

Court of The Hague  
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## PAYING NOTES

### **PAX Netherlands, Netherlands Lawyers Committee for Human Rights, Stop Wapenhandel**

For clients, the shocking video of the Egyptian army bragging that they are all killing people in the Sinai shows what today is all about.

We now want to show two short fragments of this. I will then briefly discuss the State's defence.

- Movie

These are extrajudicial executions and attacks on their own population. Journalists are not allowed in this area. It is terrible in all sorts of ways: supplying military material to the army of *this* country goes against the core of (inter)national law that pertains to arms exports.

The stuff supplied from the Netherlands is military technology: the eyes and ears of, for example, a frigate and thus of the navy and army. Without this technology, a frigate cannot sail, aim and communicate. And no *special forces* bets, more on that later.

The State is acting in violation of its statutory duty. This obligation is 'normal' in Dutch legislation and regulations, of which the Common Position and the ATT are therefore part. The discussion about direct effect and about the existence of a wide discretionary power of the State in international relations does not therefore need to be discussed. It concerns the State that does not comply with a legal standard resting on it.

In addition, the State is obviously acting negligently, and therefore unlawfully, due to the manifestly incorrect application of the (international law) standards resting on it (of the Common Position and the ATT, but also of the ICCPR, ECHR and the Geneva Conventions). This act is unlawful even under the test applied by the State in the defence.

5.1.3. of the defence, it is stated with regard to that review that the court *can only verify whether the State has weighed up all the interests involved and whether, in the light of all the circumstances of the case, it was able to reasonably arrive at its course of action.*

This then involves acting contrary to the social care that the State must exercise, and that is where the shoe pinches.

Plaintiffs argue that the State indeed *could not* reasonably have arrived at this course of action. And this *course of action* includes the granting of permits to Egypt, the erroneous testing and deliberation that has taken place therein, and the

actual permitting of the export and non-reversal of previously permitted exports.

The key point of the State is: yes, there is a lot going on in Egypt, but every single license granted has been carefully checked. We have weighed up all the criteria in the common position and therefore there is no question of a wrongful act.

And it is nice that the State is weighing up the criteria of the Common Position. We're not saying they do *n't either*. Our concern is that they clearly do the assessment incorrectly.

It reminds me of the recurring discussion I have to have with one of my teenage sons: very clever that you have learned all that French grammar and can recite it, but if the sentence you write down in the test is grammatically incorrect, you get still a big fail.

Fortunately, we now have one concrete permit test from the State, exhibit 9 of the defence. For the (huge) amount of 114 million to the Egyptian navy. This material does not appear to be (fully) implemented yet.

When I read the test I was quite shocked: how is it possible that you write all this down and still come to the conclusion that export is allowed? It's pretty bizarre, and also obviously illegal. It deserves a big fail.

I will run through three points that make this clear.

**First on Yemen and the violation of human rights and humanitarian law of war (criterion 2c).**

In the permit we read that Egypt is part of the coalition against Yemen and that the navy is participating. According to the defense (5.3.5.), the navy's role in the blockade is *very limited*. Political support is provided, they are formally part of the coalition running the blockade, and the navy is patrolling the waters off Yemen.

According to Human Rights Watch, among others, the situation in Yemen is the largest humanitarian crisis in the world.<sup>1</sup> Millions of people are hungry, thousands of children have died.

CNN described the situation on the ground this year as "hell on earth."<sup>2</sup>

A country that contributes 'very limited' with its navy to the largest humanitarian crisis in the world and to 'hell on earth' does indeed contribute and thus clearly violates international humanitarian law. Note that criterion 2c speaks of a *clear risk* that the goods can be used for these violations. It cannot be said with a dry eye that there is *no clear risk* that the Egyptian regime will use the stuff for violations of international humanitarian law in or around Yemen.

<sup>1</sup> <https://news.un.org/en/story/2019/02/1032811>; <https://www.hrw.org/world-report/2021/country-chapters/yemen>; <https://www.unicef.org/emergencies/yemen-crisis> [https://www.democracynow.org/2021/3/12/yemen\\_famine\\_child\\_hunger\\_nima\\_elbagir](https://www.democracynow.org/2021/3/12/yemen_famine_child_hunger_nima_elbagir)

Then on **criteria 2a, the use for domestic oppression**

The permit states that: 'The human rights situation in Egypt is very worrying'. A little further on, however, we read that, as far as we know, the Egyptian navy is not involved in human rights violations in or outside Egypt.

The State has clearly also seen the images that we have just shown of the military operation in which the Egyptian army, air force and navy work together. In the permit it is euphemistically described as that 'the army does not act softly in counter-terrorism operations in the Sinai.' It also states that the rights of Egyptian residents in Sinai are being violated and that extrajudicial executions are taking place.

The Dutch equipment will be part of a frigate that has various functions. One of those functions, according to the permit, is to support *special forces units*. The special forces units are specialized marines. These *Egyptian Navy SEALs*, as they are also called, work from the Egyptian Navy, landing from the air or by dinghies and conducting reconnaissance, raids and assassinations.<sup>3</sup>

The special forces units are deployed in the Sinai for counter-terrorism operations, according to documents that we submitted yesterday.<sup>4</sup> In the summons we already pointed to other possible ways of involvement of the navy in the conflict in the Sinai.

Human Rights Watch reaffirmed this in its March 2021 report ("The government has mobilized tens of thousands of troops, including infantry, air, and naval forces").<sup>5</sup>

So there is at least the risk of criteria 2a, of involvement of the Egyptian navy in the operations in the Sinai, in which the human rights of its own population are clearly violated.

The State knows this and nevertheless permits this export, in violation of the law and international obligations, and in violation of its social duty of care (which is partly fulfilled by national and the aforementioned international standards<sup>6</sup>). Of course, the State could not reasonably have come to this course of action.

Then as a third point, briefly about **criteria 6 (attitude of the country) and criteria 4 (stability in the region)**.

<sup>3</sup> See Exhibit 10. <https://www.globalsecurity.org/military/world/egypt/153commando.htm> See

<sup>4</sup> Exhibit 11. <https://navalpost.com/egypts-navy-modernization-the-growth-of-new-power-in-the-middle-east/>

<sup>5</sup> <https://www.hrw.org/news/2021/03/17/egypt-massive-sinai-demolitions-likely-war-crimes#:> "Hostilities at an intense level beyond sporadic disturbances have continued for years. The government has mobilized tens of thousands of troops, including infantry, air, and naval forces, and all parties to the conflict have organized command structures. Ordering unlawful forcible displacement of civilian populations and the extensive seizure and destruction of their homes and farms can constitute violations of laws of war that are serious enough to amount to [war crimes](#)."

<sup>6</sup> Including the Common Position, the ATT and treaties such as the ECHR & ICCPR, and the Geneva Conventions, including common Article 4.

We read in exhibit 9 that Egypt is supplying military equipment to General Haftar in Libya and that Egypt is thereby violating the arms embargo. And then there's the previously discussed role of Egypt around Yemen.

This is not about the exact role of the navy in violating the arms embargo of Libya or the blockade of Yemen. It is about Egypt's *attitude* in these matters.

I would refer to the User's Guide to the Common Position for this: "Member States will not grant a license if the assessment of the track record of the purchasing country against criterion 6 does not yield a positive result."<sup>7</sup>

If you add up all the knowledge that the State has about Egypt, then the State could not lawfully allow the export under criteria 6 and 4.

### **Conclusion**

We know that the Netherlands has allowed the export of military equipment in the recent past. The test that we have now been able to see was clearly done incorrectly and therefore in violation of social prudence; moreover, the State is acting in violation of a legal obligation by allowing the export. That is illegal. And we know that the State does not rule out allowing more supplies to the Egyptian navy and perhaps even to the army.

This situation must stop immediately. Every day that the Netherlands wants to continue and continues to allow arms exports to Egypt, every day that the State does not intervene to stop military material that Dutch companies intend to export, is a violation of (inter)national law and an unlawful act. acted.

All in the Netherlands have an interest in ensuring that the State does comply with international standards and human rights obligations, also in order to prevent risks of war, conflict and human rights violations elsewhere. But it is also the people of Egypt and the people of the region that I want to mention and whose interests are at stake here.

The Egyptian Navy SEAL, who shoots people dead in a village in the Sinai, without any trial, knows, perhaps partly thanks to Dutch material, where he can commit these violations. The eyes and ears of the frigate that supports him, and enables him to commit his crimes, can be Dutch.

Clients here request a measure to prevent weapons from being exported in violation of the applicable standards under the current situation in Egypt.

Because the State does not want to change behavior itself, we need you. It is important that you allocate the claims.

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<sup>7</sup> See production 12.