

**Risk as a ‘Permissive Technology’:
An Analysis of Canada’s “Robust” Arms Export Risk Assessment Process**

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Major Research Paper
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December 2023

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Acknowledgements

I would like to take this opportunity to thank my supervisor, Dr. Nisha Shah of the School of Political Studies at the University of Ottawa. Her advice and expertise supported me throughout the many twists and turns of the research process.

Next, I would like to thank Dr. David Black with the Political Science Department at Dalhousie University where I completed my undergraduate degree. His guidance and support were integral to my pursuit of a graduate degree.

Finally, I would like to thank my parents whose support has remained steadfast. I would be lost without their love and encouragement.

Abstract

The disparity between the actions of the global arms trade and reporting of international human rights groups is well established. In 2018, when the Government of Canada launched a review of all existing arms export permits to the Kingdom of Saudi Arabia (KSA) and placed a moratorium on the issuance of new export permits it seemed as if Canada was headed towards a more meaningful consideration of human rights in its arms trading. However, in 2020, when the findings of the review were published, the moratorium lifted, and a reaffirmation of the LAV deal was confirmed, it was clear that this was not the case. This analysis argues that a “permissive technology” embedded into Canada’s arms export risk assessment process enabled the findings of the review that facilitated a resumption of arms transfers to KSA and produced a disparity between related United Nations reporting.

Key Terms

Arms Trade Treaty - ATT

Export and Import Permits Act - EIPA

“Final report: Review of export permits to Saudi Arabia” - The Final Report

Global Affairs Canada - GAC

United Nations (UN) Group of Eminent International and Regional Experts on Yemen Report - GEEY REPORT

Kingdom of Saudi Arabia - KSA

Light Armoured Vehicles - LAVs

"No Credible Evidence": Canada's flawed analysis of arms exports to Saudi Arabia" - “No Credible Evidence”

United Kingdom - UK

United Nations - UN

Introduction

In February 2014, Stephen Harper's Conservative government announced Canada's largest arms export deal, a \$14 billion deal to send light armoured vehicles (LAVs) and other associated weapons systems, spare parts, and technical data to the Kingdom of Saudi Arabia (KSA). When the Liberals came into power in 2015, under Justin Trudeau's leadership, they upheld the deal.¹ Despite almost a decade of controversy, the LAV deal persists.

Canada's defense industry, which represents a \$6 billion annual contribution to the country's GDP, benefits enormously from this deal as it brings economic prosperity and bolsters Canada as a trading partner, specifically with other Gulf Cooperation Council (GCC) countries. At its inception the deal represented the creation of approximately 3,000 jobs over the course of 14 years.² Additionally, after it was announced, a spokesperson for Ed Fast, then Trade Minister, defended the deal with the following statement, "Saudi Arabia is an important partner for Canada. It has significant regional and global influence, and plays a leadership role among Arab countries on key regional issues, including Syria and Iran".³ This was a significant selling point from the Conservative government who fortified the deal. The Conservative government, who endeavored to strengthen its relationship with KSA, hoped this deal would establish a deeper relationship, ensure economic propensity, and used the incentive of job creation to generate support.⁴

Controversy surrounding the deal was immediate. Reporting from CBC and the Globe and Mail captured this criticism. A CBC article published on February 14, 2014, cited Human Rights Watch's 2014 Report that labeled Saudi Arabia as a "serial abuser of human rights".⁵ This criticism has endured. In late 2018, following the murder of Saudi journalist Jamal Khashoggi, the Canadian Minister of Foreign Affairs announced that Canada would be conducting a review of all export permits for military goods and technology to KSA and imposing a moratorium on

¹ Thomas Juneau, "Canada and Saudi Arabia: A Deeply Flawed but Necessary Partnership," *Canadian Global Affairs Institute*, 2016.

² Juneau,.

³ James Cudmore, "General Dynamics Canada Wins \$10B Deal with Saudi Arabia," *CBC News*, February 14, 2014,

<https://www.cbc.ca/news/politics/general-dynamics-canada-wins-10b-deal-with-saudi-arabia-1.2537934>.

⁴ Cudmore.

⁵ Cudmore.

all new exports.⁶ The review was conducted between November 2018 to December 2019. In this time Global Affairs Canada (GAC) deployed its “robust” risk assessment framework and reviewed all existing export permits for armed goods controlled under the Export and Import Permits Act (EIPA) that were to be sent to KSA.⁷ At the same time GAC continued to assess the risk of new export permit applications on a case-by-case basis.⁸

In April 2020 GAC’s final findings were published in *“Final report: Review of export permits to Saudi Arabia”* (Final Report). The Final Report concludes that there is no “substantial risk” that exporting military items, including LAVs to KSA would be used for any kind of human rights or humanitarian law violations.⁹ Based on the results of the review, the deal was reaffirmed in 2020.¹⁰ Criticisms quickly arose once the findings of the review were published. Amnesty International, in collaboration with Canadian organization Project Ploughshares published their own report entitled *““No Credible Evidence”: Canada’s flawed analysis of arms exports to Saudi Arabia”*.¹¹ Additionally, in their 2021 Report the United Nations (UN) Group of Eminent International and Regional Experts on Yemen (GEEY Report) identifies Canada as a third state whose arms sales to KSA “perpetuates the conflict”.¹²

This UN finding facilitates the departure for our investigation, to examine the findings of GAC’s review of arms exports to KSA that ultimately led to the lifting of the moratorium and re-affirmation of the LAV deal. This analysis will seek to understand how the risk assessment process, employed during the review period, produced this outcome. We will use the conceptualization of the risk assessment process from Ana Stavrianakis’s work in *“Requiem for*

⁶ Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia,” 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng#repo1>.

⁷ Global Affairs Canada, “2022 Exports of Military Goods” (Government of Canada, 2022), https://www.international.gc.ca/transparency-transparence/controls-controles/military-goods-2022-marchandises-militaires.aspx?lang=eng#a3_1.al

⁸ Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

⁹ Global Affairs Canada.

¹⁰ Murray Brewster, “Canada Strikes New Deal with Saudi Arabia, Clearing Way for Armoured Vehicle Sales,” *CBC News*, April 2020, <https://www.cbc.ca/news/politics/canada-saudi-arabia-lav-1.5528460>.

¹¹ Project Ploughshares Amnesty International, “NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia,” August 2021, <https://www.amnesty.ca/human-rights-news/canada-saudi-arms-deal-flouts-international-law-amnesty-international-project-ploughshares-report/>.

¹² Human Rights Council, “Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014: Report of the Group of Eminent International and Regional Experts on Yemen,” 2021, <https://reliefweb.int/report/yemen/situation-human-rights-yemen-including-violations-and-abuses-september-2014-report-1>.

Risk: Non-knowledge and Domination in the Governance of Weapons Circulation".¹³ In this article, Stavrianakis examines the UK's arms exports to KSA and the controversy surrounding this trade relationship. In her analysis, Stavrianakis identifies risk as a permissive technology that disseminates itself within the risk assessment process. By this, Stavrianakis is referring to the consistent privileging of permissive outcomes, meaning the granting of export permits, and interpretations of risk in risk assessment processes.¹⁴ She understands permissive risk operations as a set of practices, processes, and operations deployed to prevent restriction by embedding themselves into the bureaucratic structuring and subsequent daily functioning of processes instructed with assessing the risk of arms export permits. Stavrianakis is clear in her assertion that "the operation of risk in the arms trade generates a permissive rather than a restrictive logic".¹⁵ To conceptualize the risk assessment process as one that is embedded with a generative permissive logic provides the basis for our analysis of the Canadian risk assessment process, which has determined outcomes contradictory to UN findings. Throughout this analysis we will apply this idea of risk as a permissive technology to understand the findings of the Final Report.

In order to appropriately assess the process that produced the findings of the Final Report our analysis will be split into two different sections, Definitions and Constructed Narratives. The first section will introduce the bureaucratic structuring of risk, which is central to the entire analysis. By first evaluating a corresponding British case study to understand how risk can be structured out of vital decision making processes we are able to gain important insight into how permissive technology is built into Canada's definitions, implementations, and management of risk. This section will evaluate Canada's national implementation of the definitions and criteria set out by the Arms Trade Treaty (ATT) through the EIPA and draw conclusion on how the enactment of this international treaty, in a domestic context, was built to privilege permissive outcomes.

In the next section our analysis will look at the distortion of risk and the mobilization of what this paper refers to as the 'accident narrative'. Building from Stavrianakis's idea of an "accidental or unintentional trope", this paper explores how an 'accident narrative' is used to distort future risk and make it unclear through the use of mitigating measures, which are used to

¹³ Anna Stavrianakis, "Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation," *International Political Sociology* 14, no. 3 (September 2020): 233–51, <https://doi.org/10.1093/ips/olz030>.

¹⁴ Stavrianakis, 234.

¹⁵ Stavrianakis, 234.

“reduce to below the threshold of substantial” if “substantial risk” was previously determined.¹⁶ We will investigate “Training” as a mitigating measure and describe how the presence of training by other Canada allies, like the United Kingdom, is cited in the Final Report but that there is no corresponding mechanism to assess training and therefore no accountability of these measures. This exploration will contribute to our previous analysis on the bureaucratic structuring of risk by demonstrating the ways in which the “Mitigating Measures” criteria does not include sufficient accountability procedures.¹⁷

The next narrative this section introduces is the ‘inheritance narrative’ which refers to continued coordinated efforts by the Liberal government to circulate the notion that the LAV deal was the previous Conservative government’s construction and subsequent responsibility. Analysis of the ‘inheritance narrative’ first utilizes news sources to track the management of information by the Government of Canada since the inception of the deal and then applies itself to the Final Report. In looking at these narratives we will explore and contextualize them as strategies deployed to obscure and distort risk, making it difficult to determine, and thus privileging permissive outcomes of the risk assessment processes. For the purposes of our analysis these two narratives should be understood in tandem as they both contribute to facilitating the outcomes of the risk assessment processes and Canada’s reputation. In order to deepen understanding of these narratives, this section will expand upon different strategies utilized by GAC and the Government of Canada that contribute to permissive outcomes. These strategies include reputational management, managed openness and the enactment of partial transparency through ‘cherry-picking’.¹⁸ Here, we will demonstrate how these strategies are inherently linked to the constructed ‘accident narrative’ and the ‘inheritance narrative’.

In terms of structure, this paper will first outline the research question and the corresponding methodology and theoretical framework applied in its pursuit. Next, we will provide contextual background into the regulation regime of global arms trade, including its inception in a post Cold War context and the impact that 9/11 had on conceptualizing risk in

¹⁶ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020; Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia,” 7.

¹⁷ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020; Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

¹⁸ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

order to establish a foundation for our analysis. The subsequent section will provide vital background information into the institutionalization of risk, popular criticism of global interpretations of ‘risk’ and Arms Trade Treaty (ATT) obligations, and the objectives of relevant “risk actors”.¹⁹ The following section is the analysis and will include the two sub-sections outlined above. Finally, the conclusion will provide a comprehensive overview and reflection on the findings of our analysis and conclude that *a permissive technology of risk has embedded itself into Canada’s risk assessment process, privileging a permissive outcome of GAC’s 2018-2019 review of arms exports to KSA.*

Theoretical Framework & Methodology

Theoretical Framework

Stavrianakis’ “*Requiem for Risk: Non-knowledge and Domination in the Governance of Weapons Circulation* ” provides the theoretical framework of our paper. This academic article was published by the International Political Sociology Journal in 2020. It is through Stavrianakis’s analysis that we conceptualize Canada’s risk assessment process as being generative of permissive outcomes. Stavrianakis’s interrogation into the inception and development of risk assessment processes, coupled with her analysis of the UK’s exports to KSA, builds a compelling analytic foundation for our own examination of the Canadian case.²⁰ In her article, Stavrianakis applies various concepts to develop and defend her analysis of the UK’s arms export relationship with KSA. By identifying strategies employed by the British government to influence and obscure its framing of risk, she analyzes how exports are justified despite enduring controversy over IHL violations and human rights abuses. A particular conceptualization we have borrowed for our analysis is her idea of risk as a permissive technology that embeds itself into the risk assessment process and thus privileges pro-export

¹⁹ Stavrianakis, 239.

²⁰ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

outcomes.²¹ We use this conceptualization to build our analysis of the Canadian risk assessment process. To strengthen this analysis we engage with other arguments that Stavrianakis makes, including governments enactments of “unintentional and accidental tropes” to justify IHL violations.²² Additionally, we contrast Stavrianakis’s inclusion of “training” as a preventative measure used to obscure risk against Canada’s own set of mitigating measures.²³ Augmented by the ideas from various thinkers identified in the Contextual Background, Stavrianakis’s conceptualizations act as the foundation of our analysis.

Stavrianakis identifies how the risk assessment process “creates and capitalizes on shifting dynamics of secrecy, partial transparency, and managed openness to enable state actors to navigate the demands of an ostensibly preventative risk rationale”.²⁴ Stavrianakis describes this process as the production of non-knowledge and that through these strategies what is created is a systematic ignorance. Moreover, Stavrianakis focuses on dominating power dynamics, a reconstruction of ignorance to describe the consequences of inaction within the regulation regime, and how risk is made “unclear”.²⁵ Our own analysis builds from these ideas, centered around her understanding of risk as a permissive technology. Looking at two dimensions of the LAV deal, we will focus on how a) Definitions and b) Constructed Narratives employed by the GAC and the Government of Canada come together to diminish risk and reach conclusions that contradict UN findings.

Accurate implementation of the ATT requires the accurate implementation of definitions within the ATT, notably how risk is defined and diversion treated.²⁶ In our paper we will identify important discrepancies between the obligations set out in the ATT and Canada’s national implementation of the international legally-binding treaty. Stavrianakis’ work allows us to analyze the influences and incentives behind the structuring of the risk assessment process and we are able to see how developing definitions that do not scrutinize risk to the same level as the ATT is reflective of the structuring of a “generative” permissive technology.²⁷ The way that risk, and other criteria like diversion, is defined in GAC’s Final Report is fundamental to how the review

²¹ Stavrianakis.

²² Stavrianakis, 243.

²³ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

²⁴ Stavrianakis, 234.

²⁵ Stavrianakis, 241.

²⁶ Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

²⁷ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020, 243.

of exports was conducted. Definitions that apply a lower level of scrutiny diminish risk and then generate permissive outcomes.

When Stavriankis describes the actions of generating non-knowledge, she focuses on “partial transparency and managed openness” as a means of creating and maintaining this ignorance.²⁸ This leads us to identify different narratives constructed by the Canadian government in order to protect its reputations and stave off criticism. Utilizing partial transparency and managing information allows for the manipulation of fact and carries significant impact over the outcomes and perception surrounding these outcomes, like that of the Final Report.

By focusing our analysis on the definitions and constructed narratives employed by the Canadian government in protection of the LAV deal, we are able to evaluate the strategies mobilized in support of this deal. Our concentration on definitions will help us identify how the risk assessment process is fundamentally structured to diminish risk. While our focus on constructed narratives looks at direct and indirect ways that the control of information enables a process structured to privilege permissive outcomes. A combination of these two dimensions will lead to a fruitful analysis on the Canadian arms exports risk assessment process.

Methodology

Deploying an analysis of bureaucratic practices and strategies facilitates this paper’s goal of answering our research question: *How has Canada embedded risk as a permissive technology into its governance of arms exports?* I examine this question specifically in the case of the findings of GAC’s 2018-2019 review of arms exports to KSA, which contradicted findings from the UN’s GEEY Report.

Guided by our research question this paper employs a qualitative research methodology through a critical discourse analysis, setting out to investigate Canadian arms export controls procedures concerning arms transfers to KSA. The analysis applies a theoretical framework developed by Stavrianakis through the study of two key documents. The first document is the

²⁸ Stavrianakis, 234.

“*Final report: Review of export permits to Saudi Arabia*” (“Final Report”) published by Global Affairs Canada (GAC) in April 2020, following a review into Canada’s export control practices in relation to KSA that imposed a moratorium on new export permits that spanned two years.²⁹ The second document is “*No Credible Evidence*”, a report published by UK-based international non-governmental organization (NGO), Amnesty International, which focuses on human rights. This Report was written in collaboration with Project Ploughshares, a Canadian based NGO centered around the advancement of peace. Analysis of “*No Credible Evidence*”: *Canada’s Flawed Analysis of Arms Exports to Saudi Arabia*” (“*No Credible Evidence*”) helps to strengthen our pursuit of examining Canada’s risk assessment process by providing its own criticism of the Final Report.³⁰ In their report, Amnesty International focuses on identifying gaps and contradictions in the findings of GAC’s Final Report. Where “*No Credible Evidence*” identifies contradictions and inconsistencies within GAC’s Final Report, our analysis will attempt to explain these outcomes through our framing of the Canadian risk assessment process as one that privileges permissive outcomes. Our analysis will operationalize Stavrianakis’s conceptualizations of risk assessment processes and apply this to GAC’s Final Report with an inclusion of the analysis from Amnesty International.

Moreover, we assessed a number of news sources to track and reflect on public response and media relations over the past eight years, since the inception of the LAV trade deal. These new sources included opinion pieces and reporting on government statements. By utilizing these sources, we were able to conduct a thorough analysis of narratives the Liberal government has strategically constructed in support of the LAV deal.

Through a critical analysis of GAC’s review of arms exports to KSA, via its Final Report, we identify strategies and practices employed by a risk assessment process devised in pursuit of permissive outcomes. Through a reliance on concepts developed by Stavriankis in her analysis of the UK case, Amnesty International’s report on the outcomes of the review, and various Canadian news sources, we are able to develop a meaningful analysis into the process that led to Canada’s decision to lift the moratorium on new permits to KSA, and reaffirm the LAV deal.

²⁹ Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

³⁰ Amnesty International, “NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia.”

Contextual Background:

In order to conduct a meaningful evaluation of Canada's risk assessment process, this paper will execute a purposeful review of the historical context related to the global arms trade and its regulation. The aim of this review is to provide essential contextual background into the arms trade and corresponding regulation regimes. Additionally, establishing insight into prominent theories will help conceptualize the literature and our subsequent analysis of the Canadian context.

The 'Proliferation Problem' and an Increasingly Globalized World

The acceleration of regional effort to acquire strategic weaponry appeared in the later years of the Cold War. In his 1993 article entitled "*Controlling weapons proliferation: The role of export controls*" author Aaron Karp discusses the "proliferation problem", describing the national efforts of countries to acquire new military technologies.³¹ This problem became an accepted reality of a globalizing world and analysts knew that efforts could "not be stopped only slowed".³² Instead of focusing on preventing proliferation, an entirely new literature emerged that centered around "management to minimize the dangers of a progressively more proliferated world".³³ This belief in the inevitability of the regional acquisition of strategic armaments was a stark reorientation from the Cold War context. The worst years of the Cold War were defined by state actors chasing a "technological imperative".³⁴ However, after the implementation of different treaties aimed at severing strategic nuclear forces we can see the transformations that occurred during the Cold War, through the acceleration of technology and weapons development. The culminating efforts of international treaties to promote peace and slow the development of destructive technology are seen through a series of treaties signed in the late 80s and early 90s.³⁵

³¹ Aaron Karp, "Controlling Weapons Proliferation: The Role of Exports Controls," *The Journal of Strategic Studies* 16, no. 1 (1993): 18–45, <https://doi.org/10.1080/01402399308437503>.

³² Karp, 19.

³³ Karp, 19.

³⁴ Karp, 19.

³⁵ Karp, "Controlling Weapons Proliferation: The Role of Exports Controls"; Stavrianakis, "Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation," September 2020.

It is interesting to reflect on literature on the ‘proliferation problem’ that emerged out of the Cold War. In their analysis, Karp asserts that technology transfer controls “are the single most useful lever in restraining weapons proliferation”.³⁶ By citing how restriction of sensitive technology exports is an important mechanism that can be applied unilaterally by outside powers, Karp contrasts the cooperative appeal of this restriction on exports to that of regional arms control. Regional arms control and domestic political reform are not easy to implement. Karp argues that technology transfer controls “undoubtedly will remain the primary instrument against weapons proliferation”.³⁷ What is interesting for our analysis is the ‘proliferation of arms’ in the post-Cold War context and subsequent treaties to regulate strategic nuclear forces. This demonstrates the importance of international treaties and norm building to curb nuclear development and an emphasis on other export controls concerning weapons development.

Establishment of Legally Binding International Treaty: the Arms Trade Treaty

Despite the existence of international treaties concerning nuclear weapons, prior to 2013, there were no established global rules to govern the import and export of arms. This meant that countries exercised a high level of freedom in the ability to buy and sell weapons without any common or agreed upon norm managing the purchases.³⁸ This absence of norms on arms trade allowed for decades of unregulated arms transfers which facilitated the perpetuation of human rights abuses around the world. In April 2013, after a negotiation process that can be described as “complex”, 154 states voted to adopt the “first-ever comprehensive, legally binding international treaty governing the transfer of arms”.³⁹ Just over a year later, the ATT came into force, with 50 ratifications as soon as September 2014. The negotiation process included consideration of security, trade, human rights law, international humanitarian law, and principles of international relations. The ATT protects the right to life, limiting states conduct during conflict by setting

³⁶ Karp, “Controlling Weapons Proliferation: The Role of Exports Controls,” 21.

³⁷ Karp, 21.

³⁸ R Muggah, “Making History: How the Arms Trade Treaty Was Won,” 2013, <https://theglobalobservatory.org/2013/04/making-history-how-the-arms-trade-treaty-was-won/>.

³⁹ Muggah; Denise Garcia, “Global Norms on Arms: The Significance of the Arms Trade Treaty for Global Security in World Politics,” *Global Policy* 5, no. 4 (2014): 425–32, <https://doi.org/10.1111/1758-5899.12182>.

humane principles of distinction. The Treaty adds important layers of accountability and transparency responsibilities upon states. Like treaties restricting the development of nuclear technology and weapons, the ATT was a culmination of enduring efforts to “fill a much-needed gap in the international system”.⁴⁰ The ATT strengthens security and protects people around the world.

The “Arms to Iraq” Affair and Relevancy of the British Case

In 1980, the British government declared its neutrality concerning the Iran-Iraq war and was legally bound to not provide military assistance. In 1984, this was strengthened with corresponding legislation that export licenses for defense equipment to Iran and Iraq would need to be “scrutinized rigorously”.⁴¹ In the late 1980s, Iraq’s procurement of arms-making equipment drew media attention. The resulting controversy mainly focused on the UK’s export policy regarding the two states, who both had “very poor human rights records” and were actively “engaged in a very bloody conflict”.⁴² Additionally, controversy surrounded the UK’s policy towards Iraq’s procurement networks. What followed would come to be known as the “Arms to Iraq” affair.⁴³

The affair was triggered by export license applications to the government from Matrix Churchill Ltd, a small engineering firm, in March 1989. The licenses were for the export of advanced lathes to munition plants in Iraq and completely ignored government policy that directly prohibited the export of any equipment that would “significantly enhance the capability of Saddam Hussein to breach the existing ceasefire in the region”.⁴⁴ It was found that government ministers had in fact encouraged companies to break the government rules that prohibited arms export to Iraq. Additionally, Ministers had lied to the British parliament in an

⁴⁰ Garcia, “Global Norms on Arms: The Significance of the Arms Trade Treaty for Global Security in World Politics,” 426.

⁴¹ Davina Miller, “Democracy, Dictators and the Regulation of Arms Exports: The UK and Iraq,” *Intelligence and National Security* 9, no. 3 (1994): 536, <https://doi.org/10.1080/02684529408432266>.

⁴² Miller, 536.

⁴³ Pat Gray, “Errors of an Administrative Nature? Explaining the ‘Arms to Iraq’ Affair,” in *Public Policy Disasters in Europe* (Routledge, 1998), 103–23, Doi: 10.4324/9780203984789-7.

⁴⁴ Gray.

attempt to cover up this “relaxation” of the rules and in doing so “risked sending innocent men” like Paul Henderson, managing director of Matrix Churchill to jail.⁴⁵

Many experts on the development of the risk-based arms export control regime identify the use of European-supplied weapons by Iraqi troops in the 1991 Operation Desert Storm as the “catalyst” or moment of ‘inception’.⁴⁶ The responding establishment of a European control regime operated under this global risk management thesis: “a concern with the diffuse, inchoate nature of risks facing the West and with the high-technology, combined civil-military and preemptive responses to them”.⁴⁷ This growing knowledge around risk was deeply impacted by the 9/11 terror attacks. As the foundation of the risk-based arms export control regime was already characterized by threats to the West, the unprecedented nature of 9/11 only propelled forwards existing transformations of how threats and risk were perceived and addressed.⁴⁸

9/11, The ‘War on Terror’, and an Emerging “Risk Based Society”

In her article “*Governing Terrorism Through Risk: Taking Precautions, (un)Knowing the Future*”, Professor Claudia Aradau analyzes 9/11 and its influence and the development of a “risk based society”.⁴⁹ Borrowing from German sociologist Ulrich Beck, Aradau uses risk analysis as a conceptual tool to examine “heterogenous practices” that make up the ‘war on terror’.⁵⁰ In his development of a “world risk society” Beck asserts that we live in a society with “uncontrollable and unpredictable dangers against which insurance is impossible”.⁵¹ Aradau builds on this by arguing that “risk deployed to prevent terrorist events is made possible by the representation of terrorism as doubly infinite in its catastrophic effects and the uncertainty of its

⁴⁵ Gray.

⁴⁶ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020, 236.

⁴⁷ Stavrianakis, 236.

⁴⁸ Claudia Aradau and Rens Van Munster, “Governing Terrorism Through Risk: Taking Precautions, (Un)Knowing the Future,” *European Journal of International Relations* 13, no. 1 (2007): 89–115, [https://doi.org/\[DOI: 10.1177/1354066107074290\]](https://doi.org/[DOI: 10.1177/1354066107074290]).

⁴⁹ Aradau and Munster.

⁵⁰ Aradau and Munster, 107.

⁵¹ Aradau and Munster, 90.

occurrence”.⁵² In this sense, Aradau is arguing that the uncertainty of the risk terrorism presents and the dissemination of ambiguity facilitates a higher level of agency by states in the name of security.

Aradau refers to 9/11 as “novel and exceptional”, describing how the IR discipline tried to conceptualize the historic event using pre-existing tools.⁵³ Through Beck’s analysis and other literature on the evolution of risk, we can see that these tools were already becoming outdated before the 9/11 attacks. Transforming during the Cold War and emerging in an increasingly globalized world, threats, and our perception of them, were undergoing enormous change.

Aradau emphasizes the way that pre-existing IR theories on war fall short of understanding “the war on terror” which is a “more complex discursive and institutional formation than these theories have been able to account for”.⁵⁴ Aradau outlines distinct characteristics of the ‘war on terror’, including the use of biometrics and increased surveillance. “The ‘war on terror’ has regimented a whole series of practices that do not fall under the description of war” and as a result transform governance structures.⁵⁵ The threat of terrorism is characterized by uncertainty and diverts attention away from threats that fit into the traditional conceptualization of war.

Ambiguity as a Strategy of Non-Compliance

In their article, “*Taking ambiguity seriously: Explaining the indeterminacy of the European Union conventional arms export control regime*”, researcher Susanne Therese Hansen interrogates the European Union conventional arms export regime and the use of ambiguous language as a strategy to remedy non-compliance with different kinds of international agreements. Hansen argues that eliminating ambiguity “stood at the forefront among the strategies that have been proposed to remedy poor implementation”.⁵⁶

⁵² Aradau and Munster, 108.

⁵³ Aradau and Munster, 90.

⁵⁴ Aradau and Munster, 90.

⁵⁵ Aradau and Munster, 90.

⁵⁶ Susanne Therese Hansen, “Taking Ambiguity Seriously: Explaining the Indeterminacy of the European Union Conventional Arms Export Control Regime,” *European Journal of International Relations* 22, no. 1 (2016): 192, <https://doi.org/10.1177/1354066115584086>.

Hansen emphasizes the likelihood of risk assessments to be influenced by those who assess risk and that it “is no science”.⁵⁷ Although the ATT outlines certain international obligations, efficacy of the dissemination of these obligations is up to national implementation. Hansen outlines an important instance in which ambiguity compromises implementation, specifically if we are thinking in the context of ATT obligations. The definitional differences between ‘clear risk’ and ‘risk’ can become quite important. To many countries, the use of “clear risk” implies an “unreasonably high risk threshold”.⁵⁸ The differences between definitions might result in some countries authorizing arms transfers amidst the existence of some risk.⁵⁹ The enactment of the manipulation of language and ambiguity are important strategies that help prevalent state actors evade international obligations pertaining to arms trade. Identifying the use of “vague, incomplete, inconsistent, indeterminate, and open-ended language” is an important step to addressing gaps in the implementation of regulatory policies on arms trade and will be of significant relevance in our analysis.⁶⁰

Through this review of the contextual background concerning the shifting patterns of how risk is perceived in a post-Cold War context, working in tandem with the effects of 9/11 and the coinciding ‘war on terror’ we can establish an important moment of departure for our analysis: that further contextualization of risk in a globalized world requires a consideration for international obligations and the efficacy of corresponding implementations and is essential in understanding risk assessment processes, and what characterizes their evolution into existing processes that privilege pro-export outcomes.

Inception and Institutionalization of the Risk-Based Arms Export Control Regime

The post-Cold War political climate, coupled with the impact of the fall out of the “Arms to Iraq” affair are credited with igniting early development of a risk-based arms export control

⁵⁷ Hansen, 207.

⁵⁸ Hansen, 206.

⁵⁹ Z Yihdego, “The EU’s Role in Restraining the Unrestrained Trade in Conventional Weapons.,” *German Law Journal* 10 (2009): 281–303; Hansen, “Taking Ambiguity Seriously: Explaining the Indeterminacy of the European Union Conventional Arms Export Control Regime.”

⁶⁰ Hansen, “Taking Ambiguity Seriously: Explaining the Indeterminacy of the European Union Conventional Arms Export Control Regime,” 195.

regime.⁶¹ The result of European and Western-supplied weapons supporting Iraqi troops against Coalition forces led to significant criticism, especially in the UK. Development of a risk-based regime by European actors was in direct response to this criticism.⁶²

At its inception, all risk actors, including pro-export and pro-control actors, supported risk assessment processes, but for very different reasons. Pro-control actors, mostly made up of NGOs and human rights groups, felt optimistic that their concerns would be meaningfully considered in policy processes, leading to stricter controls. While pro-export actors, made up of the foreign policy and military wings of states, saw risk as an opportunity.⁶³ Beginning in the 90s, pro-export actors have mobilized risk as a “permissive technology”.⁶⁴ The success of global arms trade and pro-export actors continuously securing their desired outcomes reveals a risk assessment process reflective of calculated efforts to subordinate the desires of pro-control actors. As Stavrianakis emphasizes, contextualizing risk as a “failure” in governance strategy is insufficient.⁶⁵ Instead, it is essential to understand risk as a generative regulatory technology that embeds itself within governance structures. Risk assessment processes have not failed, they have been built to privilege pro-export outcomes. It is through this contextualization that power dynamics begin to reveal themselves and we see how “domination is built into the operation of risk”.⁶⁶

The institutionalization of risk assessments into export processes reveals this embedded nature of how risk is built to yield certain results. However, to understand the development and properly characterize how assessment processes have evolved, one must also consider the institutionalization of the corresponding regulation regime. Tracing risk back to the European control regime we see that risk has been “conceived” through a Western lens, with consideration for Western soldiers, societies, and policies.⁶⁷ Within the European regime, concern for Southern populations fell upon the activism of NGOs and human rights advocacy groups. This activism

⁶¹ Yee-Kuang Heng, *War as Risk Management. Strategy and Conflict in an Age of Globalised Risks*. (London: Routledge, 2006), DOI:10.4324/9780203970072; Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

⁶² Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

⁶³ Stavrianakis.

⁶⁴ Stavrianakis, 233.

⁶⁵ Stavrianakis, 234.

⁶⁶ Stavrianakis, 234.

⁶⁷ Stavrianakis, 236.

was instrumental to the agreement of the EU Code of Conduct on Arms Exports and the subsequent UN ATT. These international agreements signal the “nascent institutionalization” of the risk-based arms transfer regulation regime.⁶⁸ NGOs wanted to create a “win-win situation in the changed ideological climate of the post-Cold War era, by harnessing human security concerns to the risk bandwagon”.⁶⁹ Political contextualization of the development of risk assessment practices in the post-Cold War era offers important insight into how risk was prioritized and co-opted by pro-control actors.

From ‘Threat’ to ‘Risk’

In his 2006 book, *War as Risk Management: Strategy and Conflict in an Age of Globalised Risks*, author Yee-Kuang Heng provides an analysis on ideological shifts in the realities and perceptions of war. Heng discusses the ways in which Cold War mentalities give “way to risk oriented thinking”, coupled with the cataclysmic event that was 9/11.⁷⁰ Heng also considers the influence of an increasingly globalizing world and its impact on strategic thinking in terms of war. It is his conceptualization of transformation from threat to risk that is particularly interesting for our analysis. Heng describes a new “policy space” that made way for “rethinking war as proactive risk management”.⁷¹ In a post-Cold War context, security challenges metamorphosed and new challenges, like terrorism and crime, presented themselves to the West. This shift placed less importance on “threat based” approaches towards more “risk-based” scenarios.⁷² Over the course of the Cold War, a transformation was underway. An increasingly globalized world turned security strategies from responsive and defensive to proactive and offensive. An investment into preventative measures necessitated legitimacy. This transformation from “threat to risk” meant a transformation of state’s security planning from specific and reactive containment to preventive policies marked with “ambiguity”.⁷³

⁶⁸ Stavrianakis, 236.

⁶⁹ Stavrianakis, 236.

⁷⁰ Heng, *War as Risk Management. Strategy and Conflict in an Age of Globalised Risks.*, 19.

⁷¹ Heng, 19.

⁷² Heng, 19.

⁷³ Heng, 19.

In his book, Heng quotes social anthropologist Mary Douglas and her work on risk assessment processes, “the language of risk is reserved as a specialized lexical register for political talk about undesirable outcomes”.⁷⁴ This quotation helps us further build our understanding of risk and the ways it has embedded itself into governance systems, and subsequently export controls processes. Risk has been co-opted as a strategy to directly confront undesirable outcomes while evading blame. From Douglas’s understanding, risk can be used to legitimize and discredit policy. What we have seen in Western governance is the use of risk to legitimize arms exports through the recognition and subsequent management of risk.⁷⁵

The uncertainty that the post-Cold War period ushered in, with new and unpredictable threats like terrorism, brought forth through an increasingly globalized world, saw an increase in ambiguity surrounding how to treat threats, revealing a vulnerability in previous responses. This led to an orientation towards preventive and precautionary measures. Threats were more unknown and in need of a new lexicon for interpretation.

Competing Interests: Pro Control vs Proexport Actors...

In the early 1990s, during the establishment of the risk-based arms export regime, all risk actors were united on the potential of risk as preventive and cautionary measures. As previously discussed, pro-export actors, foreign policy, and military wings of states were heavily invested in the continuation of arms exports but wanted protection for themselves and their populations from “blowback”.⁷⁶ Unlike pro-export actors who were more aligned with arms capital interests, pro-control actors, made up of NGOs and some state development actors and aid agencies, hoped to mobilize risk as a restrictive technology and in doing so, protect foreign populations from harm.⁷⁷ Therefore, on its face, arms export licensing “is simultaneously a means of facilitating exports, protecting the reputation of industry, and protecting Western societies from terrorism—and, also, an ostensibly preventive measure that protects Southern societies from

⁷⁴ Heng, 22.

⁷⁵ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020, 236.

⁷⁶ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

⁷⁷ Stavrianakis, 237.

human rights and IHL Violations”.⁷⁸ What we find in practice is a discrepancy between the two objectives with a subordination of the protection of human rights and IHL violations and a prioritization of facilitating arms exports. Pro-control actors, generally state development actors and aid agencies, desire a more restrictive technology, to protect Southern populations, while pro-export actors, foreign policy, and military wings of states invest in the generative nature of a permissive technology.⁷⁹ Conceptualizing risk assessment processes as being embedded with this permissive technology helps to inform the following analysis of the UK case which Stavrianakis presents.

Much like Canada, the UK insists that its risk-based licensing regimes as being one of the best in the world.⁸⁰ In 2013, the UK signed the ATT and what followed was a 10-month ratification period which led to the *‘Export Control (Amendment) Order 2014’* which made for legislation to be “brought under the scope of the treaty”.⁸¹ The Amendment was brought into force in May 2014, and came to control what the UK refers to as its robust risk-based licensing regime.⁸²

SECTION ONE - DEFINITIONS

The Bureaucratic Structuring of ‘Risk’

In her article, Stavrianakis takes us through the UK risk assessment process in order to demonstrate how permissive outcomes are privileged through the bureaucratic structuring of risk. The Department of International Trade (DIT) administers UK risk assessments in regard to arms

⁷⁸ Stavrianakis, 237.

⁷⁹ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

⁸⁰ Jon Lunn, “UK Ratifies the Arms Trade Treaty” (House of Commons Library, April 2014), <https://commonslibrary.parliament.uk/uk-ratifies-the-arms-trade-treaty/#:~:text=The%20current%20government%20signed%20the,What%20has%20UK%20ratification%20involved%3F>.

⁸¹ Lunn.

⁸² Lunn.

transfers, which it does through its Export Control Organization (ECO).⁸³ The ECO takes advice from DIT, Ministry of Defence (MOD), and Foreign & Commonwealth Office (FCO) officials. However, the Department for International Development (DFID) is only involved in cases where weapons are exported to countries with sustainable development concerns and because this does not include the KSA “..the use of weapons in a third country to cause a developmental disaster falls outside of this remit, meaning DFID has been excluded from the decision-making over weapons..”.⁸⁴ What makes the exclusion of the DFID in this decision-making process so notable is the fact that it is the government department in charge of the UK’s humanitarian response in Yemen and therefore should be front and center to the risk assessment process of UK arms exports to the KSA, as British weapons are being used in cross-border operations in Yemen.⁸⁵ Here we are able to see how risk as a permissive technology is built into the bureaucratic structuring of the UK’s risk assessment process.

Looking at this example of how the DFID, who leads the UK’s humanitarian in Yemen, has been “structured out” of assessing risk is a culmination of our analysis thus far and informs the next section of our analysis.⁸⁶ Now, examining the Canadian case, we will explore how the risk assessment process has been structured to ignore or devalue important criteria, leading Canada to failure in meeting its treaty obligations through its national implementation of the ATT in its review of arms exports to KSA.

When discussing the UK’s arms transfers with Paul Henderson, former manager of Matrix Churchill, a machine tools manufacturing company at the heart of the “Arms-to-Iraq” scandal in the UK, feels as if no apology is necessary for trading with Iraq.⁸⁷ Henderson explains that selling “machine tools that will make munitions components is an inescapable fact of industrialization”.⁸⁸ Arms and arms-making technology represent a “diffusion of strength” in a competitive system and this rivalrous environment incentivizes arms trading.⁸⁹ Henderson’s comments are reflective of ideas we’ve discussed from Heng, Beck, Douglas, and Stavrianakis,

⁸³ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

⁸⁴ Stavrianakis, 237–38.

⁸⁵ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

⁸⁶ Anna Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” n.d., 234.

⁸⁷ Miller, “Democracy, Dictators and the Regulation of Arms Exports: The UK and Iraq.”

⁸⁸ Miller, 543.

⁸⁹ Miller, 543.

that international rivalry has economic, military, and political dimensions which all shape the reality of arms transfers in a globalized, post Cold War, post 9/11 world.

Between July and September 2020, the UK signed off on arms exports with 1.4 billion pounds.⁹⁰ This was immediately following a lift on the ban of weapons sales to Saudi Arabia. The UK's moratorium on arms sales to Saudi Arabia began in 2019 after its High Court issued a "landmark" ruling which forced a pause on all arms sales to KSA over concern that the weapons would be implicated in violations of humanitarian law.⁹¹ It is this ruling that Stavrianakis's comments on throughout her analysis. Like the Canadian case, a subsequent government review was conducted into the allegations that led to the moratorium. The findings of the review concluded that although there were "isolated incidents" of possible violations by Saudi forces in Yemen, there was "no clear risk" of future serious breaches.⁹² In July 2020, the UK government announced that based on the findings of its review it would resume arms sales to KSA which is its largest weapons buyer. Within two months following this ruling, 1.4 billion pounds of arms exports was signed off on, indicating the enormous economic incentives of this partnership.⁹³

Canadian Case

In November 2018, the Minister of Foreign Affairs announced that Canada would be conducting a review of all of its export permits to KSA. Along with news of the review, the Minister also announced a moratorium on all new export permits pending the completion of the review. As such, between November 2018 - December 2019, GAC conducted a review of all existing export permits for goods and technology that were controlled under EIPA and were to be sent to KSA.⁹⁴

In April 2020, the Minister of Foreign Affairs, along with the Minister of Finance, released a statement summarizing the conclusion of the review on exports to Saudi Arabia and

⁹⁰ ALJAZEERA, "UK Approved \$1.9 Billion of Arms Sales to Saudi Arabia since Ban Lifted.," 2021, <https://www.aljazeera.com/news/2021/2/9/uk-approved-1-4bn-of-arms-sales-to-saudi-arabia-post-export-ban>.

⁹¹ ALJAZEERA.

⁹² ALJAZEERA; House of Commons Library, "UK Arms Exports to Saudi Arabia: Q & A" (UK Parliament, 2021), <https://commonslibrary.parliament.uk/research-briefings/cbp-8425/>.

⁹³ ALJAZEERA, "UK Approved \$1.9 Billion of Arms Sales to Saudi Arabia since Ban Lifted."

⁹⁴ Global Affairs Canada, "Final Report: Review of Export Permits to Saudi Arabia."

lifting the moratorium on new export permits. The statement cited “a new robust permits review process” that will review permits on a case-by-case basis and invest into the strengthening of international compliance with the ATT.⁹⁵ The statement also ensures that upon an infringement of the permit’s end use assurance permits will be delayed or denied. Therefore, if LAV’s are used for anything other than their stated purpose, future export permits may be delayed or denied.

Below we will be conducting an analysis of the Final Report, which is the document that includes the findings of GACs review on export permits to Saudi Arabia. As mentioned above, the review resulted in the lifting of the moratorium on new export permits to Saudi Arabia.⁹⁶ Our analysis will build off of Stavrianakis’s conceptualizations of risk assessments and the UK examples she provides, while looking at the Final Report and an analysis of this report conducted by Amnesty International and Project Ploughshares. Specifically, in this next section we will contrast the DFID example presented above with how Canada's review of export permits, through EIPA criteria, has been flawed in its interpretation of ATT obligations and that these flaws have led to privilege permissive outcomes.

Canada’s Treaty Obligations Under ATT

Originally enacted in 1947, the Export and Imports Permit Act (EIPA) delegates discretionary powers to the Minister of Foreign Affairs to control the flow of specified goods.⁹⁷ Canada uses an Export Control List to control exports. This list is then used by the Governor in Council (Cabinet) to determine which “goods require ministerial approval through the issuance of a permit”.⁹⁸ Canada underwent a very similar process to the UK in its ratification of the ATT. In April 2017, Canada introduced Bill C-47 to amend EIPA and meet the criteria for ratifying the

⁹⁵ Global Affairs Canada, “Canada Improves Terms of Light Armored Vehicles Contract, Putting in Place a New Robust Permits Review Process,” 2020, <https://www.canada.ca/en/global-affairs/news/2020/04/canada-improves-terms-of-light-armored-vehicles-contract-putting-in-place-a-new-robust-permits-review-process.html>.

⁹⁶ Global Affairs Canada.

⁹⁷ Parliament of Canada, “Bill C-47 (Royal Assent): An Act to Amend the Export and Import Permits Act and the Criminal Code (Amendments Permitting the Accession to the Arms Trade Treaty and Other Amendments).”, December 2018, <https://www.parl.ca/documentviewer/en/42-1/bill/C-47/royal-assent>.

⁹⁸ Amnesty International, “NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia”; Parliament of Canada, “Bill C-47 (Royal Assent): An Act to Amend the Export and Import Permits Act and the Criminal Code (Amendments Permitting the Accession to the Arms Trade Treaty and Other Amendments).”

ATT. This Bill proposed legislative amendments to both Canada’s EIPA and the Criminal Code to regulate brokering and establish important consideration of new legal requirements prior to the exports of Canadian-made arms.⁹⁹ Important amendments to the EIPA included a list of mandatory considerations and a definition of “substantial risk”. Below, these two changes are included.

“Mandatory considerations — export and brokering”

“7.3 (1) In deciding whether to issue a permit under subsection 7(1) or 7.1(1) in respect of arms, ammunition, implements or munitions of war, the Minister shall take into consideration whether the goods or technology specified in the application for the permit

- **(a)** would contribute to peace and security or undermine it; and
- **(b)** could be used to commit or facilitate
 - **(i)** a serious violation of international humanitarian law,
 - **(ii)** a serious violation of international human rights law,
 - **(iii)** an act constituting an offence under international conventions or protocols relating to terrorism to which Canada is a party,
 - **(iv)** an act constituting an offence under international conventions or protocols relating to transnational organized crime to which Canada is a party, or
 - **(v)** serious acts of gender-based violence or serious acts of violence against women and children”.¹⁰⁰

“Substantial risk”

“7.4 The Minister shall not issue a permit under subsection 7(1) or 7.1(1) in respect of arms, ammunition, implements or munitions of war if, after considering available mitigating measures, he or she determines that there is a substantial risk that the export or the brokering of the goods or technology specified in the application for the permit would result in any of the negative consequences referred to in subsection 7.3(1)”.¹⁰¹

⁹⁹ Parliament of Canada, “Bill C-47 (Royal Assent): An Act to Amend the Export and Import Permits Act and the Criminal Code (Amendments Permitting the Accession to the Arms Trade Treaty and Other Amendments).”

¹⁰⁰ Parliament of Canada.

¹⁰¹ Parliament of Canada.

In December 2018, when Bill C-47 received its Royal Assent, the objective was to create “a more rigorous process for assessing whether there is a “substantial risk” for an export to then be involved in international rights or humanitarian law violations”.¹⁰² The new risk assessment process that came out of the amendments to EIPA is continuously labeled by the Government of Canada as “robust”, similar to its UK counterpart.¹⁰³

Before we comment on Canada’s implementation of the ATT in GAC’s Final Report, we will briefly look at the core obligations of State’s under the ATT. State’s core obligations are found in Articles 6,7, and 11.¹⁰⁴ Article 6, “Prohibitions” details the situations in which the State Party must not authorize a transfer of conventional arms.¹⁰⁵ Mostly, this section outlines a State’s responsibility to not authorize transfers if the obligations outlined in the earlier sections are not met. Article 7, “Export and Export Assessment” details mandatory factors to consider before issuing an export permit, consideration of mitigating measures, and describing “overriding risk”.¹⁰⁶ Finally, Article 11, outlines the issues of Diversion, describing the ways in which each State Party must take measures to prevent diversion of conventional arms that they export.¹⁰⁷

There has been significant criticism surrounding the amended EIPA and whether it properly “incorporates the ATT into Canadian law” which results in questioning as to whether Canada is meeting its treaty obligations through its national implementation of the ATT.¹⁰⁸ Amnesty International and Project Ploughshares argue that Bill C-47 fails to “enact three obligations under the ATT”, including Article 6,7, and 11, all of the Article’s where the state’s obligations are found.¹⁰⁹

In s 7.4 of the EIPA, it states, that a Minister shall not issue a permit if “after considering available mitigating measures, he or she determines that there is a substantial risk that the export

¹⁰² Amnesty International, “NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia,” 52; Parliament of Canada, “Bill C-47 (Royal Assent): An Act to Amend the Export and Import Permits Act and the Criminal Code (Amendments Permitting the Accession to the Arms Trade Treaty and Other Amendments).”

¹⁰³ Global Affairs Canada, “2022 Exports of Military Goods.”

¹⁰⁴ Amnesty International, “NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia.”

¹⁰⁵ United Nations, “The Arms Trade Treaty,” 2014, 4, <https://thearmstradetreaty.org/treaty-text.html>.

¹⁰⁶ United Nations, 5.

¹⁰⁷ United Nations, 7.

¹⁰⁸ Amnesty International, “NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia,” 14.

¹⁰⁹ Amnesty International, 14.

or the brokering of the goods or technology specified in the application for the permit would result in any of the negative consequences referred to in subsection 7.3.”¹¹⁰ Additionally, in this section there is a definition for what Canada considers “substantial risk”, which is Canada’s equivalent of “overriding risk” assessment.¹¹¹ This corresponds to Article 7 of the ATT which outlines the importance of mitigating measures and defines “overriding risk”.¹¹²

GAC’s Final Report

Below we will further investigate Canada’s implementation of the ATT into its risk assessment process, through its EIPA criteria. Specifically looking at the Final Report, its use of “substantial risk” and its treatment of “diversion”.¹¹³ This examination will help us uncover how permissive outcomes are being privileged in the risk assessment process through the bureaucratic structuring of the process, structured to leave meaningful interpretation of international treaty obligations in order to maintain Canada’s arms exporting partnership with KSA.

Definition of ‘Substantial Risk’

The Final Report describes Canada’s definition of “substantial risk” as requiring a “direct, present and foreseeable risk that the specific good or technology proposed for export would result in one or more of the negative consequences specified in s 7.3(1) of the EIPA”.¹¹⁴ Additionally, the Final Report establishes a threshold for substantial risks, stating that it “requires an examination of whether ‘it is more likely than not’ that the export WOULD be used for any of the negative consequences found in s 7.3(1) of the EIPA”.¹¹⁵ Contrary to this definition, the ATT’s definition of “overriding risk” is risk that “cannot be substantially reduced or eliminated

¹¹⁰ Amnesty International, 14; Government of Canada, “Export and Import Permits Act,” 1985, <https://laws-lois.justice.gc.ca/eng/acts/e-19/>.

¹¹¹ Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia,” 14.

¹¹² United Nations, “The Arms Trade Treaty,” 5.

¹¹³ Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

¹¹⁴ Global Affairs Canada.

¹¹⁵ Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia,” 20.

using mitigating measures".¹¹⁶ Therefore, the definition used by the ATT is much more restrictive of arms exports than the definition employed by Canada. In Article 7(3) of the ATT, it is required for a state party not to authorize and export if an overriding risk with no mitigating measures is established.¹¹⁷ Furthermore, the definition of "substantial risk" included in the Final Report, does not consider different standards outlined in Article 7(1)(a) and 7(1)(b) of the ATT.¹¹⁸ Article 7(1)(a) focuses on peace and security and uses a "higher standard of 'would'" while Article 7(1)(b) uses the "lower standard of 'could'".¹¹⁹ This distinction is not incorporated into EIPA or the Final Report. Through this lack of distinction and a less restrictive definition, we come to see how the potential for a lower standard of interpretation and permission is built into the very process of risk assessment. Similar to the UK example of bureaucratic structuring failing to incorporate the DFID into the decision-making process, the Canadian case reflects a concrete example of developing risk assessments as a permissive technology, to privilege permission over restriction.

A major gap in Canada's implementation of the ATT through EIPA, specifically in terms of its GACs review and corresponding Final Report, is that the Report's findings do not meaningfully consider the possibility that "Canada-made weapons could be used to facilitate these prohibited acts".¹²⁰ Consideration for this possibility is mandatory under the ATT. In the next section, we will discuss diversion and how Canada's "robust" risk assessment process does not award its sufficient consideration in the Final Report, which creates an ignorance to how Canada is contributing to the perpetuation of the conflict.¹²¹ With these differences in definition, we see something similar, the favouring of a permissive outcome. The consequence of a less restrictive definition is how it disseminates itself throughout the implementation process, culminating in a less restrictive outcome. Definitions that privilege permissive outcomes facilitate arms exporting and as the UN has argued perpetuation of the conflict in Yemen.¹²²

¹¹⁶ Amnesty International, "NO CREDIBLE EVIDENCE": Canada's Flawed Analysis of Arms Exports to Saudi Arabia"; United Nations, "The Arms Trade Treaty," 7.

¹¹⁷ Amnesty International, "NO CREDIBLE EVIDENCE": Canada's Flawed Analysis of Arms Exports to Saudi Arabia."

¹¹⁸ Amnesty International.

¹¹⁹ Amnesty International, 20.

¹²⁰ Amnesty International, 20.

¹²¹ Global Affairs Canada, "Final Report: Review of Export Permits to Saudi Arabia."

¹²² Human Rights Council, "Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, Report of the Group of Eminent and International and Regional Experts on Yemen," Forty-Second Session, August 2019, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/17, a.

Something else that the “*No Credible Evidence*” Report identified in GAC’s Final Report was the lack of transparency surrounding GAC’s “interpretation” of “substantial risk” as a significant section under “Substantial Risk” was redacted.¹²³ Amnesty International and Project Ploughshares stated that this redaction undermined “transparency around the way in which the department has opted to understand the term”.¹²⁴ The “*No Credible Evidence*” Report further argues that redacting this information is not consistent with Canada’s ATT obligations to transparency as outlined in Article 1 of the treaty. In her analysis of the UK’s risk assessment process, Stavrianakis states “conceptually, I argue that the process of risk assessment creates and capitalizes on shifting dynamics of secrecy, partial transparency, and managed openness to enable state actors to navigate demands of an ostensibly preventive risk rationale”.¹²⁵ While there are different reasons for redactions, the censoring of certain information under the “Substantial Risk” section does result in a “partial transparency and managed openness of information”.¹²⁶ Although there can be many reasons for redactions in official government documents, the redaction of how the report interprets risk does compromise overall transparency of the report and therefore transparency of the investigation of IHL violations where Canadian-made weapons might be implicated.

Diversion

The Amnesty International and Project Ploughshares Report “*No Credible Evidence*” draws attention to how GAC’s Final Report treats the issue of diversion, arguing that it does not extend this issue meaningful consideration. Through highlighting commitments outlined in Article 11 of the ATT, “*No Credible Evidence*” demonstrates the way in which Canada is not meeting its ATT treaty obligations.¹²⁷ Article 11 of the ATT “requires that exporters ‘shall seek to prevent the diversion of the transfer of convention armsby assessing the risk of diversion of

¹²³ Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia,” 20.

¹²⁴ Amnesty International, 20.

¹²⁵ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” n.d., 234.

¹²⁶ Stavrianakis, 234.

¹²⁷ Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia.”

the export and considering the establishment of mitigation measures”.¹²⁸ These mitigation measures include “examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures”.¹²⁹ “*No Credible Evidence*” also emphasizes a “problematic and broad interpretation” of end-use, along with no-proactivity to mitigate the diversion of arms exports in Canada’s part.¹³⁰ As a strategy, the report narrowly identifies risks in direct relation to specific weapons. In this way, the Final Report distorts risk, emphasizing one thing and vaguely interpreting another to influence the findings. With a vague interpretation of end-use, its application in the Canadian case is not adequately addressed. The ambiguity surrounding end-use in the context of the report, coupled with a narrowed identification of risk being related directly to weapons themselves, aligns with an overall objective to seek permission rather than restrictions from the processes of risk assessments.

GAC’s Final Report contradicts itself on whether or not Canadian-made weapons are being used in Yemen. Although there is “significant” discussion surrounding this issue during GAC’s report, its findings state “to date there is no credible evidence that Canadian exports of military goods and technology are being used by the KSA-led Coalition in Yemen”.¹³¹ We will focus on this contradiction in the following sections emphasizing how it should inform the question of diversion, as if the KSA Coalition forces are using Canadian-made LAV’s in Yemen operations, the possibility of diversion exists. In fact, the Final Report itself includes intelligence reports that Houthi forces have gained control of Canadian-made LAVs and sniper rifles. To offset this, the GAC describes how sniper-rifles are designed for precision targeting and therefore do not pose a threat to civilians and therefore it is unlikely they would be involved in any IHL violations.¹³² The conflicting reports of the KSA-led coalition using Canadian made weaponry in Yemen and the corresponding reassurance by GAC that if they are, they cannot be used to commit IHL violations completely ignores the fact that Canadian-made weapons present in Yemen presents the need for meaningful consideration of the threat of diversion. By confirming that the presence of Canadian-made weapons in Yemen would necessitate further treatment of

¹²⁸ Amnesty International; United Nations, “The Arms Trade Treaty,” 7.

¹²⁹ United Nations, “The Arms Trade Treaty,” 7.

¹³⁰ Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia,” 21.

¹³¹ Amnesty International, 17; Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

¹³² Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

the diversion issue but through obfuscating the issue as to whether they are in Yemen and claiming that ‘if’ they are it is not a concern for diversion, discussion of risk in the case of diversion is made to not matter.

Above we discussed how GAC strategically distracted from properly addressing diversion in the Final Report. Here, we will evaluate the claim by GAC that when Canadian-made weapons have been commandeered by Houthi forces it was unintentional and therefore not a means for restricting exports. This paragraph will relate this interpretation of diversion to Canada’s adamant claims that they are not contributing to the perpetuation of the conflict. Although the Final Report finds that there is no credible evidence, they do include intelligence reports that indicate that the KSA army is using Canadian-made LAVs in cross-border operations in Yemen and that the Houthis have seemingly captured some of these vehicles.¹³³ Additionally, there are reports that Canadian-made sniper rifles have fallen into the hands of Houthi forces but because this is not the “intentional diversion” of a weapon, there are no grounds to deny export permits.¹³⁴ GAC’s report reflects many things on this issue: a failure of adequate interpretation of the ATT’s definition of diversion, active efforts to deflect the risk that diversion could pose, and a disregard for what diversion could mean for the perpetuation of the war. The Final Report cites the findings from Group of Eminent International and Regional Experts on Yemen, that a number of third-party states were identified as perpetuating the conflict, explicitly naming France, the UK, and the US.¹³⁵ GAC emphasizes that the GEEY Report did not question the legality of Canadian arms transfers because “these have not been items used in operations in respect of which IHL violations have been alleged”.¹³⁶ Canada does not acknowledge that unintentional diversion still contributes to the perpetuation of the conflict.

Engaging with Stavrianakis’s analysis, we are able to gain insight into an important example of how the UK’s risk assessment process is built to exclude contributions from the DFID. Reflecting on the Canadian case, it becomes clear that there are mechanisms similar to the UK that structure important expertise and information out of the process. GAC’s application of EIPA in the Final Report is flawed and through the Report’s definitions of “Substantial Risk” and

¹³³ Global Affairs Canada.

¹³⁴ Global Affairs Canada.

¹³⁵ Human Rights Council, “Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, Report of the Group of Eminent and International and Regional Experts on Yemen.”

¹³⁶ Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia”; Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

its treatment of the “Diversion” criteria, it is evident that structuring of the risk assessment process neglects adequate consideration for obligations outlined in the ATT. Therefore, a national implementation that fails to effectively implement international legal obligations, both fails to meet the standards of the ATT, and in turn supports the generative nature of a permission technology that has integrated itself throughout Canada’s process of risk assessment on armed exports.

SECTION TWO: CONSTRUCTED NARRATIVES

Doubt, Ambiguity, and the Production of Non-knowledge

In her article, Stavrianakis discusses an important strategy employed by governments in the management of risk, “the mobilization of doubt and ambiguity by the UK state”.¹³⁷ Stavrianakis describes this mobilization as happening through the generation of non-knowledge, which she describes as “the strategy of making certain knowledge not count” resulting in uncertainty that acts as a “means not to act preventively on risk”.¹³⁸ Complementary to Stavrianakis’s conceptualization of risk as a permissive technology, she also explains how the production of non-knowledge is a generative practice that embeds itself into risk assessment practices through a reliance on the relations of dominant forces like the global arms trade regime and aligned state actors.¹³⁹ Non-knowledge is an important strategy in maintaining a permissive risk assessment process. In this section we will look at the way an active investment into producing uncertainty has allowed both the UK and Canadian government to avoid acting preventively on risk, through processes that result in the distortion of risk.

By mobilizing doubt and ambiguity, states distort risk, making it unclear. This is done in many ways, from enacting partial transparency, to distraction, to deploying strategies that seek to diminish, transfer, or evade responsibility. Stavrianakis introduced an interesting trope of accidental or unintentional harm, where emphasis is placed on the intent behind a violation and if the intention was accidental then future risk of recurrence is ‘unclear’.¹⁴⁰ Although in relation to the Yemen conflict, we have seen state’s channel significant effort into the generation of non-knowledge, it has not been enough to mitigate the controversy, as much has been brought to light by NGOs and human rights advocacy groups.¹⁴¹ For the purposes of our analysis, we will use the term ‘accident narrative’ to describe the enactment of the trope that Stavrianakis

¹³⁷ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020, 241.

¹³⁸ Stavrianakis, 240.

¹³⁹ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

¹⁴⁰ Stavrianakis, 243.

¹⁴¹ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

discusses. We will examine how the Canadian government has used this narrative to produce non-knowledge and uncertainty in order to distort risk.

Mobilization of the ‘Accident Narrative’

While analyzing mobilization of the accident narrative, we recall the issue of diversion. “*No Credible Evidence*” found that the issue of the “Diversion” criteria in the Final Report was neglected, leading Canada to an inadequate interpretation of its ATT treaty obligations.¹⁴² On the issue of Diversion GAC’s final report states:

“There have also been reports of “battlefield losses” of Canadian-made sniper rifles to Houthi forces, but this is not considered a ground for denying an export permit, as such losses do not represent an intentional diversion of an item. Sniper rifles are intended to support precision-targeting, and as such are considerably less vulnerable to being used in a way that would result in unintentional civilian casualties”.¹⁴³

The language employed here, including “do not represent an intentional diversion” and “unintentional” contributes to a mobilization of the accident narrative. In the Final Report, GAC handles the issue of diversion by framing it as something unintentional, accidental, implicitly determining that diversion does not matter unless it is intentional and if diversion is not intentional then it cannot be reasonably anticipated.¹⁴⁴ Here we see an important transformation of what reasonable anticipation is and a subsequent distortion of risk.

The motivation behind diversion is receiving a high level of attention, whereas its impacts are neglected. Whether diversion is intentional or not, intelligence reports suggest numerous cases where Canadian-made weapons have landed in the hands of Houthi forces.¹⁴⁵ The very act of diversion must be given meaningful consideration in the risk assessment process instead of attributing it to battlefield losses and moving on. This enactment of an ‘accident narrative’ to delegitimize the importance of diversion and make the risk it poses as unclear,

¹⁴² Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia.”

¹⁴³ Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia,” 17; Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia.”

¹⁴⁴ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

¹⁴⁵ Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

reminds us of Mary Douglas's analysis on risk. Douglas argues that risk is used as a strategy to confront undesirable outcomes head on, and in doing so, either legitimize or discredit policy as required.¹⁴⁶ The distortion of risk in order to reframe the issue of diversion as something that cannot be anticipated is a textbook example of meeting "undesirable outcomes head on" in order to legitimize the idea that risk cannot be anticipated if it is not intentional.¹⁴⁷

Stavrianakis's idea of "managed openness" is also worth mentioning here.¹⁴⁸ In parallel with non-knowledge and partial transparency strategies, managing, and manipulating information like the issue of diversion, all indicates support for a permissive technology. The inclusion of intelligence reports in the Final Report is calculated. By addressing reporting of an unintentional diversion of arms to Houthi troops, the Final Report constructs a narrative, dissembling blame through categorizing the outcome as accidental. Through this strategy, GAC is trying to get ahead of criticism and determine with some level of finality that there is no requirement to be restrictive of arms exports in terms of diversion.

It is noteworthy that the findings of the Final Report contradict themselves over the presence of Canadian weaponry in Yemen. Despite all outside claims and evidence, coupled with the intelligence reports included in the Final Report, it is still determined that there is "no credible evidence" confirming the presence of Canadian weaponry in Yemen.¹⁴⁹ In the Final Report, GAC reveals certain information, managing it to fit their narrative and the result is a distortion of the issue of diversion and in turn a distortion of risk itself. GAC demonstrates that unless intention is established, "future risk of violations" remains unclear.¹⁵⁰ By establishing uncertainty through a contradiction in its findings and not fully committing to the evidence that there are Canadian weapons being used by the KSA army, we are unable to award risk the consideration it deserves in this context. If GAC committed outright to the presence of the KSA using Canadian-made weaponry in Yemen, risk may have not been able to be distorted in this way. Through promoting this uncertainty, the Final Report is able to enact non-knowledge and maintain the accident narrative.

¹⁴⁶ Heng, *War as Risk Management. Strategy and Conflict in an Age of Globalised Risks*.

¹⁴⁷ Heng.

¹⁴⁸ Stavrianakis, "Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation," September 2020.

¹⁴⁹ Global Affairs Canada, "Final Report: Review of Export Permits to Saudi Arabia."

¹⁵⁰ Global Affairs Canada, 7.

Training

Stavrianakis identifies the use of training as an important strategy to distort risk and make it unclear. In her article, Stavrianakis uses an example of the UK facing an undesirable outcome head on and discrediting the risk it poses.¹⁵¹ In 2017, the KSA admitted responsibility for a bombing of a Médecins Sans Frontières hospital in Haidan, Yemen. The UK government ultimately determined that the bombing did not “constitute a clear risk of misuse” because the KSA admitted responsibility and took steps towards procedures designed to prevent a similar recurrence.¹⁵² The willingness to admit mistakes and promises to make amends seems to be sufficient for governments to determine that there is no clear risk of future harm. The training that the UK provides to the KSA was cited as an important consideration in this outcome. Therefore, the ‘mistakes’ or ‘accidents’ made by the KSA that have been deemed credible but which the KSA has taken responsibility for do not pose a reason to refuse transfers. What Stavrianakis shows us with this example is that importers of their weaponry will not face repercussions of having their exporting licenses revoked if they promise to take preventative measures for it not to happen again. This reveals a serious lack of accountability that enables risk as a permissive technology.

In the Canadian case we also see the use of training to distort risk. The Final Report outlines “Mitigating Measures” as set out in the EIPA. These measures are in place for cases when it is first determined, based on the Mandatory Assessment Criteria, that the proposed export does pose a “substantial risk”.¹⁵³ In these cases, it is left to the Minister to consider certain mitigating measures specific to the proposed export. The measures provided do not constitute an exhaustive list and are not mandatory; other measures not listed may also be considered based on the specific circumstances.¹⁵⁴ The mitigating measure of interest for our analysis is “training of

¹⁵¹ Heng, *War as Risk Management. Strategy and Conflict in an Age of Globalised Risks*.

¹⁵² Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020, 243.

¹⁵³ Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

¹⁵⁴ Global Affairs Canada.

relevant actors in the application of IHL or IHRL”.¹⁵⁵ Here we see how Canada has built the distortion of risk into its criteria for assessing risk. This mandatory criteria includes

“

- would contribute to peace and security or undermine it; and
- could be used to commit or facilitate
 - a serious violation of international humanitarian law,
 - a serious violation of international human rights law,
 - an act constituting an offence under international conventions or protocols relating to terrorism to which Canada is a party,
 - an act constituting an offence under international conventions or protocols relating to transnational organized crime to which Canada is a party, or
 - serious acts of gender-based violence or serious acts of violence against women and children”.¹⁵⁶

Therefore, if any of the mandatory assessment criteria is used to determine if there is a substantial risk, training can be used as a mitigating measure to offset the risk pre-determined at the mandatory assessment stage. Here we see exactly how preventative measures like training are used to distort the reality of risk. Under section 49 of the Final Report, GAC discusses training under “Accountability Mechanisms and Efforts to Reduce Civilian Harm in Yemen”.¹⁵⁷ In this discussion, there is mention of the lack of accountability pertaining to other mechanisms, like JIHAT. What we do not see is any discussion on the actual accountability of training.

In this section, we reviewed the enactment of the accident narrative which distorts the risk over the issue of diversion by making diversion not matter if it is unintentional. A way that Canada deals with situations where “substantial risk” is determined using the Mandatory Assessment Criteria, like diversion, is through mitigating measures. We analyzed “Training” as a mitigating measure. If there were accountability measures in place to determine the efficacy of mitigating measures like training, this strategy might have more legitimacy. Through this

¹⁵⁵ Global Affairs Canada, 7.

¹⁵⁶ Parliament of Canada, “Bill C-47 (Royal Assent): An Act to Amend the Export and Import Permits Act and the Criminal Code (Amendments Permitting the Accession to the Arms Trade Treaty and Other Amendments).”

¹⁵⁷ Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia,” 15.

analysis we see how a focus on intention takes attention away from the actual outcome of diversion and how when ‘substantial risk’ is determined, Canada relies on measures that it does not hold to any accountability standards. Therefore, risk is made unclear and distorted for the sake of maintaining permissive outcomes of the risk assessment process.

Our justification for including the Canadian “Mitigating Measure” of “training” in our analysis of the ‘accident narrative’ is based on Stavrianakis' analysis of the UK case and how training is used to obscure the perception of violations of IHL and subsequently make risk ‘not to matter’ through a construction of ‘prevention’. When mistakes or accidents are confirmed to be made by the KSA, British and Canadian governments have made significant efforts to demonstrate that the mistake was unintentional and because of this unlikely to happen again. Stavriankis cites training as an important consideration in this outcome. Therefore, if there are clear indications that KSA puts in place preventative measures then risk is perceived as adequately managed.¹⁵⁸

In the Canadian case the ‘accident narrative’ indicates how EIPA is structured to downplay the severity of IHL violations by the KSA by not adequately accounting for the history and persisting reality of diversion in the conflict. Through a cross-case comparison with a UK example we are able to see how the use of mitigating measures like training is inherently linked to ‘accident narratives’. When ‘accident measures’ are applied, it is preventative, or mitigating, measures like training that directly correspond. If a IHL violation was an accident then states want to perpetuate the belief that it will not happen again if there are preventative measures in place.¹⁵⁹ Unfortunately, in Canada we see no accountability mechanism in place for these mitigation efforts. Additionally, at its core an ‘accident narrative’ is employed to evade responsibility and a lack of effective and accountable corresponding preventative measures enable this evasion. These goals are reflective of a process where permission is sought not earned.

The Inheritance Narrative: Reputational Management of Trudeau’s Liberal government

¹⁵⁸ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020.

¹⁵⁹ Stavrianakis.

Throughout this analysis we have assessed different strategies employed in the protection of a permissive technology that has embedded itself into Canada's arms export risk assessment process.¹⁶⁰ The strategies we have assessed thus far have been structurally built into the risk assessment process. For example, how definitions of "Substantial Risk" and "Diversion" in the EIPA do not adequately reflect the ATT and how in the Final Report uncertainty was used to make future risk "unclear", privileging a permissive outcome.¹⁶¹ Even the 'accident narrative' is built into the "Substantial Risk" and "Mitigating Measures" mechanisms in the risk assessment process. In this section we will apply Stavrianakis' inclusion of reputational management practices for the purposes of our own analysis. Stavrianakis discusses "managed openness" and "partial transparency" in parallel with reputational management practices.¹⁶² Understanding how information is deployed directly and indirectly to promote the legitimacy of the risk assessment process, will bolster our understanding of strategies employed by the Government of Canada. In our analysis we will demonstrate how the control and manipulation of information constitutes reputation protection by the Government of Canada through different constructed narratives.

To maintain a risk assessment process that yields permissive results, the management and manipulation of information and common understandings of risk is essential. Pro-control actors call for transparency throughout decision making processes concerning arms exports, thus it is important to understand the structural conditions that produce a manipulated or "partial transparency".¹⁶³ We can seek this understanding by situating transparency as a "contingent, contextual, and political choice" instead of simply a "neutral form of information provision".¹⁶⁴ In order to apprehend information surrounding the deal, whether that be information produced in the risk assessment process or information employed to justify this process, we must investigate the ways that "risk is managed and weapons transfers are justified, legitimized, and

¹⁶⁰ Stavrianakis.

¹⁶¹ Global Affairs Canada, "Final Report: Review of Export Permits to Saudi Arabia."

¹⁶² Stavrianakis, "Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation," September 2020, 239.

¹⁶³ Stavrianakis, 234.

¹⁶⁴ Clare Birchall, "Introduction to 'Secrecy and Transparency': The Politics of Opacity and Openness," *Theory, Culture & Society* 28, no. 7-8 (2011): 7-25, <https://doi.org/10.1177/0263276411427744>; Stavrianakis, "Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation," September 2020, 239.

challenged”.¹⁶⁵ Therefore we must probe the new dynamics of secrecy that have emerged amidst an increasingly ‘transparent’ time.

In April 2016, after six months in office, Trudeau was forced to publicly reaffirm his government’s support for the LAV deal credited to the reveal of CBC obtained documents that “shed light on the strategy the federal government is using to justify the sale of light armored vehicles to Saudi Arabia”.¹⁶⁶ These documents, being internal GAC memo’s, indicated a misrepresentation of government support for the deal. The release of these documents demonstrate how the Liberal government misrepresented and underplayed their role in “green-lighting exports of these weaponized armored vehicles to a country notorious for human-rights abuses”.¹⁶⁷ When the deal was struck in 2014 between the KSA and Stephen Harper’s Conservative government, despite criticism, it was framed as an excellent opportunity to create thousands of jobs.¹⁶⁸ Once the Liberals came into power, their framing became one of ‘inheritance’. Trudeau referred to his government support of the deal as a “matter of principle”.¹⁶⁹ He strengthened this defense by stating that “the principle at play here is that Canada’s word needs to mean something in the international community”.¹⁷⁰ This language seeks to imply a reluctance within the Liberal government to continue with the deal, but that they will remain in favor to protect Canada’s global reputation. The revelation that these documents exposed, that Foreign Affairs Minister Stéphane Dion had, in an uncommon move signed off on export permits, challenges the reluctance perpetuated by the Liberal government.¹⁷¹

A CBC article, entitled “*On Saudi arms deal, the new boss in Ottawa is just like the old boss*”, written in reaction to the release of the GAC document describes the document as “a gem of hair-splitting, parsing, willful blindness and justification for selling billions worth of fighting

¹⁶⁵ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020, 239.

¹⁶⁶ Peter Zimonjic and Catherine Cullen, “Stéphane Dion Approves Export Permits for \$11B in LAVs to Be Sent to Saudi Arabia,” *CBC*, 2016, <https://www.cbc.ca/news/politics/saudi-arms-deal-documents-1.3533082>.

¹⁶⁷ S Chase, “The Big Deal,” *The Globe and Mail*, 2016, <https://www.theglobeandmail.com/news/politics/the-saudi-arms-deal-why-its-a-bigdeal/article28568660/>.

¹⁶⁸ Zimonjic and Cullen, “Stéphane Dion Approves Export Permits for \$11B in LAVs to Be Sent to Saudi Arabia.”

¹⁶⁹ Susana Mas, “As Liberals Defend Saudi Arms Deal, U.S. Report Highlights Human Rights Concerns,” *CBC*, 2016, <https://www.cbc.ca/news/politics/liberals-saudi-arms-deal-amnesty-report-1.3535760>.

¹⁷⁰ Mas.

¹⁷¹ Mas; Zimonjic and Cullen, “Stéphane Dion Approves Export Permits for \$11B in LAVs to Be Sent to Saudi Arabia.”

vehicles and weapons to Saudi Arabia, one of the most oppressive regimes on Earth”.¹⁷² This article echoed popular reaction to these documents and what they exposed, directly dismantling the narrative of inheritance constructed and disseminated by the Liberal government. Until these documents were leaked in April 2016, “the Liberal message has been that while it wouldn't have negotiated the deal, it was stuck with it, and it is a legal contract and therefore must be honored”.¹⁷³ This message was conveyed directly from Trudeau when he spoke from London, Ont, April 2016, asserting that Canada maintaining its word was of the utmost importance.¹⁷⁴ This propels the inheritance narrative forward, demonstrating active effort to frame the public's perception of the Liberal party as being reluctant to the deal. When Trudeau's Liberal government came into power and claimed to establish a more principled foreign policy that considers human rights and equality in a more meaningful way, its commitment, albeit reluctant, to the export deal was questionable. But when the GAC documents were revealed, the promise of a more principled foreign policy quickly faded away.¹⁷⁵ Despite the Liberal government's commitment to this narrative, evidence to suggest a proactive versus reluctant role in the deal was exposed. This narrative allowed for the Liberal government to recognize criticism surrounding the deal while simultaneously releasing itself of responsibility in order to maintain the reputation it was building for itself as being a government centered on equality.¹⁷⁶

Partial Transparency and ‘Cherry-Picking’ - In Support of the ‘Inheritance Narrative’

The inception of arms export risk assessment processes in Western countries saw a coinciding increase and reshaping of transparency. Governments now report arms export licensing decisions and increasingly include more detail in this reporting. Based on these developments, we see that

¹⁷² Neil Macdonald, “On Saudi Arms Deal, the New Boss in Ottawa Is Just like the Old Boss,” *CBC*, 2016, <https://www.cbc.ca/news/politics/canada-saudi-arabia-arms-lav-contract-liberals-conservatives-neil-macdonald-1.3534795>.

¹⁷³ Macdonald.

¹⁷⁴ Justin Zadorsky, “Prime Minister Trudeau Defends LAV Contract during London Stop,” *CTV*, 2016, <https://london.ctvnews.ca/prime-minister-trudeau-defends-lav-contract-during-london-stop-1.2858562>.

¹⁷⁵ Srdjan Vucetic, “A Nation of Feminist Arms Dealers? Canada and Military Exports.,” *International Journal* 72, no. 4 (2017): 503–19.

¹⁷⁶ Vucetic.

“secrecy is thus no longer the deadening blanket it was in the past”.¹⁷⁷ Canada’s LAV deal with the KSA is not secret. It may be “shrouded in secrecy” but Canada’s involvement in exporting arms to the KSA is explicit.¹⁷⁸

Above, we discussed a narrative deployed by the Liberal government, since 2015 when it came into power, to evade responsibility and criticism for its support of the LAV deal by shifting blame to its predecessor. Here we will build off of this narrative, focusing back on the Final Report we will identify strategies employed to obscure Canada’s involvement in the conflict in Yemen by shifting blame to other countries and ‘cherry-picking’ from sources. In 2020, once the Final Report was published and moratorium on new exports lifted, the Liberal government struck a new deal with KSA to pave the way to resume exports. Once again we see an enactment of the inheritance narrative. In his justification of this new contract, Foreign Affairs minister Francois-Philippe Champagne was quoted “What we are doing today is improving a situation we have inherited”.¹⁷⁹ This statement demonstrates the Liberal government’s unwavering commitment to this narrative as it is continuously used to shift blame. Ignorant to evidence of the its own integral role in the commencement of the deal and even after placing a moratorium on new export permits, conducting a review into all permits, and coming to the conclusion that there is no “substantial risk” of exports to KSA being used in violation of human rights and humanitarian law, the Liberal government still returns to its original strategy of shifting blame back onto its predecessors.¹⁸⁰

Reviewing strategies present in GAC’s Final Report which obscure UN findings and are implicitly suggestive of other’s culpability and not its own, we see a total evasion of responsibility consistent with the inheritance narrative. In fact, we are able to see how strategies like partial transparency directly support this narrative. Until GAC documents detailing Dion’s involvement in personally signing off on export permits was revealed, the inheritance narrative had, more successfully than it does now, reflected a begrudging government. What the release of these documents revealed was a manipulation by the Liberal government. Their release shed light “on the strategy the federal government is using to justify the sale of light armoured

¹⁷⁷ Stavrianakis, “Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation,” September 2020, 239.

¹⁷⁸ S Chase, “Canada’s Arms Deal with Saudi Arabia Shrouded in Secrecy.,” *The Globe and Mail*, 2015, <https://www.theglobeandmail.com/news/politics/canadas-arms-deal-with-saudi-arabia-shrouded-in-secrecy/article22547765/>.

¹⁷⁹ Brewster, “Canada Strikes New Deal with Saudi Arabia, Clearing Way for Armoured Vehicle Sales.”

¹⁸⁰ Global Affairs Canada, “Final Report: Review of Export Permits to Saudi Arabia.”

vehicles to Saudi Arabia”.¹⁸¹ This next section will detail another manipulation, employed by GAC to justify the findings of the Final Report and therefore facilitate the reinstatement of the LAV deal.

A similar use of ‘half truths’, or partial transparency is applied in the Final Report. Below we will detail how the Government of Canada once again shifted blame, not addressing the ‘full truth’. As “*No Credible Evidence*” concludes, “GAC selectively” relied on findings from the GEEY Report “using its explicit questioning of the legality of arms transfers to KSA by France, the United Kingdom, and the United States to implicitly suggest that there was no issue with Canadian arms transfers”.¹⁸² The “*No Credible Evidence*” Report includes findings from the GEEY report that GAC’s Final Report ignores. These findings include an emphasis on third states for perpetuating conflicts through arm exports, specifically that “the continued flow of arms to KSA fuels the conflict in Yemen”.¹⁸³ In a 2021 GEEY Report, Canada is identified, along with France, Iran, the United Kingdom, and the US, as perpetuating the conflict through their arms sales to KSA.¹⁸⁴ “*No Credible Evidence*” argues that GAC determined that inclusion of these other findings from the GEEY report did not have to be included in their assessment because Canadian weapons have not been proven to have been used in incidents in which IHL violations have been alleged.¹⁸⁵ This determination ignores an important part of the GEEY report, that focuses on third party state’s implicated in the perpetuation of the conflict by way of arms exporting. Therefore, we can understand GAC’s incentive to draw selectively on this report. In doing so, Canada was able to justify its arms exports, dismiss findings that complicate the legality of these exports, and shift blame to other countries.¹⁸⁶

By questioning the legality of arms transfers from other countries, the Final Report shifts blame by enacting partial transparency through selectively including findings from the GEEY

¹⁸¹ Zimonjic and Cullen, “Stéphane Dion Approves Export Permits for \$11B in LAVs to Be Sent to Saudi Arabia.”

¹⁸² Human Rights Council, “Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, Report of the Group of Eminent and International and Regional Experts on Yemen”; Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia,” 23.

¹⁸³ Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia,” 23.

¹⁸⁴ Human Rights Council, “Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, Report of the Group of Eminent and International and Regional Experts on Yemen.”

¹⁸⁵ Human Rights Council.

¹⁸⁶ Amnesty International, “‘NO CREDIBLE EVIDENCE’: Canada’s Flawed Analysis of Arms Exports to Saudi Arabia.”

Report. GAC manipulates the findings of this UN Report, obscuring Canada's involvement in the Yemen conflict, which in turn supports the findings of Canada's risk assessment process and the Final Report. It is important to analyze strategies utilized by the Government of Canada and GAC to maintain the permissive technology that has rooted itself in the risk assessment process. The strategy of shifting blame away from Canada's involvement seeks to distract and distort risk through an exclusion of important findings from the GEEY report which meant that they were not considered in the investigation and findings of the Final Report.

The inheritance narrative of the Liberal government, to shift blame onto its predecessor, coupled with GAC's selectivity of UN reporting all indicates pro-export actors deploying incentivized support of the LAV trade deal and inherently the risk assessment process that generates export permits supporting the continuance of the deal and others. Shifting blame is a tactic that manipulates information, leading to a production of non-knowledge and distortion of risk, and in this case, is having real consequences on Canada's arms exports to KSA. Therefore, shifting blame to other countries by way of emphasizing UN identification of their role in perpetuating the conflict but omitting other findings of the GEEY report that clearly identify Canada as contributing to the perpetuation is another way that the strategy of distortion, by way of shifting blame, enables a narrative like the inheritance one, that works continuously to evade responsibility.

Protecting Canada's reputation is essential in maintaining a permissive risk assessment process. Maintaining Canada's reputation as an international peacekeeper allows Canada to stave off significant criticism, legal damage, and, in turn, any compromise to the country's arms exports.¹⁸⁷ Reputation management is a very important pro-export strategy.¹⁸⁸ In order to maintain a risk assessment process generative of permission, reputational and legal damage must be kept to a minimum. The risk assessment process itself helps to ward off reputational and legal damage because it is built in a way to transform risk into something that is uncertain and clears the path for arms exports. The very act of processing a risk assessment directly challenges criticism from NGOs and outside sources questioning the legality and morality of arms exports. Any narratives that help bolster the outcomes of the process, through legitimizing the actions of

¹⁸⁷ Vucetic, "A Nation of Feminist Arms Dealers? Canada and Military Exports."

¹⁸⁸ Stavrianakis, "Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation," September 2020.

governments, are important strategies deployed in service of permissive technology that has entrenched itself into the bureaucratic functioning of a government.

Conclusion

By applying concepts developed by Stavrianakis we are equipped with a generalized framework for a substantive analysis of Canada's national risk assessment process. In this paper's evaluation of GAC's 2018-2019 review of arms exports to KSA, through a critical analysis of GAC's Final Report and "*No Credible Evidence*" and a focus on two key dimensions, Definitions and Constructed narratives, we ascertain how this process prioritizes permission over restriction. In the findings of our analysis, *it becomes evident that a permissive technology has embedded itself within Canada's "robust" risk assessment process, facilitating the LAV deal and producing outcomes contrary to UN findings.*

To gain meaningful insight into the manner that the global arms trade remains at odds with human rights groups and more specifically, UN findings on the issue of human rights, an evaluation of regulation regimes and their functioning is essential. To acquire this understanding we must scrutinize closely national implementations of international treaties like the ATT, and identify and characterize the disparity.

The paper was broken into two sections, Definitions and Constructed Narratives, to highlight two important dimensions of the risk assessment process and the strategies and practices that accompany them. The Definitions section opened with a discussion of bureaucratic structuring, which is central to our analysis as we are looking at the national bureaucratic practices involved in the risk assessment process. Examining the UK example, we are able to identify how DFID's responsibilities are relevant to the UK's arms exports to KSA but that they were structured out of decision making within the risk assessment process. This offers a foundation for us to evaluate the Canadian case where we can analyze how a proper implementation of the ATT and consideration for risk has been structured out of the Canada risk assessment process. The Final Report includes a less restrictive definition for risk. This is coupled with a lack of transparency in the section that defines "substantial risk", as there is a

partial redaction in definition.¹⁸⁹ Combined this does not reflect an adequate implementation of the ATT's definition of risk. Additionally, the Final Report's treatment of the "Diversion" criteria is also a flawed interpretation of the ATT's respective criteria. Drawing from the analysis in "*No Credible Evidence*", awareness is raised to how the Final Report simultaneously perpetuates ambiguity over "end-use" and narrowly defines risk, which leads to a manipulation of information through exclusion and a selective inclusion. Analysis of how the Canadian risk assessment process leaves out consideration for definitions and certain criteria that is fundamental to the ATT reveals how the process is structured to omit certain knowledge that could lead to a more restrictive outcome. This non-knowledge¹⁹⁰ is disseminated throughout the entire process.

As Stavriankis argues, doubt and ambiguity generate non-knowledge leading to an uncertainty that enables states to not be required to act on risk.¹⁹¹ In the second section of the paper, which looks at constructed narratives, there is a particular emphasis on this investment into producing non-knowledge to prevent action which results in the distortion of risk. Building off of the issue of diversion, this section observes how GAC justified intelligence reporting of battlefield losses of Canadian-made rifles and LAVs to Houthis in Yemen as not an intentional diversion of weapons therefore not warranting preventive action. GAC constructed a narrative that because these actions were not intentional they do not have bearing on determining risk; there is an important transformation of reasonable anticipation and an accompanying distortion of risk that emerges. Next, an accompanying analysis on mitigating measures helps to strengthen the enactment of this narrative by demonstrating how "Mitigating Measures" in the Final Report are mobilized to handle risk. Solutions like the training coordinate with narratives like this to offset risk and ensure a permissive outcome. Stavriankis discusses this combined effort and highlights how there is often a lack of accountability mechanisms to accompany these measures, which is something we saw in the Canadian case.¹⁹²

Next, this paper introduces the inheritance narrative which focuses on partial transparency, managed openness, and reputational management strategies. Looking at a narrative adopted by the Liberal government in order to maintain its reputation and the LAV deal we

¹⁸⁹ Stavriankis, 234.

¹⁹⁰ Stavriankis, "Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation," September 2020.

¹⁹¹ Stavriankis.

¹⁹² Stavriankis.

explore both indirect and direct practices that influence the perception of the deal and the outcome of GAC's review. Through a lack of transparency the Liberal government constructed a narrative that pushed blame onto its predecessor and spread the notion that they needed to uphold the deal to maintain Canada's reputation on an international scale. However, when certain documents emerged that indicated a much deeper support for the LAV deal from the Liberal government, controversy was widespread and the narrative was weakened.¹⁹³ However, the Liberal government has continued to invest in this narrative. In 2020, when the moratorium on new export permits to KSA was lifted and the LAV deal reaffirmed, the Foreign Affairs Minister was quoted referring to the deal as an inherited situation.¹⁹⁴ After introducing the 'inheritance narrative' and its inherent evasion of responsibility, we shift our focus to the mobilization of this narrative in the Final Report. Through the selective inclusion and exclusion of certain information the findings of the Final Report are manipulated in pursuit of permissive outcomes in the risk assessment process. In GAC's Final Report the findings of the UN GEEY Report are included selectively to shift responsibility onto other countries while simultaneously implying that Canada was not included in the findings of the Final Report. However, Canada was in fact named as a third party perpetrator of the conflict in Yemen in that very same Report.¹⁹⁵ The 'inheritance narrative' refers to a general lack of responsibility that permeates through direct and indirect practices that support permissive outcomes of arms export risk assessments. Through the construction of both narratives, GAC and the Government of Canada enact a systematic non-knowledge that employs strategies, like partial transparency and managed openness, which immerse themselves into a risk assessment process developed in their favour. This process then becomes mutually reinforcing.

Through everything determined in this analysis, we are able to ascertain how risk as a permissive technology disseminates throughout Canada's risk assessment process. The consequences of this technology include a fundamental neglect of international norms and legally binding regulations set out in the ATT, which Canada has ratified. The ATT is the only common legislation managing global arms trade. It seeks to protect civilians and prevent IHL violations through limiting state's conduct in conflict and setting humane principles of

¹⁹³ Zimonjic and Cullen, "Stéphane Dion Approves Export Permits for \$11B in LAVs to Be Sent to Saudi Arabia."

¹⁹⁴ Brewster, "Canada Strikes New Deal with Saudi Arabia, Clearing Way for Armoured Vehicle Sales."

¹⁹⁵ Human Rights Council, "Situation of Human Rights in Yemen, Including Violations and Abuses since September 2014, Report of the Group of Eminent and International and Regional Experts on Yemen."

distinction.¹⁹⁶ For Canada's risk assessment process of export permits to not adequately interpret the ATT is a failure of its treaty obligations.

In "*Requiem for Risk: Non-Knowledge and Domination in the Governance of Weapons Circulation*" Stavrianakis develops concepts that provide the tools to interrogate different risk assessment regimes. The goal of our analysis has been to advance her conceptualizations into a generally applicable framework that can be deployed to the Canadian case and yield a meaningful examination of Canada's risk assessment processes. In this analysis we have addressed the discrepancy between the outcomes of Canadian risk assessments and UN reporting on Canada's arm exports to KSA. What we gain from this analysis is an understanding of how these practices create a disparity between findings and how Canada's risk assessment process of arms exports can be addressed to include meaningful consideration of international norms on human rights.

¹⁹⁶ Garcia, "Global Norms on Arms: The Significance of the Arms Trade Treaty for Global Security in World Politics."

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