

MASTER THESIS

# THE NATIONAL PARLIAMENTS' APPROVAL ON THE EU MEMBER STATES' ARMS EXPORTS

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## Contents

THE NATIONAL PARLIAMENTS' APPROVAL ON THE EU MEMBER STATES' ARMS EXPORTS.....	6
Abstract.....	6
CHAPTER 1 INTRODUCTION.....	7
THESIS AIM.....	7
How governments' attempts earn parliamentary approval.....	8
RESEARCH QUESTION.....	9
THESIS LIMITATIONS AND THE FOCUS OF THE STUDY.....	9
THEORETICAL FRAMEWORK.....	11
RESEARCH METHOD AND SOURCES.....	12
THESIS OUTLINE.....	13
CHAPTER 2 LITERATURE REVIEW.....	16
THE MOTIVES BEHIND THE ESTABLISHMENT OF THE ECC.....	16
THE EFFECTIVENESS OF THE ECC.....	16
THE IMPACTS OF THE OBLIGATION TO IMPLEMENT THE ECC'S CRITERIA IN THE ARMS EXPORT CONTROL MECHANISM IN THE NETHERLANDS.....	16
THE HISTORY OF THE DUTCH REGULATIONS FOR THE ARMS EXPORT CONTROLS IN THE NETHERLANDS.....	17
THE ARMS EXPORT CONTROLS IN PRACTICE IN THE NETHERLANDS.....	18
THE ROLE OF THE DUTCH MINISTRIES IN THE ARMS EXPORT CONTROLS IN THE NETHERLANDS.....	18
THE ROLE OF DUTCH PARLIAMENTS IN THE ARMS EXPORT CONTROLS IN THE NETHERLANDS.....	19
WHY PARLIAMENTS' APPROVAL IS IMPORTANT.....	20
THE SOURCES TO EARN PARLIAMENTS' APPROVAL.....	20
EXPLANATORY REASONS EXPLAINING WHY PARLIAMENTS IN OTHER MEMBER STATES APPROVE THE ATTEMPTS OF THEIR GOVERNMENTS TO GRANT THE PERMITS TO ARMS EXPORTS TO THIRD COUNTRIES CONSIDERED AS HUMAN RIGHTS PERPETRATORS AND THE IMPORTANCE OF HUMAN RIGHTS.....	22
Why France, Germany, and Belgium are chosen for comparison.....	22
The explanatory reasons explaining why German parliaments approved the arms exports to the third countries identified as human rights violators.....	23

The explanatory reasons explaining why French parliaments approved the arms exports to the third countries considered as human rights perpetrators.....	24
The explanatory reasons explaining why Belgian parliaments approved the arms exports to the third countries considered as human rights perpetrators.....	25
The explanatory reasons explaining why Dutch parliaments approved the arms exports to third countries considered as human rights perpetrators.....	27
THE ROLE OF INTEREST GROUPS IN FRANCE, GERMANY, BELGIUM, AND THE NETHERLANDS IN INFLUENCING THE PARLIAMENT'S APPROVAL.....	28
CHAPTER 3 RESEARCH METHOD AND SOURCES.....	29
CHAPTER 4 RESEARCH RESULTS.....	34
CHAPTER 5 CONCLUSION.....	39
REFERENCE.....	40

## **Abbreviations**

**ECC: European Code of Conduct**

**EC: European Commission**

**EU: European Union**

**WA: Wassenaar Arrangement**

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## **THE NATIONAL PARLIAMENTS' APPROVAL ON THE EU MEMBER STATES' ARMS EXPORTS**

### ***Abstract***

*This thesis explains the arms export control in EU Member States after the establishment of the European Code of Conduct (ECC)'s criteria, where the need to protect human rights is incorporated as one of its criteria. This thesis shows that, although EU Member States should only control their arms exports using the ECC's criteria, the result of the controls on the exports of arms to third countries considered as human rights perpetrators in different Member States is not harmonized. This is because national parliament of each EU Member State might approve the exports of arms in their countries based on different reasons. Parliaments in the Member States that have more respect to human rights, like the Netherlands, can prevent their governments from granting the permits to the exports that carry risk of violation of human rights. The parliaments in the Member States that have less respect on human rights can still allow their governments to grant the permit for such exports because for them export revenues and bilateral relationship might be more important than human rights. This thesis shows that the national parliaments can control the exports of arms in their countries and prevent their governments from granting the permits to the exports that do not satisfy their wishes.*

*Key words: parliaments, governments, approval, public value advocating the need to protect human rights, human rights, arms exports, permits, and ECC*

# CHAPTER 1 INTRODUCTION

## ***THESIS AIM***

This thesis explains that the arms export control on the exports of arms to third countries considered as human rights perpetrators in different EU Member States is not harmonized. National parliament of each EU Member State might approve the exports of arms to such countries based on different reasons. The purpose of this thesis is to observe the explanatory reasons explaining why national parliament of a Member State approves the attempt of their government to grant the permit to an arms export to a third country considered as human rights perpetrator.

For this purpose, this thesis chooses to observe the explanatory reasons explaining why Dutch parliaments approve the governments' attempts to grant the permit to an arms export to a third country considered as human rights perpetrator. The choice is motivated by the fact that Dutch parliament has ever disapproved the attempt of its national government to grant the permit to an export of tanks to Indonesia in 2012. This parliament's reaction was motivated by the consideration that Indonesia has been identified as human rights perpetrator. Because of this parliamentary objection, the permit for the export of these tanks was not granted. This fact shows that national parliaments in the Member States that have respect to human rights, like the Netherlands, can prevent their governments from granting the permits to the exports that carry risk of violation of human rights.

Another argument that makes the parliamentary control in Netherlands is interesting to study, is the fact that Dutch parliaments allowed governments to grant the permit to the exports of corvettes to Indonesia, but not to the export of tanks. Choosing the country of Indonesia as the recipient country and using these exports phenomena for observation enable this thesis to find out the explanatory reasons behind the parliaments' approval on arms exports. These explanatory reasons help this thesis explain why sometimes parliaments give their approval, and why sometimes not although the recipient country is the same.

To show that the parliaments in other Member States may grant their approval based on other explanatory reasons, this thesis provides literature review describing the explanatory reasons explaining why parliaments in other Member States, like France, Germany, and Belgium approve the attempts of their governments to grant the permits to the exports of arms to third countries considered as human rights perpetrators like Saudi Arabia. This literature review also explains that these countries can be argued to have less respect on human rights compared to the Netherlands. This thesis shows that national parliaments from EU Member States that have less respect on human rights approve the attempts of their governments to grant the permits based on other explanatory reasons.

At the same time, this thesis shows that parliaments in the EU Member States that respect human rights like the Netherlands will only approve the attempts of their governments to grant the permits to the exports of arms to third countries considered as human rights perpetrators like Indonesia when they understand that the exported arms would not be used to violate human rights in recipient countries. The fact that the exported tanks would have more likeliness to be used to violate human rights in Indonesia compared to the exported corvettes, assumed based on their technical use, explains why Dutch parliaments approved the export of corvettes but not the export of tanks. This all



and all shows that the explanatory reasons explaining the parliament's approval on the government's attempt to grant the permit to an arms export to a third country considered as human rights perpetrator are influenced by their respect on human rights. This thesis shows that, because the respect on human rights across the EU is not the same, the arms export control in different Member States is not harmonized, even after the establishment of the ECC's criteria.

## **How governments' attempts earn parliamentary approval**

The citizens provide approval on a particular governments' attempt by submitting their wishes related to that attempt through their interest groups. These interest groups will then forward these wishes to parliamentary members (the political actors representing political parties). These wishes describe the requirements behind their willingness to support an arms export. The parliamentary members use these submitted wishes to ensure that the governments' attempts to grant the permits are not in contrary with these wishes (see Bromely, 2008, p: 34).

The decision of parliaments to disapprove or to approve a particular arms export is influenced by how hard these interest groups lobby them. The lobby of the interest groups is one of the most important factors that move the parliaments (Gilens and Page, 2014).

Interest groups in France, Germany, Belgium and the Netherlands work using transnational framework to link the wishes of their citizens with the interest of the EU as a whole and the interest of the citizens of other Member States and the third countries. Such transnational framework is being established from their networks with the interest groups from other Member States and third countries, their national political parties and the national political parties from other EU Member States (see Beyers, J., and Kerremans, B., n.d.).

The networks that interest groups have with political parties are useful to lobby them, including their members sitting in parliaments and in governments. The political parties, parliaments and governments from France Germany, Belgium, and the Netherlands welcome these interest groups to make contacts with them and to build networks with them, even for those having opposite interests. This is because they want to know about the wishes of their citizens, including their contradictory wishes. From this welcoming attitude, this thesis argues that parliaments and governments in these four countries will always perform in accordance with the wishes of their citizens. In other words, the permits that have been granted in each of these four countries have been in accordance with the wishes of the citizens and their parliamentary representatives (Beyers, J., and Kerremans, B., n.d.).

In the Netherlands, parliaments control the exports of arms to third countries considered as human rights perpetrators. When parliaments do not agree with a particular arms export, parliaments will prevent the governments from granting the permit to that particular arms export. The governments usually take into account this parliaments' position before granting the permit (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-507/12, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië, Beantwoording vragen van het lid El Fassed over berichten dat Indonesië mogelijk van Duitsland Leopard- tanks wil kopen) (Akkerman, 2012, p: 12) (Tweede Kamer der Staten Generaal, de motie-El Fassed c.s. over niet leveren van tanks aan Indonesië (33000-X, nr. 47), n.d., "Handelingen")

(Parlement.com, Moet een motie altijd worden uitgevoerd?, n.d., “Motie een door de Kamer aangenomen motie altijd worden uitgevoerd?”).

## **RESEARCH QUESTION**

To understand why Dutch parliament approved the government’s attempt to grant the permit to the export of corvettes to Indonesia, but not the attempts to grant the permits to the exports of tanks to the same country, the main intention of this study will be to answer the following inquiry:

*What are the main explanatory reasons explaining the parliaments’ decision to approve the governments’ attempts to grant the permits to the exports of arms to Indonesia?*

## **THESIS LIMITATIONS AND THE FOCUS OF THE STUDY**

This thesis uses this research question to observe the possible reasons explaining why parliaments approved the governments’ attempts to grant the permits to the exports of arms to Indonesia. This thesis in any case only considers that this parliaments’ approval is based on good consideration and good information. However this thesis still acknowledges the fact that parliaments might have limited of knowledge because of their dependency on the information submitted by governments. This thesis is not focused on discussing whether the governments always submit honest and clear information to parliaments (Tweede Kamer der Staten-Generaal, Antwoorden op Kamervragen over de mogelijke leverantie van korvetten aan de Indonesische marine (2030418020), 2004) (Tweede Kamer der Staten-Generaal, Antwoorden op Kamervragen Indonesië EKV en Wapenexportcontrole, 2006) (Tweede Kamer der Staten-Generaal, Exportkredietverzekering, sondages en wapenexportvergunningen, 2005).

This thesis is also not focused on discussing whether parliaments in EU Member States, like the Netherlands, have exercised their powers efficiently (see Klopman, 2012). This thesis is not focused on evaluating parliaments’ performances. This thesis is not focused on discussing whether the parliaments have deployed different measures to earn support from the citizens for supporting their motions so that governments will respect their motions. For example this thesis is not focused on discussing whether the parliaments have enhanced the transparency of arms export controls and the exported arms, so that they can give more pressure to the governments to relinquish their attempts to grant some permits (see Klopman, 2012, p: 23) (see Steert, 2009, p: 9-13) (Bono, n.d.).

This thesis acknowledges that the power of the parliaments in different Member States to scrutinize the governments’ performances is not the same. This could be seen from the fact that Dutch and German parliaments have stronger powers in commenting on the created Green/White Papers and scrutinizing the position of their countries within the EU policies construction compared to French and Belgian parliaments. However, this thesis is not focused on discussing how strong the parliaments’ powers in each EU Member State are in ensuring proper implementation of the ECC’s criteria in the arms export control in their countries (see Jensen and Martinsen, 2014).

Moreover this thesis is not focused on discussing whether there has been transparency in the information on the governments’ attempts to grant the permits for arms exports and whether there have been effective measures deployed to enhance the transparency of this information. Due to the establishment of “European Administrative Space” (EAS), each EU Member State is expected to adopt the principles of openness and transparency in their public administrations. The principle of openness

suggests that the administration should be made become publicly available. The principle of transparency suggests that the administration of each Member State should enable the public to examine it and evaluate it for the purpose of scrutiny and supervision. Due to the requirement to adopt these principles in the public administration, the parliaments and the governments of each Member State must have published all information linked to the arms exports in their countries so that their citizens can access them and can examine and evaluate them so that they can make a decision on whether they want to delegitimize particular arms exports. For the case of arms exports in the Netherlands, is supported by the fact that according to the Article 2 of the “Wet openbaarheid van bestuur” in the Netherlands, every government organ, including the governments and the parliaments, is obliged to publicize the information that the citizens need to know. These government organs have also the obligation to ensure that the publicized information is actual, correct, and comparable. According to the Article 8 from the same regulation, these government organs with their own manners in any case must ensure that the publicized information advocate the public value of democracy. The Article 8 also regulates that these government organs should ensure that the publicized information is understandable so that the citizens can use it and take advantages out of it in accordance with their needs and can understand how these organs perform and operate. From here it is clear that it can be considered that Dutch parliaments and Dutch governments must have published all information linked to the arms exports in the Netherlands, including the governments’ attempts to grant the permits for arms exports, that can be used by the Dutch citizens to make decision on whether they want to legitimize or delegitimize some of those attempts. From this consideration, this thesis argues that, when there is no specific parliamentary motion specifically created to avoid a particular arms export, there is no (strong) interest from the citizens to delegitimize any governments’ attempts to grant the permits for any arms exports (see [Bustraan, 2012](#)) (see [Overheid.nl, wet openbaarheid van bestuur, n. d.](#)) (OECD, 1999).

Although this thesis is aware that the salience of the arms export as an issue for debate in France, Germany, Belgium, and the Netherlands influences the eagerness of the citizens in these four countries and their interest groups to submit their wishes to approve or disapprove particular arms exports to the parliaments so that those exports can be avoided, this thesis is also not focused on discussing whether arms export is an interesting issue for the citizens in France, Germany, Belgium, and the Netherlands that stimulate them to submit to their interest groups their interest to approve and to disapprove a particular arms export (see [Beyers, J., and Kerremans, B., n.d.](#)).

This thesis is also further aware that such eagerness is also influenced by the distance between the citizens and their interest groups and the distance between these interest groups and political parties and parliaments, this thesis is not focused on discussing to what extent such distance exists in each of these four countries, to what extent each interest group in these four countries have willingness to lobby all of the necessary parties to get their voices heard, to what extent their networks with these parties are efficient and effective, and to what extent their lobbying has been efficient and effective (see [Beyers, J., and Kerremans, B., n.d.](#)).

## ***THEORETICAL FRAMEWORK***

The study in this thesis is based on a qualitative analysis on research materials. This qualitative analysis is done using the theoretical framework that includes some scholarship theories necessary to enable the analysis producing theoretically explanations and arguments (see [Van Evera, 1997](#)).

The theoretical framework is used to help this thesis investigate and analyze qualitatively the causes and effects in the phenomena linked to the parliamentary control on arms exports, including the explanatory reasons explaining why the parliaments approve an arms export (see Van Evera, 1997). Some scholarship theories concerned on the parliaments' approval on the governments' attempts are used in this theoretical framework (see Van Evera, 1997).

These scholarship theories explain that parliament will approve a government's attempt when government respects the existing law, shares the motive behind that attempt with the parliament and respects the public values of their citizens, including the public value protecting human rights (see Pfaff, 2011) (see Schmelzle, 2011).

Using these theories as conceptual framework, this thesis observes qualitatively how the government's respect on the existing law like the ECC's criteria matters. Because Member States are obliged to implement the ECC's criteria during the application assessment, this thesis seeks to investigate whether Dutch parliament disapproved the government's attempt to grant the permit to the export of tanks to Indonesia because government had not implemented the ECC's criteria when assessing the permit application. To find out whether this incompliance was indeed the reason, this thesis also investigates whether governments had fulfilled that obligation for the export of corvettes (see Pfaff, 2011) (see Schmelzle, 2011).

Using these theories as conceptual framework, this thesis observes qualitatively how the government's willingness to share the motive behind their attempt matters. This thesis investigates whether the fact that government had not shared the (economic) motive behind the export of the tanks had been another explanatory reason why parliament disapproved their attempt to grant the permit for the export of those tanks. To find out whether this was indeed the reason, this thesis also investigates whether governments had shared the motives behind the exports of the corvettes (see Pfaff, 2011) (see Schmelzle, 2011).

Using these theories as conceptual framework, this thesis observes qualitatively how the government's respect on the public values of their citizens, including the public value protecting human rights, matters. This thesis investigates whether one of the explanatory reasons why the parliament disapproved the government's attempt to grant the permit to the export of tanks was the fact that the government had forgotten to assess the risk of violation of human rights that the export of tanks carries. To find out whether this was indeed the reason, this thesis also investigates whether Dutch governments had not forgotten to do such assessment for the export of the corvettes (see Pfaff, 2011) (see Schmelzle, 2011).

Furthermore, using these theories as theoretical framework, this thesis also observes qualitatively the explanatory reason that explains why parliament decided to approve the government's attempt to grant the permit to the exports of corvettes but not to the exports of tanks (Tweede Kamer der Staten-Generaal, documenten-en-publicaties, n.d.) (Kumm, 2004) (Schmelzle, 2011) (Pfaff, 2011) (Van Evera, 1997).

## **RESEARCH METHOD AND SOURCES**

The research design in this thesis is based on case study research where one case is deeply observed to provide a picture of phenomena linked to the parliamentary control at the national level in an EU

Member State provided on the exports of arms to third countries considered as human rights perpetrators. The parliamentary control provided in the Netherlands on the exports of arms to Indonesia is chosen as the case to study (see Sagepub, n.d.) (see Thomas, 2003).

Besides observing the parliamentary control provided in the Netherlands on the exports of arms to Indonesia, to provide a an overview on the parliamentary control in other EU Member States, this thesis provides a comparative analysis of NL, Germany, France and Belgium. France, Germany and Belgium are chosen for comparison due to their arms exports to Saudi Arabia, which has also been identified as human rights violator. The fact that they export arms to Saudi Arabia shows that their respect on human rights is less compared to the Netherlands. Another reason why France, Germany, and Belgium are chosen as comparative countries instead of other EU arms exporters like United Kingdom, Sweden and Italy is the consideration that there is a bigger possibility that the Netherlands mimics arms exports decisions of France, Germany, and Belgium rather than the exports decisions of United Kingdom, Sweden, and Italy. This is due to the argument that the Netherlands has shared more historical paths with France, Germany, and Belgium than with United Kingdom, Sweden and Italy. And one reason that countries usually have to mimic foreign policies of other countries is its sharing of historical paths, identities, cultures, values, networks and dependencies grounded in its historical relationship with those countries (see Pauly Junior, 2013) (see Soetendorp, 2014) (see Lak, 2011) ("Faithfull Allies?", n.d.) (Bromley, 2012) (Willardson, 2013) (Dodd, Lyklema, and Van Weringh, 2006) (Grebe, J., 2014) (see Poullie, 2014, p: 39) (Detjen, J., n.d.) (Tacq, 2009) (Haspeslagh, M., 2011) (Duquet, 2014).

The overview on the parliamentary control in France, Germany and Belgium provided on the exports of arms to the third countries identified as human rights violators like Saudi Arabia is provided from some scholarship literatures available online. These literatures provide brief information explaining why the parliaments in these Member States approve the attempts of their governments to grant the permit to the exports of arms to third countries considered as human rights perpetrators. These literatures also provide brief argument that one explanatory reason why these parliaments approve such exports is the consideration that the respect on human rights in these countries is not that high (see Sagepub, n.d.) (see Thomas, 2003).

To study the parliamentary control provided in the Netherlands on the exports of arms to Indonesia, this thesis analyze qualitatively the content of the parliaments' and governments' letters submitted since 1998 until 2013. The year of 1998 is chosen because it was the starting point of the obligation to adopt the ECC's criteria. The year of 2013 is chosen due to the need to find the needed and accessible research materials. These parliamentary letters are the letters that parliaments have sent to the Ministries asking some questions on some arms export issues. The letters that governments submit to parliaments are the letters replying these letters providing information that has been asked by the parliaments. Basically these governments' letters explain that they have implemented the ECC's criteria during the application assessment, that there have been good reasons to grant permits for some submitted applications and that the need to protect human rights has been taken into account during the application assessment (Tweede Kamer der Staten-Generaal, documenten-en-publicaties, n.d.) (see Sagepub, n.d.) (see Thomas, 2003).

By providing such explanation to parliaments, through their letters governments want to motivate parliaments to approve their attempts to grant the permits. On the other hand, through the

parliaments' letters parliaments inform whether they can accept and agree with the governments' arguments (Tweede Kamer der Staten-Generaal, documenten-en-publicaties, n.d.) (see Sagepub, n.d.) (see Thomas, 2003).

## ***THESIS OUTLINE***

This thesis is divided into five chapters. The first chapter, which is this chapter, provides information about the aim of this thesis, the research question of this thesis, short literature review, conceptual framework and a short description on the research method and sources used in this thesis. The literature reviews in this chapter explains shortly how the governments' attempts granting the permit to arms exports earn parliamentary approval.

The second chapter provides different literature reviews. These literature reviews include the literature review on the ECC, which is the control instrument that each Member State should implement when assessing the permit applications. This review provides a short description about the impact of the obligation to implement the ECC's criteria when controlling arms export in the Netherlands.

Another literature review in Chapter two is the literature review on the history of the regulations for the arms export control regulations in the Netherlands. This literature review is there to provide an insight about how is the history of the development of the arms export control in the Netherlands and the development of the regulations regulating such control. This literature review explains the development of the arms export control in the Netherlands before and after the introduction of the ECC's criteria.

The next literature review is about how the control provided on the exports of arms happens in practice in the Netherlands. This literature review provides brief explanation about how the arms exports to third countries are being controlled in the Netherlands.

The next literature review from chapter two is the granting mechanism of the arms export permit. This literature review provides information about the granting permit mechanism, the actors involved, and their administration responsibilities linked to export and import field.

Chapter two also explains the role of the Dutch parliaments in the granting of the permit. Chapter two argues that, although the parliaments do not have the authority to make the decision to grant the permit or the denial permit, their approval on the governments' attempts to make those decisions is very much taken into account by the Dutch governments when assessing the permits applications.

Following this argument Chapter two also explains why the governments consider that such parliamentary approval is important. Chapter two explains that this approval is important because the parliaments are there to represent the citizens. The governments need to have their approval to ensure that their decision to grant the permit for a particular export will be accepted by their citizens. The citizens' acceptance on the governments' decision is important to increase the effectiveness of their governance.

Chapter two is also there to provide short literature reviews on the scholarship theories explaining some explanatory reasons why the parliaments approve the governments' attempts to make a

particular decision, including their attempt to grant the permit for a particular export. This thesis uses these theories in its theoretical framework to investigate whether these reasons might have been the reasons explaining why the Dutch parliaments only approved the governments' attempts to grant the permits for the exports of corvettes to Indonesia, but not the tanks.

Chapter two also provides some literature reviews on the explanatory reasons explaining why the attempts of the governments to grant the permit can earn approval from the parliaments in other Member States. This chapter provides some reviews on the explanatory reasons explaining why the parliaments in some Member States like France, Germany and Belgium allowed their governments to grant the permits for arms exports to the third countries identified as human rights violators. These reviews provide an insight about whether implementing the ECC's criteria when assessing the permit applications is necessary for earning the parliamentary approval. These reviews also explain how important the need to respect human rights is for earning the parliamentary approval. Furthermore, these reviews provide an insight that for some EU Member States like France, Germany, and Belgium these two needs are less important compared to other needs, such as an economic incentive from the exports and an improvement of bilateral relationship. In this section, it is also explained why the countries of France, Germany, and Belgium are chosen as comparative countries instead of other big arms exports like United Kingdom, Sweden, and Italy.

In regards to these reviews, before researching about the explanatory reasons explaining why the Dutch parliaments approved the arms exports to Indonesia, in Chapter two this thesis provides some literature reviews on how important the public value respecting human rights is in the Netherlands. This importance explains why the parliaments disallowed the governments to export tanks to Indonesia.

At the end, the literature reviews also provide some reviews on the interest groups in France, Germany, Belgium and the Netherlands, especially on the influence of their networks on the restrictiveness of national parliament on controlling their country's arms exports.

In chapter three this thesis explains about the research method which is used in this thesis to investigate about the explanatory reasons behind the parliaments' approval on the governments' attempts granting the permits for the exports of arms to Indonesia. Chapter three also explains the research sources used in this thesis.

Chapter four provides the research results of this thesis. These results describe that the explanatory reasons explaining why parliaments approved the exports of corvettes to Indonesia but not the export of tanks. These research results also explain that the seriousness of the governments' respect on the public value protecting human rights is the most important source to earn approval from parliaments on their attempts to grant the permits.

Chapter 5 provides conclusion of the research results and a brief suggestion for the next research.

## **CHAPTER 2 LITERATURE REVIEW**

### ***THE MOTIVES BEHIND THE ESTABLISHMENT OF THE ECC***

The exchange of the real-time information of the permit denials among control officials in different Member States is the most important reason that makes the ECC offer a better control mechanism compared to the Wassenaar Arrangement (WA). In addition, the ECC also includes less number of countries engaged compared to the WA. This less in number of the countries involved reduces the diversity of wishes (Bromley, 2008, p: 38).



There are three driving factors that motivate the harmonization of the arms export controls in different Member States. The first driving factor is the consolidation and internationalization of the arms industries. Some arms industries in different Member States decide to consolidate with each other so that they can export their arms from different Member States. Because of this, the EU Member States agree with each other that they should apply similar controls on the exports of these industries (see Smith, K., E., 2001 p: 187 cited in Bromley, 2008, p: 5).

The second driving factor is the need to harmonize the foreign and security policies from different Member States. This is due to their interest to avoid war among them (see Smith, K., E., 2001 p: 187 cited in Bromley, 2008, p: 5).

The third driving factor is the need of different Member States to harmonize their attempts to create a common position towards third countries. Such a common position is necessary for example when they aim to apply embargo together towards a particular third country (see Bromley, 2008, p: 7-8).

### ***THE EFFECTIVENESS OF THE ECC***

The responsibility to make the decision to grant the permit still belongs on the hands of each Member State. The European Commission (EC) has no substantial power to enforce similar implementation of the ECC's criteria during the control in different Member States. Different Member States can grant different permit decisions on the similar arms exports (see Bromley, 2008, p: 10-13) (see Bromley, 2008, p: 14-16).

### ***THE IMPACTS OF THE OBLIGATION TO IMPLEMENT THE ECC'S CRITERIA IN THE ARMS EXPORT CONTROL MECHANISM IN THE NETHERLANDS***

The obligation to implement the ECC's criteria when assessing the permit applications does not change the decision making procedures in the government level and in the parliamentary level that much (Bromely, 2008, p: 37). There is also no impact on the day-to-day control activities (Bromely, 2008, p: 37) However, the exporters argue that the Netherlands is more restrictive in granting the permit compared to other Member States (Bromely, 2008, p: 33) (Bromely, 2008, p: 37).

### ***THE HISTORY OF THE DUTCH REGULATIONS FOR THE ARMS EXPORT CONTROLS IN THE NETHERLANDS***

The "Algemene wet" established in 1822 was the first Dutch law regulating the export controls in the Netherlands. This law regulated the controls for the import, export and transit of products in the Netherlands. In this law, the transactions for arms were treated like the transactions for other products. There was no special law for the control of arms transfers (Customs, 2008).

The "Algemene wet" was replaced by the "Algemene Wet inzake de Douane en Accijnzen (AWDA)" on 5 July 1962. The AWDA still did not distinguish the transfers of arms and the transfers of other products (Ministry of Economic Affairs, 1962 cited in Lagerwaard, 2009, p: 26).

In the same year, in 1962, there was another law created called the "In- en Uitvoer Wet". This law also did not contain specific regulations for arms transfers (Customs, 2008 cited in Lagerwaard, 2009, p: 26).

It was just on 26 April 1963 a law containing specific regulations regulating arms transfers for the first time was created. This law is called the “In- en Uitvoer Besluit Strategische Goederen”. According to this law, arms exporters must acquire the permit from the Ministry of Economic Affairs before transferring their arms (Ministry of Economic Affairs, 1963 cited in Lagerwaard, 2009, p: 26).

To complete the “In – en Uitvoer Besluit Strategische Goederen”, another law called the “Sanctiewet” was established in 1977. The motif behind its establishment was to accommodate the interest to harmonize the national decisions of different countries on applying an (international) economic sanction against a particular country, e.g. the decision to create an embargo against particular third countries (Ministry of Foreign Affairs, 1977 cited in Lagerwaard, 2009, p: 26).

The “Wet Wapens en Munitie (Weapons and Ammunition Act)” came into force on 16 November 1995 and was established to prohibit, and therefore regulate through permits, activities dealing with weapons and ammunition, including manufacturing trading, importing, exporting, possessing, carrying and etcetera. In terms of exporting and importing arms, the permit applications were applied to the Ministry of Economic Affairs and the granted permits were checked when the arms were passing the Customs. The law was being replaced by another law on 1 January 1997 called the “Herziening Wet Wapens en Munitie” (Ministry of Justice, 2003 cited in Lagerwaard, 2009, p: 27).

The “Algemene Douanewet (General Customs Act)” came into force on 1 August 2008 replacing the “In- en Uitvoer Wet” and the “Douanewet”. The “Algemene Douanewet (General Customs Act)” adopts the European law, including the ECC and its criteria (Customs, 2009a, Lagerwaard, 2009, p: 27).

This part explains that the first Dutch law providing special regulations to regulate arms transfers was established in the 1960s. Before this period, the arms transfers were treated as the international trades of the common products. The concern of different Member States to keep improving the harmonization of their arms export controls has been one of the reasons motivating the Dutch governments to keep developing their control regulations and improving their controls on permit applications (see Lagerwaard, 2009).

## ***THE ARMS EXPORT CONTROLS IN PRACTICE IN THE NETHERLANDS***

The Dutch Ministry of Economic Affairs has been authorized to assess each permit application and to grant the permit. The Dutch Customs authority controls the arms exports at four Dutch borders, including Rotterdam, North, West and South. At these borders, the Customs authority implements these core duties:

1. Stopping the arms passing the borders;
2. Ensuring the CDIU controlling the invoice and the granted permit properly. When no permit, the arms cannot be exported. The CDIU should match the physical of the exported arms with the data in their export documents;
3. Levying and collecting taxes on the exported arms (see Customs, 2009b cited in Lagerwaard, 2009, p: 27-28).

## ***THE ROLE OF THE DUTCH MINISTRIES IN THE ARMS EXPORT CONTROLS IN THE NETHERLANDS***

In this part this thesis explains about the granting permit mechanism, actors are in charged, and their administration responsibilities.

The arms exporters must first submit a permit application to the Centrale Dienst voor In- en Uitvoer (CDIU). Without this permit, these exporters are not allowed to export arms. The CDIU performs on behalf of the Ministry of Foreign Affairs receiving and examining the permit applications. The CDIU assess each permit application to investigate whether each arm receiver country can satisfy all of the ECC criteria or not. The CDIU is in charged to examine the application when the exports are purposed for other NATO Member States, other EU Member States, Switzerland, Japan, Australia, and New Zealand. The CDIU examines those applications using the instructions given by the Ministry of Economic Affairs. When the export is purposed for other countries, the CDIU needs to consult its assessment with the Ministry of Foreign Affairs and The Ministry of International Trade and Cooperation with the Development Countries. The minister of Foreign Affairs provides advice to the minister of Economic Affairs on the security risks and the bilateral benefit that a particular arms export possesses. In examining the information about the technic specifications of the arms proposed for export, the CDIU and the Ministry of Foreign Affairs examine whether the information mentioned in the application about the use purpose of the exported arms proposed matches with their technical functions. The recipient countries are the most important for the assessment. One of the information sources is the Dutch embassy situated in the recipient country. The information about the recipient country includes the information on what it does with the received arms, the information on to what extent it has been actively trying to purchase the arms from other countries, and the information on whether another Member States has granted a denial permit on the exported arms. The Ministry of Foreign Affairs also takes into account the information on the nature of the transaction when assessing the permit applications. This information includes the information on the payment and on the shipment. In addition, this information also includes the information on the recipient country, the transit country and the brokers involved. The minister of Foreign Affairs implements the ECC's criteria when assessing the permit applications. The Minister for International Trade and Cooperation with the Developing Countries helps the Ministry of Foreign Affairs provide advices on the bilateral risks that permit denials might produce. When the exports are purposed for third countries, besides the Ministry of Economic Affairs, these Ministries are responsible for the granting of the permit. The CDIU is still in charged in handing over the permit after the approval from these Ministries is granted (Rijksoverheid.nl, "Regels voor export en doorvoer van militaire goederen", n. d.) (Ministerie van Buitendlanse Zaken, 2013.122971, 2013, p: 1-2) (Tweede Kaer der Staten-Generaal, Wapeneportbeleid 22 054, brief nr. 217, 2013) (In- en Uitvoerwet 1944 cited in Overheid.nl, Wet- en regelgeving, Beleidsterrein In- en uitvoerregelingen, 2014) (Douane Belastingdienst, 110.00.18, n.d.) (Ministerie van Buitendlanse Zaken, 2013.122971, 2013, p: 19) (Overheid.nl, Wet- en regelgeving, Beleidsterrein In- en uitvoerregelingen, 2014). (Ministerie van Buitendlanse Zaken, 2013.122971, 2013, p: 3) (Ministerie van Buitendlanse Zaken, 2013.122971, 2013, p: 3) (Ministerie van Buitendlanse Zaken, 2013, p: 33) (Overheid.nl, Wet- en regelgeving, Beleidsterrein In- en uitvoerregelingen, 2014) (Uitvoerbesluit Strategische goederen 1963 cited in Overheid.nl, 2014).

When the assessment produces a desired result, the permit will be granted, otherwise not. When the application is rejected, the importer and recipient country receive a refusal notification including the

reason behind the rejection. Such rejection will be shared immediately to other EU Member States. Other EU Member States attempting to grant the permits on the rejected applications must consult their attempt to those rejecting Member States before granting the permits ([Ministerie van Buitendlandse Zaken, 2013.122971, 2013, p: 3](#)).

## ***THE ROLE OF DUTCH PARLIAMENTS IN THE ARMS EXPORT CONTROLS IN THE NETHERLANDS***

Dutch parliaments apply control on the arms exports in the Netherlands and grant their approval based on the information from different sources, including from governments. This information includes the information on the export credit insurance, the information on the arms production, the information on how the arms producers let the country pay the loss when the permits are not granted ([Tweede Kamer der Staten-Generaal, Antwoorden op Kamervragen over de mogelijke levering van korvetten aan de Indonesische marine \(2030418020\), 2004](#)) ([Tweede Kamer der Staten-Generaal, Antwoorden op Kamervragen Indonesië EKV en Wapenexportcontrole, 2006](#)) ([Tweede Kamer der Staten-Generaal, Exportkredietverzekering, sondages en wapenexportvergunningen, 2005](#)).

This information is usually provided through the ministerial letters submitted to parliaments. In these letters the Ministers usually provide this information using causal analysis to provide better understanding about the background of each issue. For example, in explaining about the need to use export credit insurance, governments explained that, because there is no certainty that a particular export permit application will not be refused, arms producers use the export credit insurance to cover the possible loss, produce their products based on orders and submit their permit applications after the production is finished. Furthermore, governments also explained that, such export credit insurance is not taken directly by the producer, but by the banks financing its arms production instead. This implicitly means that, because this insurance is financed by the country, when the permit is not granted, the country pays the insurance loss covering the production expenditures ([Tweede Kamer der Staten-Generaal, Antwoorden op Kamervragen over de mogelijke levering van korvetten aan de Indonesische marine \(2030418020\), 2004](#)) ([Tweede Kamer der Staten-Generaal, Antwoorden op Kamervragen Indonesië EKV en Wapenexportcontrole, 2006](#)) ([Tweede Kamer der Staten-Generaal, Exportkredietverzekering, sondages en wapenexportvergunningen, 2005](#)).

For the exports to third countries considered as human rights perpetrators, Dutch parliaments apply a more stringent control. Assessing the permit applications based on the ECC's criteria, including its criterion protecting human rights, may not always be enough to show to parliaments how serious governments have taken into account the need to avoid any risk of violation of human rights that an export carries. This means that informing parliaments that they have assessed the permit application using the ECC's criterion protecting human rights does not always enable them to earn approval from parliaments on their attempt to grant the permit for the application assessed ([Tweede Kamer der Staten-Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek aan openheid over mogelijke tankdeal met Indonesië](#)) ([Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië](#)) ([Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië](#)).

## ***WHY PARLIAMENTS' APPROVAL IS IMPORTANT***

Most governments take into account the opinion of their parliaments. Dutch governments usually take into account the parliaments' decision to disapprove particular arms exports. They do so because the parliamentary approval gives a long term impact on the effectiveness of their governance. This is based on the argument that the parliaments' approval on the governments' attempts to make a particular decision, like granting the permit, is important to enable the governments to earn citizens' acceptance on that particular decision after it is made. This citizens' acceptance is necessary to increase their respect on the decision taken. Such respect is important for the effectiveness of the governments' governance. Governance effectiveness is argued to be consequence of citizens' acceptance on governments' decisions (see Weber 1978, p: 212ff cited in Schmelzle, 2011, p: 8) (see Levi/Sacks 2009 cited in Schmelzle, 2011, p: 12) (Schmelzle, 2011, p: 13) (Tweede Kamer der Staten-Generaal, Antwoorden op Kamervragen over de mogelijke leverantie van korvetten aan de Indonesische marine (2030418020), 2004) (Tweede Kamer der Staten-.Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek aan openheid over mogelijke tankdeal met Indonesie) (Tweede Kamer der Staten-.Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-.Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië).

## ***THE SOURCES TO EARN PARLIAMENTS' APPROVAL***

There are some explanatory reasons explaining why parliaments approve the governments' attempts to grant the arms export permits. Some of these reasons include the government's respect on the existing law, the government's willingness to share the motives behind their attempts, and the government's respect on the citizens' public values, including the public value protecting human rights.

According to legal scholars, parliaments will approve the governments' attempts to grant the permit, when those attempts are in accordance with the ECC's criteria. Legal scholars argue that one important factor to earn parliamentary approval is the legality background. This thesis observes whether the government's in-compliance with their obligation to implement the criteria of the ECC's criteria when assessing the permit application for the export of tanks to Indonesia in 2012 was one of the explanatory reasons explaining why parliament disapproved the government's attempt to grant the permit for the export of those tanks. To find out whether this in-compliance was indeed the reason, this thesis also investigates whether governments had fulfilled that obligation for the exports of the corvettes (Pfaff, 2011, p: 4).

Furthermore, some scholars also argue that parliaments approve the government's attempts to grant the permits when governments share the motives behind their attempts. This motive sharing provides an opportunity for parliaments to understand more about the goals that those attempts aim to achieve and the impacts of their approval on the achievement of those goals. In regards to this point of view, this thesis observes whether the fact that government had not shared the (economic) motive behind the export of the tanks had been another explanatory reason explaining why parliament disapproved the government's attempt to grant the permit for the export of those tanks. To find out whether this was indeed the reason, this thesis also investigates whether governments had shared the motive behind the exports of corvettes (see Schmelzle, 2011, p: 14).

According to scholars, using the content-dependent concept, parliaments approve the government's attempts to grant the permits when these attempts respect the citizens' public values. These public values include the public value protecting human rights which is very important for the Dutch citizens. Parliaments approve the government's attempts when they consider that the "content" of these attempts does not violate the citizens' public values. This thesis observes whether one of the explanatory reasons explaining why parliament disapproved the government's attempt to grant the permit for the export of tanks to Indonesia was the fact that the government had forgotten to assess the risk of human rights violation that this export carries. One way to assess such a risk is by assessing the application for this export using the ECC's criterion protecting human rights. This thesis investigates whether parliaments decided to disapprove the governments' attempt to grant the permit for this export because government had forgotten to implement the ECC's criterion protecting human rights when assessing the application for this export. To find out whether this was indeed the reason, this thesis also investigates whether governments had not forgotten to do such assessment for the export of corvettes (see Schmelzle, 2011, p: 10-11).

The incorporation of the public value protecting human rights in the preamble and Article 1 of the Universal Declaration of Human Rights (UDHR), and the establishment of the ECC's criterion advocating the need to protect human rights produce an obligation for every UN Member States and the EU Member States, to respect and protect human rights (General Assembly, 1948 cited in Ericsson, 2008, p: 8) (Ericsson, 2008, p: 8-9) (Hansen and March, 2013). In regards to this obligation, the following section provides literature review on the explanatory reasons explaining why parliaments in other Member States like France, Germany and Belgium approved the attempts of their governments to grant the permit for the arms exports to third countries considered as human rights perpetrators, including Saudi Arabia (see Ericsson, 2008).

### ***EXPLANATORY REASONS EXPLAINING WHY PARLIAMENTS IN OTHER MEMBER STATES APPROVE THE ATTEMPTS OF THEIR GOVERNMENTS TO GRANT THE PERMITS TO ARMS EXPORTS TO THIRD COUNTRIES CONSIDERED AS HUMAN RIGHTS PERPETRATORS AND THE IMPORTANCE OF HUMAN RIGHTS***

To provide a better picture on the parliamentary control across the EU provided by national parliaments on the exports of arms to third countries considered as human rights perpetrators, this section provides review on the explanatory reasons explaining why parliaments in EU Member States, like France, Germany, and Belgium approve the attempts of their governments to grant the permits to the exports of arms to such countries.

Because every Member State is required to respect human rights, in this section, this thesis provides literature review explaining whether national parliaments in different Member States like France, Germany, and Belgium grant their approval on the governments' attempt to grant the permit based on the concern to prevent the risk of violation of human rights that an export carries. The review explains that in France, Germany, and Belgium, national parliaments approve the governments' attempts to grant the permits to the exports of arms to third countries that have some human rights issues like Saudi Arabia. The review shows that the public value protecting human rights for the parliaments in these Member States seems to be somewhat not that important and this is because



this public value is not rooted in their societies. This rooting explains how important this value is for their citizens. When this public value is important for their citizens, parliaments will put more concern to increase the governments' respect on this value. The literature review also explains that the importance of this value for the citizens can be traced from the legitimate laws and constitution. The literature review includes the review on some laws and constitutions of these EU Member States. This review is used to argue to what extent this value is rooted in their societies. Furthermore, the review shows that national parliaments in such Member States do not grant their approval based the need to respect human rights, but based on other reasons. This thesis argues that parliaments from the Member States that have less respect on need to protect human rights put less concern on the risk of violation of human rights that an export carries, and therefore they approve the exports based on other reasons (Duquet, 2014) (see Poullie, 2014) (Grebe, J., 2014) (Tacq, R., 2009, p: 28-32) (Detjen, J., n.d.) (Haspeslagh, M., 2011) (Duquet, 2014, p: 40-52) (see Schmelzle, 2011) (see Pfaff, 2011) (Tweede Kamer der Staten-Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek aan openheid over mogelijke tankdeal met Indonesie) (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesieë) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië) (General Assembly, 1948 cited in Ericsson, 2008, p: 8) (Ericsson, 2008, p: 8-9) (Hansen and March, 2013).

### **Why France, Germany, and Belgium are chosen for comparison**

Besides due to their arms exports to third countries considered as human rights perpetrators, these countries are also chosen for comparison due to some other arguments. The first argument is the argument that countries sometimes mimic the foreign policies of other countries, including the decisions linked to those policies. And because the arms export is a tool part of foreign policy of a country, the decision to export arms that a country has is linked to its foreign policy. Therefore when a country mimics foreign policy of another country, it can be argued that it will make its arms export decision in accordance with the arms export decision of the country it mimics. These countries are chosen as comparison instead of other Member States because of the possibility that the Netherlands might mimic the foreign policies of these countries is bigger compared to other Member States like United Kingdom, Sweden, and Italy. This is because the Netherlands has shared more historical paths with France, Germany, and Belgium than with United Kingdom, Sweden and Italy. And one reason that countries usually have to mimic foreign policies of other countries is its sharing of historical paths with these countries. This historical paths include; identities, cultures, values, networks and dependencies, all and all grounded in its historical relationship with these countries (see Pauly Junior, 2013) (see Soetendorp, 2014) (see Lak, 2011) ("Faithfull Allies?", n.d.) (Bromley, 2012) (Willardson, 2013) (Dodd, Lyklema, and Van Weringh, 2006) (Detjen, J., n.d.) (Poullie, 2014) (Grebe, 2014).

### **The explanatory reasons explaining why German parliaments approved the arms exports to the third countries identified as human rights violators**

The amount of exported arms from Germany to the third countries that have been identified as human rights violators has been increased. Such third countries include Algeria, Indonesia, Qatar and

Saudi Arabia. This might one wonder why German parliaments approved the governments' attempt to grant the permits for the exports to such countries (Poullie, 2014, p: 3).

One example of those exports is the export of patrol boats to Saudi Arabia secured by export credit insurance totaling Euro 1.4 billion. Other deals include the deal for battle tank with Qatar, the deal for military equipment with Algeria and the deal for tanks with Indonesia. The tanks deal with Indonesia might be one of the most controversial examples showing that German parliaments make different judgement on the need to prevent violation of human rights in recipient countries compared to Dutch parliaments (Grebe, J., 2014) (see Poullie, 2014, p: 39) (Tweede Kamer der Staten-Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek aan openheid over mogelijke tankdeal met Indonesie) (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië).

To understand the explanatory reasons explaining why German parliaments approved arms exports to these third countries, one should understand first the German control measures on arms exports. In Germany, arms exports are controlled to ensure whether they meet the German "objectives, interests, and values". This is because Germany links its arms exports to its foreign and security policies (Grebe, 2014) (see Poullie, 2014, p: 39).

The German foreign and security policies, including the decisions on arms exports, are produced based on the German "values, interests and objectives" (Poullie, 2014, p: 39). The German "objectives" include providing security and protection of German citizens, providing territorial integrity and sovereignty for Germany and its allies and fulfilling the international responsibilities, including its responsibilities to deliver liberty and peace. The German "security interests" include preventing and managing conflicts and crises in third countries that may produce security threats for Germany and its allies and advocating and implementing its foreign and security policies using an assertive and credible manner. The German "public values" include the public value of freedom, the public value of safety and the public value of democracy (Detjen, J., n.d.) (Poullie, 2014) (Grebe, 2014).

The public value protecting human rights is just the public value that Germany is interested to promote. This public value is not incorporated in the German interests and objectives. This public value also has not been originally incorporated in the German Constitution. The public values in the Constitution that are linked to this public value were just adopted in the Constitution after the Second World War. The important reason behind their adoption is linked to the need to avoid the human rights violations during the Hitler regime being repeated (Detjen, J., n.d.) (Poullie, 2014) (Grebe, 2014). The fact that this value was not incorporated in the German Constitution since the beginning of its establishment explains that this value is not rooted in the Dutch society. This all and all shows how important the public value protecting human rights for the German society compared to the need to satisfy German "objectives, interests, and values". German parliaments do not grant their approval on the governments' attempt to grant the permit based on whether their arms exports may impose any risk of violation of human rights violation, but on whether they meet the German "objectives, interests and values" (Detjen, J., n.d.) (Poullie, 2014) (Grebe, 2014) (Tweede Kamer der Staten-Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek



aan openheid over mogelijke tankdeal met Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië).

### **The explanatory reasons explaining why French parliaments approved the arms exports to the third countries considered as human rights perpetrators**

Similar to Germany, France also considers its arms exports as part of its foreign policy and security policies. This has happened since the president Charles de Gaulle started developing bilateral relationships with other countries to gain influence on them. Since then France has used its arms exports to finance its arms industries to be able to sell more and to gain more influence. For French parliaments exporting arms is part of these policies and has nothing to do with the risk of violation of human rights in recipient countries (Duquet, 2014) (Tweede Kamer der Staten-Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek aan openheid over mogelijke tankdeal met Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië).

The unawareness of French parliaments on the need to protect human rights might be explained by the consideration that the public value protecting human rights is not rooted in the French society. This can be seen from French national laws and decisions linked to the need to protect human rights. One example from these laws and decisions is the national law created against burqa. France has created a national law that forbids the use of burqa in public spaces. In addition to this law, although the freedom of religion has been advocated as a human right that must be respected according to the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the Charter of Fundamental rights of the European Union, the need to avoid the use of burqa has already been attempted by the French society since 20 years ago. Another example of these national laws and decisions is the national decision to block the adoption of the revised CoC as a Common Position until the end of 2008. The revise of the ECC could not be completed due to the France's objection. Due to the Common Position, when there is an objection of a Member State on a particular decision, the intentions of other Member States to take that decision are blocked, and therefore the attempted decision cannot be taken by the EU. This France's objection is related to the France's request to lift up the arms embargo on China which has also been blocked by other Member States. France has been interested to lift up the international arms embargo on China although France has understood that that embargo is purposed to prevent further human rights violations that the Chinese governments have done. These national law and decision explains that the public value protecting human rights is not rooted in the French society. This all and all explains that, for France, the explanatory reasons why French parliaments approved the French arms exports to the third countries considered as human rights perpetrators only include the need to improve bilateral relationship with those countries and the need of arms exports revenues to sustain its arms industries, and do not include the concern to prevent violation of human rights in recipient countries (Tacq, 2009, p: 28-32) (Drgoncova, J., 2011) (Duquet, 2014, p: 30-40).

## **The explanatory reasons explaining why Belgian parliaments approved the arms exports to the third countries considered as human rights perpetrators**

Belgian national governments and national parliaments have agreed to regionalize arms export control in 2003. Since then the capital of each region including the Flemish, Walloon and Brussels Capital Region have been responsible for controlling arms exports in their regions, and have been authorized in determining, implementing and monitoring the handling of the permits in their regions (Duquet, 2014).

The Walloon and Flemish defense industries produce different products and have different customers. The Walloon defense industry produces products such as firearms, ammunition and explosives. Its customers are end-users across the world. Flemish defense industries produce the components for the production process like radar and communication equipment, visualization screens, vehicle components and imaging equipment. Their customers are industries in EU and North America (Duquet, 2014, p: 40-41).

In the Federal level, the interest of different regions in Belgium to sell arms to Saudi Arabia is motivated by the need to increase their competence to compete with other regions. The regionalization of export control motivates each region to export more arms and decrease their stringent in controlling the exports. The permits seem to always be granted in each region. The Federal (national) level only controls the exports of surplus arms from Defense department. However, such control only involves the representatives of the political parties sitting in the Federal governments, but not in the Federal parliaments. The arms exports to Saudi Arabia have never been discussed in the Federal parliaments. Federal parliaments do not seem to grant their approval on the governments' attempt to grant the permit based on the concern to ensure that the exported arms will not impose any risk of violation of human rights in recipient countries (Duquet, 2014, p: 43-48) (Duquet, 2014) (Tweede Kamer der Staten-Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek aan openheid over mogelijke tankdeal met Indonesie) (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië).

Flemish Parliaments seem also to be not that eager to stop the exports of arms to third countries considered as human rights perpetrators like Saudi Arabia. When they knew that Belgian arms might have been re-exported by Saudi Arabia to Syria, they only questioned Flemish regional government whether those arms had been made by Flemish industries. There has not been a parliamentary motion adopted to add Saudi Arabia in the list of "on hold" countries or to propose an embargo on Saudi Arabia. Flemish regional parliaments will only take a more stringent action to control the exports of arms to Saudi Arabia if other EU Member States, other than the Netherlands, do the same. Flemish regional parliaments do not seem to grant their approval on the governments' attempt to grant the permit based on the concern to ensure that the exported arms will not impose any risk of violation of human rights in recipient countries (Duquet, 2014, p: 48) (Duquet, 2014) (Tweede Kamer der Staten-Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek aan openheid over mogelijke tankdeal met Indonesie) (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de

verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië).

Walloon region has always been interested to export arms to Arab states despite its human rights issues. The Arab Spring did not reduce this interest. Thus Walloon parliaments also do not seem to grant their approval on the governments' attempt to grant the permit based on the concern to ensure that the exported arms will not impose any risk of violation of human rights in recipient countries (Tweede Kamer der Staten-Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek aan openheid over mogelijke tankdeal met Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië). (Duquet, 2014, p: 46-51). Belgian regional parliaments grant their approval based on the need of arms export revenues and the need to compete with other regions, but not based on the concern to prevent violation of human rights in recipient countries (Duquet, 2014, p: 40-51).

To understand how critical Belgian national and regional parliaments might concern about the issues of violation of human rights, one might need to look on the fact how Belgian parliaments have concerned on the need to respect human rights in Belgium itself. After French, Belgium is another country that bans the use of burqa. Belgian government in 2011 introduced a general ban on the wearing of burqa in public places. This law was created against burqa. Before this national law was introduced, in some areas there had already been some local regulations avoiding the use of burqa. From here one can argue that the public value protecting human right (of freedom of religion) might be not rooted the Belgian society. This might be the explanatory reason why Belgian national and regional parliaments approved their governments' attempts to grant the permits to the exports of arms to third countries considered as human rights perpetrators (Haspeslagh, M., 2011) (Duquet, 2014, p: 40-52).

### **The explanatory reasons explaining why Dutch parliaments approved the arms exports to third countries considered as human rights perpetrators**

In the Netherlands, the public value protecting human rights is very important for the Dutch citizens. This public value is rooted in the Dutch societies from different periods (Kortmann, 2005, p: 22 cited in Mak, 2007, p: 24) as it has been recognized in the Dutch Constitution since the first time it was established in 1815 (Mak, 2007, p: 24). The incorporation of this public value in the Constitution even is meant to protect the Dutch citizens' human rights against the country of the Netherlands. This all and all shows how much this value is important and rooted in the society of the Netherlands (Acharya, S., 2013)(Mak, 2007, p: 25).

Because each parliamentary member is interested to seek re-election, each of them would take any chances to earn more citizens' voices in the next election period, including assuring the governments' respect on the citizens' public values like the public value protecting human rights. The fact that this public value is very important for the Dutch citizens motivates parliaments to stringent their control on the exports of arms to third countries considered as human rights perpetrators, including Indonesia (see Milner, 1997, 35-36 cited in Tacq, R., 2009, p: 28-32) (Mak, 2007) (Tweede Kamer der

Staten-.Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek aan openheid over mogelijke tankdeal met Indonesie) (Tweede Kamer der Staten-.Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesieë) (Tweede Kamer der Staten-.Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesieë).

Due to the importance of this public value in the Netherlands and the fact that Indonesia has been argued as a human rights perpetrator, one might argue that the exports of corvettes to Indonesia should also have not been allowed by Dutch parliaments. However it is also necessary to look on the possibility that parliaments might have approved those exports because they have been interested to support the governments' interest to gain some economic benefits like providing jobs which is important for the economic growth. Governments' regulations, laws, policies, measures, and decisions, including the decision to grant the arms export permits, influence the growth of arm industries and determine whether the governments' spending in sustaining arm industries has been cost-effective. Countries that do not decide to compete in the international arm trade may still need (for their defense reason) to subsidize the research and development programs in their arm industries to maintain their capability in producing arms. These countries may have not justified that their spending has been cost-effective as their subsidy budget might have been higher than their arm-selling revenues. These countries use tax income to pay this different. This situation may produce budget deficits for other government programs, including education, health care, housing, and infrastructure. Economically justified government regulations, laws, policies, measures and decisions, including the decision to grant the arms export permits, help government prevent this situation to happen (see Brink, T., T., 2014) (Bitzinger, R., A., 2009) (see Woolcock, M., 1998).

Due to the consideration that the economic consequence of each permit decision might be interesting for parliaments and that human rights protection is important for the Dutch society, this thesis investigates the explanatory reasons that motivate parliaments approve the governments' attempts to grant the permits for the arms exports to third countries considered as human rights perpetrators like Indonesia (see Schmelzle, 2011, p: 14) (see Pfaff, 2011, p: 4) (see Schmelzle, 2011, p: 10-11) (Tweede Kamer der Staten-.Generaal, DVB/NW-040/12, 2012, Beantwoording vragen van het lid El Fassed over gebrek aan openheid over mogelijke tankdeal met Indonesie) (Tweede Kamer der Staten-.Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesieë) (Tweede Kamer der Staten-.Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesieë).

### ***THE ROLE OF INTEREST GROUPS IN FRANCE, GERMANY, BELGIUM, AND THE NETHERLANDS IN INFLUENCING THE PARLIAMENT'S APPROVAL***

The decision of parliaments to disapprove or to approve the governments' attempt to grant the permit is influenced by the information the interest groups have submitted. This information is based on the citizens' wishes and the information that they have received from their networks. They combine this information to create a good lobby material (see Gilens and Page, 2014) (see Beyers, J., and Kerremans, B., n.d.). The quality of this information is influenced by how good their networks are. These interest groups include the business organizations, the NGOs and the labor unions (see Beyers, J., and Kerremans, B., n.d.).

In general German and French interest groups are more active in building transnational networks compared to Dutch and Belgian groups. Dutch interest groups are however the least Europeanized ones. Dutch interest groups have the lowest contacts with interest groups from other EU Member States and in third countries compared to French, German, and Belgian interest groups. French interest groups are the most adapted ones in seeking contacts and building relationships with others. (see Beyers, J., and Kerremans, B., n.d.).

Due to the minimum networks of Dutch interest groups, they seem to have minimum information on arms business. This minimum information might make parliament become less motivated to grant their approval. This minimum information can also lead to misjudgment on the information about the most recent development of the human rights protection in recipient countries and on the competitors willing to supply arms to third countries whose permit applications have been rejected. For the case of the tanks deal with Indonesia, the unawareness of parliaments that Germany would supply the tanks when the permit would not be granted might be due to this minimum information (see Beyers, J., and Kerremans, B., n.d.).

This thesis considers the Netherlands is an interesting Member State to research in regards to the purpose of this study because it has the complexity explained above. This is interesting for those who want to understand how arms control is done at the national level in the EU and how such control is influenced by the Member States' obligation to implement the ECC's criteria during the control, influenced by the national parliaments' preferences, and influenced by the consideration that these preferences might be based on minimum information supplied by interest groups (see Beyers, J., and Kerremans, B., n.d.).

## **CHAPTER 3 RESEARCH METHOD AND SOURCES**

The purpose of this study is to understand the national parliamentary control provided on the exports of arms in an EU Member State. This thesis aims to understand how this control is used in a Member State to regulate the exports of arms to third countries considered as human rights perpetrators (see Sagepub, n.d.) (see Thomas, 2003).

To clearly understand the application of this parliamentary control, this thesis uses the qualitative research method applied on a case study. The use of this method makes this thesis focus on text instead on numbers of the case being studied. This thesis chooses to study the parliamentary control in the Netherlands provided on the exports of arms to Indonesia. Such "text" is the derived from the parliamentary and ministerial letters, which later will be further explained in this section (see Sagepub, n.d.) (see Thomas, 2003).

The Netherlands is chosen because in the Netherlands there is indeed a parliamentary control provided on the exports of arms to the third countries considered as human rights perpetrators and because of its respect on human rights. This parliamentary control is done through the giving of the parliamentary approval on the governments' attempt to grant a permit. Parliaments usually only

disapprove the governments' attempt to grant the permit for a particular export of arms when it carries risk of violation of human rights (see Sagepub, n.d.) (see Thomas, 2003).

To clearly understand the application of this Dutch parliamentary control, the control provided on the exports of arms to Indonesia is observed. This thesis investigates the explanatory reasons explaining why Dutch parliaments approved the exports of arms to Indonesia (see Sagepub, n.d.) (see Thomas, 2003).

Indonesia is chosen for two reasons as the recipient country. The first reason is because Indonesia has been considered as a human rights perpetrator. Therefore the Dutch parliaments provide control on the exports of arms to Indonesia. The second reason is because the Dutch parliaments have decided to approve the exports of corvettes to Indonesia, but not the export of tanks. This event is interesting to observe as it helps to understand the explanatory reasons behind the parliaments' approval (see Sagepub, n.d.) (see Thomas, 2003).

To understand the explanatory reasons behind the parliaments' approval, this thesis chooses a research question of, "what are the explanatory reasons that explain why Dutch parliaments decide to approve the governments' attempts to grant the permits to the exports of arms to Indonesia?" (see Sagepub, n.d.) (see Thomas, 2003).

The research result of this thesis shows that the parliamentary control is provided on the exports of arms that carry the risk of violation of human rights. The result also shows that the parliaments' approval is given based on the examination on the technical use of the exported products. Parliaments only approve when the exported products, based on their technical use, will not be used to violate human rights. This explains why parliaments only approved the governments' attempt to grant the permits to the exports of the corvettes to Indonesia, but not the tanks. The governments' attempt to grant the permit to the export of tanks was disapproved because tanks are likely to be used to suppress human rights, when corvettes not (see Sagepub, n.d.) (see Thomas, 2003).

The methodology used in for research in this thesis is the qualitative analysis method. This method contains a qualitative nature and is used to analyze an in-depth case study which is the parliamentary control in the Netherlands provided on the exports of arms to Indonesia. This method is applied during the review on the Ministers' letters submitted to the parliaments. This review is to research the parliamentary control on the exports of arms to Indonesia. This review is to analyze the reasoning behind the parliamentary approval (see Sagepub, n.d., p: 321-322) (see Sagepub, n.d.) (see Thomas, 2003).

This thesis uses the in-depth qualitative analysis method to understand what parliaments "really" thought when making decision to approve and to disapprove the governments' attempts to grant the permits. This method is used to understand the parliaments' thought against particular situation at a particular time. This method is used to analyze qualitatively the text in the letters to understand, based on interpretation, the social experience of parliaments when knowing that their governments want to grant the permit for an export of arms to a perpetrator of human rights. The use of an interpretation in understanding the text is named as the hermeneutic perspective method and is part of the in-depth qualitative analysis method. The use of this method in the theoretical framework of this thesis helps this thesis to make interpretations based on scholarship theories (see Patton 2002, p: 114 cited in Sagepub, n.d., p: 321) (see Van Evera, 1997).



The study in this thesis observes the official letters from the Ministers submitted to parliaments since 1998 until 2013. The year of 1998 is chosen because it was the starting point of the obligation to adopt the ECC's criteria. The year of 2013 is chosen in regards to the need to find the needed and accessible research materials (see Sagepub, n.d.) (see Thomas, 2003).

These letters are published online through the Dutch governments' website ([www.Rijksoverheid.nl](http://www.Rijksoverheid.nl)). From this website these letters were downloaded before being observed. This website provides almost all Ministers' letters containing information on the exports of arms in the Netherlands. The relevant information for the topic studied in this thesis is gathered from these letters (Tweede Kamer der Staten-Generaal, documenten-en-publicaties, n.d.) (see Sagepub, n.d.).

In these letters the Ministers provided answers to the parliamentary questions mentioned in the letters that parliaments had earlier submitted to them. These parliamentary questions include some questions on some arms export issues. Through their letters parliaments ask the reasons why governments want to grant the permits to some exports. In each of these letters, the questions from parliamentary members are displayed before the answers from the Ministers. In each of these letters, a reference number is mentioned. This reference number can be used by the parliamentary members from the following election period to find the Ministers' answers on the questions from earlier parliamentary members. This arrangement is to avoid different parliamentary members ask the same questions. The documentation of these letters provides historically information about the arms business in the Netherlands and in the EU (Tweede Kamer der Staten-Generaal, documenten-en-publicaties, n.d.) (see Sagepub, n.d.).

From this historical information, each parliamentary member can find different information on the exports of arms in the Netherlands and in the EU. This information includes the information on the arms that will be exported and on the arms that have been exported. From here parliaments can understand the status of each arms export. For example, from the letters parliaments can understand whether a particular exporter has submitted an arms export permit prohibition application (*sondage*) or not and what is the result of the assessment on this prohibition application. From such information each parliamentary member can decide whether they want to propose a particular motion to prevent the export of those arms. When the whole parliament at the end decides to adopt the proposed motion before government grants the permit and when the government decides to respect the adopted motion, the permit will not be granted (Tweede Kamer der Staten-Generaal, documenten-en-publicaties, n.d.) (see Sagepub, n.d.).

Through their letters parliaments ask some questions on whether particular arms export applications may violate ECC's criteria. Normally, their questions are only to ensure that governments have assessed each application using the ECC's criteria. Through their letters the governments explain that that they have indeed assessed each application using the ECC's criteria, including its criterion protecting human rights. To earn the approval from parliaments, governments also share the motives behind their attempt to grant the permit. From the information that governments provide in their letters, each parliament member can decide whether they want to propose a motion to prevent a particular arms export (Tweede Kamer der Staten-Generaal, documenten-en-publicaties, n.d.) (see Sagepub, n.d.) (see Thomas, 2003).

This thesis deploys inductive qualitative data analysis helpful to reduce and summarize a complex data (Thomas, 2003, p: 3). Using this method, this thesis identifies and analyzes qualitatively some important categories in the data gathered from the Ministers' letters (Sagepub, n.d., p: 322). Re-reading these letters many times is helpful to identify the categories related to the parliamentary control in the Netherlands provided on the exports of arms to third countries argued as human rights perpetrators. These categories include the government as the actor who grants the export permit, the parliament as the actor who gives the approval on whether a permit should be granted, the products being exported, the recipient country which is Indonesia, the governments' strategies to earn the parliaments' approval and the parliaments' approval itself. These governments' strategies include the governments' respects on the ECC's criteria and on human rights, and motive sharing (see Sagepub, n.d., p: 322) (see Thomas, 2003, p: 2-3).

From these categories, this thesis identifies and analyzes qualitatively their patterns and their relationships. This identification and analysis help this thesis understand when parliaments grant their approvals on the governments' attempts to grant the permits for the exports of arms to Indonesia. To draw the patterns, this thesis observes firstly to what extent parliaments and governments play an influential role in different years to assure that a particular permit should be granted or not. After that, this thesis observes the pattern of the exports of arms to Indonesia. This pattern gives information about the exports of arms from the Netherlands to Indonesia from 1998 – 2013 that have been approved and disapproved by the parliaments. Furthermore, this thesis also observes the pattern of the strategies that Dutch governments have deployed to earn the parliaments' approval. Moreover, this thesis also observes the pattern of the moments when the parliaments grant their approval on the attempts of their governments to grant the permits (Sagepub, n.d., p: 322) (see Thomas, 2003).

The relationship of these patterns are identified and analyzed to understand for the exports of which products (whether the corvettes or the tanks or both) parliaments grant their approval and which governments' strategy(s) that enables governments to earn the parliaments' approval (see Sagepub, n.d., p: 322) (see Sagepub, n.d.) (see Thomas, 2003).

This thesis identifies and analyzes these categories, their patterns and relationships when gathering the data from the letters (see Stake, 1995, cited in Sagepub, n.d., p: 322). This identification and analysis are done based on the theoretical framework explained in Chapter one and Chapter two (Tavallaei, M., and Talib, M., A., n., d., p: 573-574) (see Sagepub, n.d.) (see Thomas, 2003).

This theoretical framework is created from scholarship theories explained in Chapter two. These scholarship theories are usually used by scholars to explain the parliamentary approval on the implementation of a particular international law in a country (Kumm, 2004) (see Sagepub, n.d.) (see Thomas, 2003). These theoretical framework helps this thesis observe and develop perceptions on certain aspects of the parliamentary control based on scholarship theories and identify and analyze the categories, the patterns and the relationships of these categories based on these perceptions (Tavallaei, M., and Talib, M., A., n., d., p: 573-574) (see Sagepub, n.d.) (see Thomas, 2003).

To observe and to develop perceptions on these aspects, the exports of the corvettes and the tanks to Indonesia and the behaviors of governments and parliaments linked to those exports between the periods of 1998 until 2013 are deeply and thoroughly studied (Denzin & Lincoln 2005, Merriam 1998,



Stake 1995, 2006, Yin, 2003 cited in Tavallaei, M., and Talib, M., A., n., d., p: 574) (see Sagepub, n.d.) (see Thomas, 2003).

The use of this theoretical framework for developing theoretically based perceptions before identifying and analyzing the categories, their patterns, and their relationships makes this identification and analysis are done based on particular theories (see Yin, 2008, p. 28 cited in Tavallaei, M., and Talib, M., A., n., d., p: 574) (see Sagepub, n.d.) (see Thomas, 2003). This is necessary to ensure that the finding of this thesis is based on theoretical perspectives (see Creswell, 2007 cited in Tavallaei, M., and Talib, M., A., n., d., p: 574) (see Sagepub, n.d.) (see Thomas, 2003) which is very important to make the finding become theoretically explainable. The use of theories in the research framework helps this thesis link the theories and the causes and effects of each phenomenon linked to the parliamentary control. This helps this thesis develop theoretically explainable perceptions that are based causal laws (see Van Evera, 1997, p: 7-8) (see Sagepub, n.d.) (see Thomas, 2003). For example, according to the finding of this thesis, there are three explanatory reasons explaining why Dutch parliaments approved the governments' attempts to grant the permits for the exports of corvettes to Indonesia. Parliament approved the governments' attempts to grant the permits because governments had explained that they had implemented the ECC's criteria, including its criterion protecting human rights, when assessing the permit applications and because they had shared the economic motive behind the exports. In addition Dutch parliaments disapproved the export of tanks to Indonesia because they had understood that based on their technical use the exported tanks can be used to violate human rights. Although they also understood that the government had implemented the ECC's criteria, including its criterion protecting human rights, when assessing the permit application and that the export of the tanks could decrease the national expenditures (the economic motive of the export), they still decided to disapprove. This shows that governments need to show their respect on human rights not only by assessing the application using the ECC's criterion protecting human rights, but also by assuring that the exported products, based on their technical use, will not be used to violate human rights in the recipient countries. From here, based on scholarship theories, it can be concluded that, the first explanatory reason explaining why Dutch parliaments decide to approve the attempts of their governments to grant the permit to the export of arms to a third country considered as human rights perpetrator like Indonesia is the respect of their governments on the obligation to implement the ECC's criteria during the application assessment. The second explanatory reason is the resinous respect of governments on human rights. This includes implementing the ECC's criterion protecting human rights during the application assessment and assessing the technical use of the exported products to observe whether the products are likely to be used to violate human rights. The third explanatory reason is the motive sharing. The use of the theories in the research framework helps this thesis produce finding that provide specific theoretically explanations of phenomena linked to the national parliamentary control in the Netherlands provided on the arms exports to third countries considered as human rights perpetrators (see Van Evera, 1997, p: 15-16) (see Sagepub, n.d.) (see Thomas, 2003).

## CHAPTER 4 RESEARCH RESULTS

According to the research finding, although according the Dutch law governments have the sole right to decide whether a permit for should be granted or not, when parliaments want to prevent a particular arms export, parliaments can create and adopt a parliamentary motion. A parliamentary motion functions as a “common position” of all parliamentary members against a particular government’s attempts, including the attempt to grant the permit for that particular arms export. When government decides to respect the adopted motion, they will not grant the permit (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-507/12, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië, Beantwoording vragen van het lid El Fassed over berichten dat Indonesië mogelijk van Duitsland Leopard- tanks wil kopen) (Akkerman, 2012, p: 12) (Tweede Kamer der Staten Generaal, de motie-El Fassed c.s. over niet leveren van tanks aan Indonesië (33000-X, nr. 47), n.d., “Handelingen”) (Parlement.com, Moet een motie altijd worden uitgevoerd?, n.d., “Motie een door de Kamer aangenomen motie altijd worden uitgevoerd?”).

One example for this is the motion proposed by the parliamentary member El Fassad and created to gather the voices of other parliamentary members to take a stand against government’s attempt to grant the permit to the export of leopard tanks to Indonesia. When there is a motion established against a particular arms export, although the Dutch law does not oblige government to adopt the motion, parliaments require governments to respect that motion and grant the denial permit to the exporter (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de

leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-507/12, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië, Beantwoording vragen van het lid El Fassed over berichten dat Indonesië mogelijk van Duitsland Leopard- tanks wil kopen) (Akkerman, 2012, p: 12) (Tweede Kamer der Staten Generaal, de motie-El Fassed c.s. over niet leveren van tanks aan Indonesië (33000-X, nr. 47), n.d., "Handelingen") (Parlement.com, Moet een motie altijd worden uitgevoerd?, n.d., "Motie een door de Kamer aangenomen motie altijd worden uitgevoerd?").

Because the motions are used by parliaments to influence the governments' permit decision, this thesis argues that, when there is no specific parliamentary motion created against a particular export, there is no attempt from the parliaments to prevent the governments from granting the permit to any arms exports (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-507/12, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië, Beantwoording vragen van het lid El Fassed over berichten dat Indonesië mogelijk van Duitsland Leopard- tanks wil kopen) (Akkerman, 2012, p: 12) (Tweede Kamer der Staten Generaal, de motie-El Fassed c.s. over niet leveren van tanks aan Indonesië (33000-X, nr. 47), n.d., "Handelingen") (Parlement.com, Moet een motie altijd worden uitgevoerd?, n.d., "Motie een door de Kamer aangenomen motie altijd worden uitgevoerd?").

From the period of 1998 until 2013, there has been only one motion created to prevent an arms export to Indonesia. This motion is the motion proposed by the parliamentary member El Fassad mentioned earlier. This motion was proposed in November 2011 and adopted by the parliament in December 2011. This motion was meant to avoid the export of leopard tanks to Indonesia. In other words, from the period of 1998 until 2013, parliaments have decided to approve other arms exports to Indonesia, including the exports of corvettes. To observe the explanatory reasons explaining why parliaments approved the exports of corvettes and disapproved the exports of tanks, this thesis uses a qualitative analysis based on some theories explained in Chapter two (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-507/12, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië, Beantwoording vragen van het lid El Fassed over berichten dat Indonesië mogelijk van Duitsland Leopard- tanks wil kopen) (Akkerman, 2012, p: 12) (Tweede Kamer der Staten Generaal, de motie-El Fassed c.s. over niet leveren van tanks aan Indonesië (33000-X, nr. 47), n.d., "Handelingen") (Parlement.com, Moet een motie altijd worden uitgevoerd?, n.d., "Motie een door de Kamer aangenomen motie altijd worden uitgevoerd?").

These theories are based on earlier scholarship studies. As explained in earlier chapters, according to legal scholars, parliaments approve the governments' attempts to grant a permit for the export of arms to third countries considered as human rights perpetrators when those attempts respect the existing law (see Pfaff, 2011, p: 4).

In 2004 the government informed the parliaments through their letter that they wanted to grant a permit to an export of corvettes to Indonesia. Through that letter government also informed parliaments that they had assessed the permit prohibition application (*sondage*) for this export using the ECC's criteria. On 17 October 2006, through their letter the government informed the parliament once again that they also had assessed on the application for this export using the ECC's criteria (see Pfaff, 2011, p: 4) (Tweede Kamer der Staten-Generaal, BEB/HIB 4051879, 2004, "Antwoorden op Kamervragen over de mogelijke levering van korvetten aan de Indonesische marine (2030418020)") (Tweede Kamer der Staten-Generaal, Besluitvorming m.b.t. korvetten voor Indonesië, 2006). Because between 2004 until 2006 there was no parliamentary motion adopted against this export, this thesis argues that one of explanatory reasons explaining why Dutch parliaments approved the export of these corvettes to Indonesia is the fact that governments had implemented the ECC's criteria when assessing these applications. This explanatory reason explains that parliaments will grant their approval on the governments' attempt to grant a permit to an arms export when they know that governments respect their obligation to implement the ECC's criteria during the application assessment (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-507/12, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië, Beantwoording vragen van het lid El Fassed over berichten dat Indonesië mogelijk van Duitsland Leopard- tanks wil kopen) (Akkerman, 2012, p: 12) (Tweede Kamer der Staten Generaal, de motie-El Fassed c.s. over niet leveren van tanks aan Indonesië (33000-X, nr. 47), n.d., "Handelingen") (Parlement.com, Moet een motie altijd worden uitgevoerd?, n.d., "Motie een door de Kamer aangenomen motie altijd worden uitgevoerd?").

However, according to the finding, through their letter, to earn the parliaments' approval on their attempts to grant the permit to the export of tanks to Indonesia in 2012, governments explained to parliaments that they had also implemented the ECC's criteria when assessing the permit application. This means that, although parliaments only approved the exports of corvettes, but not the export of tanks, for the exports of both types of products governments had assessed the applications using the ECC's criteria. From here, this thesis argues that the governments' compliance on their obligation to implement the ECC's criteria when assessing the application only becomes one of the explanatory reasons explaining why parliaments approve the exports of arms to Indonesia when the exported products are corvettes, but not tanks (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-507/12, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië, Beantwoording vragen van het lid El Fassed over berichten dat Indonesië mogelijk van Duitsland Leopard- tanks wil kopen) (Akkerman, 2012, p: 12) (Tweede Kamer der Staten Generaal, de motie-El Fassed c.s. over niet leveren van tanks aan Indonesië (33000-X, nr. 47), n.d., "Handelingen") (Parlement.com, Moet een motie altijd worden uitgevoerd?, n.d., "Motie een door de Kamer aangenomen motie altijd worden uitgevoerd?").

In addition to this, the scholars also argue that one more explanatory reason to earn parliaments' approval is the governments' respect on the public values of the society. This thesis argues that, one of the important public values for the Dutch society is the public value protecting human rights. In the

Netherlands, the governments' respect on human rights is very important to earn the parliaments' approval on their attempts. From the finding, one of the explanatory reasons explaining why Dutch parliaments approved the export of corvettes to Indonesia might be the fact that governments had informed parliaments that, they had assessed the permit prohibition application and the permit application for this export using the ECC's criterion protecting human rights. Assessing the permit application using the ECC's criterion protecting human rights is one way to inform parliaments that governments have taken into account the need to protect human rights when assessing the applications and to show to parliaments that they care with human rights (Lagerwaard, 2009) (see Schmelzle, 2011, p: 10-11) (Tweede Kamer der Staten-Generaal, BEB/HIB 4051879, 2004, "Antwoorden op Kamervragen over de mogelijke leverantie van korvetten aan de Indonesische marine (2030418020)") (Tweede Kamer der Staten-Generaal, Besluitvorming m.b.t. korvetten voor Indonesië, 2006).

From here, using the scholars' theories this thesis argues that the two explanatory reasons explaining why the parliaments approved the exports of corvettes to Indonesia are the governments' respect on the ECC's criteria and the governments' respect on human rights (Tweede Kamer der Staten-Generaal, Besluitvorming m.b.t. korvetten voor Indonesië, 2006) (Tweede Kamer der Staten-Generaal, Antwoorden op Kamervragen over de mogelijke leverantie van korvetten aan de Indonesische marine (2030418020), 2004) (Lagerwaard, 2009).

According to scholars, another source to earn the parliaments' approval is the motive sharing. As explained in earlier parts of this thesis, some scholars also argue that parliaments will approve an export of arms when governments share the (economic) motives behind the export. This thesis observes whether one of the explanatory reasons explaining why Dutch parliaments approve the exports of arms to Indonesia is the fact that governments always share the motives behind those exports (see Schmelzle, 2011, p: 14).

According to the finding, Dutch governments always inform their parliaments about the economic consequences of every permit decision. For example, through their letter on March 2005 government shared the motive behind their attempt to grant the permit to the exports of corvettes to Indonesia. They explained that the one of those motives is the economic motive. They explained that refusing to grant the permits to the exports of corvettes would make the Netherlands pay the insurance loss to the banks funding the production of those corvettes. From here, this thesis argues that one of the explanatory reasons explaining why parliaments approved the exports of arms to Indonesia is the governments' motive sharing (Tweede Kamer der Staten-Generaal, Reactie op schriftelijke vragen vanuit de vaste commissie voor Economische Zaken, 2005).

However, this thesis also finds out that, in the Netherlands, motive sharing and showing the respect on the ECC's criteria and human rights by assessing the applications using the ECC's criteria, including its criterion protecting human rights, do not always motivate parliaments to grant their approval. One example of this is what happened in 2012 when parliaments refused to grant their approval on the export of tanks to Indonesia. To prevent this tanks export parliament adopted the motion proposed by El Fassad in 2011. After this motion had been adopted, in 2012, to share the motives behind this export, government explained that the economy benefit behind this tank export would be about € 200 million. In addition, government also explained that these tanks had been the surplus tanks of the Dutch Defense department, therefore their export would not only provide export revenue, but

also would decrease the annual national expenditures. To show their respect on the ECC's criteria and human rights, government also explained that they had assessed the permit application for this export using the ECC's criteria, including its criterion protecting human rights. Despite these explanations, at the end parliaments still decided to deploy the motion from El Fassad to prevent government from granting the permit to this export. This phenomenon shows that motive sharing and showing the respect on the ECC's criteria and human rights by assessing the applications using the ECC's criteria, including its criterion protecting human rights, are not always being the reasons explaining why Dutch parliaments grant their approval on the exports of arms to third countries considered as human rights perpetrators (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië).

Moreover in June 2012, through another letter government explained their attempt to grant a permit for another export of corvette to Indonesia. In this letter, to inform parliament about the legal background of their attempt and their respect on human rights, government explained that the assessment using the ECC's criteria, including its criterion protecting human rights, on the permit prohibition application for this export had produced a positive result. In addition, to share the economic motive behind this export, government explained that its value is \$ 220 million (approximately € 175 million) and it provides about 375 men of work. Since the letter was submitted to parliament until the time this thesis is being produced, there has not been any motion adopted by parliaments to prevent this export. In other words, until this thesis is being produced, parliaments have not had any attempt to prevent this export (Tweede Kamer der Staten-Generaal, DVB/NW-405/12, 2012, Beantwoording vragen van de leden Ten Broeke en Schaart over de levering van een SIGMA korvet aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-507/12, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië, Beantwoording vragen van het lid El Fassad over berichten dat Indonesië mogelijk van Duitsland Leopard- tanks wil kopen) (Akkerman, 2012, p: 12) (Tweede Kamer der Staten Generaal, de motie-El Fassad c.s. over niet leveren van tanks aan Indonesië (33000-X, nr. 47), n.d., "Handelingen") (Parlement.com, Moet een motie altijd worden uitgevoerd?, n.d., "Motie een door de Kamer aangenomen motie altijd worden uitgevoerd?").

Although for the exports of corvettes and tanks to Indonesia, governments had assessed the applications using the ECC's criteria, including its criterion protecting human rights, and had shared the motives behind the exports; parliaments only approved the exports of corvettes, but not the export of tanks. The finding shows that the reason behind these two different decisions is the fact that the assessment on each permit application involves the assessment on the likeliness that the exported products will be used to violate human rights, which is most of the time evaluated based on their technical use. Parliaments approved the exports of corvettes because, based on their technical use, it is not likely that the exported corvettes would be used to violate human rights in Indonesia. On the other hand because based on their technical use it is likely that the exported tanks will be used to violate human rights in Indonesia, parliaments disapproved the export of these tanks. This all and all shows that governments need to show their respect on human rights not only by assessing the



application using the ECC's criterion protecting human rights, but also by assuring that the exported products, based on their technical use, will not be used to violate human rights in recipient countries (Tweede Kamer der Staten-Generaal, DVB/NW-405/12, 2012, Beantwoording vragen van de leden Ten Broeke en Schaart over de levering van een SIGMA korvet aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-332/12, 2012, Beantwoording vragen van de leden Van Dijk en Van Bommel over de verkoop van tanks aan Indonesië) (Tweede Kamer der Staten-Generaal, BS 2012012493, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië) (Tweede Kamer der Staten-Generaal, DVB/NW-507/12, 2012, Verkoop van Leopard 2A6 tanks met toebehoren aan Indonesië, Beantwoording vragen van het lid El Fassed over berichten dat Indonesië mogelijk van Duitsland Leopard- tanks wil kopen) (Akkerman, 2012, p: 12) (Tweede Kamer der Staten Generaal, de motie-El Fassed c.s. over niet leveren van tanks aan Indonesië (33000-X, nr. 47), n.d., "Handelingen") (Parlement.com, Moet een motie altijd worden uitgevoerd?, n.d., "Motie een door de Kamer aangenomen motie altijd worden uitgevoerd?").

## **CHAPTER 5 CONCLUSION**

This thesis has found at least three reasons explaining why national parliaments of an EU Member State respecting human rights like the Netherlands approve the attempts of their governments to grant the permits to the exports of arms to third countries considered as human rights perpetrators like Indonesia. The first explanatory reason is the compliance of the government with the existing law, including the obligation to implement the ECC's criteria during the application assessment. The second explanatory reason is the seriousness of governments to care with human rights. Governments are not only expected to implement the ECC's criterion protecting human rights during the application assessment, but also assessing the technical use of the exported products to observe whether the products are likely to be used to violate human rights in recipient countries. Dutch parliaments will only approve an arms export to a third country considered as human rights perpetrator like Indonesia when they know that the exported arms, based on their technical use, will not be used to violate human rights in recipient countries. The third explanatory reason is the (economic) motive behind the export.

Among these three explanatory reasons, this thesis has found out that, in an EU Member State respecting human rights like the Netherlands, the governments' respect on human rights is the most important source to earn the parliaments' approval on an export of arms to a third country considered as human rights perpetrator like Indonesia. For the Member States respecting human rights like the Netherlands, the concern to prevent violation of human rights in recipient countries is more important than the concern to earn economic benefit from an export. Although Dutch parliaments had understood that the export of tanks would give not only revenue but also reducing national expenditures, as the tanks had been the surplus tanks from Defense department, they still decided to disapprove the export. This all and all shows that the arms export control in different EU Member States after the establishment of the ECC's criteria is not the same. This is because the

national parliaments in the Member States that have more respect to human rights, like the Netherlands, may prevent their governments from granting the permits to the exports that carry risk of violation of human rights although they have known that their governments have assessed the permit applications using the ECC's criterion advocating the need to protect human rights. On the other hand, the national parliaments in the Member States that have less respect on human rights, like France, Germany, and Belgium, may still allow their governments to grant the permits for such exports, because for them export revenues, bilateral relationship and the need to compete might be more important than human rights. This thesis argues that to find out which one of these explanatory reasons that is more important than the rest to earn the approval from the national parliaments in each of these Member States might be an interesting topic for the following research as it gives clear picture about the national preferences in other Member States that influence their arms export controls.

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