 1:2 Awb) and a consistent case law from which it followed that NGOs could stand up for the public interest, also in arms export cases, but because of the linking provision Article 1:5 of the General Customs *Act (hereinafter: Adw)* and
Article 8:1 of the Adw would no longer be able to do that.

However, as already indicated, this reasoning does not hold. Even if the administrative law route were closed to NGOs, they can still defend the public interest through civil law.

The application of the court's restrictive interpretation of the stakeholder concept in EU law therefore has no effect other than that it is only possible for arms export companies to use administrative law to challenge arms export licenses, while NGOs can do the same through civil courts. can challenge permits.

This is not only difficult to defend from a legal economic point of view, to have the same license challenged by different interested parties before two different courts; it is also inconsistent with the way in which the government should deal with administrative law.

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7 'British arms exports to Saudi Arabia to be scrutinised in high court', *The Guardian,* 30 juni 2016. Zie: https://www.theguardian.com/world/2016/jun/30/british-arms-exports-to-saudi-arabia-to-be-scrutinised-in-high-court

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Combating and resolving government decisions should in the first place take place within an administrative law framework

After all, if the government can choose between administrative law or civil law, the government should choose administrative law. This follows from the Windmill judgment of the Supreme Court[8] :

> 3.2. (...) The issue here is whether the government, in the event that it is involved in a public law regulations for the protection of certain interests have been granted certain powers, which may also represent interests by making use of its in principle pursuant to the powers vested in private law, such as those derived from property rights powers, the power to conclude contracts under civil law or the jurisdiction to make a claim on the basis of an unlawful act committed against it to be brought before the civil court. When the public law scheme concerned does not provide for this, the decisive factor in answering this question is whether the use of the private-law powers that regulation interferes with in an unacceptable manner. In doing so, attention must be paid, among other things, to the content and scope of the regulation (which may also be evident from its history) and on the way in which and the extent to which, in the context of that regulation protects the interests of the citizens, all this against the background of the other written and unwritten rules of public law. From It is also important whether the government, by making use of the public law regulation can achieve a similar result as by using the private law jurisdiction because, if so, it is an important indication that no place for private law.

The administrative procedure is more accessible, offers more legal protection for citizens and takes more account of the power difference between the stakeholder and the government. From the perspective of legal protection, it is therefore understandable why the government, and in this case the court, should opt for administrative law if a choice can be made between private law and administrative law.

Legal protection must also be practical and effective. This follows from the principle of effective legal protection contained in, inter alia, Article 6 ECHR and Article 47 of the Charter and 19, second paragraph, TEU. This principle has often been discussed at the Court of Justice of the EU. In the *Johnston* case , the Court ruled that a course of action may not be framed in such a way as to render the possibility of judicial review virtually impossible or

is made more difficult.[9] It has also been established in the *Factortame* case that, in the light of effective legal protection, the national court must have the power to take interim relief against a national measure that is presumably contrary to European law.[10] From Article 4(3) TEU follows that the national court (or administrative authority) is obliged to exercise this power.

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8 HR 26 januari 1990 (Windmill), NJ 1991, 393.

9 Case 222/84, Johnston.

10 Case C-213/89, Factortame.

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The question can be asked whether this is actually a matter of practical and effective legal protection. The NGOs are, after all, excluded by the court ruling sent from 'the cupboard to the wall'.

From the legislative history and the parliamentary discussion about the switching provision it also appears that the latter mainly supervises the rules on supervision and enforcement of customs legislation and is in no way intended to limit or exclude the right of appeal of the interested party.11
On the contrary, in the context of effective human rights protection, the broad concept of stakeholders that is guaranteed in the European Convention on Human Rights *(hereinafter: ECHR),* Charter of Fundamental Rights of the European Union *(hereinafter: Charter),* Treaty on European Union *(hereinafter: TEU),* and general legal protection directives.

The link provision does not limit the right of appeal of "general interested parties" as referred to in Article 1:2 Awb. But it mainly supplements the 'supervision, control and enforcement powers' of authorities where it is necessary.

There is therefore much to be said for designating the NGOs as stakeholders. Not designating them as interested parties will:

- after all, do not restrict them from being able to challenge arms export licenses;
- mean that different stakeholders (arms export company versus NGOs) have to conduct different procedures (administrative law and civil law) about the same licence;
– send stakeholders from pillar to post and;
- do not relate to the two-way theory from the Windmill judgment.

There is room to be stakeholders in the EU too
There is also scope for your Court, also in the framework of EU law, to designate the NGOs as stakeholders after all.

Firstly, it concerns a very special case and matter.
Never before has an arms export license been challenged under administrative law in the Netherlands in this way. The Court of Justice has also not yet ruled on such an issue.

11 Explanatory Memorandum to the General Revision of Customs Legislation (General Customs Act) *Parliamentary Papers II,* 30580, no.3. See: https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3apgmbsrzl and Parliamentary Papers II, 30580, no. 4. See: *https://zoek.officielebekendmakingen.nl/ kst-30580-4.html*

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Arms exports, or the export of strategic goods, is a politically sensitive topic. For political reasons, it can differ considerably per country whether or not arms trade is allowed with, for example, a country like Saudi Arabia.[12]

Military equipment supplied to countries that (thereby) violate human rights can contribute to an increase in national and regional conflicts and human suffering.
An arms export license where an incorrect or incomplete human rights assessment has taken place, as is the case in this case, whereby weapons are supplied to Egypt, a country that, according to the responsible ministry, also seriously violates human rights, can have major consequences.

Much more than, say, a delivery of flower bulbs, a delivery of military equipment has potentially enormous political and humanitarian consequences. Peace, human rights, civil rights and international obligations under Common Position 2008/944/CFSP of the Council of the European Union *(hereinafter: Common Position)* and the UN *Arms Trade Treaty (hereinafter: ATT),* do play a role in arms , where this is not an issue with flower bulbs, or much less so.

Your Court deals with import and export licenses. This specific arms export license undeniably involves important human rights and international law aspects.
PAX, Stop Wapenhandel and the NJCM are pre-eminently the interest groups that should be received at your Court in the interests of peace and human rights to be able to discuss this, especially since it is established that the company that wants to supply the military goods also can be received as an interested party.

Secondly, the way in which the Court of Justice looks at the stakeholder concept is not one-to-one applicable in the national context.
After all, the Netherlands has explicitly opted, through both Article 1:2 Awb and Article 3:305a of the Dutch Civil Code, to allow NGOs to go to court for general interests.

In several judgments, the Court of Justice has ruled, on the basis of the principle of equivalence, that rules applicable to a dispute with a European dimension *should not be less favorable* than those applicable to similar national regulations. Also, these rules may not substantially limit the exercise of rights conferred by the EU legal order

12 'Sweden cancels arms deal with Saudi Arabia', *NOS,* 11 March 2015.
See: http://nos.nl/ artikel/2024036-zweden-zegt-armdeal-met-saudi-arabie-af.html

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impossible or, at the very least, extremely difficult. See, inter alia, *Rewe (Case C-33/76), Levez (Case C-326/96) and Preston (Case C-78/98).13*
And, in principle, anyone who can derive rights from EU law must have access to the courts to enforce these rights. This requirement may even require a Member State to widen the national circle of persons entitled to appeal.14 As can be seen from Lesoochranárke zoskupenie *(Case C-240/09)* 15:

> para 54: The Court of Justice (Grand Chamber) hereby rules:
> Article 9(3) of the Convention on Access to Information, Public Participation decision-making and access to justice in environmental matters, acting on behalf of the Community was approved by Council Decision 2005/370/EC of 17 February 2005, has no direct effect under Union law. However, it is on the referring court to review national procedural law with regard to the conditions for filing an administrative appeal or appeal to the court, as far as possible in accordance with both the objectives of Article 9(3) of that Convention and the effective judicial protection of the rights conferred by Union law rights, in order for an environmental association, such as Lesoochranárske zoskupenie, to to bring an action in court against a person after an administrative procedural decision that could be contrary to the environmental law of the Union.

On the basis of the principle of effectiveness, national procedural law should not make the exercise of EU law excessively difficult or impossible. On the basis of the principle of effective judicial protection, an individual should be able to enforce the protection of his rights conferred by EU law in court. In the cases of *Safalero (case C 13/01)16* and *Streekgewest Westelijk Noord-Brabant (case C-174/02)17* the Court of Justice of the EU ruled that rules on locus standi and interest in bringing proceedings under Community law may not affect a effective judicial protection in the exercise of the rights conferred by the Community legal order.

As far as we can see, there has only been one similar proceeding to the present one before: in the United Kingdom over arms exports to Saudi Arabia. As was also argued in the first instance: in
the NGOs, including an organization similar to Stop Wapenhandel, have been declared admissible in this procedure.18

13Case C-33/76 (Rewe), Jur. 1976, p. 01989; Case C-326/96 (Levez), Jur. 1998 I-5063; Case C 78/98 (Preston), ECR. 2000 I-3201.

14See, for example, Joined Cases C-87-89/90 (Verholen and Others), Jur. 1991, p. I-3757; case C 174/02 (Region West Noord-Brabant), Jur. 2005, p. I-85; Case C-13/01 (Safalero), Jur. 2003, p. I-8679; CJEU 8 March 2011, case C-240/09 (Lesoochranárke zoskupenie).

15 Jur. 2003, p. I-8679; HvJEU 8 maart 2011, case C-240/09 (Lesoochranárke grouping).

16 Case C-13/01, Safalero.

17 Case C-174/02, Regional Region Western North Brabant.

18 https://www.caat.org.uk/media/press-releases/2016-06-30

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In its ruling on this identical case, the Noord-Holland District Court refers to the *procedural autonomy* of member states. But this principle of process autonomy is also bound by rules and principles. From the point of view of European integration, this position of the court is incomprehensible and undesirable. The European legal principles of equivalence, effectiveness and effective protection should have a harmonizing effect and should serve as minimum requirements that Member States' legal systems must meet. On the basis of

the principle of sincere cooperation (Article 4, paragraph 3 TEU), Member States should work towards a harmonized legal order as much as possible. In the first place, Member States must take all appropriate general or specific measures to ensure compliance with the obligation to protect human rights under the EU treaties. Secondly, Member States should refrain from taking any measures that could jeopardize the achievement of the Union's objectives. A situation in which there are too great differences between Member States between the protection of rights that individuals derive from European law is not desirable in an integrated legal order and is counterproductive.

Your Court can therefore apply a broader interpretation of the stakeholder concept than the Court of Justice of the EU normally does.

For all the above reasons, a broader interpretation would also be obvious. It appears from the *Djurgården case (Case C-263/08)19* that national law should not impose excessive requirements on interest groups and that interested organizations should, in principle, be able to appeal to the courts effectively and effectively.

PAX and Stop Arms Trade stand up for peace and the NJCM for human rights. Both in their statutes and in their activities. The organizations have previously been declared admissible on these grounds in court.

In a case about an arms export to Egypt, it can therefore be stated that PAX, Stop arms trade and the NJCM are directly and individually affected in their interests. Like the test of article 1:2 Awb.

4.2 Statement without motivation

The court has provided little or no reason why the NGOs could not be stakeholders under EU law. This while this question was presented for the first time with this case. There is no case law, nor

19 Case C-263/08 Djurgården, see also other cases: C-115/09 Trianel, C-427/07 Commission v Ireland.

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national, nor from the Court of Justice, to which the District Court of Noord-Holland could refer.

Both parties had requested the court to comment on the question whether the EU stakeholder concept was valid and what this would mean for the stakeholder interest for the NGOs. The fact that the court has not offered the parties the opportunity to do so is still up to now, the court should at least have motivated its conclusions (more extensively).

The principle of effective judicial protection and the principle of defense compel national authorities and courts to carefully substantiate decisions so that the parties can deliberate sufficiently and, if necessary, defend themselves in the event of a continuation of the judicial process. Since that has not happened, the statement is careless and unmotivated.

4.3. Content-related

Since the allocation of the Wob request to the decision-making and decision regarding the arms export licence, new facts have been made available to the organizations **(Appendix** 3) . The new facts are first presented in the context of the ATT discussed and then by criterion of the Common Position .

4.3.1. TO

In the appeal, it was doubted whether the Ministry had assessed against Articles 6 and 7 ATT. Indeed, it does not appear from the Wob information that the research obligations under the ATT have been carried out by the Ministry.

According to the decision-making process, the ministry first discusses its arms export policy with regard to Egypt since 2013.[20] She emphasizes that no arms exports to Egypt should take place if they can be used for internal repression. In addition, the ministry reports that the Netherlands supports this conclusion in the context of the EU. The Netherlands therefore held up all permit applications arms exports to Egypt.

Other EU Member States were found for the assessment of military exports goods to Egypt, however, to distinguish between different end users within the armed forces of Egypt. Member States would grant licenses for arms exports to Egypt's navy, because they weapons would not be used for internal repression. It decides on this Ministry to resume review for the Navy.

20 Decision of 10 August 2015, 'Arms export to Egypt via France', Ministry of Foreign Affairs. p. 3.

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According to the NGOs, it remains to be seen whether a distinction can be made between different end users within the armed forces and whether the navy actually can be seen as separate, or independent, from the entire army, or the State.

The ministry then says it will resume testing for the navy, but, as will become apparent below, this assessment is careless and unmotivated.

In its assessment of the navy as the end user of the weapons among others:21

- Egypt's membership in the Saudi-led coalition Arabia carries out bombing raids in Yemen.
- The deteriorating situation in Yemen where 80% of the population dependent on humanitarian aid.
- The economic program of Egyptian President Sisi.
- The deployment of four naval vessels to the Gulf of Aden, which is adjacent to Yemen, to protect. • A wave of violent incidents and small and sometimes large attacks everywhere in the country after ousting former president Morsi, which is further escalated after breaking up two sit-ins with extreme violence.
- Security organizations under the Egyptian Ministry of Home Affairs and the police responsible for renewed abuses and repression can be held responsible.
- Egypt's logistical support for airstrikes in Libya by the United Arab Emirates.

The ministry then comes to the following conclusion:

> Review against the EU Common Position and the UN Arms Trade Treaty related to the nature of the good and the end user is positive.22

It is incomprehensible how the ministry, after listing the activities of the Egyptian State, without further investigation into the possible use of weapons in serious violations of international humanitarian law and human rights concludes that the obligation of the Dutch State to investigate has been complied with according to the ATT.

According to Articles 6 and 7 of the ATT, the Ministry must investigate whether the weapons will be deployed, or whether it is possible that the weapons would be deployed be, in a way that is contrary to international obligations, international humanitarian law and human rights.

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21 Decision of 10 August 2015, 'Arms export to Egypt via France', Ministry of Foreign Affairs. p. 4-6.

22 Decision of 10 August 2015, 'Arms export to Egypt via France', Ministry of Foreign Affairs. p. 6.

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But the ministry does not talk about and does not investigate possible violations of humanitarian law and human rights because of the blockade of Yemen by the Egyptian Navy. The blockade contributes to a further destabilization of Yemen and the already critical humanitarian situation deteriorated.23 However, the ministry only talks about the deployment of naval ships to protect the Gulf of Aden and calls it 'unlikely' that the goods will be used in a ground offensive in Yemen.24 Unlikely, however, is not the same as impossible, and the possibility of the use of weapons in the ground offensive must, according to Article 7 ATT be examined before an arms export license can be granted.

That it cannot be concluded without thorough research that the navy is not is or has been involved in violations of international humanitarian law in Yemen is all the more true, now that the supplied radar and C3 systems also appear could be used to hit so-called 'surface targets' and in combination with, for example, the Exocet anti-ship missiles of the Gowind Corvettes of the Egyptian Navy can contribute to a 'coastal country' attack'.25

As the decision does not reflect considerations or specific reviews of international treaties, international humanitarian law and human rights, can it can be argued that the obligation to investigate under Articles 6 and 7 has not been complied with ATT. This makes the decision-making and the decision of the ministry regarding the granting the arms export license carelessly and without motivation.

4.3.2. Common Position

International Obligations (CR1)

It has already been discussed in the discussion of the ATT that it remains to be seen whether the supply of weapons to the Egyptian navy does not conflict with the international obligations and commitments of the Netherlands. It also tests

23 European Parliament resolution of 25 February 2016 on the humanitarian situation in Yemen (2016/2515(RSP)).
See : http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0066+0+DOC+XML+V0//EN "Condemn[ed] the air strikes by the Saudi-led coalition and the naval blockade it has imposed on Yemen, which have led to thousands of deaths, have further destabilised Yemen, have created conditions more conducive to the expansion of terrorist and extremist organisations such as ISIS/Da'esh and AQAP, and have exacerbated an already critical humanitarian situation."

24 Decision of 10 August 2015, 'Egypt arms export via France', Ministry of Foreign Affairs. p. 7.

25 'Dutch radars on Egyptian Corvettes', *Naval vessels,* 2 September 2015. *See:* http://marineShips.nl/nieuws/Smart-S-mk2-op-korvetten-Egypte-020915.html and 'Smart-S Mk2', *Thalesgroup. https://www.thalesgroup.com/en/worldwide/defence/smart-s-mk2-3d-medium long-range-surveillance-radar* http://www.mbda-systems.com/exocet-solution/exocet- mm40-block3/

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Ministry of the Egyptian Navy's actions in Yemen do not follow the San Remo Manual. Nevertheless, with regard to its international obligations, the Ministry comes to the following very succinct conclusion:

> International obligations (CR1): **positive**
> The supply of radar technology to Egypt's navy does not conflict with NL's international obligations and commitments.26

Since considerations or specific reviews of international treaties are not apparent from the decision, it can be argued that the decision-making and the decision of the ministry regarding the granting of the arms export license is careless and unmotivated.

Human rights (CR2)

The appeal has already extensively discussed the mandatory human rights and humanitarian assessment prior to granting an arms export licence. It now appears from the Wob information that it can be stated with certainty that the following requirement of Criterion 2 has not been met:

> Criterion 2: Respect for human rights in the country of final destination and compliance with international humanitarian law by that country: a) Member States evaluate the attitude of the recipient country towards important principles enshrined in international human rights instruments.27

Nowhere in the Wob information does it appear that the ministry has looked at Egypt's attitude towards different and specific human rights. The human rights and humanitarian assessment has therefore been insufficiently carried out.

Internal repression

In general, the Ministry's conclusion on the human rights situation in Egypt is as follows:

> Serious human rights violations are taking place in Egypt (…) The violent and violent reactions of the security forces were initially motivated by the desire to suppress terrorism. It is in particular the regrouped security organizations that come under the Ministry of the Interior and the police that can be held responsible for renewed abuses and repression.28

The Common Position clearly states in criterion 2 that what matters is the attitude of the recipient country towards human rights, and not just the attitude of the navy. It is not expressly stated in the decision

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26 Decision of 10 August 2015, 'Egypt arms export via France', Ministry of Foreign Affairs. p. 6.

27 Article 2 paragraph 2 Common Position.

28 Decision of 10 August 2015, 'Egypt arms export via France', Ministry of Foreign Affairs. p. 6.

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investigated which possible actors other than the police and regrouped security services play a role in the renewed abuses and internal repression. Another important consideration, which the ministry should have made, concerns the degree of independence of the navy vis-à-vis the minister of Home Affairs, from the Minister of Defense or the Prime Minister.

In any case, it does not appear from the new Wob information that the ministry asked questions, investigated them, or answered them.

The blockade of Yemen

Next, the ministry looks at the military intervention in Yemen and the support from Egypt with naval capacity.29 In relation to the conflict in Yemen is being discussed by various organizations about possible human rights violations by the coalition, as acknowledged by the ministry.

She continues that it is unlikely that the weapons to be delivered will be deployed in view of the nature of the goods intended for patrol vessels. This appears to be an assumption of the ministry. After all, as was already apparent in the discussion of the ATT, the term 'surface targets' and the possibility of a 'coastal land attack' in connection with the weapons to be exported can be brought. From a real investigation into the use of the weapons during the intervention in Yemen is not apparent from the decision.

The ministry also knows the following about the Egyptian navy:

> Furthermore, the Egyptian Navy is not involved in human rights violations in Egypt. However, the navy sometimes takes a hard line against illegal migrants who try to reach Europe by boat reach. However, these are incidents that do not occur on a structural basis. On base of these, the test against criterion 2 is positive.30

In any case, the Egyptian navy has boats with unilaterally shot at refugees, causing the death of two people.31 Het ministry is talking about this 'crackdown' against illegal migrants and knows apparently that the Egyptian navy is shelling refugee boats, sometimes fatal effects. How can the human rights test be positive if it turns out that the Egyptian navy is 'occasionally' guilty of violations of humanitarian law and human rights? Why is this not enough to refuse to supply further weapons to the Egyptian navy?

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29 Decision of 10 August 2015, 'Arms export to Egypt via France', Ministry of Foreign Affairs. p. 6, 7.

30 Decision of 10 August 2015, 'Egypt arms export via France', Ministry of Foreign Affairs. p. 7.

31‘We cannot live here any more, refugees from Syria in Egypt’, *Amnesty International,* 17 oktober 2013, Index: MDE 12/060/2013, p. 1 en 2.

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It does not follow from the discussion of the role of the Egyptian navy in the military intervention in Yemen and with regard to the unilaterally shelled refugees that the ministry has examined whether there is a clear risk that the military goods to be exported could be used for serious violations of international humanitarian law. For example, research into international humanitarian law does not show established principles.

As a result, the human rights and humanitarian assessment was insufficiently carried out by the ministry. That makes the decision-making and the decision careless and unmotivated.

Internal conflicts (CR3)

The ministry reasons as follows:

> The internal situation in Egypt is currently stable, but still fragile (…)
> Opposition, critics and NGOs are suppressed. The terrorist threat from extremists is not limited to Sinai but extends to the entire country. Smaller and sometimes larger terrorist attacks take place on a regular basis. The attacks mainly target the authorities, but tourists have also been targeted. There have also been attacks at the border crossing between Egypt and Israel. However, the risk that the supply of radar and C3 systems to the Egyptian navy contributes to internal repression is virtually nil. In particular, the security services and the police are held responsible for renewed abuses and repression. In addition, it is unlikely that the goods in question will be used for internal repression, as the application is purely maritime. Therefore, the assessment of criterion 3 is positive.32

It is unclear whether the ministry has investigated or has assumed that the goods destined for the navy, but which de facto strengthen the armed forces of the Egyptian state, do not contribute to provoking or prolonging armed conflicts. According to the NGOs, there should be a thorough investigation when granting an arms export license for a country where opposition, critics and civil society are suppressed.

Regional stability (CR 4): positive

According to the ministry, Egypt conducts an active foreign policy that *is generally* not accompanied by the deployment of military means. The ministry says the following about foreign policy that does involve the deployment of military resources:

> An exception is the crisis in Libya. While the Egyptian authorities deny any involvement, there are strong signs that Egypt was involved in the airstrikes on Libya through logistical support to the UAE (…)
> In addition, Egypt is behind the 2015 airstrikes in Libya that followed the murder of 21 Egyptian Coptic Christians. However, there are no indications that the Egyptian navy is involved in the conflict in Libya.

32 Decision of 10 August 2015, 'Arms export to Egypt via France', Ministry of Foreign Affairs. p. 7.

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> Egypt is also involved in the military operation in Yemen. Egypt has (…) supplied four naval vessels in support of the operation.
>
> Regional stability is highly volatile. However, the Egyptian navy has a legitimate security need, for example in countering terrorism in Sinai and guarding maritime areas and sea trade routes. This transaction for the navy also contributes to the maritime security of Egypt and the region, which is also in European interest. Furthermore, the Egyptian navy plays an important role in regional stability and in combating the smuggling of people and goods.33

It is not clear from the above which considerations the ministry has made about the possible negative influence of the weapons on regional stability. The ministry only mentions the legitimate security needs of the Egyptian navy as an important condition, so that the assessment for this criterion is positive. However, a legitimate security need is not a requirement for this criterion. The criterion from the Common Position, on the other hand, imposes negative conditions. In addition, every country has a legitimate security need. This therefore has no added value in assessing whether regional stability will be negatively affected by the supply of weapons to the navy.

The ministry also did not consider whether the military equipment would be used other than for national security and defense of Egypt, for example in Yemen. The deployment of the Egyptian navy in the blockade of Yemen should lead to a thorough assessment.

This makes the assessment, and therefore the decision-making and decision-making, careless and unmotivated.

Attitude to terrorism/cross-border crime (CR6): negative

According to the ministry:

> There is a strong threat of terrorism in Egypt. Especially in Sinai.
> Combating this is a legitimate security need. However, the Egyptian army is fighting terror in such a way that universal human rights are under threat.
>
> However, there is no connection between these facts and the present goods and/or the end user. This negative assessment is therefore not leading in the final assessment.34

Reference has been made several times to the assumed independence of the navy from the army. This independence is debatable and should therefore be investigated by the Ministry. That there would be no connection

33 Decision of 10 August 2015, 'Egypt arms export via France', Ministry of Foreign Affairs. p. 7, 8.

34 Decision of 10 August 2015, 'Egypt arms export via France', Ministry of Foreign Affairs. p. 8.

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existence between the facts, the navy or the Dutch military goods seems to be an assumption rather than a conclusion after an (extensive) investigation.

Development cooperation (OS) test (CR8)

The ministry is considering:

> Egypt is a Lower Middle Income Country on the OECD DAC list. In 2012, Egyptian defense spending amounted to 3.4% of GDP. In comparison, health care spending was 4.9% of GDP in 2012 and 5.1% of GDP in 2013. Actual spending may be higher: defense spending is not formally disclosed, but is in any case substantial.
>
> The army is the largest of all Arab armed forces in size. The country finances some of its military purchases through US defense support. After a brief hiatus in 2014, US defense support of USD 1.3 billion per year resumed in March this year. Based on the above, the assessment is positive.35

There is no indication that the ministry has considered whether the proposed arms export would hinder Egypt's sustainable development. The ministry also does not look at the influence of the arms supply on Egypt's external debts, whether the expenditure is, for example, in line with its 'Poverty Reduction Strategy'.36

All in all, the new information confirms the NGOs' suspicions, thanks to the Wob request, that the international law, human rights and humanitarian assessments that the ministry had to carry out for granting the arms export license have not been carried out or have been insufficiently carried out. This makes the decision-making and the related decision careless and unmotivated.

5) Conclusion

I request you to quash the ruling and, if possible, provide for the case yourself.

I also request that you take a preliminary injunction, stating that the decision of the Ministry to grant a license for arms exports to Egypt, to suspend, or to otherwise prohibit the government from supplying or installing military equipment from the Netherlands destined for Egypt is possible. to make.

35 Decision of 10 August 2015, 'Arms export to Egypt via France', Ministry of Foreign Affairs. p. 9.
36 Zie de User’s Guide to Council Common Position 2008/944/CFSP over criterium 8.

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I also request that you exercise your power to order the administrative body to pay the costs of the proceedings in objection, appeal and appeal.

Yours faithfully,

J. Klaas