

Courage to change or continuation of structural deficits?

German arms exports and parliamentary control

by Jan Grebe

The German government launched its annual arms exports report for 2013 on 11 June 2014 much earlier than in previous years. Still, it raises a number of critical questions on German arms exports practice, as it reports a sharp increase in arms exports (25 percent compared to the previous year) and a rise in small arms exports. The report also clearly shows that countries outside of the EU/NATO have increasingly become important customers of the German arms industry in the last few years. The share of exports to these countries, which include Algeria, Indonesia, Qatar and Saudi Arabia, amounted to 62 percent of all arms exports in 2013.

Shortly after government and parliament took up their work after the parliamentary elections of 2013, a number of major arms deals caused quite a stir, leading to heated debates in the public and in parliament, and to some doubt about the restrictive arms export policy of the government. One of these transfers was the delivery of patrol boats from Germany to Saudi Arabia; a deal which the German government had arranged, and the financing of which had been secured by Hermes credit guarantees totaling euro 1.4 billion. Furthermore, numerous arms deals came to light with Middle Eastern countries both capable and willing to pay, amongst them Qatar which has bought a few dozen battle tanks and Algeria that intends to acquire a whole range of German military equipment. The archipelago state of Indonesia also acquired battle tanks "Made in Germany". German and European arms exports to Russia must also be mentioned—with the recent crisis in

Ukraine, such transfers have caught the public eye. While the German government has put the delivery of a combat training center to Russia on the back burner, it seems that at the European level there is no political will for a categorical stop of all arms exports to Russia.

All this shows that the tried and tested pillars of German arms exports policy—restraint and non-delivery of arms to regions of crisis—are becoming unstable. It seems instead that the German government has recently shown more interest in providing partner countries in conflict regions with arms—in the framework of its policy of strengthening rather than interfering (*Ertüchtigung statt Einmischung*). With this, two closely connected aspects fall by the wayside: transparency and effective public and parliamentary control. It is true that announcements from the new coalition agreement¹ on changes in the arms exports policy and the adoption of the Key Issue Paper on arms exports² show that change in the often criticized arms exports practices is possible. Yet the question remains of how the suggested changes of the current system will be reflected in practice. Whether and how decisions by the government in favor or against certain arms exports are taken to the public and to what degree urgently needed foreign, security and peace policy based justifications will be made public remains vague. The role of parliament as a supervisory body to the government on arms exports is also unclear. This is why a stronger role of parliament in the scrutiny of arms exports could indeed have a positive effect on conflict sensitivity and restraint.

¹ CDU/CSU and SPD: "Shaping the future of Germany," Coalition agreement, 18th parliamentary term.

² CDU/CSU and SPD: "Key Points Paper Arms Exports," Berlin, 7 April 2014.

Changes caused by the coalition agreement and the Paper on arms exports

In their coalition talks, the current Federal government has agreed to changes in its arms exports policy. Besides its commitment to the Political Principles on arms exports, it states, "(T)he Federal government will inform parliament immediately of its final license decisions taken in its Federal Security Council." It continues: "Furthermore, we will improve transparency towards parliament and the public by presenting the annual arms exports report before the summer break of the following year as well as an additional interim report." In their Paper, presented in April 2014, the parliamentary groups of CDU, CSU and SPD in the German *Bundestag* gave a more detailed description of the future practice of providing information on arms exports. Besides stressing the Political Principles and the responsibility of the government in this area, the Heads of the governing parties have agreed on various factors that are intended to improve transparency. Apart from the rule that the report on arms exports of the previous year is to be published before the summer break, they have also decided on an interim report in autumn for the respective first six months of the current year. Besides the faster publication of the final report, the paper lays down parameters for the entire reporting practice. "The government will inform about licenses to be granted by the Federal Security Council immediately and jointly with the final decision of the preparatory committee of the State Secretaries after having granted the licenses, at the latest two weeks after the meeting of the Federal Security Council (Date of receipt at the Bundestag)"³. The information shall include the nature and number of defense goods to be exported and the final recipient country. What sounds to be quite precise must, however, still be adapted to and applied in ever-day work.

Transparency and its limits

The adjustments agreed by the governing parties are no doubt important and necessary steps towards quicker information of parliament and the public. Yet the term 'immediate information' which in future is to be provided 14 days after the final authorizing decision of the Federal Security Council and the Preparatory Committee of the state secretaries leaves some space for questions. This 'final

authorizing decision,' by the way, is the very export license granted by the Federal Ministry for Economic Affairs. It seems that a first notification by the Federal government in early June 2014 shows the political will for improving reporting practice, as the *Bundestag* was indeed informed within less than four weeks after the meeting of the Federal Security Council. Yet in reality, the way towards an arms exports deal will have already been paved by a positive decision by the Federal Security Council on a preliminary inquiry—which is excluded from the duty to report as not to violate any legitimate interests of third parties. In this case, there is a serious limit to transparency towards parliament.

The example of Sweden shows how prompt reporting can work when there is political will: the government published its official figures on arms exports for 2013 on 25 February 2014. Yet, it is not only about the publication date. The reporting on the licensing practice alone only gives an incomplete picture, particularly for political landmark decisions about arms exports taken by the Federal Security Council. The fact that the Federal government is still not obliged to politically justify towards parliament why they have decided in favor of certain weapons exports can be considered a structural deficit as parliament has no opportunity to discuss the issue and thus influence decision-making. If the information was passed on to parliament, it could verify the Federal government's interpretation of the arms exports criteria. This dilemma could be clarified in the near future. On 15 April, the Federal Constitutional Court heard the case of a dispute between one governmental body (parliamentarians of the *Bundestag*) against another (the Federal government) with respect to parliamentary questions concerning the delivery of Leopard tanks to Saudi Arabia as well as arms exports to Saudi Arabia and Algeria. As was to be expected, the plaintiffs argued in favor of more transparency whereas the representative of the Federal government and the security and defense industry stressed the importance of trade and business secrets. Judgment by the Federal Constitutional Court on the future license practice for arms exports or the treatment of information on such transfers by the Federal government, however, is only to be expected in a few months.

³ CDU/CSU and SPD: "Key points paper arms exports," Berlin, 7 April 2014.



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All in all, the changes laid down in the coalition agreement and the Paper are welcome, but as long as further information and reasons why decisions are made in favor of certain arms transfers are kept away from parliament, there is no real transparency. As pressure increases to legitimize decisions it remains to be seen whether or not these changes will indeed lead to a more restrictive arms exports policy as some assume.

Chances and Challenges of parliamentary control

The coalition agreement points out that the “decision on who is to be informed lies with the *Bundestag*.” It is now up to the *Bundestag* to actively reform the current system of arms exports control and to take up every opportunity to co-determine contents, details and time frame of information. By agreeing in the Paper that the committee for economy and energy is to be informed in future as a lead body, the representatives of the governing parties have taken the first step. But regardless the question of which parliamentarians, which body, or which committee must be informed, parliament has to discuss what is to be done with the information received.

In general, parliamentary control should aim at verifying the compliance with standards and criteria that the government has set for itself, such as in the Political Principles and the EU Common Position to assure a restrictive arms exports policy. It should also ascertain that the government publishes its political reasons for exceptional arms exports, such as the export of weapons of war to non-EU/NATO countries. Preconditions for such parliamentary scrutiny are, as mentioned above, improved reporting and a general attitude of transparency which can be achieved by providing reliable, relevant, precise, comparable and up-to-date information. To evaluate a decision, the form and timing of publication as well as the circle of those who have access to important information is crucial. The Federal government's arms exports report as it is today only partially fulfills this task of creating the necessary transparency. This is why not only the timing of future publication must be determined but also its content.

Valuable insights can be gained from international practice: In Italy, for instance, the duty to report is laid down in national law. In Flanders (Belgium), the

government publishes detailed information on end users of military equipment. In Great Britain, parliament has been expanding the range of information over the years so that today, the report even contains detailed information on the evaluation of single recipient countries. The control of British arms exports is strengthened by the fact that within three months the government has to submit a written answer to an independent arms exports report written by parliament. Without a doubt, all of this cannot be easily transferred to Germany, but international practice still offers examples of how reporting in Germany can be improved.

Recommendations: Flexible blueprint and institutional steps towards reform

One opportunity for the German *Bundestag* could be to think about a framework document for the arms exports report—a kind of flexible blueprint—that is to contain the information they consider important for their work. Up to now, the Federal government has determined the format and information contained in the arms exports report. In cooperation with experts and civil society, a format could be created which gives strict parameters for reporting but is also flexible enough to react to changes in arms exports practice should, for instance, political framework conditions change or parliamentarians want more information. As in Great Britain, such a step would permit parliament and the public to review and evaluate certain interpretations of the criteria of the EU Common Position by the Federal government. Another effect of this could be that important foreign, security and peace policy arguments will become part of the report, which would allow an evaluation of the arms exports policy beyond mere figures. A legal anchoring in national legislation, as in Italy, would strengthen the position of parliament.

Most recently, the question of institutional models for the scrutiny of arms exports has come to the fore. Suggestions vary from an expert political advisory body to an arms exports control supervisory council. Any decision on future institutional reforms must discuss the following basic questions: Which competences should such a body have? What is its composition? Which cases does it have to deal with? At what point in time does it have to be informed? Does it meet on its own accord or in reaction to information provided by the government?



In concrete terms, this could be a parliamentary control body, with a similar structure to the already established body that supervises the German secret services. Parliamentarians would be able to receive information on a regular basis while the trade and business secrets are protected. The price for this, however, is large-scale secrecy. The Federal Constitutional Court could indeed suggest such a body. Another possible alternative would be the transfer of tasks to an existing body, such as the Foreign Affairs Committee or the Defense Committee in parliament. The government considers the Federal Ministry for Economic Affairs and Energy to be responsible for arms exports; as a consequence, in their Paper the governing parties have transferred the lead for work in parliament to the committee for economic affairs and energy. Besides a responsible experts advisory body, there is a third alternative, namely the cooperation of various bodies, as in Great Britain. There, the Quatripartite Committee, consisting of the committee for defense, foreign affairs, trade and industry, and development is the author of an annual independent arms exports report to which the government has to respond.

Further publications by Jan Grebe (selection):

“Gemeinsam uneinig: Ambivalenzen in der Kontrolle europäischer Rüstungsexporte”. In: J. Werkner et al. (eds.). *Friedensgutachten 2014*. Münster: LIT, S. 140-53 (mit Marc von Boemcken). *Parlamentarische Kontrolle und Transparenz von Rüstungsexporten*. BICC/Brot für die Welt/Misereor. 2013 (mit Sebastian Roßner). http://www.bicc.de/uploads/tx_bicctools/Studie_Ruestungsexportkontrolle.pdf

Harmonized EU Arms Exports Policies in Times of Austerity? Adherence to the Criteria of the EU Common Position on Arms Exports. BICC. 2013. http://www.bicc.de/uploads/tx_bicctools/EU_arms_exports_policies.pdf

Zeitschrift für Friedens- und Konfliktforschung, No. 2/2013: “Deutsche Rüstungsexportpolitik: Zwischen mangelnder Transparenz, der Notwendigkeit parlamentarischer Kontrolle und einer Neujustierung der Rüstungsexportpolitik”. http://www.zefko.nomos.de/fileadmin/zefko/doc/Aufsatz_ZeFKo_13_02.pdf

Regardless of the question which body or which committee will finally be formed, it has to be clarified which resources will be made available for its, often very technical, tasks so that it can indeed evaluate individual arms exports decisions competently. One could think of changing the resources of the committees or of taking on board an external advisory body whose scientific, economic, and societal expertise it can profit from. Bearing all this in mind the majority ratio in parliament must be taken into account. A body that demands political justifications for certain decisions from government should be able to do so by minority of the representatives.

Changes in control are the order of the day—and they have to go beyond what had been negotiated by the grand coalition and the government. All changes in arms exports control must be measured against how they improve transparency, foster a transparent political rationale for why a decision has been taken in favor of arms exports, offer parliament an important role and, finally, how they strengthen a restrictive arms exports policy. The current changes are a beginning; they now have to prove whether they can indeed promote a new course in arms exports policy.