

14 July 2020

## Commentary \ **The Libyan Civil War: Shining a Spotlight on a Problematic Arms Export Policy**

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The German government frequently stresses that it pursues a “restrictive arms export policy”. And yet, some of the biggest customers of German arms manufacturers are countries in the Middle East (MENA region) in particular. In their comments Simone Wisotzki (HSFK) and Max Mutschler (BICC) criticise in particular German arms exports to states which—as in the case of Libya—violate UN arms embargoes.

The United Arab Emirates (UAE) was one of the top ten recipients of German arms exports in 2017 and Turkey also regularly purchases German weapons technology. An [Expert Report on the implementation of the UN Security Council resolution 1973](#) identifies these two countries, along with Jordan, as suppliers of weapons and military equipment to the warring parties in the Libyan conflict. In so doing, they are breaching the UN arms embargo in place since 2011. Germany exporting arms to recipient countries such as these carries the risk of weapons showing up in Libya’s civil war zone and is therefore something the German government should not be pursuing.

### **Civil war being fought with German weapons?**

With the help of his Libyan National Army (LNA), General Haftar hopes to bring down the internationally recognized Government of National Accord (GNA). Haftar began his military offensive in April 2019 with an attack on the Libyan capital of Tripoli. Although Haftar’s troops were forced to withdraw from the critical al-Watiya air base, he continues to have control over large parts of Libyan national territory. According to media reports, over the last year there has already been evidence of armed groups in Libya, and specifically militia General Khalifa Haftar, using military equipment from Germany in combat. It is reported, for example, that the Haftar militia mounted Russian Pantsir-S1 air defense systems on military trucks bearing the German MAN brand. The [German government approved the export of military trucks of this type to the UAE between 2000 and 2013](#). The UAE [has repeatedly and blatantly violated weapons embargos in the past, in Eritrea and Somalia, for instance](#). In addition to the arms supplied to the UAE, arms exports to Egypt and Jordan are at risk of being sent on to Libya by the original recipient countries, both supporters of General Haftar, in doing so breaching the UN arms embargo. Further, the UAE has also deployed its own soldiers to the conflict. The same applies to the NATO member state Turkey, which has been sending troops in support of Prime Minister Fayed al-Sarraj’s government since January, and which receives financial support from Qatar. The Libyan central government

meanwhile has German military weapons, too, including 120 mm mortar grenades produced by Denel, the South African subsidiary of German defense giant Rheinmetall, [presumably reaching the warring party via Turkey](#). In other words, both sides of the Libyan Civil War are relying on arms made in Germany or of German design. The case of Libya thus shines a spotlight on all the problems of Germany's arms export policy. These include, for instance, deficits of arms export law regarding the arms production by foreign subsidiaries and joint ventures. However, they also include the fact that the German government all too often fails to consider the medium to long-term consequences of arms exports when it comes to peace and security. As in the case of Libya, what we then see time and again is German weapons being used in wars and conflicts, a fact that ultimately is not in line with German foreign and security policy.

In January 2020, Germany initiated a major peace summit in Berlin, attended not only by the parties in the conflict, but also various other countries, including Egypt, Turkey, Russia, and the UAE. A total of 16 states and organizations signed the closing declaration, in which they agreed to uphold the arms embargo. Reports from the United Nations Support Mission in Libya (UNSMIL), however, document that this does not happen—various countries, including those mentioned above, are continuing to support both sides of the conflict in Libya by providing [weapons, air support, soldiers, and mercenaries](#). Similar to Yemen, Libya is now also seeing a proxy conflict involving several external actors. In her [briefing to the UN Security Council](#), the Special Representative of the UN Secretary-General on Libya, Stephanie Williams, made specific mention of Turkey, a NATO member state, which had violated the arms embargo and is said to have supplied Prime Minister Fayeze al-Sarraj's government with unmanned drones as well as ground-based air defense missiles. This is something the EU has proven powerless to stop, despite its endeavors to monitor adherence to the arms embargo against Libya via [Operation IRINI](#), which the German armed forces are also involved in. During an interview Williams emphasized that weapons ending up in the hands of those fighting the civil war was something she witnessed on a daily basis. The UN Security Council has only recently authorized an [additional one-year extension of the arms embargo](#).

### **Shortcomings in European and international standards and regulations for arms exports**

Between 2014 and 2018, the German government approved arms exports to Egypt, Jordan, Turkey, and the UAE totaling over two billion euros (see Table 1). Since the start of this year alone Germany has [authorized the export of 331 million euros in weapons and military equipment to Egypt, Turkey, and the UAE](#). The lion's share of this, worth a total of 308 million euros, went on supplying a submarine to Egypt. Under the relevant standards and regulations governing the authorization of German arms exports, however, these arms transfers should not be permitted.

**Table 1: Approved German Arms Exports to Egypt, Jordan, Turkey, UAE, 2014-2018, in euros (Source: German government reports on arms exports)**

|              | Egypt                | Jordan            | Turkey             | UAE                |
|--------------|----------------------|-------------------|--------------------|--------------------|
| <b>2014</b>  | 22.735.428           | 1.386.573         | 72.445.432         | 121.219.530        |
| <b>2015</b>  | 18.715.126           | 7.252.338         | 38.965.369         | 107.281.038        |
| <b>2016</b>  | 399.826.609          | 16.605.070        | 83.900.411         | 169.475.128        |
| <b>2017</b>  | 708.258.491          | 31.544.730        | 34.187.941         | 213.866.923        |
| <b>2018</b>  | 14.276.299           | 9.574.756         | 12.867.843         | 45.267.104         |
| <b>TOTAL</b> | <b>1.146.968.353</b> | <b>66.363.467</b> | <b>242.366.996</b> | <b>657.109.723</b> |

Both the [international Arms Trade Treaty \(ATT\), which entered into force in 2014](#), and the EU's [Council Common Position of 2008](#) contain different criteria that decisions on arms transfers have to meet. These include the question of whether the weapons concerned undermine peace and security (Art. 7 ATT, Art. 2, Criterion Four, Common Position) and whether there is a risk of the recipient country transferring the military equipment or technology to an “undesirable end-user” (Art. 2, Criterion Seven, Common Position). A non-state armed actor in a civil war such as General Haftar in Libya would undoubtedly be classed as an “undesirable end-user”. That said, both with regard to this issue and the question of the possible threat to peace and security, the regulations set down in the Council Common Position and the ATT allow governments substantial leeway when it comes to interpreting the criteria.

Thus, although governments are obliged to incorporate these factors into their evaluations and conduct the corresponding risk assessments (according to the generally accepted definition: risk = extent of damage x probability of occurrence), this does not pertain to a general risk of peace and security in the state concerned being undermined by the transfer of arms, but rather whether those exact arms that the recipient country is looking to purchase hold this risk. These sets of standards lack the binding, objective benchmarks required for such a risk assessment. And, since the occurrence of damage is a future event, a supplier state's government can always justify their arms export with the claim that, at the time it was conducted, their thorough risk assessment did not reach the conclusion that this very weapons system would be re-transferred without authorization. If the damage is incurred—with the unauthorized transfer of military equipment taking place—the government can claim that its risk assessment was (regrettably) erroneous, but that it did not break the rules (at least not

according to the letter of the law). The absence of a link between the assessment criteria and objective indicators is one of the main shortcomings of the arms control set down in the ATT and the Common Position. Arms exports to embargo violators undermine rule-based international order

One exception to this—and one which is certainly relevant to the Libyan case—is Criterion Six of the Council Common Position and Article 6(1) of the ATT. Criterion Six of the Common Position shifts the attention to the behavior of the buyer country with regard to the international community, “in particular [...] respect for international law”. The focus here is therefore not on assessing the risks of what might happen in the future with the supplied armaments, but rather, irrespective of this, on evaluating the behavior of the buyer country to date.

Criterion Six already lists a number of measures for this assessment. Alongside support for terrorism and international organized crime, as well as compliance with international humanitarian law, a country’s behavior in terms of its commitment to non-proliferation and other areas of arms control and disarmament is also taken into consideration. Governments are only obliged to take these factors “into account” when making decisions about arms exports. However, if Criterion Six is not to be completely deprived of meaning, such blatant and repeated violations of a UN arms embargo must be regarded as a significant factor at the expense of the potential recipient country. Moreover, Criterion One of the Council Common Position explicitly refers to the implementation of United Nations arms embargoes as among the international obligations of EU Member States. It would be downright absurd if, in decision-making regarding arms exports, potential recipient countries were exempt from this very obligation, which is a priority for the EU Member States themselves.

The ATT likewise attaches high priority to compliance with the UN arms embargo. Article 6(1) of the ATT prohibits the transfer of weapons in the event that this would violate such an embargo. A legal commentary on the ATT draws the conclusion that the obligation to comply with UN arms embargoes not only pertains to direct exports to an embargoed country but also covers indirect supply to such a country.<sup>1</sup>

To sum up, the international rules and regulations on the arms trade see the breach of a United Nations arms embargo as a particularly significant barrier when it comes to future arms exports. If the German government takes its self-proclaimed role as defender of the rule-based international order seriously, then it must refrain from authorizing arms exports to states that violate the UN weapons embargo—and, in the case of the Libya conflict, this includes Egypt, the UAE, Jordan, and Turkey.

This commentary was published in the [PRIF Blog](#) at the same time.

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<sup>1</sup> See Casey-Maslen, Stuart/Clapham, Andrew/Giacca, Gilles/Parker, Sarah (2016): *The Arms Trade Treaty. A Commentary*, Oxford: Oxford University Press.