

On the eleventh of October two thousand and twenty-one,

at the request of:

- I. The **foundation Vredesbeweging PAX Nederland**, with its registered office and place of business in Utrecht (“**PAX**”);
- II. The **foundation Campagne tegen Wapenhandel**, also acting under the name ‘Stop Wapenhandel’, with its registered office and principal place of business in Amsterdam;
- III. The **Nederlands Juristen Comité voor de Mensenrechten (NJCM)** [Dutch Section of the International Commission of Jurists], an association with full legal capacity with its registered office and principal place of business in Leiden;

all electing domicile in this matter in Amsterdam at the office of PILP-NJCM, where their lawyer J. Klaas LL M is employed, and for whom L.M. Ravestijn LL M (lawyer practising at Buitenveldertselaan 106, 1081 AB in Amsterdam) is appointed as litigation attorney in this matter and who will act as such.

I have

#### **SUMMONED TO APPEAR IN PROCEEDINGS**

The **STATE OF THE NETHERLANDS (THE MINISTER OF FOREIGN AFFAIRS)**, serving my **writ**, pursuant to Section 48 of the Dutch Code of Civil Procedure, at the Office of the Procurator-General to the Supreme Court of the Netherlands, with its registered office and principal place of business at (2511 CB) The Hague at the address Korte Voorhout 8, and leaving a copy of this document, as well as the exhibits listed:

Summoned to appear, in person or represented by counsel, on **the ninth of November two thousand and twenty-one** at **12:00 PM**, at the hearing which will be held in the session of the Preliminary Relief Court of the District Court of The Hague, Private Law Division, at the Palace of Justice at Prins Clauslaan 60, 2595 AJ in The Hague.

## **GIVING NOTICE THAT**

- a. If the defendant does not appear in the proceedings in person or represented by counsel at aforesaid session, or fails to observe the prescribed terms and formalities, the district court will render a default judgment against the defendant and award the claims as formulated in the following, unless the district court finds the claim wrongful or unfounded;
- b. If the defendant does appear in court, it will be charged court registry fees that must be paid within four weeks after the time of appearance;
- c. The amount of the court registry fees is listed in the most recent annex to the Court Fees (Civil Cases) Act, published on the website: [www.kbvg.nl/griffierechtentabel](http://www.kbvg.nl/griffierechtentabel)
- d. Indigent persons will be levied a lower court registry fee established for indigent persons by or under the law, if at the moment at which the court registry fees are levied, the person has submitted:
  - 1. a copy of the decision to grant legal aid, in the sense of Article 29 of the Legal Aid Act or, if this is not possible due to circumstances not reasonably attributable to the defendant, a copy of the application for legal aid in the sense of Article 24 (2) of the Legal Aid Act, or
  - 2. a statement by the board of the Legal Aid Council, in the sense of Article 7 (3) (e) of the Legal Aid Act, indicating that the defendant's income does not exceed the income level referred to in the order in council under Article 35 (2) of that Act;
- e. Any further exhibits on which the claimant wishes to rely will be presented at the hearing and sent beforehand (in CC) to the Preliminary Relief Court and to the other party.

## **FOR THE PURPOSE OF**

Hearing the claim submitted by the claimants at that time, based on the following grounds:

## Introduction

1. The claimants (hereafter also referred to jointly as: “PAX et al.”) are two foundations (PAX and Stop Wapenhandel) and an association (NJCM). The articles of association of the claimants will be submitted to the court, and sent beforehand in copy to the Preliminary Relief Court and to the other party.
2. PAX is the largest peace organisation in the Netherlands. One of PAX’s programmes focuses on arms trade. According to PAX, arms trade can fuel ongoing conflicts and lead to serious human rights violations by repressive regimes and armed groups. PAX therefore works towards stricter and more effective Dutch and international arms transfer controls.<sup>1</sup> PAX also works against arms exports to Egypt by means of campaigns, lobbying and publications.<sup>2</sup>
3. Stop Wapenhandel<sup>3</sup> is an independent organisation against international arms trade and arms industry, and especially Dutch involvement in these activities. Stop Wapenhandel researches Dutch and European arms exports and production and publishes reports on these topics.<sup>4</sup> Stop Wapenhandel also works against arms exports to Egypt by means of campaigns, lobbying and publications.<sup>5</sup>
4. The Dutch Section of the International Commission of Jurists (NJCM) advocates the development, strengthening and protection of fundamental human rights and freedoms at national and international levels, focusing in particular on the government’s obligation to recognise and respect fundamental rights and freedoms in its acts and omissions. The Public Interest Litigation Project (PILP) is the part of NJCM that explores the possibilities of

---

<sup>1</sup> PAX, Arms Trade, <https://paxforpeace.nl/what-we-do/programmes/arms-trade>

<sup>2</sup> PAX, ‘PAX tries to stop Egypt arms deal’, 7 July 2016, <https://paxforpeace.nl/news/overview/pax-tries-to-stop-egypt-arms-deal>

<sup>3</sup> Stop Wapenhandel, <https://stopwapenhandel.org/English/>

<sup>4</sup> Stop Wapenhandel, Arms Export and Trade, <https://stopwapenhandel.org/thema/wapenexport-en-doorvoer/>

<sup>5</sup> Stop Wapenhandel, ‘Grote Nederlandse wapendeal met Egypte, Backgrounder’, 26 August 2020, <https://stopwapenhandel.org/EgypteBackgrounder/>

strategic litigation.<sup>6</sup> NJCM has used lobbying, publications and legal proceedings to address arms export licences to Egypt.<sup>7</sup>

5. All claimants take part in these proceedings on the basis of Section 3:305a of the Dutch Civil Code, both from the general interest (compliance with international law by the State, including human rights and international humanitarian law) and from the more specific/collective interest of all those who are or may become victims of arms trade in violation of national and international law. These include residents of Egypt and the region, as well as past, present and future victims of the use of military force by the Egyptian armed forces.
6. The State of the Netherlands (hereafter: “the Minister”) is called upon in this case in its capacity as a ‘licensing authority’.
7. PAX et al. have tried to achieve the claims by means of consultation with the Minister. On 14 June 2021, a letter was sent to the Minister on behalf of PAX et al. with the request, in summary, not to renew existing licences for arms export to Egypt and not to issue any new licences (**Exhibit 1**). In response to that letter, a consultation took place on 20 July 2021 between PAX et al. and representatives of the Minister.
8. On behalf of the Minister, it was indicated during that consultation that they would not comply with the request by PAX et al.<sup>8</sup> On 30 September 2021, PAX et al. sent a second message to the Minister. The Minister did not accede to this request either. Further correspondence then took place by e-mail, and one more request was submitted on 7 October on behalf of PAX et al. (**Exhibit 2**).
9. Arms exports that take place in violation of human rights and national and international law affect the general interests of peace and security. It is in the interest of all Dutch people that the State of the Netherlands ensures that the world does not become more unsafe and more violent. It is also in the interest of all Dutch people that the applicable human rights and national and international rules are carefully and correctly observed

---

<sup>6</sup> PILP-NJCM, <https://pilpnjcm.nl/>

<sup>7</sup> NJCM, ‘Rechtszaak om wapenlevering aan Egypte’, 12 August 2016, <https://njcm.nl/actueel/rechtszaak-om-wapenlevering-aan-egypte/>

<sup>8</sup> For the Minister’s position, see below under “Defendant’s Position”, paragraph 65 and following.

by the Minister.

10. In addition, the victims of the regimes to which military equipment is delivered from the Netherlands in violation of human rights and national and international rules also have an interest in the claims. They are unable to defend this interest themselves, because it is not yet known who the victims of the unlawfully supplied goods will be.
11. PAX et al. have resorted to the civil court because an unlawful act by the State threatens to continue, or in any case to take place, and this must be countered and/or prevented as a matter of urgency. In addition, it has been established that the Customs Chamber of the Amsterdam Court of Appeal ruled in its decision of 17 October 2017 that the administrative-law route is not open to PAX et al. for the purpose of challenging licenses for arms exports, and that the civil-law route is the only form of effective legal protection.<sup>9</sup>
12. This writ of summons, as required by Section 1018c (1) of the Dutch Civil Code, has been registered with the Central Register of Collective Actions at the same time as its filing with the court registry.<sup>10</sup>
13. With the above steps and explanations, PAX et al. have fulfilled the requirements imposed on them by Section 3:305a of the Dutch Civil Code and by the Settlement of Large-scale Losses or Damage (Class Actions) Act.
14. The subject of this dispute is the licences for the export of military goods/technology to Egypt that have been and are still to be granted by the Minister. More specifically, this concerns the following: in July 2020, the Minister issued a licence to a Dutch company (presumably Thales Netherlands) to export radar and other equipment and related services to Egypt. This is apparent from a letter to Parliament on 10 July 2020 by the Minister for Foreign Trade and Development Cooperation and the Minister of Foreign

---

<sup>9</sup> Amsterdam Court of Appeal, 17 October 2017, ECLI:NL:GHAMS:2017:4582, <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2017:4582>

<sup>10</sup> Rechtspraak.nl, Central Register of Collective Actions, <https://www.rechtspraak.nl/Registers/centraal-register-voor-collectieve-vorderingen#0173fcff-cc24-46cd-a04a-51f12c6578edac223763-bdcc-4d9f-b33f-432ba8af51151>

Affairs at that time.<sup>11</sup>

15. PAX et al. have been given to understand that this export licence in all likelihood relates to the supply of equipment (by Thales Netherlands) for frigates to be built in Germany for the Egyptian navy. If this understanding is correct, this concerns the first of possibly six comparable orders.<sup>12</sup> Several other licenses for exports to Egypt were issued between July 2020 and July 2021. These licenses form an integral part of this dispute.
16. The basis for such licence(s) is the General Customs Act and the export control instruments derived from that legislation.
17. According to the General Customs Act<sup>13</sup>, assessment should take place on the basis of the eight criteria listed in Article 2 of the Common Position of the European Union defining the rules governing control of exports of military technology and equipment<sup>14</sup> (“the Common Position”), as well as on the basis of the Arms Trade Treaty (ATT) incorporated therein.<sup>15</sup> The criteria from the Common Position that are most relevant to this case are briefly cited here.
18. Criterion 2a states that export licences shall be denied if there is a clear risk that the military technology or equipment to be exported might be used for internal repression. The same principle applies according to Article 7(1), introduction and (b)(ii) in conjunction with Article 7(3) of the Arms Trade Treaty.  
  
Criterion 2c states that export licences shall be denied if there is a clear risk that the military technology or equipment to be exported might be used for the commission of serious violations of international humanitarian law.

---

<sup>11</sup> Letter from the Minister for Foreign Trade and Development Cooperation and the Minister of Foreign Affairs, 10 July 2020, Parliamentary Paper 22 054, no. 328.

<sup>12</sup> Marineschepen.nl, ‘Thales levert radars voor Egyptische MEKO-fregatten’, 16 July 2020, <https://marineschepen.nl/nieuws/Thales-levert-sensoren-voor-Egyptische-MEKO-fregatten-160720.html>

<sup>13</sup> General Customs Act (2008), Article 1:4 and Strategic Goods Decree, Article 11 (1) and (3).

<sup>14</sup> Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, as amended by Council Decision (CFSP) 2019/1560 of 16 September 2019.

<sup>15</sup> Arms Trade Treaty, New York, Treaty Series 2013, 143 and Treaty Series 2014, 45.

Criterion 6(b) also requires consideration of the buyer country's record of compliance with its international commitments, in particular on the non-use of force, and with international humanitarian law.

As will be shown below, exports of military goods to Egypt, under the present factual circumstances, are contrary to these criteria.<sup>16</sup>

#### The essence of the dispute in these proceedings

19. The parties are in agreement that Egypt is committing massive human rights violations and that supplies of military goods to the Egyptian army should not be allowed to take place at present. In the recent past, the defendant has put *all* arms deliveries to Egypt under what is known as a "presumption of denial" (i.e. 'no exports, unless'). However, the defendant's current position is that objections against the export of military goods to Egypt do not apply if the navy is the receiving party. The only issue that divides the parties, therefore, is whether exports of military goods to the Egyptian navy should now also be prohibited.
20. The dispute between the parties essentially comes down to the fact that **(I)** the Minister has artificially made – and maintained – a distinction between the Egyptian military (apparently: the army) and the Egyptian navy. This ignores the fact that the Egyptian navy is an integral part of the Egyptian regime which violates human rights. The Egyptian navy therefore also contributes to internal repression, or in any case makes it possible, or in any case facilitates (or contributes to facilitation of) the maintenance of that repression. Military goods supplied to this military regime run the risk of being used for internal repression. For that reason, no military goods should be exported on behalf of the Egyptian State and/or Egyptian navy.
21. However, even apart from the unjustified distinction between these two parts of the Egyptian armed forces, it is certain that **(II)** the Egyptian navy can also be considered to

---

<sup>16</sup> In this writ of summons, "military goods" also includes "military technology". The term "arms" is also used in reference to the same concept in this writ of summons. The term "export" also includes the export of military goods or technology to Egypt through other countries.

have been independently guilty of internal repression and violations of international humanitarian law, or in any case to have contributed to these acts. For that reason as well, no military goods should be exported on behalf of the Egyptian State and/or Egyptian navy.

22. Furthermore, (III) military goods should also not be supplied to Egypt, due to Egypt's behaviour towards the international community and violations of international law, including humanitarian law.
23. PAX et al. argue in these proceedings that – at the very least – there is a plausible (or very plausible) risk that the proposed delivery or deliveries by Thales or another supplier of military goods to the Egyptian navy on the basis of the licence granted by the Minister to that end may contribute to, or even be directly used in, internal repression and/or violations of fundamental human rights and/or violations of international law, including humanitarian law, and/or otherwise contravene the obligations of the Netherlands under the Common Position and the Arms Trade Treaty.
24. This implies that no arms exports should be made to any part of the Egyptian armed forces whatsoever.
25. With that knowledge in mind, or in any case based on the plausible accuracy of the above assertion by PAX et al., there should be no implementation of previously authorised and future exports of military goods to this country.
26. PAX et al. argue that the division of the burden of proof is self-evident: it is up to the State/Minister to demonstrate that the aforementioned deliveries of military equipment under the licence(s) granted do not and would not contribute to, nor pose any risk of contributing to internal oppression, and/or violations of fundamental human rights and/or violations of international law, including humanitarian law. In any case, it is up to the State to refute the assertions made by PAX et al.



## The Netherlands acknowledges the human rights violations

30. Human rights organisations and journalists are not the only parties to be concerned.<sup>22</sup> The Dutch government is also very concerned about the situation and has communicated about it both internationally and in Parliament. For example, then-Minister Blok wrote to the House of Representatives in 2019: “Fundamental freedoms are under pressure in Egypt.”<sup>23</sup> More recently, on 15 February 2021, then-Minister Blok also addressed the situation in Egypt:

“The overall human rights situation in Egypt and in Egyptian prisons has deteriorated in recent years.”<sup>24</sup>

31. On 12 March 2021, 31 countries, including the Netherlands and the US, signed a declaration before the 46th session of the UN Human Rights Council, expressing deep concern about the many human rights violations committed with impunity by the Egyptian authorities.<sup>25</sup>

32. In other words, there is no difference of opinion with the State regarding whether internal repression and human rights violations are occurring in Egypt, nor about the seriousness of the situation in Egypt.

---

<sup>22</sup> See e.g. Human Rights Watch, World Report 2021, Egypt, <https://www.hrw.org/world-report/2021/country-chapters/egypt>; Amnesty International, ‘Egypte: verontrustende stijging aantal executies’, 2 December 2020, <https://www.amnesty.nl/actueel/egypte-verontrustende-stijging-aantal-executies>; Reporters without Borders, Egypt, ‘One of the world’s biggest jailors of journalists’, <https://rsf.org/en/taxonomy/term/156>

<sup>23</sup> Letter on the current situation in Egypt, Minister Blok, 4 April 2019, BZDOC-1052268974-39, <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/04/04/kamerbrief-over-de-actuele-situatie-in-egypte>. In the same letter, Blok discussed the continued lack of democratic progress, the fragile domestic situation, the concerning new Constitution and the death sentences in early 2019.

<sup>24</sup> Responses to the written questions by MP Van den Hul (PVDA) regarding the report ‘Egypte: doden in gevangenschappen na marteling en slechte medische zorg’, Minister Blok, 15 February 2021, BZDOC-727249465-21, <https://www.rijksoverheid.nl/documenten/kamerstukken/2021/02/15/beantwoording-vragen-over-het-bericht-egypte-doden-in-gevangenschappen-na-marteling-en-slechte-medische-zorg>

<sup>25</sup> Amnesty International, ‘States break silence to condemn Egypt’s abuses at UN rights body’, 12 March 2021, <https://www.amnesty.org/en/latest/news/2021/03/states-break-silence-to-condemn-egypts-abuses-at-un-rights-body/>. The statement itself can be found here: US Mission to International Organizations in Geneva, ‘Joint Statement on Human Rights in Egypt’, 12 March 2021, <https://geneva.usmission.gov/2021/03/12/joint-statement-on-human-rights-in-egypt/>

### **Fluctuating export policy for arms exports to Egypt**

33. As noted, the State also acknowledges the seriousness of the human rights situation in Egypt. From time to time, this awareness has also led to decisions not to grant licenses to export military goods to Egypt (or only under strict conditions) – known as a “regime with added restrictions”.
34. Until early 2011, arms deliveries to Egypt were generally not considered objectionable until early 2011; at that point, the Netherlands suspended such exports in early 2011 in response to the events known as the Arab Spring. In 2012, with Morsi as president, export licenses were released again (on a case-by-case basis ) due to a “return to democracy”.
35. After the coup by Al-Sisi in July 2013, a stricter regime on arms export licences to Egypt was implemented again for some time, but after Al-Sisi officially became president through fraudulent elections during the course of 2014, the door to arms exports was opened again.
36. As of November 2018, a presumption of denial was then applied to Egypt for the entire range of Egyptian armed forces (army, air force and navy).<sup>26</sup> This presumption was reversed again in July 2019.<sup>27</sup>

### **Current policy: arms only supplied to the Egyptian navy**

37. In a previous Parliamentary letter on an earlier licence to Egypt, from 2015, the Minister stated the following:

“Serious human rights violations are taking place in Egypt. However, there are no indications that the goods to be exported are linked to the human rights violations or internal repression that have been identified. In addition, the Egyptian navy is not involved in human rights violations in Egypt.”<sup>28</sup>

38. This is also the current position of the Dutch government. From the Ministers’ letter to the

---

<sup>26</sup> Source: Parliamentary Paper 22 054, no. 305.

<sup>27</sup> Source: Parliamentary Paper 22 054, no. 312.

<sup>28</sup> Parliamentary Papers, Session Year 2014-2015, 22 054, no. 263.

House of Representatives on 12 July 2020<sup>29</sup> and the response to the Parliamentary questions on this subject on 17 August 2020<sup>30</sup>, it can be deduced that the State finds the situation in Egypt very concerning, but does not see any problems with regard to issuing licences for military goods on behalf of the Egyptian navy.

### **I. The distinction between army and navy is artificial and wrong**

39. By adopting this position, the State makes an artificial and incorrect distinction. The navy is an integral part of the military regime. The navy, together with the army and air force, constitute a coherent entity: the Egyptian armed forces. The navy falls directly under the leadership of the Ministry of Defense and the “Chief of Staff of the armed forces”.<sup>31</sup>
40. President al-Sisi’s Egypt is a military dictatorship. Under President al-Sisi, the armed forces have further increased their already strong repressive influence, and the continued expansion of military capacity will contribute to an even more authoritarian attitude on the part of President Al-Sisi and the [Egyptian] armed forces in general. All weapons supplied to this regime strengthen the military dictatorship and could contribute to internal repression.
41. Supplying *one part of* the Egyptian armed forces should not be allowed, while it is clearly established that the armed forces oppress their own population on a large scale, violate human rights and have an iron grip on the country.
42. As will be explained in more detail below, the Egyptian navy also has an independent role in internal repression and violations of international humanitarian law. Even separate from that, the military goods to be delivered to the Egyptian armed forces could be used for internal repression. Naval ships are a floating military base. Ships could be used in various ways to support the other components of the armed forces that play a role in internal repression. For example, ships can play a role in observation and operate as a command centre. That means that there is already a clear risk that the military technology or

---

<sup>29</sup> Letter to the House of Representatives on the issuing of a licence for the export of military equipment to Egypt, 12 July 2020, BZDOC-2102316022-49.

<sup>30</sup> Response to questions by MP Van Ojik (GroenLinks) on the licensing of arms exports to countries violating a UN arms embargo, 17 August 2020, BZDOC-1455490294-40.

<sup>31</sup> Egyptian Armed Forces, Ministry of Defense, <https://www.mod.gov.eg/ModWebSite/Default.aspx>

equipment to be exported by the Netherlands could be used for internal repression.

43. The rationale behind the Common Position, the Arms Trade Treaty and the Dutch arms export policy is that no military equipment is supplied to countries that actively violate human rights. As stated by the State of the Netherlands itself, the Egyptian armed forces are actively involved in serious human rights violations. Therefore, no weapons should be supplied to these armed forces, to this country.

## II. The Egyptian navy's 'own actions'

44. Even when the actions of the Egyptian navy are judged on their own merits, the criteria of the Common Position clearly indicate that no exports should take place under the current circumstances.
45. The Egyptian navy is actively deployed in the Red Sea and has participated – in any case at some point – in the maritime blockade of Yemen. This maritime blockade results in starvation of the civilian population. Starvation is being used as a method of warfare, which is a war crime and therefore a serious violation of international humanitarian law.<sup>32</sup> With the ongoing war in Yemen and the fact that Egypt continues to provide political support to the coalition led by Saudi Arabia and the UAE, including an animal blockade, there is a clear and present risk that the Egyptian navy will take part in such actions again (in the future). Under these circumstances, exports are contrary to Article 2, criterion 2(c) of the Common Position and the Arms Trade Treaty.
46. In addition, the Egyptian regime is conducting extensive military operations against its own civilian population in North Sinai. These operations include the large-scale destruction of homes and farmland, the use of cluster bombs that are banned under international law, and extrajudicial executions.<sup>33</sup> According to Human Rights Watch, the

---

<sup>32</sup> See also: ICRC, IHL Database, Rule 53, Starvation as a Method of Warfare, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule53](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule53)

<sup>33</sup> Human Rights Watch, 'If You Are Afraid for Your Lives, Leave Sinai!', 28 May 2019, <https://www.hrw.org/report/2019/05/28/if-you-are-afraid-your-lives-leave-sinai/egyptian-security-forces-and-isis>; Amnesty International, 'Egypte: leger gebruikt verboden clusterbommen', 2 March 2018, <https://www.amnesty.nl/actueel/egypte-verboden-clusterbommen>; Amnesty International, 'Wordt vervolgd, Als Sisi weggaat stort Egypte in. Zegt hij zelf', 25 June 2019, <https://www.amnesty.nl/wordt-vervolgd/egypte-sisi>;

Egyptian regime is in breach of international war laws and has committed human rights violations in North Sinai.<sup>34</sup> In 2018, Operation Sinai 2018 was launched: a large-scale military operation involving cooperation by the army, air force and navy. The Egyptian armed forces themselves thus do not make the distinction between army and navy in that context.

47. The Egyptian navy is actively involved in repressing its own civilian population in North Sinai. On 1 August 2021, the Egyptian army released a military propaganda video that offers chilling insights into the situation in this region.<sup>35</sup> The video contains violent images, with a voice-over saying that the Egyptian army has killed 89 “insurgents”, and shows e.g. the killing of unarmed people. The video also shows images of the Egyptian navy. The use of radar and C3 systems in naval support of land operations is very obvious.<sup>36</sup> The direct involvement of the Egyptian navy in this internal repression violates criterion 2(a) of the Common Position and Article 7(1)(a)(ii) in conjunction with paragraph 3 of the Arms Trade Treaty.

### III. Egypt’s conduct in the international community

48. As stated above, Egypt has repeatedly flouted international law. The blockade of Yemen, which can be considered a war crime, the continued support for bombardments by the coalition led by Saudi Arabia and the UAE, and Egypt’s actions in the internal armed conflict in North Sinai are serious violations of international humanitarian law. Egypt’s violation of the arms embargo on Libya shows that the country is also failing to comply

---

<sup>34</sup> Human Rights, Watch, ‘Egypt: massive Sinai demolitions likely war crimes’, 17 March 2021, <https://www.hrw.org/news/2021/03/17/egypt-massive-sinai-demolitions-likely-war-crimes>

<sup>35</sup> A reference (and link) to this video can be found in this update from Amnesty International: Amnesty International, ‘Egypt: ‘deeply disturbing’ propaganda video shows military killings’, 5 August 2021, <https://www.amnesty.org.uk/press-releases/egypt-deeply-disturbing-propaganda-video-shows-military-killings>

<sup>36</sup> See also this article in *Al-Monitor* about the German frigates that will be equipped with the Dutch radar equipment. The article establishes a direct link between the German ships and the conflict in North Sinai. *Al-Monitor*, ‘Egypt boosts naval power in deal with German shipbuilder’, 23 September 2020, <https://www.al-monitor.com/originals/2020/09/egypt-germany-contract-produce-frigate-navy-regional-tension.html#ixzz73QP7MjVW> “Rear Adm. Ahmed Mohamed al-Sadiq, former head of the Port Said Port Authority, told *Al-Monitor* that the Egyptian armed forces’ current policy is to diversify its sources of weapons, as part of efforts to counter any security chaos, whether inside Egypt or outside its borders. ‘The first challenge lies in the ongoing unrest in the Sinai Peninsula, where the Egyptian army is trying to keep things under control. The situation in Sinai is an important factor to determine the size and the type of weapons [the government] needs,’ Sadiq said.” (emphasis added)

with other obligations under international law.<sup>37</sup>

49. In addition, Egypt is adopting a territorially aggressive stance, both in the Mediterranean (e.g. towards Turkey) and in the Red Sea and Gulf of Aden.<sup>38</sup>
50. Egypt's lack of respect for the international rule of law is underlined by the finding that Egypt was refusing to cooperate with investigations mandated by internationally recognised human rights institutions, such as the UN Human Rights Council: "*Egypt did not cooperate with the Group or support its work.*"<sup>39</sup>
51. The assessment of Egypt as a buyer country under Criterion Six (interpreted in part based on the User's Guide to the Common Position<sup>40</sup>) should lead to the preliminary decision that no arms should be exported to Egypt.

#### Urgent interest

52. PAX et al. have a very urgent interest in obtaining urgent relief with regards to the claims.
53. If the requested ban is not granted, there is a risk that the military goods for which licences have already been issued will be exported and that future deliveries will also take place – within the very short term.

---

<sup>37</sup> UN Panel of Experts on Libya 2021, table 6 after para. 76, <https://undocs.org/S/2021/229>

<sup>38</sup> Financial Times, "Egypt threatens military action in Libya if Turkish-backed forces seize Sirte", 21 June 2020, <https://www.ft.com/content/e6aa87b0-5e0b-477f-9b89-693f31c63919>;

The Times of Israel, "Egypt uses military to send firm message to newly conciliatory Turkey", 7 July 2021, <https://www.timesofisrael.com/egypt-uses-military-to-send-firm-message-to-newly-conciliatory-turkey/>

The Arab Weekly, "New naval base boosts Egypt's presence in the Red Sea", 19 January 2020, <https://theArabweekly.com/new-naval-base-boosts-egypts-presence-red-sea>.

<sup>39</sup> Report of the Group of Eminent International and Regional Experts as submitted to the United Nations High Commissioner for Human Rights, 9 August 2019, A/HRC/42/17, para. 7.

<sup>40</sup> User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, 2189/19, p. 114: "Member States will not issue a licence where the general evaluation of the buyer country's record with reference to Criterion Six is not positive."

54. Once the goods are exported, this is irreversible: The Netherlands then loses jurisdiction over the goods; a later ruling cannot reverse the exports.
55. As indicated above, the export of military goods to Egypt (and a decision to permit such exports) would, at least for the time being, be in conflict with the obligations of the Netherlands under the Common Position, the Arms Trade Treaty, the Strategic Goods Decree and therefore also the General Customs Law; or in any case, by allowing the export, the State would be acting contrary to a private law duty of care incumbent on the State.
56. Moreover, there is a risk that the goods could be used in Egypt in the course of, or could contribute to, serious violations of fundamental human rights and/or international humanitarian law, such as the standards which aim to protect civilians in conflict areas.

#### *Abridged judgment*

57. The interests involved in a very expedited ruling by this Court are therefore undeniably great. PAX et al. therefore ask for an abridged judgment, with the details to be worked out at a later date.

#### Evaluation of interests

58. The interests described in detail above in prohibiting the delivery or deliveries in question or permission for such deliveries are not offset by any (compelling) interests on the part of the State and/or the proposed Dutch supplier.
59. In any case, PAX et al. presume that there are no interests involved other than purely economic interests, which do not outweigh all the other matters presented above in this writ of summons.
60. Insofar as the State/Minister would argue that the principle of legal certainty is at stake – after all, *one or more licences* have been granted, on the basis of which, in principle, delivery should/may take place – PAX et al. argue that this case involves such exceptional (and

serious) facts and circumstances that the requested prohibition claimed in this case should be issued notwithstanding the licence(s).

#### The claims of PAX et al.

61. The claimants have resorted to the Preliminary Relief Court because an unlawful act (in the sense of Section 6:162 of the Dutch Civil Code) by the State threatens to continue, or in any case to take place. All of the above implies that exports from the Netherlands by Dutch companies to all parts of the Egyptian armed forces, including the Egyptian navy, is currently not permissible and should be prohibited. The court in preliminary relief proceedings can impose such a prohibition on the State.
62. It is then up to the State to determine how to act in order to remedy the established unlawful act.<sup>41</sup>
63. The State has ample opportunities to do so, since the State has its own power, for example, based on the law and international obligations, to change decrees that have been made, or to prevent actual export if (new) circumstances demand such measures. The State may revoke, suspend or withdraw licences that have been issued, or take action to prevent the actual export based on the licences.
64. In these proceedings, PAX et al. petition the court – in short – that (on pain of penalties) the State be prohibited from permitting the (actual) export of military goods to Egypt, or in any case be ordered to make the (actual) export of military goods to Egypt impossible. For the elaboration of these claims, PAX et al. refer to the points mentioned below under “Therefore”.

#### Defence by the Minister and rebuttal of defence

65. On behalf of the Minister – as noted in paragraphs 7 and 8 – a meeting was held on 20

---

<sup>41</sup> Cf. *Urgenda* case, Supreme Court of the Netherlands, 20 December 2019, ECLI:NL:HR:2019:2006, paragraph 8.2.1: “This order does not (...) amount to an order to take specific legislative measures, but leaves the State free to choose the measures to be taken.”

July 2021 with representatives of the claimants (PAX, NJCM and Stop Wapenhandel). During this meeting, the claimants explained their concerns about the situation in Egypt and the urgent request not to renew or issue licences.

66. On behalf of the Minister, it was indicated in this conversation, among other things, that they also have concerns about the situation in Egypt (the Minister considers Egypt a “country of concern”), and that they share the concerns expressed by the claimants about human rights violations. However, the volatility of the situation in Egypt and the situation in the region is, according to the Minister, not yet sufficient reason to ban arms exports to the Egyptian navy. The arms export dossier on Egypt, according to the Minister, is a “living and dynamic dossier”, in which the context and all developments are taken into account, and which the Minister continues to monitor. If the facts warrant such actions, new license applications for Egypt will be rejected and licences already issued may be revoked.

## **THEREFORE**

If it pleases the Preliminary Relief Court to declare provisionally enforceable as far as possible, insofar as the law permits:

### **Exports already authorised**

- I. Prohibit the State of the Netherlands from permitting (actual) export of military goods and technology for/on behalf of the Egyptian State and/or the Egyptian navy, or order the State of the Netherlands to make (actual) export impossible with regard to all already permitted export of military goods and technology for/on behalf of the Egyptian State and/or the Egyptian navy, in any event until the court has ruled on the merits of the case or until such time as, in the provisional opinion of the Preliminary Relief Court, such exports are no longer contrary to the obligations incumbent on the State. On pain of forfeiture of a penalty of EUR 25,000 for each day (or part of a day) that the State of the Netherlands fails to comply with this order;

## **Future exports**

- II. Prohibit the State of the Netherlands from permitting (actual) future export of military goods and technology for/on behalf of the Egyptian State and/or the Egyptian navy, or order the State to make (actual) export impossible with regard to all export of military goods and technology to Egypt, for an indefinite period of time or until the court has ruled on the merits of the case or until such time as, in the provisional opinion of the Preliminary Relief Court, such exports would no longer be contrary to the obligations incumbent on the State. On pain of forfeiture of a penalty of EUR 25,000 for each day (or part of a day) that the State of the Netherlands fails to comply with this order;
  
- III. Order the State of the Netherlands to pay the costs of these proceedings, with immediate effect.

The costs are incurred by me,

Bailiff,

## List of exhibits

- Exhibit 1 Letter from PAX et al. to the Minister on 14 June 2021
- Exhibit 2 E-mails from PAX et al. to the Minister on 30 September 2021 and 7 October 2021