

Court File Number : T-

FEDERAL COURT

BETWEEN :

DANIEL TURP

Applicant

and

MINISTER OF FOREIGN AFFAIRS

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT :

A PROCEEDING HAS BEEN COMMENCED by the applicant The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. This applicant requests that this application be heard at 30 McGill street, Montreal, Quebec, H2X 3Z7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the

Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March 21, 2016

Issued by : _____

Address of local office:

The administrator
Federal Court
30 McGill St.
Montreal (Québec) H2X 3Z7

TO:

STEPHANE DION

Minister of Foreign Affairs
Global Affairs Canada
Lester B. Pearson Building, 125 Sussex Drive
Ottawa (Ontario) K1A 0G2

Court File Number : T-

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APPLICATION FOR JUDICIAL REVIEW

(Section 18.1 of the Federal Courts Act, R.S.C. 1985, c. F-7 and rules 300 et seq., as well as rule 317 of the Federal Courts Rules, 1998)

UNOFFICIAL TRANSLATION

This is an application for judicial review in respect of the issuance of export permits for light armored vehicles (LAV) to be delivered by General Dynamics Lands Systems Canada (GDLS-C) to Saudi Arabia.

The applicant makes application for:

1. Declare that the issuance of export permits for the LAV to be delivered by GDLS-C to Saudi Arabia would be illegal in that it would be contrary to the *Export and Import Permits Act*, RSC 1985, c. E-19, its Regulations and guidelines adopted by the Cabinet in 1986 (the “*Guidelines*”);
2. Declare that the issuance of export permits for the LAV to be delivered by GDLS-C to Saudi Arabia would be illegal in that it would be contrary to the *Geneva Conventions Act*, RSC 1985, c. G-3;
3. Declare that the Minister would act without competence or would exceed his jurisdiction by issuing export permits for the LAV to be delivered by GDLS-C to Saudi Arabia knowing that in that country human rights are subject to serious and repeated violations and knowing that there is a reasonable risk that the LAV might be used against the civilian population;
4. Prohibit the issuance of export permits for the LAV to be delivered by GDLS-C to Saudi Arabia;
5. In the event that one or several export permits have already been issued unbeknownst to the public, declare those permits void;
6. Should this application be rejected, order that the applicant is not required to pay the respondent's costs, in accordance with Rule 400 of the *Federal Courts Rules*;
7. Order any other remedy that this Court deems just and reasonable in light of the circumstances.

The grounds for the application are :

8. The Kingdom of Saudi Arabia (“Saudi Arabia”) is an Islamic absolute monarchy supported by a powerful army. Saudi Arabia has higher arms expenditures in proportion to its GDP than any other country. Saudi Arabia is also a State which consistently, severely and systematically violates its citizens’ human rights.
9. Concerned about the respect of human rights and the respect of its international obligations, Canada has publicly committed to strictly control the export of munitions which might be used against civilian

populations. Thus, before issuing an export permit for such equipment, Canada imposes an obligation on Canadian exporters to prove that there is no risk that munitions sold in a country where there are serious and repeated violations of human rights would be used against the civilian population.

10. The armored vehicles to be delivered by GDLS-C to Saudi Arabia may be used against the civilian population and, therefore, the issuance of export permits to GDLS-C would not respect the *Guidelines* Canada imposed upon itself and would be contrary to the *Geneva Conventions Act*. For those reasons, issuing those permits would be illegal.
11. The Canadian government still seems determined to issue this license, as indicated by the recent statements of the Prime Minister and the Minister of Foreign Affairs.

A. Saudi Arabia and human rights

12. The Saudi State considers any peaceful critique of government to be terrorism. Its serious and repeated violations of human rights are indisputable and well documented. In fact, Saudi Arabia has one of the poorest human rights records amongst all world governments.
13. Several reports from credible governmental and non-governmental organizations establish that Saudi Arabia consistently and systematically violates the rights to life, liberty, security, equality, protection against torture and other cruel, inhuman or degrading treatment, as well as freedom of conscience and religion, freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication, freedom of peaceful assembly and freedom of association.
14. According to these reports, the Saudi State routinely, systematically and widely uses against civilian populations, practices contrary to the human rights protected by international human rights conventions, including the following:
 - a) the death penalty,
 - b) the execution of this penalty by beheading,
 - c) torture and other cruel, inhuman and degrading treatments, including corporal punishment such as flogging and amputation,

d) interference with freedom of expression, including the repression and arrest of demonstrators.

15. Saudi Arabia is also at the head of a coalition now intervening in Yemen. Several reports relate to serious violations of human rights and international humanitarian law by this coalition which attacks civilian targets such as hospitals, schools and places of worship, killing thousands of innocent victims. Those acts constitute war crimes.

B. Exports controls based on the protection of human rights

16. Mindful of the importance of protecting human rights and respecting its international obligations, Canada has given itself the power to strictly control exports of munitions which could be used in countries showing a persistent record of serious and systematic violations of human rights.

17. In 1986, the Department of External Affairs issued a press release in which it confirmed the adoption of a new *Exports Control Policy* for military equipment, which stated *inter alia* :

The Minister stressed that Canada will not allow the export of military equipment to countries whose governments have a persistent record of serious violations of human rights of their citizens; unless it can be demonstrated that there is no reasonable risk that the goods might be used against the civilian population. "The new policy with respect to countries with serious human rights problems places the onus of proving 'no reasonable risk' squarely on the exporter".

...

The Government believes Canadians hold strong views about the role which their country plays internationally. They want Canada to maintain a series of defence obligations, most notably in the NATO alliance and within NORAD; they want Canada to participate in peackeeping missions; to seek the maintenance of international order and stability; and to maintain a strong stand against human rights abuses. This latter concern has been clearly expressed by a number of Canadians who are justly disturbed by the lack of respect given to human rights in certain countries.

18. This policy, which was based on a Cabinet decision, was never repealed and Canada continues to maintain publicly its intention to

comply with it. The measures taken pursuant to that policy are specifically referred to in the *Exports Controls Handbook* prepared by the ministry of Foreign Affairs for exporters and published on its website. In fact, this policy has now, more than ever, a reason for being.

19. The implementation of this policy falls under the authority of the Minister of Foreign Affairs, who can refuse to issue export permits for munitions under the *Export and Import Permits Act*.
20. Subsection 3(1)a) of that Act provides that "the Governor in Council may establish a list of goods and technology, to be called an Export Control List, including therein any article the export or transfer of which the Governor in Council deems it necessary to control for any of the following purposes: (a) to ensure that arms, ammunition, implements or munitions of war, naval, army or air stores or any articles deemed capable of being converted thereinto or made useful in the production thereof or otherwise having a strategic nature or value will not be made available to any destination where their use might be detrimental to the security of Canada".
21. Pursuant to this subsection, the Governor in Council has compiled an *Export Control List*, SOR 89-202. This list refers to the *Wassenaar Arrangement (Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies)* as well as to the *Canada's Export Controls Guide*.
22. Pursuant to section 3 of the *Export and Import Permits Act*, section 2a) of the *Export Control List*, and paragraph 2-6.a of the *Guide to Canada's Export Controls*, the LAV to be provided by CCC to SANG constitute munitions subject to export control, *i.e.* the issuance of a permit.
23. Without this permit, no person shall export goods included in the list, pursuant to section 13 of the Act, under penalty of a fine and imprisonment for a term not exceeding twelve months.
24. The *Export and Import Permits Act* provides at subsection 7(1.01), that "[i]n deciding whether to issue the a permit under subsection (1), the Minister may, in addition to any other matter that the Minister may consider, have regard to whether the goods or technology specified in an application for a permit may be used for a purpose prejudicial to: [...] (b) peace, security or stability in any region of the world or within any country".

25. Section 12 of the Act also allows prescribing the considerations that the Minister must take into account when deciding whether to issue import or export allocation such as permits.
26. In accordance with the principles of the aforementioned 1986 *Exports Control Policy*, the government adopted the *Guidelines concerning the export of military and strategic equipment*. These *Guidelines* provide that the export of military equipment must be subject to strict controls to "countries where citizens' rights are subject to serious and repeated violations by the government, unless it can be demonstrated that there is no reasonable risk that the material will be used against the civilian population."
27. This restriction to the issuance of permits is also exposed in the *Exports Controls Handbook*, a reference tool for exporters containing information as to "how to comply with the requirements of the Export and Import Permits Act and its related regulations".
28. Moreover, the implementation of the *Guidelines* enables Canada to comply with its international obligations and with the *Geneva Conventions Act*, R.S.C. 1985, c. G-3, which incorporates in Canadian law the provisions of the four *Geneva Conventions of 12 August 1949* and of their *First Additional Protocol of 8 June 1977*. Article 1 of those four Conventions requires Canada to ensure respect for the conventions and first protocol in all circumstances, including the protection of civilians in armed conflicts.

C. The issuance of export permits for munitions to be exported to Saudi Arabia would be illegal

29. On February 14, 2014, the Minister of International Trade, Ed Fast, announced that the Canadian Commercial Corporation (CCC) had concluded a contract with the Saudi Arabia National Guard (SANG) for the provision of LAV by GDLS-C. This contract, spread over a period of 14 years, is valued at \$ 15 billion. Under the terms of the contract, more than 900 LAV will be produced and delivered to Saudi Arabia.
30. SANG is one of the three major branches of Saudi Armed Forces. Its hierarchical structure reports directly to the king rather than to the Minister of Defense. Even though the SANG acts in external conflicts, its main task is to protect the monarchy against internal threats.
31. According to the information detained by the applicant to this day, no permit would have been issued yet. However, four access to information requests have been sent to the ministry of Foreign Affairs

and to the CCC. No answer has been received yet, except delay extensions and one refusal.

32. It is clear that the issuance of an export permit for LAV to be exported to Saudi Arabia would violate the *Guidelines* since the Minister of Foreign Affairs acknowledged that Saudi Arabia violates its citizens' human rights. It also has one of the worst records in terms of respect for human rights. Besides, considering the situation in Yemen, there is a reasonable risk that LAV exported to Saudi Arabia would be used against civilian populations.
33. It is thus clear that the issuance of such a permit would also violate the *Geneva Conventions Act* and the treaties it incorporates in Canadian law, since Saudi Arabia has violated and is still likely to violate international humanitarian law in Yemen by targeting civilians.
34. Accordingly, it would be for the exporter to prove that there is no reasonable risk that the material will be used against the civilian population, which is impossible in this case.
35. Indeed, LAV manufactured in Canada and exported to Saudi Arabia pursuant to a previous contract would have been seen near Najran, a city in the heart of the Yemeni conflict, in late 2015. Moreover, in a report submitted to the UN Security Council in January 2016, experts mentioned the risk that weapons sent to Yemen by Saudi Arabia despite the embargo imposed by the UN Security Council would be found in the hands of radical groups.
36. On February 17, 2016, the applicant sent a letter to the Minister of Foreign Affairs asking him to confirm, within fourteen (14) days, "that no export permit shall be issued by the Government of Canada in respect of Light Armored Vehicles manufactured by General Dynamics Land Systems for sale to Saudi Arabia". This letter remains unanswered.
37. On March 16, 2016, Prime Minister Justin Trudeau stated publicly that he intends to comply with the LAV export contract even though the government has repeatedly condemned human rights violations committed by Saudi Arabia. The Minister of Foreign Affairs has also repeatedly stated that he would not cancel the contract even if he stated publicly that he was against it, thus implying that the necessary export permits would inevitably be issued despite their manifest illegality.

38. It is not for the Minister of Foreign Affairs to cancel the contract between CCC and SANG. However, he is required under the *Export and Import Permits Act* and the *Geneva Conventions Act* to exercise export control and, in the case of the LAV contract, to determine whether there is a reasonable risk that such munitions be used against civilian populations. The fact that this contract was concluded with the previous government and the legal consequences of non-compliance are irrelevant to the decision to issue export permits.

39. The Minister's decision to grant export permits for LAV in Saudi Arabia would be illegal, as it is clear that the Minister of Foreign Affairs is guided by irrelevant considerations in exercising his discretion under the *Export and Import Permits Act*.

36. Other grounds for the applicant

40. The applicant will invoke any other ground advised by his attorneys, with the Court's permission.

Without restricting the generality of the foregoing, the applicant will invoke in support of his request:

- a) Sections 18 and 18.1 of the *Federal Courts Act*, R.S.C. 1985 c. F-7;
- b) Various sections of the *Export and Import Permits Act*, R.S.C. 1985, c. E-19;
- c) The *Guidelines concerning the Export of Military and Strategic Equipment*, reprinted in the Department of External Affairs, Press release No. 155, September 10, 1986;
- d) The *Export Control List*, SOR/89-202;
- e) The *Guide to Canada's Export Controls*;
- f) The *Exports Controls Handbook*;
- g) The *Geneva Conventions Act*, R.S.C. 1985, c. G-3;
- h) The *Geneva Conventions of 12 August 1949*;
- i) The *First Protocol to the Geneva Conventions of 12 August 1949 of 8 June 1977*;

- j) *The Wassenaar Arrangement (Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies)*;
- k) Any other means advised by his attorneys, with the Court's permission.

The following evidence will be presented in support of the application :
any evidence that the applicant or the Court may deem appropriate, including:

- a) An affidavit from Daniel Turp;
- b) An affidavit from Eric David, Professor Emeritus of International Law at the Free University of Brussels;
- c) Various public reports on the situation of human rights in Saudi Arabia;
- d) Various government reports on the military intervention in Yemen;
- e) Letter from Daniel Turp to the Honourable Stéphane Dion (17 February 2016);
- f) Various public statements made by the Minister of Foreign Affairs and the Prime Minister on the export of LAV to the SANG;
- g) Documents of any federal board, commission or other tribunal that will be disclosed under rule 317 of the *Federal Courts Rules* and that will be deemed relevant;
- h) Any other evidence suggested by prosecutors, with the Court's permission.

Requests for documents (R. 317 of the *Federal Courts Rules*)

41. The applicant requests the Minister of Foreign Affairs to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Minister of Foreign Affairs to the applicant and to the Registry:

- The *Guidelines* established by the Cabinet in 1986;
- The export permit applications for the export of LAV to the SANG and, if applicable, the permits already issued in relation with the LAV;

- All documentary evidence submitted by the exporter of LAV to the SANG on the situation of human rights in Saudi Arabia and on the risk that LAV be used against the civilian population;
- All analyses made by the Department of Foreign Affairs and Global Affairs Canada regarding the application of permits for export of LAV to the SANG, particularly with regard to the situation of human rights in Saudi Arabia and the risk that LAV be used against the civilian population;
- All communications between the Department of Foreign Affairs and Global Affairs Canada or its representatives and the Canadian Commercial Corporation or its representatives regarding the situation of human rights in Saudi Arabia and the risk that LAV be used against the civilian population;
- All communications between agents of the Department of Foreign Affairs and Global Affairs Canada or its representatives and GDLS-C relative to the situation of human rights in Saudi Arabia and the risk that the LAV be used against the civilian population;
- The LAV sales contract with SANG.

March 21, 2016

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SOR/2004-283, ss.35 and 38