

# Country Report Belgium

## NEPAL

28<sup>th</sup> of Nov 02: There has been a judgement, in our case to stop the FN export of Minimi machine guns to Nepal. The judgement says we have no interest in this case. This does not mean that the shipment of the machineguns is legal, the judgement about the legality can however take many, many years, the shipment will have taken place by then.

We applied for immediate judgement to suspencthe shipping. This judgement is not dealing about the juridical base of the export of the MINIMI machine guns, but instead of the suspencthe of the shipping until the court decides about the legality of the arms export. To be able to start such a court, you need to prove that you have an "interest" in stopping the shipment, f.i. because your family could be killed by the arms. The court didnot approve our interest as peace organisation (although our goal is to enhance peace in the world ...). We expected this. And because of this reason, we asked the help of a human right activist G.S.in Nepal (who is also a lawyer). But even his interest was not approved, although G.S. was already attacked by unknown militions. The judge said that if the Nepalese government would like to kill G.S., they donot need MINIMI's, they can do it with the weapons they already have.

About G.S. his interests, the court said:

*"Considérant qu'en aucune de ces qualités, il n'apparaît particulièrement exposé à être pris pour cible par l'armée népalaise; que l'affirmation qu'"il est certain que les armes seront mises en oeuvre contre lui personnellement" ne peut se déduire de ces diverses fonctions, ni du fait qu'il a fait l'objet d'une arrestation arbitraire d'une dizaine de jours en 1998, et encore moins de l'agression dont il a été victime de la part de personnes non identifiées en janvier 2001"*

The judgement is politically, we applied the court in the Dutch language, and still they moved the case to a frenchspeaking 'chamber', which is against the language-rules in Belgium. The reason is that FN, the company that produces the machine-guns is owned by the Walloon (French speaking) government.

In this case, there have been manifest bad translations from English to French. The Nepalese human right activist said in a letter that:

*"I am sure that we will have no problem of legal and human rights standing in the case as the direct affectees. In fact, we can also make detailed submissions of our work in Nepal for peaceful solutions..."*

The court translated this as:

*"qu'il indique même être sûr de n'avoir aucun problème et de bénéficier de protection..."*

Which means that: "he indicates even that he is sure to have no problem and that he benefits of protection ..."

Benefits for us in this court case:

- for this court case: a lot of media attention, show policians we have real problems of proving our interests, and that the law concerning this interests has to change (there are already proposals) and ther is the convention of Aarhus of the United Nations which says that countries need to work for a "wide acces to justice" – also for ngo's which is approved in the parliament.

## NEW ARMS LAW

3<sup>rd</sup> of March 03: FAQ on the new Belgian law:

1. *Criteria are being introduced which prohibit sales to those who use child soldiers. Does this mean that Belgium will not sell arms to any actor with child soldiers?*

Child soldiers under 16, that are used in armed conflicts! (Otherwise we wouldn't be able to export to the States. This is new in the law, but remember that the old law forbid every licence for countries in armed conflicts, which is not the case now.

2. *Criteria are being introduced which prohibit sales to countries which spend too much money on defense in relation to education and social security?*

The explanation of the law talks only about "the amount of military expenses of the recipient country is judged in relation to the social expenses (...). So there are no clear values as you suggest e.g.: spending more on defense than education and social security together. The law itself only says that "The technical and economical capacity of the recipient country and the legitimate needs of the country for security and defense are taken into account, as well as the desirability to fulfill these with as less possible use of human and economical potential for armament." I emphasize that in this §2 it is stated: "taken into account", in comparison §1 of the same art. 2: there it says "reject the licence when (...)"

3. *Does this mean that Belgium will not sell weapons to any country which spends more on defense in relation to what it spends on education and social security?*

No, see above (taken into account)

4. *Licenses will not be given to special police troops which are used for internal repression.*

(The law is also about licences for police forces, and that is indeed new!) There is criteria 2 of the code of conduct that is incorporated. "When there are sufficient indications that the licence contributes to an obvious violation of the human rights (...) and used for internal repression" then the licence is not accepted. AI asked the reversing of the evidence burden, but did not get it. And there is a big exception: Democratic regimes threatened in their existence have to be supported (like Nepal). Then this criterion can be overruled.

5. *End use monitoring is much more increased. How is it increased? Is it true that Belgian diplomats will have to control the end use and the minister will be entitled to send a monitoring team in case of any doubts? Is the minister only entitled to do so or is he required?*

In the yearly report (not the half yearly) there will be information on the follow up of the performance of the criteria in the law on the end use of the arms. "The Belgian diplomats will be asked to signalize every possible irregularity and problems in the performance on these end use criteria. On this base the Minister of Foreign Affairs can decide to send monitoring team to the recipient country to investigate the situation." (So the minister does not have to do this, it's only when problems are signalized by diplomats, the reports of the diplomats and monitoring teams are not public).

6. *Is the new law better than the old one?*

Forum voor Vredesactie is not happy with the new legislation. I give you the reasons in brief:

- ?? The majority in the parlement only wanted to incorporate the European Code in the whole, forgetting "operative provision" 2: *"this code will not infringe on the right of Member State to operate more restrictive national policies"*.

So, politician of the majority, including greens, liberals and social democrats weakened the current law and looked at the European Code of Conduct as a MAXIMUM standard, instead of a MINIMUM.

- ?? The old law was never applied and could not be controlled due to lacking transparency. There is only one minor change in the transparency. We will get reports each 6th month instead of yearly, but the figures in it are NOT more detailed, and are in fact nonsense figures. Belgium is not at all ahead of other countries. As for transparency, Belgium divides the arms figures in three groups (light, demi-light, heavy) if the arms are exported to governments and in zero (O !!) groups if the arms are exported to private persons or companies.

- ?? The old law was more strong in the sense that we had a precaution principle before. No arms could be licensed to countries with an armed conflict, civil war or high tensions that could lead to armed conflicts. In the new law we have to prove that the arms would provoke or prolong armed conflicts or aggravate existing tensions or conflicts before they can be blocked (this is criteria three in the code). Even worse: criteria 7 considers the legitimate defence and domestic security interests of the recipient country, this will also be

included in the new Belgian law (democratic countries have to be able to defend themselves). Finally operative provision 10 of the code recognises that member states may also take into account the effect of proposed exports on their economic, commercial, ... interests ...

7. Will an export licence for MINIMI's to Nepal be possible with the new law? The license for the export of MINIMI's machine guns to Nepal in summer 2002 was a clear violation under the old law, but nobody, even a Nepales human right activist could not prove his interests to start a legal suit against the licence. With the new law Minister of exterior affairs has three reasons to say that he can now export arms to Nepal:
  - ?? Nepal is an "early" democracy which has to be able to defend itself against terrorists (parliamentary discussion in September, said by the prime minister of Belgium)
  - ?? The diplomats that went to Nepal concluded that the MINIMI's would shorten the armed conflict, and not prolonge! The Nepal army is in urgent need of the arms, not exporting would prolonge the conflict. (cited by Minister Michel)
  - ?? FN needs the contract (operative provision 10), not exporting could be the dead of FN (French speaking press, trade unions, employers, politicians all in choir)

## EADS

6<sup>th</sup> of May 03: Amsterdam-Schiphol, the annual general meeting of the European Aeronautic Defence and Space Company (EADS). Ethical shareholders confronted the company again with the fundamental rights of shareholders to ask questions, and question the company's choice to increase the military production with 60% from 2002 to 2005.

Last year, at the AGM of EADS on May 17th 2002, tens of shareholders were not able to ask their questions, leading to a chaotic end of the meeting. Five of the shareholders considered taking EADS to court. However, after starting the procedure, EADS replied to their questions in December 2002. This year however, the board answered to almost all our questions, providing useful information to the strategic course our company is taking.

Some of the questions:

- ?? Bribery in South Africa: On 19th March 2003, ANC Chief Tony Yengeni was sentenced to 4 years in prison because of bribery in an arms deal with EADS local manager Michael Woerfel. We wanted to know from the EADS board why EADS provided discounted cars to a number of politicians and officials involved in South Africa's multi-billion-rand arms deal, but got no answer to this question. The board however did say that EADS "recently reinforced its internal rules, policies and procedures", to avoid such bribery in the future.
- ?? EADS and nuclear missiles: The French Ministry of Defence awarded in 2002 a contract to EADS Launch Vehicles for the next stage in developing France's new M51 nuclear missile. The use of these nuclear weapons could never be lawful, and the company may be complicit in a serious breach of international law. The ethical shareholders asked EADS and its subsidiaries to halt their involvement in the manufacture of nuclear missiles, and technology that is related directly to the support of nuclear weapons.
- ?? According to EADS advertisements, their customers are an alliance for Peace in Liberty. This violates the truth. One counter-examples confirmed at the General Meeting: In 2002, EADS Military Aircraft and the United Arabic Emirates Air Force and Air Defence continued to jointly develop the MAKO program. EADS has twelve individual MoUs with the UAE Air Force. According to human rights organisations, this country has almost no press freedom and a complete lack of democratic institutions. Both Amnesty International and Human Rights Watch have reported serious human rights violations. But EADS still proclaims that its customers are "an alliance of Peace in Liberty".
- ?? EADS, the 2nd biggest arms producing company in Europe, wants to raise its military production by 60% within 3 years. In 2002, the total revenues in the military sector decreased from EUR 6.1 billion to EUR 6 billion, although EADS expected a growth! According to the report of the Board of Directors, the top priority for the future of EADS is still continued growth

in their defence business. They aim to increase revenues of EUR 6 billion in 2002 to EUR 10 billion in 2005. The EADS board counts on rising budgets from European governments (confirmed at the AGM). The ethical shareholders of EADS did of course not agree with this strategic option and asked instead a reduction of the defence business.

## TRAINSTOPPING

Since middle January trains with American military material arrived in Antwerp harbour for shipping towards the Gulf area and Turkey. While most Belgians do not want war, not even with UN-mandate, Antwerp harbour is used in the war preparations against Iraq.

The legality of these military transports is very questionable. The US threatened already a while with war, with or without UN-mandate, and prepared this war actively. This is according to the Nürnberg-principles a crime against peace:

"Crimes against peace:

- (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i). "

By allowing these transports over its territory Belgium becomes a complice. NATO obligations can never mean the obligation to participate in a crime against peace.

During World War II people stopped transports of Jews to the concentration camps. Belgian judiciary never made a crime of this. On 1 and 2 March Forum voor Vredesactie organised **Trainstopping**, an attempt to block for 24 hours the American military traffic by railway to Antwerp harbour. The Belgian police stopped the action by preventively arresting 150 people on private grounds. It shows that in times of war, even if Belgium is not directly involved, democracy is strongly confined.

*Forum voor Vredesactie made a complaint against different members of the Belgian government and to certain firms (Hesse-Noordnatie en NMBS) that were involved in the shipments (for their cooperation in illegal warfare and conduction of transports of American military material for the war against Iraq. See full text of the complaint in Dutch on*

<http://www.vredesactie.be/view.php?lang=nl&artikel=189>

## AND ...

- ?? 17<sup>th</sup> of June 03, Ask (again) for embargo of arms exports to Indonesia (TAPOL), <http://www.vredesactie.be/view.php?lang=nl&artikel=198>
- ?? May 2003: Court case on disclosure of government papers (freedom of information – openbaarheid van bestuur). The minister of foreign affairs rejected our call for disclosure of all information on export licences, although his explanation did not comply with the analysis of the Commission for the Access of government Documents [CTB]
- ?? 17<sup>th</sup> of May 03: Barco: publication of dossier on the arms of Barco used in the US-UK war against Iraq: <http://www.vredesactie.be/view.php?lang=nl&artikel=190>
- ?? 28<sup>th</sup> of March 03, Call for embargo of arms exports to UK and US, in compliance with both the new law and the old law. <http://www.vredesactie.be/view.php?lang=nl&artikel=155>
- ?? Alternative arms report 2001 <http://www.vredesactie.be/html/wapens.htm>, published in november 2002 just one day before the discussion on the official arms report

## FUTURE

- ?? September 2003: Launch of campaign against investments of banks in the arms industry (together with Netwerk Vlaanderen, ethical finances)
- ?? September 2003: launch of database on the Belgian arms industry
- ?? 22<sup>nd</sup> of september 2003: Court case against 11 of the trainstoppers.