



GKKE

Gemeinsame Konferenz
Kirche und Entwicklung

Joint Conference Church
and Development

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“Arms Exports Report 2018”
by the Joint Conference Church and Development (GKKE)
GKKE’s Working Group on Arms Exports

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0 Summary

Key demands of the Joint Conference Church and Development (GKKE)

- (1) In the light of current data and developments, the GKKE reiterates its call for an Arms Export Control Act and calls on the Federal Government and the German Bundestag to draw up such an Act.
- (2) The GKKE calls on the Federal Government to adhere to its self-imposed principles and to end the delivery of weapons of war to third countries unless it can actually prove that it has special foreign or security policy interests. These interests should then be identified in detail.
- (3) The GKKE calls on the Federal Government to prohibit without exception all arms exports to states of the Saudi-led Yemen war coalition (Saudi Arabia, the United Arab Emirates, Egypt, Bahrain, Jordan, Kuwait, Morocco, Senegal and Sudan). All licenses that have already been granted must be revoked immediately.
- (4) The GKKE calls on the Federal Government to adopt regulations prohibiting German defence companies from supplying the Saudi-led Yemen war coalition with ammunition via foreign subsidiaries and joint ventures.
- (5) In general, the GKKE calls on the Federal Government to subject technical support by German citizens in third countries of the development of weapons of war and other military equipment and the build-up of capacities for arms production to certain licensing requirements. The same applies to the establishment of joint ventures and subsidiaries of German companies abroad that manufacture weapons of war and other military equipment as well as to the acquisition of shares in such companies by German companies.
- (6) The GKKE supports the European Parliament's call for the establishment of a European supervisory body for the monitoring of arms exports. To this end, it calls on the Federal Government to work towards strengthening arms exports control within the European Union.

0.1 Focus: The balance sheet of the Grand Coalition's arms export policy

(0.01) The coalition agreement, on which the CDU, SPD and CSU agreed in spring 2018, states that the Federal Government wants to restrict arms exports to third countries. Small arms and light weapons (SALW) should "in principle" no longer be exported to third countries. Furthermore, the Federal Government promises to "tighten" the arms export guidelines from the year 2000 by 2018. It strives for a "common European arms export policy" and intends to further develop the EU Common Position to this end. Furthermore, the coalition agreement states: "With immediate effect, we will not approve exports to countries as long as they are directly involved in the war in Yemen".

(0.02) The GKKE welcomes the fact that the CDU, SPD and CSU have agreed in their coalition agreement to restrict arms exports to third countries and to stop exporting SALW to these countries. In the coming years, the GKKE will also measure the Federal Government's arms export policy against these self-imposed goals.

However, the declaration in the coalition agreement not to approve arms exports to countries directly involved in the war in Yemen with immediate effect is invalidated by the assurance of so-called protection of legitimate expectations for companies and the—in some cases associated—continuation of arms exports to the countries of the war coalition. The GKKE strongly condemns these arms exports, in particular the licenses granted for patrol boats.

(0.03) The Saudi-led coalition continues to wage its war in Yemen in gross disregard of international humanitarian law—to the detriment of the people, especially the civilian population. It cannot be ruled out that the patrol boats from Germany will be used against Yemen within the framework of the naval blockade, which is contrary to international law. Their export should therefore never have been authorised. With these exports, the Federal Government not only contributes to the suffering of the Yemeni people, but also promotes the erosion of central principles and the violation of international humanitarian law.

What is more, with these exports the Federal Government is violating the internationally binding rules of the Arms Trade Treaty (ATT) and the EU Common Position on the export of military equipment and technology, as well as the German War Weapons Control Act and its own Political Principles for the Export of Weapons of War and Other Military Equipment.

A short-term ban on arms exports, as imposed after the murder of the journalist Jamal Khashoggi, is therefore not enough. In fact, from the point of view of the GKKE, all arms exports to countries of the warring parties in Yemen (Saudi Arabia, the United Arab Emirates, Egypt, Bahrain, Jordan, Kuwait, Morocco, Senegal and Sudan) must be banned without exception. All licenses that have already been granted must be revoked immediately.

(0.04) Also given these developments, the GKKE fears that the Federal Government will not implement its declarations of intent from the coalition agreement on stricter German arms export guidelines and to further develop the EU Common Position.

In this context, the GKKE renews its call for an Arms Export Control Act. Inter alia, such an Act should incorporate the substantive criteria of the EU Common Position into German law and also make the Political Principles of the Federal Government for the Export of Weapons of War and other Military Equipment legally binding.

0.2 German arms exports in the international context

(0.05) In the period between 2013 and 2017, the volume of global arms transfers increased by 10 per cent compared to the previous five-year period (2008 to 2012). This continues the upward trend of the international arms trade since the early 2000s. The five major exporters are the United States, Russia, France, Germany and China. Between them, these five states are responsible for 74 per cent of global trade in major conventional weapons. With a share of 5.8 per cent, Germany ranks fourth.

Compared to the period between 2008 and 2012, German exports of major conventional weapons and their components fell by 14 per cent in the following five years. However, this relative decline must be seen in the context of an overall increase in the volume of the international arms trade.

0.3 German arms exports 2017 Individual and collective export licences

(0.06) In 2017, the Federal Government issued a total of 11,491 individual export licenses for military equipment worth 6.242 billion euros. In 2016, 12,215 individual export licenses had reached a volume of 6.848 billion euros. The licensing value thus fell by around 600 million euros (just under nine per cent) in 2017. This is the second time in a row that licensing values for individual exports have fallen. However, the licensing values for the last three years (2015-2017) are still the top three of the past twenty-one years, i.e. since the Federal Government has publicly reported on export licences.

In 2017, the Federal Government issued 37 collective export licences with a total value of 325 million euros.

Recipients of German arms deliveries

(0.07) In 2017, exports to third countries amounting to 3.795 billion euros were approved. This corresponds to approximately 61 per cent of the overall financial volume of individual export licenses issued. With Algeria and Egypt, the two main recipients of arms exports approved in 2017 are third countries. Given the continuously high licensing values for the export of military equipment and weapons of war to third countries, the GKKE no longer considers it justifiable to speak of exceptional cases here. On the contrary, it notes that exports to third countries have now become the norm.

Overall, the figures on German arms exports do not give the impression of a restrictive licensing practice that adheres to its own standards and respects human rights. Although the Federal Government always asserts the opposite, countries where state organs systematically commit human rights violations are still supplied with German arms. It is also noticeable that extensive arms transfers take place to regions in which violent conflicts and regional arms dynamics can currently be observed, especially in the Middle East.

The GKKE criticises in particular the licensing of arms exports to those countries which are part of the Saudi-led war coalition against Yemen. Both in 2017 and in the first half of 2018, a large number of arms exports to these countries were approved.

Exports of small arms and light weapons

(0.08) In 2017, the Federal Government approved the export of small arms and light weapons (SALW) worth 47.82 million euros. This represents a slight increase compared to the previous year (2016: 46.89 million euros). In 2017, licenses worth 15.1 million euros were granted to third countries, slightly less than in the previous year (2016: 16.38 million euros). This corresponds to a share of approx. 31 per cent.

The GKKE criticises the fact that in 2017, as in previous years, SALW were delivered to countries where the human rights situation is worrying. These include in particular India, Indonesia and Malaysia.

0.4 Current debates and developments in German arms export policy

The internationalisation of the German arms industry and its consequences: The example of ammunition

(0.09) Ammunition is an important commodity in any war. Whether small arms ammunition, armour piercing shells or bombs, without ammunition modern weapons systems are generally useless. Three manufacturers from Germany are important players in the international market for ammunition: Rheinmetall, Diehl and MBDA.

In the ten years between 2007 and 2016, the share of individual export licenses for ammunition exports and their most important components (e.g. detonators) averaged between 14 and 15 per cent of the value of all individual export licenses for arms exports from Germany.

(0.10) In addition, German defence companies are involved in supplying the world market with ammunition, in particular through the establishment of subsidiaries and joint ventures abroad. In this way, they can deliver ammunition to regions of crisis without having to apply for a license from Germany. Rheinmetall AG in particular is pursuing a strategy of internationalising its production. Over the past two decades, it has acquired a number of foreign companies active in the production of ammunition.

In recent years, Rheinmetall AG has supplied thousands of bombs to both Saudi Arabia and the United Arab Emirates via these companies. Amnesty International, Human Rights Watch and Mwatana, a Yemeni human rights organisation, have documented the use of such bombs in the war in Yemen, also against civilian targets.

(0.11) GKKE strongly condemns Rheinmetall's business practice as described here. Not only Rheinmetall's corporate management, but also the German government is to be criticized. It is watching Rheinmetall's internationalisation plans and their implementation idly instead of closing existing loopholes in German export law.

The GKKE calls on the Federal Government to adopt regulations prohibiting German defence companies from supplying the Saudi-led war coalition in Yemen with ammunition via foreign subsidiaries and joint ventures.

In general, the GKKE invites the Federal Government to create reservations of approval for technical support by German nationals in third countries for the development of weapons of war and other military equipment and for the building capacities for arms production. The same applies to the establishment of joint ventures and subsidiaries of

German companies abroad related to the manufacture of weapons of war and other military equipment as well as to the acquisition of shares in such companies by German companies.

Increased German military spending: More or fewer arms exports from Germany?

(0.12) Against the background of the still current claim, repeatedly put forward by US President Donald Trump, for an increase in German military spending to up to two per cent of gross domestic product (GDP) and NATO decisions in the same direction, the question also arises of assessing this claim in regard to potential consequences for arms exports.

In the discussion about arms exports from Germany, the argument that a strong expansion of national arms procurement could also lead to fewer arms exports is repeatedly raised. For if domestic German arms expenditure rose sharply, this would more than utilise existing production capacities. The economic pressure to export, in terms of jobs and profit interests, would be reduced.

(0.13) However, a closer look at this argument and the expected consequences of an increase in national expenditure on procurement, as described below, leads to the conclusion that significantly higher investment expenditure can also lead to more rather than fewer arms exports. Although a scenario of sharply rising military expenditures does indeed open up opportunities to decide on arms exports under less economic pressure, they can only be realised by a fundamental change in arms export policy.

Arms exports would then have to be reduced roughly in parallel with the increased volume of orders for German defence companies by the German Armed Forces (*Bundeswehr*). Any increase in capital expenditure on armaments would have to be accompanied by a 1:1 ratio of a corresponding reduction in the value of arms export licenses. Otherwise, it is to be expected that the additional orders from the *Bundeswehr* will increase the competitiveness of the manufacturers. They could then expand their production capacity, submit more export applications and increase pressure on decision-makers to grant these.

Security and migration—Germany's "Enable and Enhance" Policy and its consequences

(0.14) The protection of Europe's external borders is increasingly being transferred to third countries. The focus is on the security institutions of countries in the MENA region, but also on the African continent, which are also "enabled and enhanced" from the German side. So far, German enable and enhance policy has focused primarily on training assistance. Assistance in the form of equipment, which, as in northern Iraq, also includes weapons and armaments, has so far tended to be the exception.

The German enable and enhance policy lags behind the goals it has set itself. In Mali, the declared goal of stabilisation and security gains has not yet been achieved. Instead, there are increasing signs of a "second Afghanistan". Germany, but also the European Union, lack an overall development and peace policy concept in their engagement in the Sahel. Crisis prevention also tends to play a marginal role.

(0.15) The assumption that increased border controls or high-tech border protection mechanisms would generally lead to less irregular migration is highly controversial. Rather, experts observe that this makes migration routes more dangerous and the situation of migrants/displaced persons more precarious and increases profit margins for organised traffickers. This is highlighted by the situation of a number of countries, including Niger. In return for enable and enhance initiatives, the country is to increase the control of its borders, and indeed migration has fallen by three quarters within a year. However, the Nigerien change in policy has mainly affected the informal sector of those who lived from seasonal circular migration in Niger. The "enabling and enhancing" threatens to destabilise the north of the country due to the resulting economic losses.

But it is not only the Sahel states that have advanced to become partners in the German and European enable and enhance initiative. Mediterranean countries such as Algeria, Morocco and Tunisia also receive support in border security. In addition, Morocco and Algeria have invested heavily in the armament of their military in recent years. Germany has recently repeatedly approved arms deals with Algeria in connection with border security objectives. Morocco, like Algeria, is primarily concerned with building up its own armament capabilities in order to underpin its supremacy in the region.

The GKKE demands that in the assessment of arms exports to the MENA region, greater attention be paid to questions of maintaining peace, security and stability in the countries, but also in the region. This also applies, in particular, to the approval of capacity-building for armaments production in the respective recipient countries. If there are doubts about constitutional procedures and serious violations of human rights or internal repression are the order of the day in the recipient countries, arms exports from Germany must not be permitted.

Criminal proceedings for G36 assault rifle export to Mexico

(0.16) The Stuttgart Public Prosecutor's Office accuses six defendants, including two former managing directors of the Oberndorf small arms manufacturer Heckler & Koch (H&K), of a total of 14 criminal offences against the German War Weapons Control Act (KrWaff-KontrG) and the Foreign Trade and Payments Act (AWG) by the unauthorized delivery of more than 10,000 G36 assault rifles to so-called "non-eligible Mexican federal states". On 15 May 2018, the public main trial which attracted significant media interest began in Stuttgart with the reading of the more than 40-page strong indictment.

Having heard the witnesses who had also travelled to the four 'forbidden federal states' on behalf of H&K to display weapons to members of the Mexican military and police, it emerged that G36 assault rifles were delivered on a larger scale to federal states, such as Guerrero

According to the current state of affairs, a written ruling by the Stuttgart Regional Court is expected in the summer of 2019.

0.5 European armament and arms export policy

Development of arms exports in the European Union

(0.17) According to the EU Annual Report under the Common Position on the Control of Exports of Military Technology and Equipment, the value of arms export licences issued by all EU Member States in 2016 amounts to over 191 billion euro. However, these figures should be viewed with the utmost caution. Their informative value is comparatively low, as the EU's reporting on arms exports is rendered absurd by large discrepancies between the reporting systems of Member States as they are by no means obliged to submit their annual reports according to uniform standards.

As in previous years, the data for 2016 also show that the majority of arms exports by European companies go to countries outside the EU. Exports to other EU countries account for only 16 percent of military equipment export licenses in 2016.

This figure is hence nearly as low as in the two previous years, when it reached just over 15 percent.

Ten years of EU Common Position on Arms Export Control: Transfer of competence to Brussels?

(0.18) On 8 December 2008, when the Member States converted the then ten-year-old Code of Conduct on the Export of Military Equipment and War Weapons into a legally binding Common Position, many observers had high hopes that the harmonisation of export control on the European level would experience a boost. The value of the eight criteria on which decision on arms exports were to be based and which remain the core of the common position to this day, has been increased by the legally binding nature of the Position. Numerous improvements, corrections and adjustments have been made over the last ten years. Nevertheless, it should be noted that crucial shortcomings still exist; this applies in particular to the different interpretations of the criteria. There are still many gaps in export controls.

(0.19) The review of the Common Position now offers an opportunity to resolve a number of ambiguities and inconsistencies. From the point of view of the GKKE, for example, central concepts for the implementation of the Common Position are insufficiently defined. Another serious weakness of the Common Position is the fact that the obligations for the Member States are much weaker with regard to criteria five to eight.

The GKKE also believes that the institutional framework for implementing the Common Position urgently needs to be improved. The introduction of a peer review mechanism has already been recommended in the past in order to achieve a uniform interpretation of the criteria. This procedure could be used to examine and evaluate export decisions between Member States to achieve a more coherent application of the criteria. Unfortunately, the EU member states repeatedly had reservations about this procedure.

(0.20) Finally, the institutional structure in the EU remains a central question. Against the background of an increasingly converging arms market in Europe and the desire of many states and companies for greater cooperation, a major problem remains: If there is indeed a largely liberalised European internal market for military equipment and at the same time all EU member states continue to decide independently on arms exports to third countries outside the EU, there is a danger that arms companies will relocate the final production of weapons systems to where they expect the least resistance to controversial exports. It would therefore be necessary to establish decision-making and control mechanisms at the European level to prevent this. This could best be achieved if the European Parliament were to play a decisive role in export control. As early as September 2017, the European Parliament called for the establishment of a supervisory body to monitor arms exports. GKKE agrees with this demand.

0.6 International efforts to control the arms trade:

Third Review Conference on the Programme of Action on Small Arms

(0.21) The Third Review Conference on the Programme of Action on Small Arms in June 2018 was overshadowed by the dispute between state representatives over whether ammunition should be included or not. At the end of the two-week negotiations, an unusual vote by a great majority of countries against the declared opposition of the United States and Israel was cast; unusual for the negotiation process which otherwise sought consensus. This dispute has accompanied the Programme of Action for 17 years. The United States in particular is vehemently opposed to any inclusion of ammunition. With more than 60 votes in favour, ammunition is now mentioned for the first time and twice in the outcome document of the Review Conference on the Programme of Action. Article 16 of the Declaration, a kind of preamble to the outcome document, refers to Resolution 72/55 of the UN General Assembly, a process that had been initiated by Germany in December 2017 and that is to begin in 2020 with an expert group. It deals with the issue of global standards for dealing with surplus ammunition and explosives, especially in ammunition depots, which often explode and can cause significant casualties in the civilian population. Many countries, however, believe that this process does not go far enough and demand new standards for ammunition control—including export control. Here, however, the Programme of Action is traditionally weak, and it is rather the 2014 International Arms Trade Treaty that contains global standards to monitor the export of conventional weapons—including ammunition.

The Fourth Conference of the Parties to the International Arms Trade Treaty

(0.22) From 20 to 24 August 2018, 77 States Parties, 22 signatory states and 26 observer states met in Tokyo, Japan, to discuss progress in the implementation of the Arms Trade Treaty (ATT). In the meantime, the ATT has 97 contracting parties and 38 signatory states that have yet to ratify the treaty, i.e. must transfer it into national law. This means that 59 United Nations states still remain outside the scope of the ATT.

During the conference, 30 civilians (including 22 children) were killed in air raids in Yemen by the war coalition led by Saudi Arabia and the United Arab Emirates. As in the previous year, these events remained unreflected, although numerous member states are supplying the war coalition with arms that regularly violate international humanitarian law during air strikes. In such cases, Article 6(3) of the ATT prohibits arms exports.

(0.23) The GKKE calls on the Federal Government to use its seat on the Security Council 2019 to strengthen the universality and effectiveness of the ATT. Germany should set a good example and at least not supply weapons to countries that are violating international humanitarian law, such as currently Saudi Arabia and the United Arab Emirates in Yemen. The GKKE reaffirms its demand to the Federal Government to underline the importance of the International Arms Trade Treaty by authorizing from now on only arms exports to those states that have also signed the Treaty.

1 Focus: The balance sheet of the Grand Coalition's arms exports policy

1.1 Arms exports policy in the Coalition Agreement

(1.01) The Coalition Agreement on which the CDU, SPD and CSU agreed in spring 2018 also contains a passage on arms export policy.¹ The third chapter of the section "Germany's Responsibility for Peace, Freedom and Security in the World" states that the Federal Government intends to restrict arms exports to third countries. Small arms should "in principle" no longer be exported to third countries. Furthermore, the Federal Government promises to "tighten" the arms export guidelines from the year 2000 by 2018. It strives for a "common European arms export policy" and intends to further develop the EU Common Position to this end.

Furthermore, the coalition agreement states: "With immediate effect, we will not approve exports to countries as long as they are directly involved in the war in Yemen". Companies receive protection of legitimate expectations (*Vertrauensschutz*) if they can prove that exports that have already been approved remain exclusively in the recipient country. With a view to Yemen, we also want to agree on this restrictive export policy with our partners in joint European projects."

(1.02) The exploratory paper at the beginning of the coalition negotiations between the CDU/CSU and the SPD did not contain the assurance of "protection of legitimate expectations" for already approved exports. It was only included in the agreement during the actual coalition negotiations. According to newspaper reports, several politicians from Mecklenburg-Western Pomerania, including Minister President Manuela Schwesig (SPD) in particular, had campaigned to weaken the originally clear export ban. This was against the background of a major order to supply 33 patrol boats to Saudi Arabia to be built by the Peene shipyard, which belongs to the Lürssen Group, in Wolgast, Mecklenburg-Western Pomerania.² This export project was approved under the War Weapons Control Act as early as 2015, and the first ships were delivered to Saudi Arabia in 2016 and 2017. Even at that time, the companies involved could not actually expect a license and the resulting protection of legitimate expectations, as Saudi Arabia was already involved in armed acts in Yemen at the time of the license as well as at the time of the application.

Shortly after the coalition agreement had been signed and the new Federal Government had started its work, it became public that the previous, still acting Federal Government had approved the export of eight patrol boats for Saudi Arabia. Peter Altmaier (CDU), the new Federal Minister for Economics in office since 14 March, had informed the Economics Committee of the *Bundestag* in a letter dated 22 March 2018.³ The remaining patrol boats intended for export to Saudi Arabia will presumably be delivered under the problematic reference to "protection of legitimate expectations". The murder of the Saudi Arabian journalist Jamal Kashoggi on 18 November 2018 led to a halt in this policy. However, this is initially limited (see below).

1.2 No more arms exports for Yemen war coalition?

(1.03) The countries of the Saudi-led war coalition include Saudi Arabia, the United Arab Emirates, Egypt, Bahrain, Jordan, Kuwait, Morocco, Senegal and Sudan. Until June 2017, Qatar also belonged to the war coalition. Besides Saudi Arabia, the United Arab Emirates are most involved—both send a large number of fighter planes to fight the Huthi rebels in Yemen with air strikes—as well as Egypt, whose warships participate in the naval blockade in the Red Sea as well as in the strategically important Bab al-Mandab Strait. Regardless of this, between 2015 and 2017, the Federal Government granted licenses for arms exports to these three states with a total value of more than 2.6 billion euros.

¹ German Federal Government, Ein neuer Aufbruch für Europa. Eine neue Dynamik für Deutschland. Ein neuer Zusammenhalt für unser Land, Koalitionsvertrag zwischen CDU, CSU und SPD (A new beginning for Europe. A new dynamic for Germany. A new cohesion for our country, coalition agreement between CDU, CSU and SPD), Berlin 2018.

² Peene-Werft darf nun doch Boote nach Saudi-Arabien liefern (Peene shipyard now allowed to deliver boats to Saudi Arabia), Nordkurier Online, 7 February 2018.

³ GroKo genehmigt Rüstungslieferungen nach Saudi-Arabien (Grand Coalition approves arms shipments to Saudi Arabia), Spiegel Online, 22 March 2018.

Arms export licences to Egypt, UAE and Saudi Arabia, 2015–2017⁴

(in millions of euros)

	Egypt	UAE	Saudi Arabia
2015	18.72	107.28	270.04
2016	399.83	169.48	529.71
2017	708.26	213.87	254.46
Total	1,126.81	490.63	1,054.21

(1.04) In October 2018, it became known that since its swearing-in in March 2018, the Federal Government had approved a total of 87 licenses for arms exports to countries of the Saudi-led war coalition.⁵ This is the result of an answer given by the Ministry of Economic Affairs to an enquiry by Omid Nouripour Member of Parliament from the Green Party. Between 14 March and 23 September 2018, arms exports worth 254 million euros were approved for Saudi Arabia; the remaining countries of the war coalition accounted for a total of 21.8 million euros (including a good ten million for Egypt and just under five million for the United Arab Emirates).⁶ In September 2018, Minister of Economic Affairs Peter Altmaier reported to the German *Bundestag* that the Federal Security Council had approved the export of four radar systems for artillery guns to Saudi Arabia, the export of 48 warheads and 91 seekers for air defence systems for warships of the United Arab Emirates and 385 anti-tank missiles for Jordan.⁷

(1.05) The largest financial share of the arms exports to the countries of the war coalition approved by the Federal Government in 2018 is accounted for by the approval of patrol boats for Saudi Arabia. These are part of the above-mentioned major order of 33 patrol boats (see 1.1) and, in the view of the Federal Government, fall under the "protection of legitimate expectations" provision of the coalition agreement. According to the Federal Government's Military Equipment Export Report for the first half of 2018, the Federal Government has approved military equipment exports to Saudi Arabia worth almost 162 million euro during this period; almost the entire amount is accounted for by patrol boats and parts for patrol boats.⁸ In the third quarter of 2018, the German government even approved arms exports worth over 254 million euro to Saudi Arabia.⁹ This makes the Gulf Monarchy by far the largest recipient of German military equipment in the third quarter of 2018.

In total, the German government has thus approved arms exports worth more than 416 million euros for Saudi Arabia by the end of September 2018. Most of the military equipment in question is patrol boats. The fact that the Federal Government, referring to the business and trade secrets of the company concerned, is not prepared to provide the public with information on the exact number of patrol boats already delivered¹⁰ is indicative of the opaque information policy with regard to arms exports.

(1.06) The supply of patrol boats to Saudi Arabia is particularly controversial, as the Saudi-led war coalition repeatedly blocks the onward journey of freighters carrying supplies for Yemen. This sea blockade is a serious violation of international humanitarian law.¹¹ It aggravates the situation of the people in Yemen and contributes to the fact that millions

⁴ Federal Government arms export reports for the years 2015, 2016 and 2017.

⁵ These are Saudi Arabia, the United Arab Emirates, Egypt, Bahrain, Jordan, Kuwait, Morocco, Senegal and Sudan.

⁶ Written question to the Federal Government in September 2018. Question No. 320, answer by State Secretary Ulrich Nußbaum (BMW) to Omid Nouripour (Bündnis 90/Die Grünen) of 27 September 2018.

⁷ „Deutschland liefert Rüstungsgüter für 254 Millionen Euro nach Saudi-Arabien“ („Germany supplies military equipment to Saudi Arabia for 254 million euro“), Spiegel Online, 1 October 2018.

⁸ Federal Ministry of Economics and Energy, Report of the Federal Government on its export policy for conventional military equipment in the first half of 2018, Berlin 2018.

⁹ Written question to the Federal Government in October 2018. Question no. 360, answer by State Secretary Ulrich Nußbaum (BMW) to Sevim Dağdelen (Die Linke) of 31 October 2018.

¹⁰ See Written Question to the Federal Government in October 2018. Questions No 338 and No 339, Answer by State Secretary Ulrich Nußbaum (BMW) to Alexander S. Neu (Die Linke) of 31 October 2018.

¹¹ Deutsches Institut für Menschenrechte, *Beihilfe zu Menschenrechtsverstößen vermeiden – außenpolitische Zusammenarbeit kritisch prüfen. (Avoiding aiding and abetting human rights violations - Critically reviewing foreign policy cooperation)*. Berlin: German Institute for Human Rights, 2017, pp. 25-26.

of people are threatened by famine. The United Nations speaks of the worst humanitarian catastrophe in the world today.

Saudi Arabia had already received the first patrol boats from Germany in 2016 and 2017. It cannot be ruled out that these are involved in the sea blockade. According to media reports, there are at least indications that this might be the case. In March 2018, two of the boats delivered from Germany arrived in the port of Jizan, on the northern border with Yemen, and since then have no longer sent transponder signals. Moreover, two of the patrol boats have repeatedly entered a Saudi port where a freighter carrying relief supplies destined for Yemen had been detained.¹²

(1.07) Following the murder of journalist Jamal Khashoggi at the Saudi Arabian Consulate in Istanbul in October 2018, German Chancellor Angela Merkel (CDU) and Foreign Minister Heiko Maas (SPD) criticised German arms exports to Saudi Arabia for the first time. Thus, on 21 October 2018, the Chancellor said that arms exports to Saudi Arabia could not take place "in the situation we are in at the moment".¹³ As is well known, a moment passes quickly and it is significant that the Federal Government does not reply to the question of MP Agnieszka Brugger (Green Party) as to whether the Federal Government will freeze or revoke permits already granted for arms exports to Saudi Arabia after the assassination of Jamal Khashoggi and confines itself to its now standardized phrases, according to which it pursues a restrictive and responsible arms export policy.¹⁴ In November 2018, it became known that the announced suspension of arms exports to Saudi Arabia was limited to two months. A new decision will then be taken after this deadline.¹⁵ Consequently, this stop does not represent a fundamental reversal in the Federal Government's arms export policy towards Saudi Arabia. Rather, it is to be feared that once Saudi Arabia has admitted the crime and presented guilty parties and the media echo has subsided, the German government will return to the agenda and continue to approve arms exports to Saudi Arabia.

1.3 No more small arms exports to third countries?

(1.08) There are discussions about the interpretation of the coalition agreement regarding the export of small arms to third countries. The total value of exports licenses for small arms in the first half of 2018 amounted to 14.8 million euro. Only 16,905 euros of this is accounted for by export licences to third countries. These are a few rifles and sub-machine guns for the Vatican State and parts for submachine guns for the UN mission in the Central African Republic.¹⁶ However, this value does not include the numbers for the so-called light weapons. These include grenade launchers, portable air defence systems (MANPADS) or heavy machine guns.¹⁷

As can be seen from the Federal Government's reply to a parliamentary question from the group Die Linke, at least one export of light weapons to a third country was approved in the first half of 2018—anti-tank weapons worth 8.6 million euros for Mexico.¹⁸ The question therefore arises as to whether this is an exception or whether the Federal Government interprets the announced general export ban on small arms to third countries in such a way that light weapons are not covered by this. If one follows the European Union's definition of small arms, which the Federal Government also refers to in its small arms principles, then this must not be the case. This definition includes light weapons. However, an answer given by the Ministry of Economic Affairs to an inquiry by Member of Parliament Katja Keul (Green Party) shows that the Federal Government has not yet found an answer on this issue.¹⁹

¹² Sind aus Deutschland gelieferte Kriegsschiffe indirekt an Blockade des Jemen beteiligt? (Are warships delivered from Germany indirectly involved in the blockade of Yemen?), Stern.de, 11 September 2018.

¹³ Merkel gegen Rüstungsexporte nach Saudi-Arabien (Merkel against arms exports to Saudi Arabia), Zeit Online, 22 October 2018.

¹⁴ Written question to the Federal Government in October 2018. Question No. 297, Answer by State Secretary Ulrich Nußbaum (BMW) to Agnieszka Brugger (Bündnis 90/Die Grünen) of 26 October 2018.

¹⁵ Lieferstopp nach Saudi-Arabien gilt nur für zwei Monate (Ban on deliveries to Saudi Arabia only valid for two months), Spiegel Online, 23 November 2018.

¹⁶ Federal Ministry of Economics and Energy, Report of the Federal Government on its export policy for conventional military equipment in the first half of 2018, Berlin 2018.

¹⁷ See Federal Foreign Office, Small Arms and Light Weapons, available at <https://www.auswaertiges-amt.de/en/ausserpolitik/themen/abruistung/uebersicht-konvalles-node/-/218376> (26.11.2018).

¹⁸ Bundestagsdrucksache 19/4193 of 10 September 2018, Answer of the Federal Government to the small inquiry of the deputies Sevim Dağdelen u.a. (Die Linke), „Export von Kleinwaffen im ersten Halbjahr 2018“ (“Exports of small arms in the first half of 2018”).

¹⁹ Written question to the Federal Government in September 2018. Question No. 177, answer by State Secretary Ulrich Nußbaum (BMW) to Katja Keul of 12 September 2018.

1.4 Improvements in German and European rules on arms exports?

(1.09) As regards the tightening of the arms export guidelines of 2000 promised in the coalition agreement, nothing had happened by the time this report went to press. What exactly the government coalition intends to do here remains unclear, also due to the blurred wording in the coalition agreement. In any case, an arms export control act, as demanded by Bündnis 90/Die Grünen, for example,²⁰ but also by the GKKE,²¹ cannot be expected.

In an answer by the Ministry of Economics to a question by member of the *Bundestag* Katja Keul (Green Party), it is stated that the Federal Government has not yet completed its consultations on the implementation of the statements on arms export policy in the coalition agreement, in particular on the tightening of the political principles of the Federal Government announced there.²²

(1.10) Nor can any movement be discerned with regard to the announced further development of the EU Common Position on arms exports. Originally, the EU Member States had planned to complete the review and further development of the Common Position by the end of 2018. It is now clear that a result is not expected before spring 2019 at the earliest. The Federal Government does not give the impression that it is pursuing an ambitious plan to strengthen the Common Position. Rather, it seems to be anxious to apply less strict export rules to future Franco-German joint armaments projects, such as the planned joint development of battle tanks and fighter aircraft. Federal Defence Minister Ursula von der Leyen (CDU) and her French counterpart Florence Parly agreed to manufacture a large part of the planned joint arms projects according to the rules of the so-called Schmidt-Debré Agreement of 1972. According to this, neither government may prevent the other from exporting jointly developed or manufactured weapons systems.²³ However, it should be noted here that the principle of "*lex posterior derogat legi priori*" ("A later law repeals an earlier law") also applies in international law: Recourse to informal agreements dating back half a century cannot invalidate subsequent internal and intergovernmental rules such as the Common Position and the Political Principles. This also applies to Franco-German cooperation in the development and manufacture of a joint main battle tank and combat aircraft. Notwithstanding the probably enormous political, military and economic weight of a common concept for the air combat system FCAS, a new battle tank system and possible further projects of bilateral arms cooperation, for example in the naval field, the German and European arms export control policy *acquis* must not be jeopardised. In any case, German rules must continue to be observed when exporting to third countries".

1.5 Evaluation and demands on the Federal Government

(1.11) The GKKE welcomes the fact that the CDU, SPD and CSU have agreed in their coalition agreement to restrict arms exports to third countries. The consistently high proportion of arms exports from Germany to these countries in recent years, many of which are located in areas of tension and have a problematic human rights situation, clearly shows how important it is to change course here. In the coming years, the GKKE will also measure the Federal Government's arms export policy against this self-imposed goal.

(1.12) The GKKE also welcomes the Federal Government's decision to "in principle" not export small arms to third countries. However, the GKKE draws attention to the problem of the wording "in principle". This can be interpreted as allowing exceptions to this principle. The GKKE does not believe that allowing exceptions from the outset is appropriate. It, therefore, advocates the introduction of an explicit obligation to state reasons for such exceptions. The Federal Government would have to explain in detail why it deviates from its principles in individual cases and why it sees no risk of the weapons falling into the wrong hands.²⁴ Otherwise, there is a risk of a similar development as with the export of weapons of war to third countries as a whole. According to the Political Principles of the Federal Government on the Export of Arms, these too should "in principle" not take place, but have long since ceased to be the exception and become the rule.

²⁰ Bundestagsdrucksache 19/1849 of 25 April 2018, motion of the deputies Katja Keul et al. and the parliamentary group Bündnis 90/Die Grünen Ein Rüstungsexportkontrollgesetz endlich vorlegen (Finally present an arms export control act!).

²¹ GKKE Arms Export Report 2016, Bonn/Berlin 2017, pp. 94-108; GKKE Arms Export Report 2017, Bonn/Berlin 2018, pp. 74-77.

²² Written question to the Federal Government in September 2018. Question No. 177, answer by State Secretary Ulrich Nußbaum (BMW) to Katja Keul of 12 September 2018.

²³ Schlupfloch gesucht (Looking for a loophole), *Der Spiegel*, No. 27, June 30, 2018.

²⁴ See Max M. Mutschler/Marius Bales, , Begründungspflicht statt laissez faire. Empfehlungen an die neue Bundesregierung für eine Reform der deutschen Rüstungsexportpolitik (Obligation to state reasons rather than laissez faire. Recommendations to the New Federal Government for a Reform of German Arms Export Policy), Bonn: Bonn International Center for Conversion, 2017 (BICC Policy Brief 7\2017).

The GKKE is also in favour of including so-called light weapons in the export ban on small arms for third countries. It had already called for this in last year's Arms Exports Report.²⁵ Light weapons such as anti-tank missiles or heavy machine guns are used in many violent conflicts worldwide, and their proliferation is difficult to control. Therefore special caution is required with these weapons as well.

(1.13) The declaration in the coalition agreement not to authorise arms exports to countries directly involved in the war in Yemen with immediate effect would actually be very welcome. However, this declaration of intent is devalued again by the assurance of a so-called protection of legitimate expectations for the companies and the—partly associated—continuation of arms exports to the countries of the war coalition. The GKKE strongly condemns these arms exports, in particular the approvals of patrol boats, but also the latest final authorising decisions of the Federal Government to supply artillery, tracking radar systems on carrier vehicles with accessories and adaptive armour kits for associated driver cabins to Saudi Arabia.

(1.14) The Saudi-led coalition continues to wage its war in Yemen in gross disregard of international humanitarian law, to the detriment of the people, especially the civilian population. It cannot be ruled out that the patrol boats from Germany will be used against Yemen within the framework of the naval blockade, which is contrary to international law. Their export should therefore never have been authorised.

The Federal Government repeatedly stresses that maintaining a rule-based international order is in its foreign and security policy interest. The continued weaponisation of countries of the Saudi-led coalition that is waging war in Yemen mocks this statement. For it not only contributes to the suffering of the people of Yemen but also promotes the erosion of central principles of international humanitarian law, in particular the principles for the protection of the civilian population. The states of the war coalition are violating these principles,²⁶ and Germany is aiding this breach of international humanitarian law with its arms exports.²⁷

However, with its export licenses for the patrol boats to Saudi Arabia (as with other arms exports to Saudi Arabia), the German government is not only aiding the violation of international law, but is itself also violating the internationally binding rules of the Arms Trade Treaty (ATT) and the EU Common Position on the export of military equipment and technology²⁸. Both instruments, which are binding under international law, stipulate that the export of weapons must be prohibited if there is a clear risk that they will be used to violate international humanitarian law. The GKKE clearly sees such a risk given that the sea blockade is implemented mainly by Saudi Arabia.

With its arms exports to the war coalition, the Federal Government weakens the ATT and the EU Common Position on the export of military equipment and technology. It thus undermines the credibility of its commitment to maintaining a rule-based international order.

(1.15) With its positive decisions on arms exports to Saudi Arabia and other countries of the war coalition, the Federal Government also blatantly violates, in the view of the GKKE, the War Weapons Control Act and its own political principles for the export of weapons of war and other military equipment. Already the involvement of a recipient country in imminent armed conflicts excludes a supply according to chapter III, clause 5 of these principles. This is all the more true when the country is involved in a current armed conflict. Obviously, the attacks of the war coalition are not a case of the right to self-defence provided for in Article 51 of the UN Charter. Even if this were the case, the requirement of proportionality would apply, which Saudi Arabia clearly does not respect. Furthermore, the political principles clearly state: "Employment policy reasons must not play a decisive role".²⁹

The War Weapons Control Act also prohibits exports in § 6 (3) No. 1 if "there is a danger that the weapons of war will be used in an act that disturbs peace, in particular, a war of aggression".³⁰

²⁵ GKKE Arms Export Report 2017, Bonn/Berlin 2018, p. 27.

²⁶ The GKKE has already reported on the conduct of the military war coalition led by Saudi Arabia and on the international criticism of it; see GKKE Arms Export Report 2016, Bonn/Berlin 2017, pp. 77-82.

²⁷ Cf. German Institute for Human Rights, *Beihilfe zu Menschenrechtsverstößen vermeiden – außenpolitische Zusammenarbeit kritisch prüfen* (Avoiding aiding and abetting human rights violations - critical examination of foreign policy cooperation), Berlin: Deutsches Institut für Menschenrechte, 2017.

²⁸ Simone Wisotzki, *Violating the Arms Trade Treaty. Arms Exports to Saudi Arabia and the Humanitarian Crisis in Yemen*, Frankfurt: Hessische Stiftung Friedens- und Konfliktforschung, 2018 (PRIF Spotlight 1/2018).

²⁹ See also the article by Arnold Wallraff, *Waffen für die Welt* (Weapons for the world), *Süddeutsche Zeitung*, 4 June 2018.

³⁰ See Sebastian Roßner, *Beißhemmung der Politik* (Inhibition to bite of politics), *Legal Tribune Online*, 30 October 2018.

(1.16) The arms export policy of the Grand Coalition, both old and new, towards the countries of the Yemen war coalition, especially with regard to Saudi Arabia, is—in a nutshell—disastrous: First and foremost for the people in Yemen, but also for the credibility of the Federal Government and its supporting parties.

The words in the coalition agreement have so far not been followed by deeds. The fact that shortly before the new Federal Government took office in March 2018, the current, managing Federal Government approved the export of a further eight patrol boats to Saudi Arabia is only the continuation, albeit consistent, of a cynical policy for which human suffering beyond its national borders does not play a role.

The fact that it took the murder of the journalist Jamal Khashoggi, which was the subject of extensive media coverage, to persuade the German government to at least halt Saudi Arabia's arms exports temporarily and at short notice underscores this cynicism. Such a short-term ban on arms exports is not enough. Rather, from the point of view of the GKKE, all arms exports to countries of the warring parties in Yemen (Saudi Arabia, the United Arab Emirates, Egypt, Bahrain, Jordan, Kuwait, Morocco, Senegal and Sudan) must be banned without exception. All licenses already granted must be revoked immediately.

(1.17) Also in view of these developments, the GKKE fears that the Federal Government will not actively implement its declarations of intent from the coalition agreement to tighten its national arms export guidelines and to further develop the EU Common Position. At least by the time this report went to press, it had not shown any ambition in this respect.

In this context, the GKKE renews its call for an arms export control law. Such a law should, among other things, incorporate the substantive criteria of the EU Common Position into German law and also make the Political Principles of the Federal Government legally binding.³¹

The GKKE also presents a kind of "toolbox" which offers the Federal Government and the parliamentary groups represented in the German *Bundestag* various tools for improving the existing regulatory framework. These "tools" differ with regard to their level of severity. They can be used individually, but in some cases, they can also be combined. From the point of view of the GKKE, the selected "tools" should then also be made legally binding in an arms export control law.

"Toolbox" to improve arms export control³²

1. Absolute ban on any exports of weapons of war and other military equipment to third countries.
2. Absolute ban on exports of weapons of war and other military equipment to third countries; permissible, however, in individual cases to support UN-legitimated missions.
3. General ban on exports of weapons of war and other military equipment to third countries with *a priori* exceptions for certain countries (list approach).
4. Reduction in the value of arms export licenses to third countries (taking into account the applicable arms export rules) in a ratio of 1:1 to an increase in the defence budget.
5. No licence for the export of small arms and light weapons (as defined by the Federal Government in its Small Arms Principles) and ammunition to countries outside the EU, NATO and NATO-equivalent countries.

³¹ GKKE Arms Export Report 2016, Bonn/Berlin 2017, pp. 94-108; GKKE Arms Export Report 2017, Bonn/Berlin 2018, pp. 74-77.

³² The tools listed here are largely derived from: Arnold Wallraff, Stellungnahme zum Thema „Export von Rüstungsgütern (Comment on the topic: “Arms exports”) for the public hearing in the Committee for Economics and Energy of the German Bundestag on 21 September 2018.

6. The same ban on the supply of small arms and light weapons to non-State entities in third countries.
7. Authorisation for the export of small arms and light weapons only if the old-for-new principles are applied, post-shipment controls are approved, and outreach measures are taken.
8. Authorisation to export small arms, light weapons and ammunition only on condition that recipient states participate actively in the UN Register of Weapons and the UN Programme of Action on Small Arms, e.g. by fulfilling their reporting obligations and implementing the provisions.
9. No licence to export arms to states that have not signed the Arms Trade Treaty.
10. Introduction of an authorisation requirement necessary already for the conclusion of licence agreements (as in France and Sweden) for weapons of war and other military equipment.
11. Prohibition of the granting of licenses for the production of weapons of war and other armaments in third countries, including the export of technologies for their manufacture to third countries.
12. Possibility of revoking past authorisations for licence production and technology exports to third countries for the manufacture of small arms and ammunition.
13. Possibility of prohibiting the export of certain unlisted dual-use goods or technologies intended for the manufacture of conventional military equipment in general and thus also for non-embargo countries.
14. Analogous to the small arms principles, further self-binding principles for the export of weapons of war and other military equipment in other categories such as navy, air force, army instead of absolute or relative export bans.
15. Elimination of the right to a licence under Section 8 of the AWG, at least for the export of military equipment to third countries.
16. Legal clarification that all licenses under the KWKG and the AWG are only issued subject to revocation.
17. General limitation of licenses for weapons of war and other military equipment to, for instance, two years, if necessary with an extension option; possible differentiation between EU/NATO/equivalent and third states.
18. Proof of the existence of an internal compliance programme prior to the decision by all exporters of military equipment pursuant to the AWG and KWKG. This must be checked for the individual case as a follow-up and the approval revoked if necessary.

19. Negation of the reliability of an exporter according to KWKG and AWG already when there are indications for a personal unreliability of individual staff in the company or in case of organisational deficiencies.
20. Introduction of a licensing requirement for technical assistance by Germans in third countries with respect to the development of weapons of war and other military equipment and the build-up of defence production capacity.
21. Introduction of a reservation of approval for the establishment of joint ventures and subsidiaries of German companies abroad related to the manufacture of weapons of war and other military equipment and for the acquisition of shares in such companies by German companies.
22. Introduction of an arms export commissioner to the German *Bundestag*, following the example of the Parliamentary Commissioner for the Armed Forces, to check compliance with the rules applicable to arms exports.

(1.18) With a view to further developing the EU Common Position and strengthening arms exports control at the European level, the GKKE calls on the Federal Government to support a more coherent arms export policy of the EU Member States. Not by lowering its national standards, but by strengthening the existing provisions of the EU Common Position.

In Chapter 6.2 of this report, the GKKE makes a number of proposals on how this could be implemented. Among other things, it considers an improvement of the institutional framework for the implementation of the Common Position to be of central importance and therefore endorses the European Parliament's call for the establishment of a supervisory body for the monitoring of arms exports from EU Member States.³³

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³³ European Parliament, European Parliament resolution of 13 September 2017 on arms exports and the implementation of Common Position 2008/944/CFSP (2017/2020(INI)), Strasbourg 2017.
