

FEDERAL COURT

BETWEEN :

DANIEL TURP

Applicant

AND

MINISTER OF FOREIGN AFFAIRS

Respondent

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)

NOTICE OF APPLICATION

THE RESPONDENT :

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant The relief sought by the latter is exposed to the following page.

THIS APPLICATION will be heard by the Court at a time and place fixed by the Judicial Administrator. Unless the Court otherwise orders, the place of the hearing will be by the applicant. This request that the hearing be held in Montreal, at 30 rue McGill, Montreal, Quebec H2X 3Z7.

IF YOU WISH TO OPPOSE THIS APPLICATION, be notified of any proceedings in connection with 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 Rules Federal Court (1998) and serve it on the plaintiff's lawyer or, if you did not retain the services of a lawyer, the applicant himself, WITHIN 10 DAYS from the date on which this demand notice on you.

Copies of the Federal Courts Rules (1998) and information concerning the local offices of the Court and other necessary information may be obtained upon request from the Administrator of the Court in Ottawa (telephone number 613-992- 4238), or at any local office.

IF YOU DO NOT OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT YOU FURTHER NOTICE.

Date: _____

Issued by : _____

Address of local office:

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

RECIPIENT :

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

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APPLICATION FOR JUDICIAL REVIEW

(Rules 301 and following, *Federal Courts Rules*, 1998)

This is an application for judicial review on the granting of export permits for Light Armored Vehicles (LAVs) to be delivered by General Dynamics Land Systems Canada (GDLS-C) to Saudi Arabia.

A- RELIEF SOUGHT

1. The Applicant seeks the following relief:

a. An order requiring the Defendant to annul existing permits for the export of arms or military equipment to Saudi Arabia.

b. Further, or alternatively, an order requiring the Defendant to suspend existing permits for the export of arms or military equipment to Saudi Arabia, pending a lawful review by the Minister of Foreign Affairs as to whether such exports comply with the *Export and Import Permits Act* ("*EIPA*"), as well as with the *Arms Trade Treaty* (« ATT »).

c. Such further or other relief, including declaratory relief, as the Court thinks fit.

II- STANDING

2. The Applicant is, as was noted by the Federal Court of Canada in the case of *Turp c. The Minister of Foreign Affairs*, 2017 FC 84), a professor of constitutional and international law for whom the principles of the rule of law, respect for fundamental rights and international humanitarian law are of particular concern. Among other things, through several interventions before the courts, he has shown himself to be an engaged citizen with a genuine interest in issues involving fundamental rights around the world. The Applicant was awarded standing at both the Federal Court and Federal Court of Appeal in the above-mentioned case.

III- THE CHALLENGE

3. The Defendant, in her capacity as Minister of Foreign Affairs, signed and sealed Canada's instrument of accession to the ATT on June 17, 2019 and the ATT came into force for Canada on September 17, 2019. To permit such accession, the Parliament of Canada adopted *An Act to Amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and Other amendments)*. This Act was assented to on December 13, 2018 and came into force on September 1, 2019.

4. Under the EIPA and Canada's export control regime, the Defendant is responsible for issuing, amending, suspending, cancelling or reinstating export permits. Following the recommendation contained in a *Memorandum for action* dated March 21, 2016, the former Minister of Foreign Affairs, Stéphane Dion, issued on April 6, 2016 six permits to export Light armoured vehicles (LAVs) and associated weapon systems, spare parts and technical data to the Saudi Arabia National Guard ("SANG") to allow for the fulfillment of a contract between the Canadian Commercial Corporation ("CCC") and the SANG.

5. Since these permits have been issued, there have been numerous calls by citizens and Non-Governmental Organizations ("NGO's"), notably Amnesty international, Canadians for Justice and Peace in the Middle East, the Rideau Institute, Oxfam Québec and Project Ploughshare, to cancel these permits, notably in the light of the possible use by Saudi Arabia of LAVs in the conflict in Yemen. Like her predecessor, the Defendant has constantly refused to cancel these permits.

6. In these proceedings, the Applicant challenges:

a. the Defendant's on-going failure to cancel existing permits for the export arms and military equipment to Saudi Arabia; and

b. the Defendant's decision, communicated to the Applicant on September 30, 2019 in reply to his formal notice of September 17, 2019, to refuse to cancel such permits for the export arms and military equipment to Saudi Arabia.

7. The Applicant is aware of the identity of the business, i.e. General Dynamics Land Systems Canada, who has been granted licences by the Defendant for the export of arms and military equipment to Saudi Arabia. It could be directly affected by the present application and, as such, could be entitled to participate as an interested party. The Applicant is unaware of the identities of other businesses affected and has not formally added such persons as interested parties. The Applicant trusts that the Defendant can take appropriate steps to notify these businesses of the present challenge to enable them to be joined as interested parties if they wish to do so.

IV. SUMMARY OF BASIS OF THE CHALLENGE

8. The basis of the challenge can be summarised as follows :

a. Yemen is presently engulfed in a bitterly contested armed conflict between pro- and antigovernment forces, which has – on any view – resulted in a great deal of civilian bloodshed. The August 2018 report of the United Nations Human Rights Council Group of Experts on Yemen stated that " [f]rom March 2015 to June 2018, there were at least 16,706 civilian casualties, with 6,475 killed and 10,231 injured in the conflict; however, the real figure is likely to be significantly higher". The August 2019 Report of the same Group did not include an overall estimate of civilian casualties, but stated that the Office of the United Nations High Commissioner for Human Rights had "documented at least 7,292 civilians killed (including at least 1,959 children and 880 women) and 11,630 civilians injured (including 2,575 children and 1,256 women) in Yemen as a direct result of the armed conflict between March 2015 (when it

began such tracking) and June 2019.”

b. An international coalition (“Coalition”) led by Saudi Arabia has intervened in this conflict. It has been alleged that all sides in the conflict, including the members of the Coalition, have perpetrated serious violations of international humanitarian law (“IHL”), of international human rights law (IHRL) and serious acts of gender-based violence or serious acts of violence against women and children. These allegations have notably resulted in unequivocal findings of the UN Panel of Experts on Yemen appointed by the UN Security Council, the United Nations Human Rights Council Group of Experts on Yemen and several international NGOs, such as Amnesty International and Human Rights Watch, that the Coalition and its members, including Saudi Arabia, had repeatedly breached IHL and IHRL.

9. The Applicant challenges the Defendant’s refusal to cancel the export licences to Saudi Arabia as unlawful on the following grounds:

a. In assessing in conformity with article 7.4 of the *EIPA* whether there exists a “substantial risk” that the export of arms would result in any of the negative consequences referred to in subsection 7.3 (1) and “could be used to commit or facilitate a serious violation of IHL, IHRL or serious acts of gender-based violence or serious acts of violence against women and children ” (as per paragraph 7.3 (1) b) of the *EIPA*), the government failed to make sufficient enquiries to enable a lawful decision to be reached. As such, in reaching its assessment, material and important issues were not taken into account.

b. Further, or alternatively, the Defendant has irrationally concluded that the test set out in articles 7.4 of the *EIPA* is satisfied in respect of the export of military equipment to Saudi Arabia. Overwhelming evidence of violations by Saudi Arabia exists, including the authoritative findings of UN agencies and officials, with a mandate for the protection of IHL, IHRL and the investigation of violations. The Defendant offers no rational basis to suggest that the findings of these bodies are so clearly wrong that there can be said to be no “substantial risk” that violations “would result in any of the negative consequences referred to in subsection 7.3 (1) b) of the *EIPA*.”

V- LEGAL FRAMEWORK

10. Without restricting the generality of the foregoing, the applicant will invoke in support of his application :

- 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, including the amendments made to this act by *An Act to Amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and Other amendments)*, S.C. 2018. c. 26;
- c) *The Arms Trade, Treaty*, United Nations Treaty Series (UNTC), vol. 2030, Canada Treaty Series, no 2019/;
- d) *The Guidelines concerning the Export of Military and Strategic Equipment*, reprinted in the Department of External Affairs, Press release No. 155, September 10, 1986;
- e) *The Export Control List*, SOR/89-202;
- f) *General Export Permit No. 47 — Export of Arms Trade Treaty Items to the United States*, SOR/2019-230;
- g) *The Guide to Canada’s Export Controls*;
- h) *The Geneva Conventions Act*, R.S.C. 1985, c. G-3;
- i) *The Geneva Conventions of 12 August 1949*;
- j) *The First Protocol to the Geneva Conventions of 12 August 1949 of 8 June 1977*;
- k) *The Wassenaar Arrangement (Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies)*;
- l) Any other means, with the Court’s permission.

VI- EVIDENCE

11. The following evidence will be presented in support of the application :

- a) An affidavit from Daniel Turp;
- b) Affidavits from Eric DAVID, Professor Emeritus of International Law at the Free University of Brussels, Brian WOOD, PhD Researcher, Law School, Middlesex University, London and Valentina AZAROVA, Visiting Academic, Manchester International Law Centre, University of Manchester;
- c) Various public reports on the situation of human rights in Yemen;
- d) Various government reports on the military intervention in Yemen;
- e) A letter from Daniel Turp to the Honourable Chrystia Freeland (17 September 2019);
- f) Various public statements made by the Minister of Foreign Affairs and the Prime Minister of Canada on the export of the LAVs to the SANG;
- g) the *Memorandum for Action* of 21 March 2016 to the Minister of Foreign Affairs, Stéphane Dion, and other *Memorandas for Action* to the Minister of Foreign Affairs or the Minister of International Trade concerning the export of arms and military equipment to Saudi Arabia or relating decisions not to allow of new exports permits for the delivery of arms or other military equipment to Saudi Arabia ;
- h) 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 by the court;
- i) Any other evidence, with the Court's permission.

VII- REQUEST FOR DOCUMENTS

12. The applicant asks the Minister of Foreign Affairs to send him, and send the registry pursuant to Rule 317 of the *Federal Courts Rules*, a certified copy of the following documents that are not in the possession of the applicant, but which are in the possession of the Minister of Foreign Affairs:

- The export permit applications for the export of LAVs to the SANG;
- The export permits for the export of LAVs to the SANG;
- All documentary evidence submitted by the exporter of the LAVs to the SANG on the situation of human rights in Saudi Arabia and Yemen and on the risk that the LAVs be used against the civilian population;
- All analyses made of the Department of Foreign Affairs and Global Affairs Canada regarding the application of permits for export of the LAVs to the SANG, particularly with regard to the situation in Saudi Arabia and Yemen and the risk that LAVs be used against the civilian population;
- All communications between the Department of Foreign Affairs and Global Affairs Canada or its representatives and the CCC or its representatives regarding the situation of human rights in Saudi Arabia and Yemen and the risk that the LAVs 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 relating to the situation of human rights in Saudi Arabia and Yemen and the risk that the LAVs be used against the civilian population;
- The LAVs sales contract between the CCC and the SANG.

October 10, 2019

Daniel TURP

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