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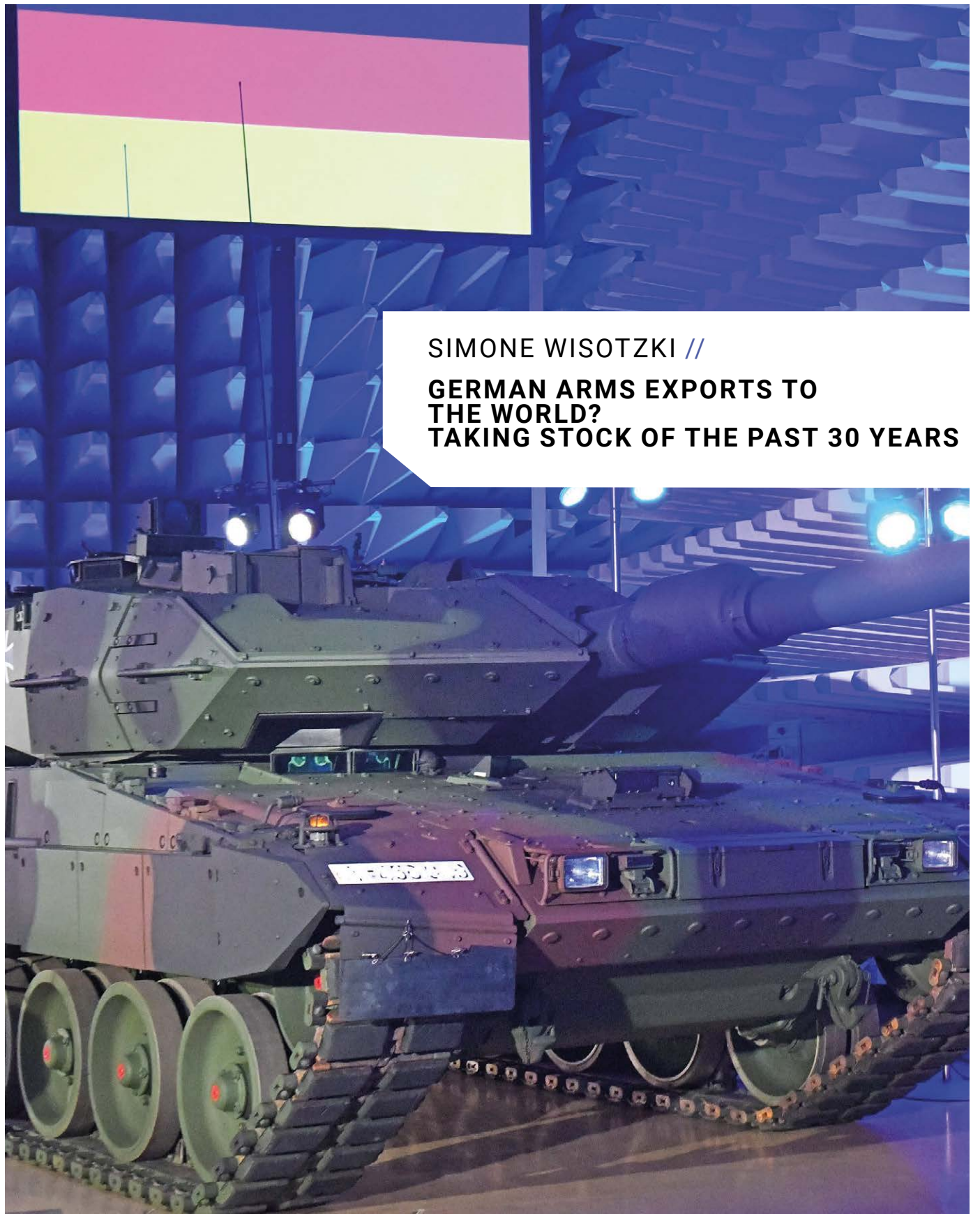
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PRIF REPORT

PEACE RESEARCH INSTITUTE FRANKFURT / LEIBNIZ-INSTITUT HESSISCHE STIFTUNG FRIEDENS- UND KONFLIKTFORSCHUNG



SIMONE WISOTZKI //

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TAKING STOCK OF THE PAST 30 YEARS**

PRIF Report 7/2020

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The German government claims to pursue a *restrictive* arms export policy. Indeed, there are ample laws, provisions and international agreements for regulating German arms export policy. However, a review of 30 years of German arms export policy reveals an alarming picture. Although licences granted for arms exports to so-called third countries, which are neither part of the EU or NATO, nor equivalent states (Australia, Japan, New Zealand, and Switzerland), are supposed to be isolated cases with specific justifications, they have become the rule. In the past ten years alone, up to 60 per cent of German weapons of war and other military equipment has repeatedly been exported to third countries. Not every arms export to third countries is problematic. It is, however, if those third countries violate the norms and rules of international humanitarian law by waging wars and indiscriminately bombing civilian targets such as schools and hospitals.

The present PRIF report takes a look at 30 years of German arms export policy. It shows that all German governments have supplied weapons of war and other military equipment to problematic third countries, but also to NATO partners such as Turkey. The time frame was chosen deliberately, since hopes were high after 1990 that with the peace dividend after the end of the Cold War a conversion of arms manufacturers would take place as a matter of industrial policy, that arms control and disarmament would become more important and the demand for arms exports would decrease both nationally and internationally. 30 years later, an opposite trend is now apparent in the form of growing defence and military expenditures and a high demand also for German weapons of war and military equipment. The regulation of arms exports remains a difficult endeavour, since states insist on their right to self-defence, guaranteed by Article 51 of the UN Charter. On the other hand, since the 1990s efforts have been and are being made at the European and international level to regulate arms transfers in accordance with existing provisions of international law and human rights.

A review of 30 years of German arms export policy shows that German arms export control meanwhile consists of a variety of rules, norms and procedures. These have been modified and adapted over the decades and also supplemented by European rules such as the EU Common Position on arms export control as well as international treaties such as the international Arms Trade Treaty (ATT). Despite this dense but also complicated web of norms, weapons of war and military equipment ended up in problematic third countries, not least because sanctioning powers don't exist at the European and international level and are very limited in Germany, too. If the eight criteria of the EU Common Position are used as a benchmark for assessing 30 years of German arms export policy, it becomes clear that Germany has often violated these criteria.

Germany grants licences and exports weapons of war and military equipment to third countries that violate international humanitarian law in armed conflicts, but also to countries that severely violate the human rights of their citizens and to regions of tensions. Especially in these cases, German arms exports contribute to fuelling the arms dynamics and thus increase the risk that existing conflicts escalate and turn violent. The countries of the MENA (Middle East and North Africa) region remain major recipients of German arms exports, but South Asia and South America also have been and still are recipient countries of German military equipment. Since 2015, a war has been raging in Yemen, in which it is particularly the civilian population that is suffering. The air strikes against civilian targets by members of the Yemen war coalition and the naval blockades violate core criteria of

international humanitarian law, such as those of proportionality and distinction between civilians and combatants. Some of the weapons of war and military equipment used in the Yemen conflict come from Germany.

In the past, Germany has repeatedly exported small arms and light weapons to third countries, including from surplus stockpiles resulting from the downsizing of the Bundeswehr and the closure of the national people's army (NVA) of the former German Democratic Republic (GDR). In July 2019, in revising the Political Principles for the Export of Weapons of war and other Military Equipment, the German government decided in principle to no longer grant licences for small arms and light weapons to be exported to third countries. The examples of the study document how quickly arms exports and equipment aid such as small arms and light weapons enter into illegal circulation and end up on the black market, and what long-term consequences the earlier generous granting of production licences for manufacturing small arms in third countries continues to have today. Worldwide, more small arms and light weapons are still being produced than are currently being destroyed. A serious regulatory gap remains with respect to ammunition, as weapons only turn deadly once they are loaded with ammunition. The revised Political Principles of July 2019 have so far disregarded the subject of ammunition.

In order to turn the existing web of norms into a more effective legal basis, the members of the German parliament should draw up and adopt an arms export control law. Already in the run-up to the federal election year 2021, several parliamentary groups in the German parliament have spoken out in favour of such an arms export control law. The idea itself is not new and was already pursued in the previous legislative period of the Grand Coalition by the Minister for Economic Affairs, Sigmar Gabriel. A consultation process between different stakeholders from politics, business, academia and civil society was organised at the time. In the meantime, legal experts have prepared drafts of what such an arms export control law could look like. Such a law could create a basis for judicial review from the patchwork of laws and political obligations. Together with the right of associations such as NGOs to take legal action, this would make decisions on arms export control subject to judicial accountability, in addition to the still limited possibilities of parliamentary scrutiny.

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1. INTRODUCTION¹

The German government claims to pursue a *restrictive* arms export policy.² There are sufficient criteria for regulating arms export policies, for example the Political Principles for the Export of Weapons of war and other Military Equipment, the Common Position of the European Union on the control of exports of military technology and equipment and the international Arms Trade Treaty (ATT). At their core, they all contain norms and rules which deny arms exports when the recipient country seriously violates international humanitarian law or human rights, for instance. Nevertheless, when decisions on licences of German arms exports are taken in practice, there is a yawning gap between the normative claim and political practice. The PRIF-report looks at 30 years of licensing practice for German arms exports and uses case examples to show that since the end of the Cold War after 1990 all government parties continued to grant licences for exporting German weapons of war and other military equipment to problematic third countries.³

While there is a legal basis for a restrictive regulation of German arms exports, it remains insufficient. On the one hand, this is due to the fact that the Political Principles are not legally binding and often contain *soft* provisions which make exceptions possible. On the other hand, there is no sanctioning authority, including at the European level, to enforce the eight criteria of the EU Common Position by legal action, for instance if arms export licences to problematic third countries are granted. In Germany, in contrast to other countries of the European Union, there is also no right to bring representative actions in the area of arms export policy, which does exist in other areas, such as environmental protection.

Germany's arms export practice also demonstrates that, despite the thicket of national, European and international regulations, there are gaps which allow German companies to found subsidiary companies abroad or transfer technology and know-how, which in turn enables third countries to manufacture and employ weapons of war. These gaps can ultimately only be filled by an arms export control law. Several parties, including the Greens (Bündnis 90/Die Grünen), the Social-Democratic Party (SPD) and the Left Party (DIE LINKE) have come out in favour of such a law by now, one year before the German parliamentary elections. The present PRIF report takes stock by reviewing 30 years of German arms export policy. The time frame was chosen deliberately, since hopes were high after 1990 that with the peace dividend after the end of the Cold War a conversion of arms manufacturers would take place as a matter of industrial policy that arms control and disarmament would become more important and the demand for arms exports would decrease both nationally and internationally. 30 years later, an opposite trend is now apparent in the form of growing defence and military expenditures and a high demand also for German weapons of war and military equipment. The regulation of arms exports remains a difficult endeavour, since states insist on their right to self-defence,

1 This report was published in an earlier German version, as a study by Greenpeace/Wisotzki (2020).

2 The Greenpeace study was supported through scientific research and collaboration by Lara Bardelle, Viola Niemack, Nicolas Schiller and Lisa Waldheim.

3 Third countries are those countries that are neither members of the European Union or NATO nor considered politically equivalent to them, such as Australia, Japan, New Zealand or Switzerland.

guaranteed by Article 51 of the UN Charter. On the other hand, since the 1990s efforts have been and are being made at the European and international level to regulate arms transfers in accordance with existing norms and provisions of international law and human rights.

Observations based on individual case studies covering this long period of 30 years yield a disparate picture. On the one hand, Germany has shown a strong commitment to conventional arms (export) control at both the European and the international level; on the other hand, the case studies show that all German federal governments have granted a number of problematic arms export licences, in particular to third countries which are neither part of the European Union or NATO, nor NATO-equivalent countries such as Australia, Japan, New Zealand or Switzerland. The eight criteria of the EU Common Position on the control of exports of military technology and equipment serve as a basis for the empirical assessment in order to substantiate this thesis. They are summarised for the purpose of the analysis, and the chapters of the report are structured such as to give particular attention to those criteria which potential violations are especially flagrant, as they violate core norms of international humanitarian law or of human rights. For numerous third countries, several criteria often apply at the same time, for example in the case of developing countries that commit systematic human rights violations. Arms export policy is such an ambivalent policy field not least because weapons of war and military equipment appear necessary on the one hand, in order to maintain public order and security, but on the other hand, they can also be directly detrimental to human security when abused, for instance when state security forces use the supplied arms against their own citizens.

On the basis of primary sources (government documents/reports on exports of military equipment; parliamentary documents, etc.), media reports and secondary literature, the PRIF report analyses the German arms export policy towards problematic recipient countries. The report focuses in particular on arms exports to third countries, but NATO states are also to be included if military equipment is used for internal repression and systematic human rights violations, for violations of international humanitarian law and for conflict escalation, as in the case of Turkey. Apart from weapons of war and other military equipment, the report also looks at forms of military assistance and the sale of decommissioned weapons stockpiles, a practice which became relevant with the end of the Cold War and the down-sizing of the military of NATO states and former Warsaw Pact states. This is another reason to start the report's period of analysis in 1990.

The criteria of the EU Common Position are the basis for assessment in analysing the German arms export policy since the 1990s. First, Chapter 2 deals with an overview of the legal basis and the decision-making practice in German arms export policy. Chapter 3 concentrates on cases in which the German federal governments granted arms export licences despite violations of international humanitarian law or human rights. Chapter 4 looks at exemplary cases in which peace, security and stability were problematic throughout the entire region of the recipient country. Chapter 5 looks in particular at the problem of proliferation and illicit diversion of small arms and light weapons by discussing Criterion Seven of the EU Common Position based on exemplary cases.

2. LEGAL BASIS AND THE DECISION-MAKING PRACTICE OF GERMAN ARMS EXPORT

Article 26 para. 1 of the German constitution emphasises the peaceful character of the German state. One aspect of the constitution's principle of peace is that actions which may be detrimental to this principle are punishable offences. Article 26 para. 2 of the constitution defines the licensing authority for German arms exports: weapons intended for warfare may only be exported with the licence of the German government, i.e. the federal cabinet. Details of the licensing procedure are to be stipulated in a federal law. The War Weapons Control Act (Kriegswaffenkontrollgesetz, KWKG) is commonly considered to be this implementing law. Article 6 (3) of the KWKG contains first provisions for denying the export of weapons of war, e.g. if their export could be used for wars of aggression or if Germany's international legal obligations would be violated if licences were granted.⁴ In Germany, licences for arms exports are usually applied in the form of so-called preliminary inquiries by the arms manufacturing company. Often, there are several years between the individual export licence and the actual export of the weapons of war. This is why the War Weapons Control Act also provides for the possibility of revocation, for example if the security situation of the recipient country has significantly changed in the meantime.

The Political Principles for the Export of Weapons of war and other Military Equipment state that the export of weapons of war to so-called third countries is handled restrictively. Licences for exporting weapons of war to such countries are not granted unless "in a specific case, this is exceptionally warranted due to particular foreign or security policy interests of the Federal Republic of Germany, having due regard to Alliance interests" (Bundesministerium für Wirtschaft und Energie 2019c, Art. 2: 6). Looking at Germany's arms export policy in the past, one finds that arms exports towards third countries are by no means isolated cases and that the exception of arms exports to third countries has long become the rule. In each of the years 2014–2018, over 50 per cent of all individual export licences were for third countries, sometimes even 60 per cent (Gemeinsame Konferenz Kirche und Entwicklung 2020: 39–40). And yet the first Political Principles for the Export of Weapons of war and other Military Equipment from 1971, for example, stipulated that weapons of war were in principle not to be exported to non-NATO countries. Since then, the Political Principles have been revised three times, most recently in July 2019.⁵ The former general ban on exporting weapons of war to third countries has been replaced by a complicated regime of restricting norms.

German arms export policy is confronted with a variety of international agreements, norms and rules. For instance, such normative contexts can be found in international humanitarian law, such as the 1949 Geneva Convention, or in the Universal Declaration of Human Rights (UDHR), but also in the form of weapons embargoes as imposed by the United Nations or regional organisations. They constitute the international framework of normative order that has constantly been expanded throughout

4 <https://www.gesetze-im-internet.de/krwaffkontrg/KrWaffKontrG.pdf> (March 3, 2021).

5 The different versions of the Political Principles are available under <http://ruestungsexport-info.de/ruestung-recht/politische-grundsätze.html>. The Political Principles are only politically binding and, therefore, below the status of formal law.

history, for instance by the 1997 Anti-Personnel Mine Ban Convention, the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNPoA), the 2008 Convention on Cluster Munitions or the 2014 Arms Trade Treaty. At the European level, the international norms were replaced by regional provisions, for instance the 1998 EU Code of Conduct, which was converted into the legally binding Common Position on the control of exports of military technology and equipment in 2008 (Amtsblatt der Europäischen Union 2008).⁶ In addition, there are two implementing laws at the German level, the War Weapons Control Act (KWKG) and the Foreign Trade and Payments Act (AWG), and furthermore the Foreign Trade and Payments Ordinance (AWV) as well as the revised and adapted Political Principles on arms exports. Article 26 para. 2 provides that exports of weapons of war require a licence by the German government; the constitution thus differentiates between weapons of war and other military equipment. This also corresponds to the separation into the War Weapons Control Act and the Foreign Trade and Payments Act (Grebe/Roßner 2013).

In sum, looking at German, European and international rules on arms export control, one can speak of a veritable web of norms that is supposed to guide German licensing procedures. In assessing the cases, the present report on German arms export policy takes the EU Common Position for the control of exports of military technology and equipment and the eight criteria it is based on as the main point of reference. Its criteria are based on the principles and norms of international humanitarian law, the Charter of the United Nations or human rights declarations. Even before 1998, most of the norms of the EU Common Position were already included in the German Political Principles (Wissenschaftliche Dienste Deutscher Bundestag 2018).

- Criterion One: Respect for international obligations: sanctions adopted by the UN Security Council/the EU; agreements on non-proliferation and arms control
- Criterion Two: Respect for human rights and international humanitarian law
- Criterion Three: Internal situation in the country of final destination with regard to the existence of tensions or armed conflicts
- Criterion Four: Preservation of regional peace, security and stability
- Criterion Five: National security of the member states and of territories whose external relations are the responsibility of a member state; national security of friendly and allied countries
- Criterion Six: Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law
- Criterion Seven: Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions
- Criterion Eight: Compatibility of the exports of the military technology and equipment with the technical and economic capacity of the recipient country, taking into account the legitimate security and defence needs

⁶ The wording of Art. 29 TEU stipulates that member states shall ensure that their national policies conform to the Union positions. In German arms export policy, the rules of the EU Common Position are also reflected in the criteria of the Political Principles after their revision in 2000.

The German government emphasises that arms exports are not an instrument of economic policy and should not be treated like other exports. Export licences are only to be granted after a specific assessment of each individual case, and decided upon according to foreign and security policy considerations.⁷ In Germany, a distinction is made between exports of weapons of war and of other military equipment; accordingly, either the Ministry for Economic Affairs takes a decision, based on assessments by the country divisions of the Foreign Office and by the Ministry of Defence, or in the case of other military equipment, also the Federal Office for Export Control (*Bundesausfuhramt, BAFA*). Particularly contentious or problematic cases of arms exports are decided upon in secret meetings of the Federal Security Council (Bundesministerium der Verteidigung 2019).⁸ The German parliament is responsible for parliamentary scrutiny of government action. In matters of arms exports, the Constitutional Court ruled against a complaint by Bündnis 90/Die Grünen demanding more transparency and less secrecy in October 2014. At least, the Economic Committee of the German Parliament receives ex-post information about the results of secret arms export policy decisions by the Federal Security Council. Question times and inquiries complement the limited opportunities of parliamentary scrutiny. Twice a year, the German Ministry for Economic Affairs publishes the official figures of licences and actual exports of weapons of war and other military equipment in the report on exports of military equipment. Here, too, transparency is limited, as only very general information is provided on the recipient states and amounts for which arms export licences were granted. The specific military equipment and the manufacturer can usually not be inferred.

3. RESPECT FOR HUMAN RIGHTS, INTERNATIONAL HUMANITARIAN LAW AND THE INTERNAL SITUATION IN THE RECIPIENT COUNTRY

The eight criteria of the EU Common Position on arms exports constitute the basis for granting licences for German arms exports. Respect for international humanitarian law and human rights in the recipient country are combined in Criterion Two of the EU Common Position. Similar provisions can also be found in the Political Principles for the Export of Weapons of war and other Military Equipment and in the 2014 Arms Trade Treaty (ATT). Especially during the negotiations on the ATT, Germany always emphasised the significance of the human rights criterion in the negotiations at the United Nations in New York. The User's Guide for the EU Common Position cites internal repression as an example of human rights violations and emphasises that human rights violations need not occur systematically in a recipient country for the export to be refused.⁹ Also, in making the export decision, particular attention is to be paid to the type of equipment; for instance, armoured personnel carriers or communication and surveillance equipment which could be used for repressive purposes are mentioned. But human rights violations such as torture, arbitrary executions, enforced disappearances of persons or restrictions on fundamental freedoms as set out in relevant human rights agreements

7 <https://www.bmwi.de/Redaktion/DE/Dossier/ruestungsexportkontrolle.html> (March 22, 2021).

8 In addition to the Chancellor, the Federal Security Council includes a representative of the Chancellery, the Foreign Office, the Ministry of Defence, the Ministry of Economic Affairs, the Ministry of the Interior, the Ministry of Justice and Consumer Protection, the Ministry of Finance and the Ministry for Economic Cooperation and Development.

9 See <https://www.consilium.europa.eu/media/40659/st12189-en19.pdf> (March 22, 2021).

are also referred to (Council of the European Union 2015). Criterion Three of the EU Common Position points to the internal situation of the recipient country and the existence of potential armed conflicts or domestic *tensions* in the buyer country. The User's Guide of the EU Common Position defines these as hostilities between different groupings of the recipient country, unrest, violence or the existence of private militias. The following examples illustrate that since 1990, the German government has repeatedly granted licences for exporting weapons of war and military equipment to recipient countries whose authoritarian governments use violence against their own population, commit serious human rights violations or are involved in armed conflicts.

3.1 EGYPT

Between 2001 and 2019, Germany granted licences for the export of weapons of war and military equipment worth 1.5 billion euros to Egypt.¹⁰ In 2019, the military regime was the top recipient among third countries. Thyssen Krupp had been granted a licence for exporting a frigate of the MEKO 200 type, even though the country belongs to the Yemen war coalition and the German government had agreed in the coalition treaty in 2018 not to grant any licences for arms exports to members of the coalition (Gebauer/Traufetter 2019).

But even before, Egypt was a problematic recipient country in view of the system of internal repression and human rights violations. Already under President Hosni Mubarak, torture and abuse of dissidents and opposition members was the order of the day. President Abdel Fattah al-Sisi also uses violence against its political opponents, e.g. lethal torture and abuse in prisons. Egypt has joined core human rights agreements, but their implementation is poor, which applies especially to the Convention against Torture. Nevertheless, the country received small arms from Germany, for example in 2007 and 2009, but also armoured vehicles, parts for tanks and air defence systems (Gemeinsame Konferenz Kirche und Entwicklung 2011: 54; 2008: 39).

In 2011, there were mass protests by the Egyptian population against the Mubarak regime, which resulted in numerous deaths and injuries. Mubarak ultimately stepped down, whereupon first the military and then the Muslim Brotherhood under Mohamed Morsi took power. In 2013, Morsi was ousted by the military, which then in turn took over power (Bonn International Center for Conversion 2020a). In August 2013, the EU foreign ministers agreed on stopping shipments of military equipment to Egypt as a result of the internal situation in Egypt (Der Spiegel 2013). Yet in 2014, eleven EU countries granted arms export licences with a total value of more than six billion euros. In 2014, the German government granted arms export licences amounting to 22.7 million euros, mainly for submarine technology. Egypt's army had also used the light wheeled tank Fahd against the peaceful protests, which was produced in Egypt, but for which parts and components had been supplied from Germany until 2012 (Brössler 2013). Egypt's neighbour Israel expressed concern in 2012 about the licence for

10 Cf. Campaign against Arms Trade n.d.: EU Arms Export. EU-Waffenexporte, <https://www.caat.org.uk/resources/export-licences-eu/licence.de.html?source=Germany&destination=Egypt> (March, 22 2021)..

two submarines of the HDW shipyard in Kiel, stating that after the overthrow of Hosni Mubarak, the country was not a reliable state in the region (Nassauer 2012b; Focus 2012).

3.2 ALGERIA

Between 2001 and 2015, Germany granted licences for exports of weapons of war and military equipment worth nearly two billion euros to Algeria. These were mainly vehicles and tanks, but also warships, explosive devices as well as small arms and ammunition. Since President Abdelaziz Bouteflika stepped down in 2019, the internal situation and the human rights record have remained tense; military and security forces use violence against protest movements. Between 2013 and 2017, the death penalty is said to have been carried out in around 175 cases (Friedrichs 2018). Despite the precarious human rights situation, the instability of the country and the tense situation in the entire region of North Africa, the Federal Security Council granted licences for various arms projects for Algeria in 2011. These applied to armoured transport vehicles and parts for armoured vehicles worth 217 million euros in 2011 and off-road vehicles and trucks worth more than 500 million euros in 2012 and 2013 (Bonn International Center for Conversion 2020b). Rheinmetall and MAN were awarded the contract to build the armoured transport vehicle Fuchs with their joint venture in Algeria. Mercedes Benz focused on the production of trucks and off-road vehicles. ThyssenKrupp Marine Systems requested licences for frigates and training the navy (Handelsblatt 2011). In short: German assistance contributed to the large-scale modernisation of the Algerian armed forces (Gemeinsame Konferenz Kirche und Entwicklung 2015: 90; 2012). The Algerian arms industry is becoming independent by establishing its own production capacities with the support of German companies; this trend can be identified in many countries of the MENA region (Middle East and North Africa). At the same time, by establishing own production capacities these countries can in turn export arms to war zones and crisis regions. Algeria has so far not signed the international Arms Trade Treaty and is thus not bound to global arms export control standards beyond some general regulations of international law. Since 2014, Mercedes Benz has been producing off-road vehicles of the BA6G class near Tiaret (Nkala 2015). Rheinmetall Algerie SPA built 120 armoured transport vehicles of the Fuchs type in each of the years 2018 and 2019. In 2019, the Federal Security Council granted a licence for 160 electric drives for weapon stations that are to be integrated into the Fuchs armoured transport vehicle (Gebauer 2019). In the next ten years, the company intends to produce a total of around 1,000 tanks.

3.3 BRAZIL

According to SIPRI, Germany was the most important supplier of military equipment to Brazil between 2006 and 2019, even ahead of the U.S. and Russia. In 1999, Brazil received patrol boats and parts for warships, in 2001 parts for submarines and minesweepers, in 2009 battle tanks, armoured vehicles and trucks worth 115.1 million euros. In 2016, Brazil also received submachine guns and pistols, among other things (Bonn International Center for Conversion 2020c). There are recurring human rights violations in this South American country, such as excessive police violence. Threats, attacks and killings of human rights activists and defenders are the order of the day. In a case from

the 1990s, Brazilian military police officers killed 111 prisoners while squashing an uprising. In October 1992, there were quarrels in a prison in São Paulo and the police stormed the prison by force of arms, even though numerous prisoners declared their peaceful intentions with white cloths. The military police were equipped with Heckler & Koch submachine guns of the MP5 type, which had been supplied from Germany, as Amnesty International was able to ascertain using the serial numbers (Cascais 2014).

3.4 INDONESIA

In 2003, pictures of Indonesian warships showed soldiers of the Indonesian army being transported to the civil war in Aceh. The warships were units of German origin which had been passed on to Indonesia as decommissioned weapons from the stockpiles of the former East German military after its dissolution; they included landing ships, corvettes and a support vessel. At the time, the German government had stated in reply to critical questions from members of the parliamentary opposition that the ships were designated solely for protecting the coast and sea routes against piracy and drug trafficking. Ten years later, the internal situation in Indonesia had changed so fundamentally that the German warships were used in a civil war (Gemeinsame Konferenz Kirche und Entwicklung 2003: 33). This was also made possible by a supply of new engines which replaced the old ship engines. Already from the 1970s onwards, German weapons of war and military equipment had been supplied to Indonesia; they were also used in the conflict in East Timor in 1999 (Friedrichs 2013; Gemeinsame Konferenz Kirche und Entwicklung 2000: 4). Since the mid-1990s, the German parliament had repeatedly debated arms exports to Indonesia. Opposition politicians criticised the decisions of the Federal Security Council and referred to the systematic human rights violations of the Indonesian government in East Timor (Deutscher Bundestag 1996a; 1996b).

In 2013, the German government granted licences for the shipment of 104 Leopard 2 battle tanks and 50 older Marder tanks. Indonesia had first submitted a request in the Netherlands. However, the deal failed because of parliamentary concerns regarding the human rights situation in the country (Gebauer/Nassauer 2013). The tanks originated from decommissioned stockpiles of the German military and had been sold to the German arms industry for resale. Rheinmetall ultimately concluded the deal with Indonesia and had previously carried out a technical modernisation of the old tanks (Deutscher Bundestag 2012). In Article 4, the EU Common Position provides for consultations if another member state had denied the licence within the preceding three years, as the Netherlands had. In addition, in the case of battle tanks to Indonesia, Germany would have had to justify vis-à-vis the Netherlands why the licence was granted by Germany although it had previously been denied by the Netherlands. However, the EU arms export system and the EU Common Position do not foresee any sanctions against its member states (Grebe/Roßner 2013).

3.5 QATAR

German weapons of war and military equipment are also supplied to the kingdom of Qatar. Although Qatar is a dictatorship in which human rights are frequently violated, supports non-state groups, for example in the war in Syria, and is in conflict with Saudi Arabia, Egypt and the United Arab Emirates over the issue of cooperation with Iran and Islamist groups, export licences for weapons of war have been granted and used, in particular in recent times. Between 2001 and 2012, the sum of licences amounted to nearly 60 million euros.¹¹ They included licences for warships, small arms and explosive devices. In 2013, the German government granted licences for 673.3 million Euros worth of weapons of war and military equipment for Qatar (Gemeinsame Konferenz Kirche und Entwicklung 2015: 57). In 2016, Qatar came in at the top of the list of recipient countries of German arms exports, with licences amounting to 1.66 billion euros (Bundesministerium für Wirtschaft und Energie 2017a). In 2013, the German government granted licences for the export of 62 battle tanks of the Leopard 2 type and 24 armoured howitzers. In 2015, the first tranche was due for export to Qatar. Since 2015, Qatar has been involved in the war against Yemen and sent ground forces (Krüger/Mascolo 2015). The Ministry for Economic Affairs had even initiated a review due to the changed political situation, but the concerns about industrial claims for compensation apparently carried more weight (Hickmann/Mascolo 2015). The members of the German parliament critically discussed the planned shipments of tanks as a current issue (Deutscher Bundestag 2015d). By 2017, all 62 Leopard 2 tanks had been shipped to Qatar (Tillack/Bettoni/Richter 2017). In the summer of 2017, Qatar ordered 24 Eurofighter combat jets from the British company BAE Systems; Germany is also involved in the construction of these combat jets (Hegmann 2017). In 2020, the Federal Security Council granted a licence for the export of a total of 15 anti-aircraft cannon tanks of the Gepard (*cheetah*) type worth 31.4 million euros (Der Spiegel 2020).

3.6 SAUDI ARABIA

German arms exports to Saudi Arabia have a long tradition. Whether it is patrol boats, artillery ammunition or licences for independent production sites for small arms: over the decades, there has been a variety of licences and realised arms exports from Germany to the region's *anchor of stability* (Gebauer 2015; Welt 2011). This is how nearly all German governments justified the licences granted for arms exports to the authoritarian regime. There has also been frequent talk of a strategic balance vis-à-vis Iran, even though the MENA region (Middle East and North Africa) is already deemed one of the most heavily armed regions of the world, and yet the arms race continues unabated. The Western side often presents the argument of using arms exports to equip countries in the war on terror. In the case of Saudi Arabia, it became clear after 9/11 and the terror attacks in New York and Washington, D.C., that 15 attackers and the strategic head of the terror organisation Al-Qaeda, Osama bin Laden, came from Saudi Arabia, as well as financing (Zeit Online 2018). Since 2015, Saudi Arabia has waged war against the Huthi militias in Yemen; the victims of the war are also civilians who are injured and

11 Cf. Aufschrei-Waffenhandel (o.J.): Deutsche Rüstungsexporte nach Katar, <https://www.aufschrei-waffenhandel.de/daten-fakten/empfaengerlaender/katar/> (March 22, 2021).

killed by air strikes against markets, hospitals, schools or homes and who suffer from the dire consequences of the war such as famines and a lack of medical care (Wisotzki 2018; Deutscher Bundestag 2015b). There are recurring serious human rights violations in Saudi Arabia, such as torture and targeted killings of dissidents (Bonn International Center for Conversion 2020f). In 2019, there were again mass executions; 37 people ostensibly suspected of terrorism were executed. Women's rights are heavily restricted in the country, and women's rights campaigners are subject to arbitrary arrests (Amnesty International 2019b).

Already in the 1960s, there were close contacts between Germany and Saudi Arabia, with first arms deals including artillery, rocket-propelled grenades, small arms and light weapons (Der Spiegel 1974). In the 1980s, the Saudi kingdom again showed interest in buying German arms. But the German government at the time had great difficulties in proving that the desired Leopard battle tanks and Gepard anti-aircraft tanks would not be employed against Israel. Moreover, the revised Political Principles for the Export of Military Equipment applied since 1982 according to which shipments were not to be made to *regions of tension* (Gemeinsame Konferenz Kirche und Entwicklung 2003: 34; 1999: 18–20). In 1991, during the period of the second Gulf War, the Kohl government granted licences for 36 used armoured reconnaissance vehicles from stockpiles of the West German military (Grässlin 2013: 57). Saudi Arabia quickly made its way into the top 20 recipient countries of German arms exports, and after Chancellor Angela Merkel took power in 2005, it even moved into the top ranks of buyer countries of German weapons of war. In 2008, the German government granted a production licence for the fabrication of G36 assault rifles of the Heckler & Koch Company. In 2011, Saudi armed forces supported the Bahraini security forces in their violent suppression of the peaceful protests in the country, yet Germany granted licences for arms exports worth nearly 140 million euros to Saudi Arabia (Gemeinsame Konferenz Kirche und Entwicklung 2013: 36). In 2012, the kingdom showed interest in buying up to 800 Leopard 2 battle tanks. In Germany, this triggered a fierce controversy over these potential exports and licences, which were then finally stopped in 2014 by the Minister of Economic Affairs, Sigmar Gabriel (SPD) (Zeit Online 2014). On the other hand, weapons of war and military equipment amounting to 332 million euros were still exported in 2014/2015, including guided missiles and spare parts for combat aircraft as well as parts for artillery ammunition, howitzer ammunition and mortar ammunition (Der Spiegel 2015).

Saudi Arabia's war in Yemen since March 2015 did not change the German government's attitude in granting licences for exports of weapons of war and military equipment to Saudi Arabia (Deutscher Bundestag 2017b). Since 2015 alone, the German government has granted licences for arms exports with a total value of around 1.5 billion euros (Bonn International Center for Conversion 2020f). The air strikes by the Saudi air force against civilian targets in Yemen were also carried out with combat aircraft of the Tornado and Eurofighter Typhoon types, which had been supplied by the UK but also include components from German production (Bundesministerium für Wirtschaft und Energie 2017a). In 2017, licences were granted again for another four patrol boats of the Lürssen shipyard and for 110 trucks of Rheinmetall to be shipped to Saudi Arabia. The military supplier Fritz Werner is authorised to sell military equipment and tools amounting to 8.9 million euros to Saudi Arabia. In 2018, Saudi Arabia was still in fourth place of the recipient countries of German arms exports, with licences amounting to 416 million euros (Bundesministerium für Wirtschaft und Energie 2020a).

Only the murder of Jamal Khashoggi in October 2018 brought a change in the German government's arms export practice, even though there had already been media reports of serious human rights violations in Saudi Arabia before and the reporting on the Yemen war also resulted in negative headlines (Bales/Mutschler 2019). Investigative research revealed that German weapons of war were employed in the Yemen war (Tillack 2019b). This includes the patrol boats supplied so far from the Peene shipyard in Wolgast, which were used for naval and port blockades in the Yemen war instead of coastal protection once they had arrived in Saudi Arabia (Tillack 2018b). French media reports documented that other weapons of war supplied by Germany were also employed in Yemen (Made in France 2019). The moratorium on exports imposed in October 2018, which has since been extended, is prompting German arms manufacturers to take legal action in order to force a decision. In the case of the Rheinmetall Company's complaint of inactivity, the Frankfurt administrative court decided in December 2019 that the chosen mechanism for suspending the validity of the licence for the export of trucks is flawed and the German government now has to correct it (Verwaltungsgerichtsbarkeit Hessen 2019). Since then, a decision of the German government how to pursue with the court ruling is still pending.

In practice, the moratorium on exports has some gaps and is limited in time. For instance, the company Lürssen can send spare parts and staff to Saudi Arabia to perform maintenance and repairs on patrol boats (Tillack 2019e). In 2019, the Federal Security Council allowed the company KAMAG to export technology in order to build tank transporters at the affiliated company Nicolas Industries in France and to export them to Saudi Arabia (Nassauer 2019). Moreover, parliamentary inquiries document that between January 2019 and June 2020, military equipment was supplied to France, from where it was re-exported to Saudi Arabia under licence of the German government, for instance electronic systems for military reconnaissance and intelligence worth more than 4.6 million euros (Deutscher Bundestag 2020). Yet, air strikes are still being carried out against positions of the Huthis in Yemen, as documented by the Yemen Data Project. For July 2020 alone, non-governmental organisations count 215 air strikes that killed 35 civilians (Yemen Data Project 2020).

3.7 TURKEY

In the past, arms exports to Turkey were always justified with Turkey's NATO membership and also with its candidacy for accession to the EU. In the light of domestic developments, but also due to the tensions with Greece in the Aegean (including over the Cyprus issue), there would be sufficient reasons not to supply this NATO partner with weapons of war and military equipment. The number of licence denials document that the German government is indecisive in its political handling of arms exports to Turkey. For instance, eleven applications were not granted during the five months between November 2016 and March 2017, inter alia with reference to Criterion Two, "respect for human rights and international humanitarian law", and Criterion Three, "internal situation in the country of final destination, as a function of the existence of tensions and armed conflicts" (Bonn International Center for Conversion 2020g). These decisions followed the declaration of a state of emergency after the failed coup attempt on July 15, 2016.

Turkey has been in conflict with the PKK (Kurdistan Workers' Party) for decades; the peace process launched in 2013 was stopped in 2015. The Turkish air force has repeatedly carried out air attacks against Kurdish territories in order to fight the PKK, which in turn is responsible for terror attacks in Turkey. In south-eastern Turkey, there is recurring military action, and there are also reports of serious human rights violations against the Kurdish population. In 2019, after Turkey's invasion of Syria, the German government imposed a temporary suspension of arms exports, whereas in 2018, during the Turkish attack on the Syrian region around Afrin, licences continued to be granted; in this case, too, alliance commitments were a reason (Bundesministerium für Wirtschaft und Energie 2018). The Political Principles of July 2019 state that arms exports to NATO partners are generally not to be restricted unless a restriction is in order due to specific political reasons in individual cases (Bundesministerium für Wirtschaft und Energie 2019c). The fact that the German government has denied licences and rejected applications shows that it does make use of this practice for action, especially when the domestic situation changes. On the other hand, licences are granted for exports of weapons of war which are employed against Turkey's own population or in conflicts, for example in Syria.

Turkey in particular is equipped with a variety of licences and with production capacities of its own. Already in the early 1990s, Turkey received speedboats and MEKO frigates from Germany. Various naval vessels developed in Germany are produced under licence in Turkey, for example submarines, frigates, speedboats and minehunters (Deutscher Bundestag 2010). In 2019, Turkey built the first of six submarines under German licence, with substantial involvement of Thyssen Krupp Marine Systems. Germany supplied components worth 180 million euros for this. Additionally, Turkey has held rights to copy the assault rifles G3 and HK 33 of the company Heckler & Koch and the licence to copy the submachine gun MP5 and to manufacture ammunition for assault rifles and submachine guns since 1967 and 1998, respectively (Deutscher Bundestag 2010: 15–16).

In 1999, a first Leopard 2 tank was provided to Turkey for testing purposes; the licence applications for howitzer parts submitted at the same time were denied by the Federal Security Council with reference to potential employment against the Kurds, including on northern Iraqi territory (Gemeinsame Konferenz Kirche und Entwicklung 2000: 11–13). In 2004, a debate began in Germany on whether 300 to 500 used tanks of the Leopard 2 type from stockpiles of the Germany military should be passed on to Turkey (Gemeinsame Konferenz Kirche und Entwicklung 2004: 45–47). At the same time, the European Commission gave a positive signal on allowing accession negotiations with Turkey for admission to the European Union. Shortly before the end of its term, the Social Democratic Party/The Greens coalition government authorised the transfer of 298 surplus tanks of the Leopard 2 type from German military stockpiles to Turkey (Gemeinsame Konferenz Kirche und Entwicklung 2006: 72). In 2009, the German government under Chancellor Angela Merkel authorised 41 Leopard 2A4 tanks for the Turkish armed forces and another 15 tanks as *spare part donors* (Thumann 2019).

Surplus small arms, for example from decommissioned stockpiles of the former East German military, were also sent to Turkey (Stauch 1994). In the early 1990s, Turkey received 250,000 Kalashnikov assault rifles, 5,000 machine guns, including several hundred million rounds of ammunition, as well as 5,000 rocket-propelled grenades of the RPG 7 type and 250,000 rounds of ammunition (Schwarz 1992). In 2000, the German government granted a licence for building an SS109 5.6mm am-

munition factory, which was executed in 2003 by the company Fritz Werner Industrieausrüstungen. Since 2005, the Turkish-Kurdish conflict has intensified and has claimed lives on both sides. In 2008, the Turkish army launched a renewed offensive against the Kurds in northern Iraq. An overview of the arms shipments between 2000 and 2010 illustrates the regularity and intensity of licences granted and exports from Germany (Deutscher Bundestag 2010).

The failed coup attempt of 2016, the harsh crackdown on the Gülen movement and other opposition politicians as well as President Recep Erdoğan's declaration in July 2015 that the peace process with the Kurds was terminated re-ignited the debate in Germany on arms transfers to Turkey. In 2016, Turkey ranked eighth among the most important recipient countries of German military equipment (Deutscher Bundestag 2017a). The German government denied a series of licences in that year, but it did then grant licences for exporting warships, aircraft, military electronics as well as small arms. The licences for bombs, torpedoes and missiles alone amounted to nearly 18 million euros (Bundesministerium für Wirtschaft und Energie 2017b). One year later, there were signs of a significant decrease, but licences for exports of weapons of war and military equipment to Turkey were still granted (Bundesministerium für Wirtschaft und Energie 2017c). In 2019, during the Turkish advance in northern Syria, it became apparent that German Leopard 2A4 tanks were being employed (Thumann 2019). This underlines once again that in a changed political situation, weapons of war and military equipment supplied earlier may be employed in armed conflicts, but also against a country's own population (Deutscher Bundestag 2018). The denial of licences amounting to more than 14.58 million euros as documented in the 2019 report on exports of military equipment with reference to the human rights situation or peace and security in the region illustrates that the NATO partner Turkey is indeed considered a problematic recipient country (Bundesministerium für Wirtschaft und Energie 2020).

3.8 UNITED ARAB EMIRATES

The United Arab Emirates (UAE) are also still one of the most important buyers of German arms exports, despite also belonging to the Yemen war coalition. Until the end of the 1990s, the UAE played a rather small role as a recipient of German arms exports. This changed in 2008; since then, the value of German military equipment has regularly been in the triple-digit millions (Bonn International Center for Conversion 2020h). The UAE also took part in air strikes against the Huthi militias in Yemen, which also repeatedly hit civilian targets. In 2019, the investigative research collective #GermanArms uncovered that weapons systems with German technology were employed in Yemen, for example tanks with MTU engines fitted with German protective armour (ECCHR 2019). In 2017, the German government had granted a licence for protective shields for military vehicles of the company Dynamit Nobel Defence worth 125.84 million euros (Der Spiegel 2017). The suspension of exports that the German government had imposed for Saudi Arabia was not extended to the UAE, even though the UAE also *directly* take part in the Yemen war by carrying out air strikes, including against civilian targets such as hospitals, schools or homes. However, the UAE were ultimately still mentioned in the justification for the export moratorium for arms exports to Saudi Arabia. Accordingly, the German government wanted to push the European partners in joint arms cooperations not to supply any weapons from

this production to Saudi Arabia or the UAE (Die Bundesregierung 2019). However, Western states, including Germany, had supplied the UAE with weapons of war and military equipment for years. Amnesty International reported that the UAE in turn supplied militias in Yemen with armoured vehicles, mortar systems, machine guns and pistols (Amnesty International 2019a).

According to media reports, the UAE are also said to have bypassed the UN arms embargo against Libya and supplied General Haftar's militias with arms (Wisotzki/Mutschler 2020; Tillack 2019c). An expert report on the implementation of UN Security Council Resolution 1973 identifies the UAE, together with Turkey and Jordan, as the countries which supply different warring parties in Libya with equipment and weapons (United Nations Security Council 2019). Again and again, Amnesty International has reported human rights violations such as *enforced disappearances* of journalists and opposition members, torture and death penalties. The involvement of the UAE in the war in Yemen, the violation of UN sanctions in Libya and the human rights violations all concern criteria of the EU Common Position; therefore, no arms export licences to the country should actually be granted. Nevertheless, in the past years the UAE have repeatedly received licences for small arms and light weapons as well as associated ammunition, for armoured howitzers, armoured vehicles, minehunters and parts for patrol boats or parts for a combat training centre (Tillack 2019a).¹² Since the beginning of the Yemen war in 2015, the UAE have received licences worth more than 500 million euros (Bonn International Center for Conversion 2020h).

4. REGIONAL TENSIONS

Some of the Political Principles have long served as guidelines for decisions on German arms exports, e.g. not exporting to regions of tension. Criterion Four of the EU Common Position emphasises the need to preserve peace, security and stability in the respective recipient region. The User's Guide suggests that the export decision should depend on whether the intended recipient country wants to use the military equipment aggressively against another country, to assert a territorial claim by force or even just to threaten an aggressive use. This needs to be balanced against the right to self-defence enshrined in Article 51 of the Charter of the United Nations, also the country's interest to *ensure its internal security* must be taken into account. Thus, the assessment should also consider whether there is a *clear risk*, whether there is a history of armed conflict or trends towards an escalating conflict situation can be discerned in the region/neighbourhood (Council of the European Union 2015: 56–57). For the report, the countries of the Middle East and North Africa have been assessed mainly according to Criterion Two (respect for human rights and international humanitarian law) as well as Criterion Three (internal situation). However, the Middle East region in particular has been in a constant arms race for decades, with high potential for conflict but also concrete military interventions, as Turkey's invasion of Syria but also the war in Yemen have shown. Here, too, Criterion Four should

¹² Cf. Waffensexporte.org (n.d.): Tabellarische Aufarbeitung der Rüstungsexportberichte der Bundesregierung 2000-1. HJ 2017. Vereinigte Arabische Emirate, https://www.waffensexporte.org/wp-content/uploads/2017/03/Waffen-Ex_Vereinigte-Arabische-Emirate.pdf (March 22, 2021).

supply sufficient grounds to deny licences. Indeed, the German government often refers to Criterion Four in denying any export licences.

The South Asia and Southeast Asia regions are also among the regions with most tensions and conflicts. Armed conflicts over the Kashmir region have already erupted three times between India and Pakistan since 1947, the last one in 1999. Both sides claim Kashmir as part of their territory; both Pakistan and India have nuclear weapons. But even apart from this armed conflict between India and Pakistan, tensions in the Kashmir region regularly claim casualties. In 2018 alone, Indian security forces killed 76 civilians during violent protests in the Jammu and Kashmir region administered by India (Heidelberg Institute for International Conflict Research 2019: 137).

4.1 INDIA

India is among the most important recipient states of German weapons of war and other military equipment, and among the largest arms importers worldwide. Between January 2017 and July 2019 alone, the country received military equipment worth more than 278 million euros from Germany (Bundesministerium für Wirtschaft und Energie 2019b). This put India in second place behind Egypt among developing countries (Fähnders 2019). In 2019, the Federal Security Council granted an export licence for 72 Meteor warheads and associated engines; the air-to-air missile is intended for the Indian air force. This occurred just when the clashes in the Jammu and Kashmir region administered by India saw a renewed violent escalation (Gebauer 2019). Export licences for such crisis regions remain highly problematic and should not be granted if the Political Principles and the EU Common Position were interpreted accurately.

Even though the German government frequently uses Criterion Four of the EU Common Position as a basis for rejections in its reports on exports of military equipment, licenses have been granted for exports of weapons of war and military equipment to India, including tanks, warships and, e.g. in 2012, also small arms and light weapons (Bonn International Center for Conversion 2020d). India is viewed as a difficult cooperation partner, as the country is aiming to establish an independent arms industry. Accordingly, the German licences are often for supplying parts and components e.g. for submarines, parts for battle tanks or technologies for border security systems. Since 2016, German arms manufacturers have increasingly targeted India as a market, also because the German government entered into regular intergovernmental consultations with the Indian government, with the dialogue on defence between the two countries to be intensified (Presse- und Informationsamt der Bundesregierung 2019: 91).

Besides the tensions and repeatedly escalating conflicts with neighbouring Pakistan and the violent escalations in the Jammu and Kashmir region, there are also frequent violent clashes between Hindus and Muslims within India (Deutscher Bundestag 2019a). Amnesty International reports serious human rights violations in India itself, with armed forces and police alleged to be involved e.g. in extrajudicial executions (Amnesty International 2020). It appears all the more problematic that the German government has nevertheless repeatedly granted licences for machine guns and subma-

chine guns (Gemeinsame Konferenz Kirche und Entwicklung 2016b: 52). The case of Mexico shows that small arms and light weapons in particular often end up in the regions of a country where government security forces disregard the rule of law.¹³

4.2 PAKISTAN

Pakistan is also among the largest arms importers worldwide. In the conflict with India over Kashmir, both sides are continually building up arms. Amnesty International reports a variety of human rights violations in Pakistan (Amnesty International 2017). In addition, there are various internal conflicts in Pakistan, including between Islamist groupings and the government, but also religious conflicts between Sunni and Shi'a. These conflicts are often fuelled by the uncontrolled proliferation of small arms and light weapons that reach Pakistan from neighbouring Afghanistan. Moreover, Pakistan was deemed a Taliban safe haven after September 11, 2001. In December 2014, the Pakistani part of the Taliban claimed responsibility for a massive terrorist attack on an army school in Peshawar that killed more than 150 people, including 130 school children.¹⁴ In summary, this shows that the country is not only involved in a constantly simmering regional conflict with neighbouring India, but the internal situation of the country is also extremely unstable. Thus, according to the criteria of the EU Common Position, there would be multiple criteria that preclude arms exports to Pakistan.

Among other things, the country received missiles and parts for torpedoes, engines for helicopters and parts for combat aircraft from Germany. Between January 1, 2017 and July 2019 alone, the German government granted licences for Pakistan amounting to 247 million euros (Bonn International Center for Conversion 2020e. In 2018, the government granted licences for military equipment worth about 174 million euros, including for maritime patrol aircraft, torpedo bombers, aircraft, helicopters, communication equipment and radar reconnaissance systems as well as underwater detection devices. Pakistan was thus among the top ten most important recipient countries of German arms exports (Bundesministerium für Wirtschaft und Energie 2019a: 73).

4.3 ISRAEL

Every German government has emphasised Germany's unique historical responsibility for Israel's security; it is part of Germany's *raison d'état* as a result of Nazi terror and the Holocaust (Die Bundesregierung 2008; Kaim 2015). And yet Israel lies in the midst of the region of tension in the Middle East and is in perpetual conflict with Arab states and Iran, not least about the recognition of the State of Israel. At the core of the Middle East conflict lies another conflict which is the Israeli-Palestinian conflict. The example of Israel makes the dilemma between the country's right to self-defence according

¹³ See the case of Mexico in Chapter 5.

¹⁴ Cf. Bonn International Center for Conversion (2020e): Pakistan Informationsdienst Sicherheit, Rüstung und Entwicklung in Empfängerländern deutscher Rüstungsexporte, BICCLÄNDERBERICHT 12, http://www.ruestungsexport.info/user/pages/04.laenderberichte/pakistan/2020_Pakistan.pdf (March 22, 2021).

to Article 51 of the UN Charter and the risk of arms exports contributing to a violent escalation of existing conflicts and an actual use of these weapons particularly clear. For example, in 2019 Israel attacked Iranian positions in Syria (Zeit Online 2019). In 2006, Israel responded to the sustained missile fire from the Shi'ite Hezbollah militia with a five-week war in Lebanon (Der Spiegel 2006).

The German understanding of Germany's historically rooted responsibility for Israel's security was already expressed in the 1950s, when German companies started supplying Israel with military equipment. The arms cooperation between the two countries intensified over time. In 1965, Arab states threatened to break off diplomatic relations over the German arms shipments. As a result, Germany planned to no longer supply weapons of war to the various parties and to apply the principle of equal treatment to other military equipment (Wissenschaftliche Dienste Deutscher Bundestag 2007). However, in the case of Israel a lasting arms cooperation continued without ever being formalised contractually. For example, since the 1980s the Israeli battle tank Merkava has used the same technology as the German Leopard 2 tank. The Merkava tank was employed in 2006 in the Lebanon conflict (Nassauer 2006).

In the first half of the 1990s, the German government granted licences for three submarines of the Dolphin class; they were shipped in 1999 and 2000 (Nassauer 2011). Licences for three further submarines had been granted by 2012. The budget for 2012 included 135 million euros for funding the submarines to cover about a third of the total cost of 400 million euros (Nassauer 2012a). The decision in favour of the submarines was taken with the knowledge that Israel could arm the warships with nuclear weapons and Germany could thus contribute to Israeli nuclear deterrence. However, Israel has never confirmed its status as a nuclear power. Germany, by contrast, is a party to the 1968 nuclear Non-Proliferation Treaty (NPT) and is thus undermining the credibility of its own status and conduct as a non-nuclear-weapon state.

Besides such exports of weapons of war, a number of Israeli major weapons systems also contain German components, for example speedboats, corvettes or the Merkava tank (Nassauer 2010). Manufacturing know-how for the German Panzerfaust 3 launcher was passed on to Israel. In particular, the arms cooperation between Germany and Israel has intensified over the last three decades, though information about it remains highly classified (Nassauer/Steinmetz 2003). The cooperation between the two states is said to extend e.g. to the area of research, development and testing of weapons systems (Nassauer/Pallade/Steinmetz 2002). The above examples show that Germany also passes technology on to Israel which is then incorporated into Israeli arms projects.

5. THE RISK OF ILLICIT DIVERSION OF SMALL ARMS AND LIGHT WEAPONS

In Criterion Seven, the EU Common Position emphasises the risk that military technology or equipment will be diverted within the buyer country or re-exported. Small arms and light weapons are particularly relevant to proliferation. By their nature, they are easy to transport, smuggle and pass on.

Legal small arms in state hands often end up in illegal circulation due to insufficiently secure storage, as the examples of German arms export policy of the past document.

5.1 AFGHANISTAN

Germany took part in rebuilding Afghanistan in the framework of the multinational ISAF mission with soldiers and equipment aid. Thus, licences for weapons of war and military equipment were granted after the UN weapons embargo ended in 2001. For instance, in 2005 and 2007 licences were granted for small arms, including 10,000 decommissioned pistols to the Afghan security forces from German military stockpiles. Some of these pistols appeared on Afghan and Pakistani black markets (Der Spiegel 2009).

5.2 GEORGIA

In summer 2008, illegally supplied G36 assault rifles surfaced in the Russo-Georgian War (Der Spiegel 2008). The German government had at no time granted licences for these assault rifles, but had rather denied a concrete application of the Georgian government for 230 G36 assault rifles (Deutscher Bundestag 2008). The suspicion therefore arose that these weapons came from an unlicensed retransfer. The German government could presumably have identified the country of origin based on the serial numbers. However, the matter was never resolved, despite parliamentary inquiries. According to unconfirmed sources, the weapons may have originated from licences and exports to the United States of America (Deckert 2008).

5.3 COLOMBIA

More than 38,000 pistols and firearms of the company Sig Sauer are said to have reached Colombia, a country torn by civil war, via the U.S. between 2009 and 2012; no licences had been granted for this by the German government (Nassauer 2014). In 2019, the illegal retransfer from the U.S. to Colombia led to a trial in the Landgericht (regional court) in Kiel. An executive of the company with U.S. citizenship was arrested during a stopover at Frankfurt Airport and was remanded in custody. The company Sig Sauer had deliberately circumvented the export ban and had declared the firearms as an export to the U.S. From there the weapons were directly shipped on to Colombia. The trial in Kiel ended with a plea deal already on the second day. In return for a comprehensive admission of guilt, the three defendants would have received suspended sentences, and Sig Sauer's entire gross revenue of about eleven million euros would have been confiscated. The defendants ultimately did not accept this deal after all but rather appealed the decision, so that this case will have to be decided by the Federal Court of Justice in Karlsruhe (Gemeinsame Konferenz Kirche und Entwicklung 2019: 68–70).

5.4 LIBYA

In 2011, rebels storming a residency of Muammar Gaddafi in Tripoli obtained G36 assault rifles alleged to have been in the country since 2005. The German government had not granted a corresponding export licence. Upon request, the company Heckler & Koch stated that the assault rifles appeared to have come from an export to Egypt and to have reached the Libyan dictator from there. However, the case was never really resolved, which was presumably also due to the insufficient marking of these weapons, which had systematically been obliterated from the polymer frame (Grässlin 2012).

5.5 MEXICO

In summer 2006, the Federal Security Council granted licences for the export of the first tranche of G36 assault rifles to Mexico. However, a specific condition was attached: Heckler & Koch was not allowed to ship the assault rifles to the four troubled provinces of Chiapas, Chihuahua, Guerrero and Jalisco. Until 2009, the German government granted licences for further shipments of G36 assault rifles to equip the Mexican police; in total, up to 9,000 are said to have been delivered. Already in 2007, Heckler & Koch obtained follow-up orders for spare parts, also amounting to millions of euros. In that context, officials in the Office for Export Control (Bundesausfuhramt, BAFA) in Eschborn responsible for the licences noticed discrepancies in the company's end-use certificates, as the spare parts were also to be shipped to the four troubled provinces, to which the assault rifles should never have been sent in the first place (Grässlin 2011). Already in 2006, Amnesty International decried numerous cases of misuse of weapons by the Mexican police against opposition members. Moreover, the police repeatedly used armed force against protesters.

On September 26, 2014, the police in Iguala in the state of Guerrero shot at busses with student protesters inside, killing six students. They then encircled a group of students, whom the police subsequently handed over to a criminal gang. 43 of these students were missing for a long time, until traces of their DNA were discovered in a mass grave. The Mexican investigators had also seized G36 assault rifles upon arresting police officers. A projectile from a G36 was found in one of the surviving Mexican students, who has been in a coma since. The evidence was sufficient for the Landgericht in Stuttgart to order 3.6 million euros of Heckler & Koch's revenue from illegal exports of small arms to be confiscated. The company's appeal is currently still pending before the Federal Court of Justice in Karlsruhe (Gemeinsame Konferenz Kirche und Entwicklung 2018: 96–99; 2019: 68–70). However, the Landgericht in Stuttgart rejected the application of Mexican relatives of the 43 disappeared students to join the court case. In 2015, the German public broadcaster ARD dedicated a theme night to this scandal of German arms export policy, with a feature film and a documentary seen by about four million TV viewers.¹⁵ The members of the German parliament also dealt with the case of Mexico as a current issue in a parliamentary debate (Deutscher Bundestag 2015c).

15 Cf. SWR (n.d.): Meister des Todes, <https://www.swr.de/meisterdestodes/-/id=15524194/447tym/index.html> (March 22, 2021).

5.6 NORTHERN IRAQ

The situation seemed dramatic and required immediate political action. In 2014, more than 20,000 Yazidis had sought refuge in the Sinjar Mountains in northern Iraq. As a religious minority, they were directly exposed to the IS terror and were in mortal danger. In this exceptional situation, the German government decided to supply the Kurdish Peshmerga in northern Iraq with used weapons, ammunition and equipment from German military stockpiles so that they could liberate the encircled Yazidis. In fact, the Yazidis were liberated by fighters of militias associated with the PKK, which is acknowledged as a terrorist group in Germany. Beginning in February 2015, the German government decided to ship further weapons and ammunition. There was no longer any talk of an emergency, an exceptional situation and the need to prevent crimes against humanity by all available means. Rather, the justification for the new tranches of weapons and ammunition from German military stockpiles was now that the Iraqi-Kurdish regional government had to be supported in the fight against the terror of the *Islamic State* (Gemeinsame Konferenz Kirche und Entwicklung 2016a: 114–124).

German media repeatedly reported on the human rights violations committed by security forces of the Kurdish regional government against government critics. Critical journalists are also said to have been killed (Deutscher Bundestag 2015a). Moreover, up to 80 small arms and light weapons from German military stockpiles are said to have appeared on the black markets in Erbil, as the stocks were apparently insufficiently secured (Norddeutscher Rundfunk 2016). The situation further escalated when the Kurds in northern Iraq voted in favour of their independence in a referendum in September 2017 and included areas they had occupied since 2014, such as the city of Kirkuk and the oil-rich region nearby (Gehlen 2017). The independence referendum and the territorial expansion of the Kurds in northern Iraq prompted the Iraqi central government to take military action in and around Kirkuk. The Kurdish Peshmerga employed Milan anti-tank missiles in combat situations that they had received from Germany (Deutsche Welle 2017). This case, too, illustrates the special risk from arms exports and military aid, both of which can easily contribute to the uncontrolled and illicit proliferation of small arms and light weapons.

6. ARMS COOPERATION, TECHNOLOGY TRANSFER AND SUBSIDIARIES IN THIRD COUNTRIES

Two trends can be discerned in German arms export policy that also lead to weapons of war and military equipment ending up in controversial third countries: The Europeanisation and the internationalisation of arms production. Joint arms productions with EU/NATO states should be unproblematic in principle, but for instance the European cooperation with France and the UK illustrates that military equipment from such joint projects can also be supplied to controversial third countries such as Saudi Arabia. In principle, the criteria of the 2008 EU Common Position also apply to France and applied to the UK until it left the EU in January 2020. But the UK supplied combat jets of the Eurofighter Typhoon type to Saudi Arabia despite the fact that the recipient state used the combat jets in the Yemen war (Chapman 2019). The companies Airbus and MTU Friedrichshafen are also involved in manufacturing this combat jet. Examples from the past also show that German arms manufacturers

use foreign partners, subsidiaries or licensed production in order to circumvent possible denials of German licences. For instance, G3 assault rifles from British licensed production were supplied to Serbia in the early 1990s and were employed in the Bosnian War (Kelsey/Van Beveren 1993).

The example of the manufacturing and transfer of ammunition in the case of the company Rheinmetall illustrates a growing trend towards the internationalisation of arms production (Nassauer 2016). The company has been buying and modernising ammunition manufacturers abroad for quite some time. Rheinmetall Denel South Africa built an entire ammunition factory in Saudi Arabia (Welt 2016). Such subsidiaries and joint ventures have repeatedly supplied munition to controversial third countries. For instance, RWM Italia supplied MK bombs to Saudi Arabia, which were also used in the Yemen war. On October 8, 2016, six civilians were killed in their house in an air strike of the Yemen war coalition, even though there was no strategic military objective nearby (Trial International 2019). The bomb fragments recovered originated in RWM Italia's production. In April 2018, four non-governmental organisations filed a criminal complaint with the public prosecutor's office in Rome.¹⁶

Until 2019, Rheinmetall explored plans to potentially form a joint venture with the Turkish Partner BMC for building a tank factory. Upgrading the Leopard tanks supplied by Germany was going to be a key initial project. But in addition, personnel were to be found and trained in order to produce battle tanks in Turkey in the future (Tillack 2018a). However, in the meantime the plans have been reduced to a potential upgrade of up to 350 Leopard tanks. Rheinmetall no longer appears to be considering the arms cooperation for building a tank factory (Handelsblatt 2017). By contrast, licences have been granted for German technology, components and warheads of the company TDW to be used to develop and remodel Turkish warheads for anti-tank guided missiles. On the basis of TDW's technology, the Turkish arms manufacturer Roketsan is also producing the MAML-L warhead, which is deemed the standard weapon for Turkish drones. These drones were used against the PKK and in attacks violating international humanitarian law in the Syrian province of Idlib (Monitor 2020).

These examples of arms cooperations, of establishing subsidiaries in third countries and of transfer of German technology and know-how reveal vast regulatory gaps in German arms export legislation and the associated procedures. These relate to the export of technical support and know-how as well as the possibility to monitor investments of German arms manufacturers in building foreign production capacities. These regulatory gaps have still not been closed even after the revision of the Political Principles in July 2019 (GKKE-Fachgruppe Rüstungsexporte 2019: 7).

16 The four non-governmental organisations include the European Center for Constitutional and Human Rights (ECCHR), the Yemeni organisation Mwatana for Human Rights as well as Rete Italiana per Il Disarmo. See also GKKE-Fachgruppe Rüstungsexporte 2019: GKKE-Rüstungsexportbericht 2019, Bonn/Berlin. 89–93.

7. CONCLUSIONS: THE PATTERNS OF GERMAN ARMS EXPORT POLICY

The review of 30 years of German arms export policy illustrates that German arms export control consists of a variety of rules, norms and procedures. These were modified and adapted over the decades, and were additionally complemented by European rules such as the EU Common Position and by international treaties such as the Arms Trade Treaty. Despite this dense but also complicated web of norms, weapons of war and military equipment reached and are still reaching controversial third countries, not least because sanctioning powers do not exist at the European and international level and are very limited in Germany, too. If the criteria of the EU Common Position are taken as a basis for assessing 30 years of German arms export policy, then Germany has repeatedly violated many of these criteria.

The German Political Principles for the Export of Weapons of war and other Military Equipment emphasise that arms exports to third countries are to be handled restrictively. Licences for exporting weapons of war are not granted unless particular foreign and security policy interests or alliance commitments speak in favour. These principles require a principled justification of such foreign and security policy interests. Despite the principle of peace in Article 26 para. 1 of the constitution, Germany exports weapons of war and military equipment to problematic third countries. Arms exports to third countries from Germany have become the rule rather than the exception: in several of the past ten years, 60 per cent of German weapons of war and military equipment went to third countries.

This report documents three kinds of cases: 1. weapons of war and military equipment reach problematic third countries but are not immediately used; 2. weapons of war and military equipment reach countries that wage war with German weapons, or countries that apply insufficient controls to these weapons, so that these weapons end up on the black market and are employed in a conflict in a neighbouring country; 3. weapons of war, military equipment but also technologies, know-how or licences are given to third countries or to NATO countries, which retransfer the weapons from there or produce weapons of war with German technology and sell them to warring parties. German arms export policy is shaped by an interplay of licences, denials and the suspension of licence decisions. The cases of Saudi Arabia and Turkey are almost paradigmatic for Germany's indecisive and contradictory arms export policy. Arms cooperations with other EU countries, such as in the case of the Eurofighter Typhoon, are a further option for how German supplies and components in weapons of war and military equipment can end up in controversial third countries. The risk of retransfer and of undesirable diversion is particularly high for exports of small and light weapons, as documented in Chapter 4.

Germany grants licences for and transfers weapons of war and military equipment to countries waging war, to countries with human rights violations and to regions of tension. Here in particular, German arms exports fuel arms races and thus increase the risk that existing conflicts escalate and turn violent. The countries of the MENA region remain the most important recipients of German arms exports, but South(east) Asia and South America also have been and still are recipient countries of German military equipment. A war has been raging in Yemen since 2015, and the civilian population is suffering most. The air strikes against civilian targets by members of the Yemen war coalition and

the naval blockades violate central criteria of international humanitarian law, such as those of proportionality and of distinction between civilians and combatants (Wisotzki 2018). Some of the weapons of war and military equipment employed in the Yemen conflict origin from Germany.

In the past, Germany has repeatedly exported small arms and light weapons to third countries, including from decommissioned stockpiles of the German military. In July 2019, in revising the Political Principles for the Export of Weapons of war and other Military Equipment, the German government decided in principle not to grant licences for small arms and light weapons to be exported to third countries. To which extent the formulation *in principle* will be interpreted in the form of exceptions after all will only become apparent in the practice of German arms exports in the coming years. The 2019 report on exports of military equipment documents that the arms transfers to third countries have decreased considerably, but still in 2019 e.g. licences were granted for 45 parts for submachine guns to be exported to the United Arab Emirates. The report's examples document how quickly arms exports and equipment aid such as small arms and light weapons enter into illegal circulation and end up on the black market. Worldwide, more small arms and light weapons are still being produced than are currently being destroyed (Alwardt et al. 2019: 103). A serious regulatory gap remains with respect to ammunition, as weapons only turn deadly once they are loaded with ammunition. The revised Political Principles of July 2019 have so far disregarded the subject of ammunition.

But ammunition is relevant not only to the functioning of small arms and light weapons, but is also relevant for armies, navies and air forces, for instance in the form of ammunition for tanks, howitzers, artillery weapons or for naval guns. Especially the production of ammunition brings a further pattern of German arms export policy into focus, namely the growing trend towards the internationalisation of German arms manufacturers. Joint ventures such as the one formed by the company Rheinmetall, which established a new site in South Africa in acquiring Denel, aim to provide the countries of the MENA region, Latin America and South(east) Asia that are prone to conflicts and tensions with ammunition. Bombs from the company RWM Italia were employed in the Yemen conflict and killed a family of six. The regulatory gaps in the procedures of German arms export policy regarding the transfer of technology and know-how as well as investments of German arms manufacturers in foreign companies need to be closed.

This could be achieved by passing an arms export control law that could turn the vast and growing web of norms and regulations in German arms export policy into a unified and legally binding law (Gemeinsame Konferenz Kirche und Entwicklung 2016b: 94–107). Already in the run-up to the federal election year 2021, several parliamentary groups in the German parliament have spoken out in favour of such an arms export control law, including Bündnis 90/Die Grünen, the SPD and DIE LINKE. The idea itself is not new and was already pursued in the previous legislative period of the Grand Coalition by the Minister for Economic Affairs, Sigmar Gabriel. A consultation process between different stakeholders from politics, business, academia and civil society was organised at the time but did not result in any meaningful outcome. In the meantime, however, legal experts have prepared drafts of what such an arms export control law could look like (Greenpeace 2020; GKKE 2016). Such a law could create a basis for judicial review and serve as an instrument of increased accountability. Together with the right of eligible associations such as non-governmental organisations to sue the

government for problematic arms exports to third countries, this would make arms export control subject to better control, in addition to the still limited possibilities of political scrutiny. (Gemeinsame Konferenz Kirche und Entwicklung 2021: 67). Arms exports have a long life span: the examples of this study illustrate that past exports can have dramatic repercussions even many years later if the political situation in the recipient state changes such that the weapons supplied from Germany are used in war, to violently crush protest movements or to violate international humanitarian law and human rights.

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SIMONE WISOTZKI //
GERMAN ARMS EXPORTS TO
THE WORLD?
TAKING STOCK OF THE PAST 30 YEARS

Despite a variety of laws, European and international agreements and provisions, German weapons of war and military equipment is frequently exported to problematic third countries which wage war, violate norms of international humanitarian law and human rights. Using many exemplary cases, the author demonstrates how existing arms export control norms have repeatedly been violated by different German governments in the past 30 years and what short- and long-term consequences arose from this. She makes a case for finally establishing an arms export control law in order to create a basis for judicial review and accountability.

Dr Simone Wisotzki is a senior researcher in PRIF's research department "International Security". Her research topics include humanitarian arms control and arms export control.