



"NO CREDIBLE EVIDENCE"

CANADA'S FLAWED ANALYSIS OF ARMS EXPORTS TO SAUDI ARABIA

AUGUST 2021



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

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Cover image: Several variants of Saudi LAVs on display during the Northern Thunder military exercise in Saudi Arabia, 2016.

Credit: Saudi Press Agency

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I. INTRODUCTION

The Arms Trade Treaty (ATT), a multilateral international agreement aiming to regulate international trade in conventional arms, entered into force on 24 December 2014. The treaty is a direct response to the absence of regulations and lax controls on the global arms trade, which has contributed to the widespread availability and misuse of weapons.¹ The increased accessibility of weapons has heightened the risks of arms being used to commit or facilitate serious violations of international humanitarian law (IHL) and international human rights law (IHRL) by state security forces, non-state armed groups and organized criminal groups.²

On 13 April 2017, prior to becoming a State Party, Canada introduced Bill C-47 to address the shortcomings of its own export assessment process under the Export and Import Permits Act (EIPA). Mandatory criteria were introduced into Canadian law to provide structured guidance to the Foreign Affairs Minister's decision-making process on the authorization of exports. The goal was to ensure that these mandatory criteria be considered prior to the issuance of new permits, and to regulate the practice of brokering, arranging and negotiating export and import transactions of controlled goods outside of Canada.³

Soon after Canada's enhanced arms export process was introduced, one major importer of Canadian-made weapons became the subject of widespread scrutiny and condemnation: the Kingdom of Saudi Arabia (KSA). In 2018, Jamal Khashoggi was assassinated in the Saudi consulate in Istanbul, Turkey.⁴ Khashoggi, a prominent journalist, was murdered by Saudi agents after criticizing KSA's Crown Prince, Mohammed bin Salman.⁵ Khashoggi's murder catalyzed public outcry denouncing KSA's poor human rights record. In response to the murder, Canada suspended the approval of new arms export permits for KSA in November 2018.⁶ However, this suspension did not affect permits already approved.

On 17 September 2019, Canada acceded to the ATT.⁷ Contrary to the government's claim that "[a]s per Canada's practice for all international treaties, Canada will be fully compliant with all its obligations upon accession to the ATT,"⁸ the statutory regime under Bill C-47 and Global Affairs Canada's (GAC) assessment process are fundamentally flawed, because they fail to

1 Arms Trade Treaty, 2 April 2013, U.N.T.S. 3013, entered into force 24 December 2014, at art 1. [ATT]

2 Ibid, at preamble.

3 Global Affairs Canada, "Amendments to Bill C-47, 4 May 2018," <https://www.international.gc.ca/controls-controles/amendments-c-47-modifications.aspx?lang=eng>.

4 Human Rights Watch, *World Report 2019: Saudi Arabia Events of 2018*, <https://www.hrw.org/world-report/2019/country-chapters/saudi-arabia>.

5 BBC News, "Jamal Khashoggi: All you need to know about Saudi journalist's death," *BBC news*, 24 February 2021, <https://www.bbc.com/news/world-europe-45812399>.

6 Women's International League for Peace and Freedom (WILPF), *The Impact of Canada's Arms Transfers on Children's Rights: Submission to the 87th pre-sessional working group of the Committee on the Rights of the Child*, 26 June 2020, https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/att/WILPF_CRC_June2020.pdf, at 12.

7 Government of Canada, "Overview of the Arms Trade Treaty regulatory implementation package," 26 August 2019, https://www.international.gc.ca/trade-commerce/consultations/export_controls-controle_exportations/overview-apercu.aspx?lang=eng.

8 Ibid.

implement all Canada's international obligations under the ATT.

After Bill C-47 received royal assent on 13 December 2018 and following accession to the ATT in 2019, Canada did not cancel export permits to KSA. Canada continues to export armoured vehicles, as well as sniper rifles and other arms, to KSA despite extensively documented domestic human rights violations and KSA's involvement in the ongoing conflict in Yemen. Due to the risk that these weapons pose in Saudi arsenals, Canadian arms exports to KSA have received intense domestic condemnation. Civil society groups have continuously pressured the government of Canada to revoke existing export permits.

In April 2020, the government of Canada published its *Final Report: Review of export permits to Saudi Arabia* (Final Report).⁹ The Final Report argued that Canada's export of armoured vehicles to KSA, as well as other weapons systems, posed "no substantial risk" of facilitating any of the "negative consequences" referred to in subsection 7.3(1) of the EIPA.¹⁰ Following the publication of the Final Report, the freeze on the issuance of new export permits – imposed after the murder of Khashoggi – was lifted. Thus, Canadian exports of weapons to KSA continue unabated.

The Final Report's assessment and subsequent analysis were conducted exclusively under the EIPA, while ignoring Canada's obligations under the ATT. Although Canada claims that the EIPA as amended by Bill C-47 meets Canada's obligations as a signatory to the ATT, a legal analysis comparing Canadian law with the ATT demonstrates that it does not.

In this report, Amnesty International and Project Ploughshares will provide a thorough assessment of Canada's exports of arms to KSA, drawing upon international treaties, domestic legislation and United Nations (UN) expert reports released up until the publication of Canada's Final Report. We illustrate that Canadian law and practice are inconsistent with aspects of the ATT, explore the flawed analysis conducted by GAC outlined in the Final Report, and conduct a comprehensive analysis of Canadian exports to KSA as mandated by the ATT.

To better align Canadian legislation and practice with ATT obligations, Canada should:

1. Revoke existing arms export permits to KSA.
2. Amend the EIPA to fully incorporate:
 - a) The prohibition of exports where weapons would be used to commit genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes under Article 6 of the ATT;
 - b) Robust measures to assess the potential that weapons exports would undermine peace or security or could be used to commit or facilitate international humanitarian or human rights law violations under Article 7 of the ATT;

⁹ Government of Canada, *Final Report: Review of export permits to Saudi Arabia*, 16 April 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng> [Hereafter referred to as Canada, *Final Report*, 2020].

¹⁰ Ibid., at paras 22, 41, 59, 71.

- c) Measures to prevent the unauthorized transfer or diversion to another country and clear prohibitions when diversion occurs under Article 11 of the ATT; and
 - d) A definition of the term “substantial risk” that is consistent with ATT obligations and provides clear guidance to effectively mitigate the possibility of misuse.
3. Establish a Subcommittee of the House of Commons Standing Committee on Foreign Affairs and International Development to analyze and monitor Canadian export controls, policy and practice.
 4. Create an independent advisory panel of experts, including civil society organizations, to review best practices regarding arms exports by States Parties to the ATT to ensure compliance with international obligations.



Canadian-made LAV 700 on display at the Armed Forces Exhibition for Diversity of Requirements & Capabilities (AFED) in Riyadh, Saudi Arabia, February 2018.¹¹

11 Aawsat News, 25 February 2018, Twitter, https://twitter.com/aawsat_News/status/967773277665054720/photo/1.

II. BACKGROUND

In the 1970s, the General Motors (GM) Diesel Division in London, Ontario secured contracts to begin producing light armoured vehicles (LAVs) for the Canadian Army.¹² Additional contracts were later made with the US Pentagon. By 1991, on the heels of several government contracts, rumours were circulating that the facility would be shuttered. Then, in 1993, the GM plant, which was later bought by US defence giant General Dynamics and renamed General Dynamics Land Systems-Canada (GDLS-C), secured its largest contract: a multi-year agreement to produce and export more than one thousand LAVs to KSA.¹³

In the wake of this contract, Canadian weapons exports to KSA reached a new high of \$437.1 million in 1994, but exports fluctuated over time, declining to \$27.1 million in 2000.¹⁴ Following the 9/11 attacks on New York City and the beginning of the “war on terror,” arms exports to KSA rose again, peaking in 2004 at \$285.6 million, before dropping in the following years.¹⁵ Between 1993¹⁶ and 2015, GDLS-C received export permits to transfer nearly 3,000 LAVs to KSA,¹⁷ representing a significant proportion of Canada’s total global military exports.¹⁸

In 2014, Canada’s largest ever arms deal was announced: two contracts totaling \$14.8 billion for the supply and maintenance of 928¹⁹ GDLS-C LAVs to KSA.²⁰ The deal was arranged by the Canadian Commercial Corporation, a Crown corporation that brokers contracts between Canadian suppliers and foreign governments. The contract, which had a lifecycle of approximately 14 years, included training Saudi forces on the LAVs and involved over 500 Canadian firms in the supply chain.²¹

12 General Dynamics Land Systems-Canada, *Products: History*, nd, <https://www.gdlsCanada.com/products/history.html>.

13 See Kenneth Epps, “Arms export win is human rights loss,” *The Ploughshares Monitor* 35(1), Spring 2014, https://ploughshares.ca/pl_publications/arms-export-win-is-human-rights-loss.

14 Global Affairs Canada, *Report on the Export of Military Goods from Canada for years 1992 to 2019*, “Export and Import Controls,” [reports from 2007-2019 available online at <https://open.canada.ca/data/en/dataset/0e94c5fd-42f1-4839-80e1-9a96e76c7cc0#wb-auto-6>; reports from 1992-2006 on file at Project Ploughshares].

15 Ibid.

16 According to the Government of Canada, Canadian LAV exports to KSA began in 1993. However, Statistics Canada’s Canadian International Merchandise Trade (CIMT) Database shows that the export to KSA of “Tanks and other armoured fighting vehicles, motorised, and parts,” categorized under Harmonized System (HS) Code “871000,” first began in FY1992. As HS Code “871000” is the category under which GDLS-C LAVs are shipped abroad, this may indicate that Canada’s LAV exports to KSA began earlier than reported.

17 Global Affairs Canada, *Memorandum for Action Re: Export of light armored vehicles and weapon systems to Saudi Arabia*, 21 March 2016, https://www.international.gc.ca/controls-controles/assets/pdfs/documents/Memorandum_for_Action-eng.pdf.

18 Kenneth Epps, “Arms export win is human rights loss,” *The Ploughshares Monitor* 35(1), Spring 2014, https://ploughshares.ca/pl_publications/arms-export-win-is-human-rights-loss.

19 Total number of GDLS-C LAVs to be exported under the 2014 agreement eventually dropped to 742; see Murray Brewster, “Canada’s arms deal with Saudi Arabia is shrinking,” CBC News, 10 September 2018, <https://www.cbc.ca/news/politics/saudi-arabia-arms-canada-1.4815571>.

20 Murray Brewster, “Canada’s arms deal with Saudi Arabia includes ‘heavy assault’ vehicles,” CBC News, 20 March 2018, <https://www.cbc.ca/news/politics/canada-saudi-arms-deal-1.4579772>.

21 James Cudmore, “General Dynamics Canada wins \$10B deal with Saudi Arabia,” CBC News, 14 February 2014, <https://www.cbc.ca/news/politics/general-dynamics-canada-wins-10b-deal-with-saudi-arabia-1.2537934>.

“

In 2019, Canada exported nearly \$3 billion in weapons to KSA, eclipsing the total value of Saudi-destined Canadian arms for the previous six years.

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Since exports began, the 2014 deal has broken record after record.²² In 2017, Canada exported \$1.03 billion in arms worldwide;²³ nearly half of those exports were Saudi-destined LAVs, a new high for a non-US destination. In 2018, \$1.3 billion in military goods went to KSA alone.²⁴ In 2019, Canada exported nearly \$3 billion in weapons to KSA, eclipsing the total value of Saudi-destined Canadian arms for the previous six years.²⁵

In 2019, over 95% of total arms exports to KSA were GDLS-C LAVs.²⁶ The remaining exports, valued in excess of \$171 million,²⁷ were spread across different Group 2 (“Munitions List”) categories of Canada’s Export Control List.²⁸ The largest category of export after ground vehicles and components (Group 2-6) was that of large-calibre weapons and related compo-

22 Kelsey Gallagher, “Analyzing Canada’s 2019 Exports of Military Goods Report,” *The Ploughshares Monitor* 41(3), Autumn 2020, https://ploughshares.ca/pl_publications/analyzing-canadas-2019-exports-of-military-goods-report.

23 The data included in this paragraph does not include exports to the United States, which are largely unreported by the government of Canada.

24 Kelsey Gallagher, “Analyzing Canada’s 2018 Report on Exports of Military Goods,” *The Ploughshares Monitor* 40(3), Autumn 2019, https://ploughshares.ca/pl_publications/analyzing-canadas-2018-report-on-exports-of-military-goods.

25 Government of Canada, *2019 Exports of Military Goods*, 18 September 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/military-goods-2019-marchandises-militaries.aspx?lang=eng>.

26 See reporting to the United Nations Register of Conventional Arms (UNROCA) as reported in Global Affairs Canada’s annual *Exports of Military Goods* (previously entitled *Report on Exports of Military Goods from Canada*) years 2016-2019; and Government of Canada, *2019 Exports of Military Goods*, 18 September 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/military-goods-2019-marchandises-militaries.aspx?lang=eng>.

27 It should be noted that not all export values included in the annual *Exports of Military Goods* report are accurate. This is due to GAC’s practice of double counting single export values across Group 2 categories. Double counting periodically occurs when a single weapons export includes elements or components that could be classified under two (or more) export classifications. This appears to be the case with Canada’s reported export of military goods to KSA in 2019, as the disaggregated value of individual export categories exceeds Canada’s reported *total* arms exports to KSA by approximately \$120 million. Double counting frequently obscures true export values and can artificially increase the reported value of certain Canadian arms exports to a given location.

28 *Export Control List*, SOR/89-202, <https://laws-lois.justice.gc.ca/eng/regulations/sor-89-202>.

nents (Group 2-2). Most, if not all, of the weapons exported to KSA under this category were Belgian-made John Cockerill 105mm gun turrets.²⁹ These weapons systems are imported into Canada, installed on the GDLS-C LAVs, and thereafter re-exported to KSA.³⁰

The largest remaining categories of arms exports to KSA in 2019 include \$28.5 million in military and simulation systems (Group 2-14), \$17.8 million in armoured and protective equipment (Group 2-13), and \$17 million in electronic equipment and components designed for military use (Group 2-11).³¹

While GDLS-C exports goods with the largest value, it is by no means the sole Canadian producer of Saudi-destined armoured vehicles. Other Canadian-based armoured vehicle manufacturers that supply similar systems to KSA include the Streit Group, Terradyne Armoured Vehicles and the International Armored Group.³² Although these manufacturers are based in Canada, some have initiated subsidiaries in foreign countries with relaxed arms controls to circumvent Canadian regulations, such as the United Arab Emirates (which has signed, but not ratified, the ATT).³³ Experts have described this arrangement as a “loophole” in Canada’s arms control regime.³⁴ A number of these vehicles, made either in Canada or by a foreign subsidiary, have been photographed being used by the Saudi-led Coalition (the “Coalition”) in Yemen.³⁵

Terradyne armoured vehicles were also allegedly used against Saudi civilians in 2017 during unrest in Al-Awamiyah in KSA’s Eastern Province.³⁶ According to the Stockholm International

29 Audrey Lebel, “Armes: La France, Terre D’Accueil,” Amnesty International France: *La Chronique*, 1 July 2020, https://www.amnesty.fr/controle-des-armes/actualites/revelations-en-france-un-centre-de-formation-pour-des-soldats-saoudiens?fbclid=IwAR1el_Syq3k7rCj5GnVc4wi-CX6-pE0k5mdP8FNzOMXZYIbJ9ZwKHrGO2Xw.

30 David Pugliese, “Saudi Arabia fields a wide variety of weaponry on its Canadian-built light armored vehicles – here are the details,” *Ottawa Citizen*, 3 June 2020, <https://ottawacitizen.com/news/national/defence-watch/saudi-arabia-fields-a-wide-variety-of-weaponry-on-its-canadian-built-light-armored-vehicles-here-are-the-details>; Audrey Lebel, “Armes: La France, Terre D’Accueil,” Amnesty International France: *La Chronique*, 1 July 2020, https://www.amnesty.fr/controle-des-armes/actualites/revelations-en-france-un-centre-de-formation-pour-des-soldats-saoudiens?fbclid=IwAR1el_Syq3k7rCj5GnVc4wi-CX6-pE0k5mdP8FNzOMXZYIbJ9ZwKHrGO2Xw.

31 Global Affairs Canada, *Report on the Export of Military Goods from Canada* 2019, “Export and Import Controls,” <https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/military-goods-2019-march-andises-militaries.aspx?lang=eng>.

32 Levon Sevunts, “Ottawa reviews footage of destroyed Canadian-made Saudi armoured vehicles,” *RCI news*, 11 October 2019, <https://www.rcinet.ca/en/2019/10/07/ottawa-reviews-footage-of-destroyed-canadian-made-saudi-armoured-vehicles/>; and Global Affairs Canada, *Memorandum re: Export permit suspension: Munitions list item to Saudi Arabia*, 10 October 2017, <https://www.international.gc.ca/controls-controles/assets/pdfs/documents/memorandum-memo.pdf>, at para 4.

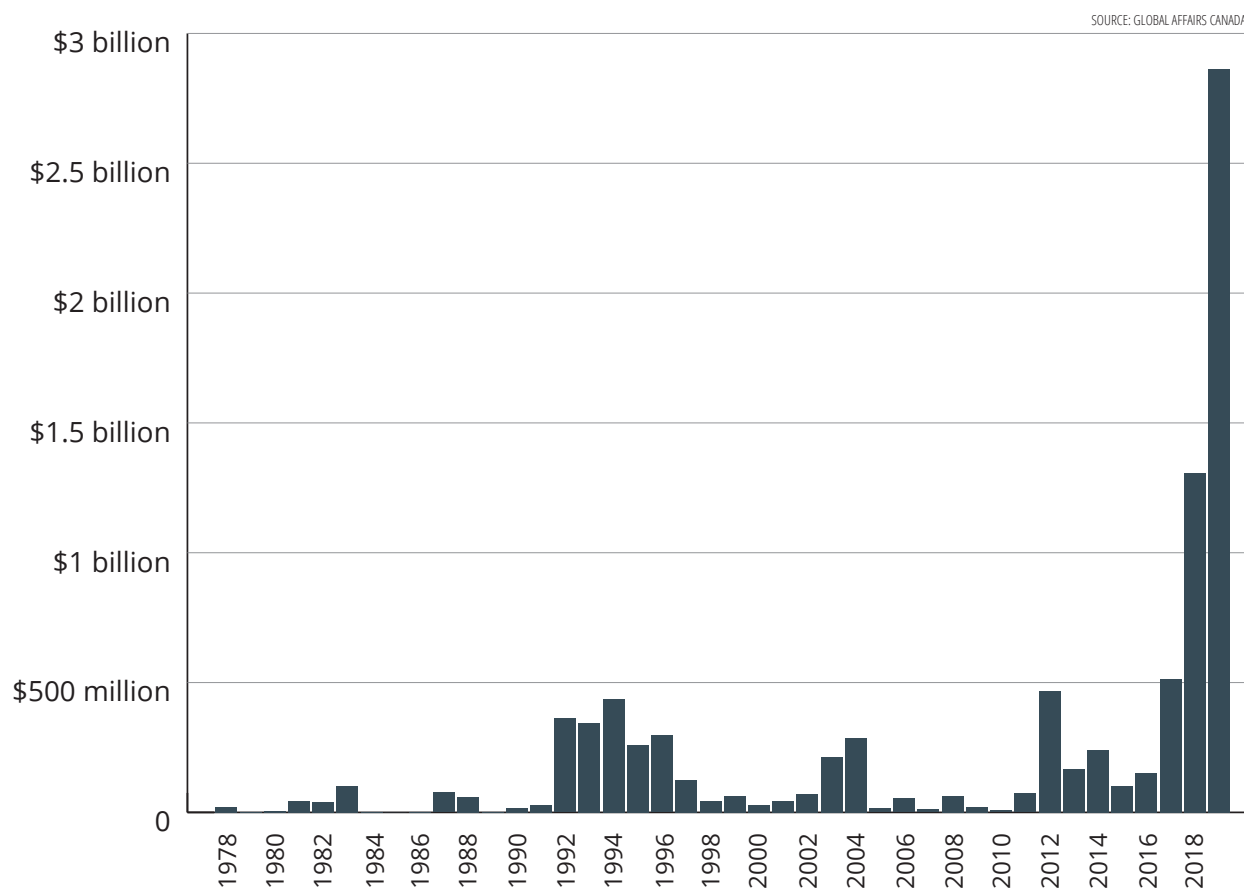
33 For instance, see Murray Brewster, “Streit Group says it can’t ‘influence’ how its armoured cars are configured abroad,” *CBC News*, 23 August 2016, <https://www.cbc.ca/news/politics/streit-statement-south-sudan-1.3731184>; and Geoffrey York, “Canadian firms part of arms sales to Nigeria,” *The Globe and Mail*, 13 September 2017, <https://www.theglobeandmail.com/news/world/canadian-firms-part-of-us-arms-sales-to-nigeria/article36256222>.

34 Ibid.

35 For instance, see Martin Lukacs, “Is Saudi Arabia deploying Canadian-made weapons in Yemen?” *National Observer*, 30 November 2018, <https://www.nationalobserver.com/2018/11/30/news/experts-say-theres-proof-canadian-made-weapons-are-being-used-saudi-war-yemen>.

36 Global Affairs Canada, *Memorandum re: Export permit suspension: Munitions list item to Saudi Arabia*, 10 October 2017, <https://www.international.gc.ca/controls-controles/assets/pdfs/documents/memorandum-memo>.

Canadian Military Exports to KSA (1978-2019)



Peace Research Institute, between 2014 and 2018, Canada exported some 159 Terradyne armoured vehicles to KSA.³⁷

Other weapons exports to KSA include high volumes of Canadian-made small arms and light weapons. Between 2016 and 2019, Canada exported nearly 5,000 rifles to KSA,³⁸ most reportedly sniper rifles manufactured by PGW Defence Technologies Inc. in Winnipeg, Manitoba.³⁹

[pdf](#), at para 3.

37 Chris Scott, "As Biden changes tune on Saudi Arabia, will Canada keep shipping armoured vehicles to the kingdom?" *Toronto Star*, 28 February 2021, <https://www.thestar.com/news/canada/2021/02/28/as-biden-changes-tune-on-saudi-arabia-will-canada-keep-shipping-armed-vehicles-to-the-kingdom.html>.

38 Global Affairs Canada, *Report on Exports of Military Goods from Canada 2016*, <https://www.international.gc.ca/controls-controles/report-rapports/mil-2016.aspx?lang=eng>; 2017, <https://www.international.gc.ca/controls-controles/report-rapports/mil-2017.aspx?lang=eng>; 2018, https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/military_goods-2018-marchandises_militaires.aspx?lang=eng; 2019, https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/military_goods-2019-marchandises-militaires.aspx?lang=eng.

39 Martin Lukacs, "Is Saudi Arabia deploying Canadian-made weapons in Yemen?" *National Observer*, 30 November 2018, <https://www.nationalobserver.com/2018/11/30/news/experts-say-theres-proof-canadian-made-weapons-are-being-used-saudi-war-yemen>.

III. CANADA'S LEGAL OBLIGATIONS

International Legal Obligations under the ATT

When considering whether to issue an export permit, Canada is bound by three main obligations under the ATT: prohibition under Article 6, risk assessment under Article 7, and the prevention of diversion under Article 11.

The ATT's preamble recognizes the "security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms."⁴⁰ Its stated purpose embraces the reduction of human suffering and a contribution to regional and international peace, security and stability.⁴¹

Conventional arms, as defined in Article 2, include battle tanks, armoured combat vehicles, attack helicopters, warships, small arms and light weapons, large-calibre artillery systems, and missiles and missile launchers.⁴² Article 3 addresses the regulation of ammunition and munitions, while Article 4 covers parts and components in which the export contributes to the assembly of conventional arms under Article 2(1).⁴³ States' core obligations are found in Articles 6, 7 and 11.

Article 6 contains an absolute prohibition of the export of weapons that would violate UN Security Council resolutions, UN Charter obligations or other international agreements to which a member state is a party. This includes cases where the state has knowledge at the time of authorization that the arms would be used "in the commission of genocide, crimes against humanity, grave breaches of the Geneva Convention of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which [the state] is a Party." These prohibitions can be characterized as 'absolute' because, unlike the risk assessment process under Article 7, there is no possibility to overcome such factors through mitigation measures.

Where not prohibited under Article 6, arms exporting states are required to conduct a risk assessment under Article 7. This provision requires that prior to authorizing the export of conventional arms, the state must assess the potential that the export would, among other things, "undermine peace or security" or could be used to "commit or facilitate a serious violation of international humanitarian or human rights law."⁴⁴ Where such risks are present, exporting states may also consider measures that could mitigate such risks.⁴⁵ If the assessment demonstrates an "overriding risk" that these negative consequences may occur from the trade and cannot be mitigated, the State Party "shall not

40 ATT, at preamble.

41 Ibid., at art 1.

42 Ibid., at art 2.

43 Ibid., at art 4.

44 Ibid., at art 7.

45 Ibid., at art 7(2).

authorize the export.”⁴⁶

Article 11 addresses the issue of weapons diversion. States Parties that transfer conventional arms must take measures to prevent the diversion of those arms.⁴⁷ While there is no universally authoritative definition of diversion, the UN accepts definitions of diversion that include the unauthorized use or transfer of a weapon by an authorized end-user or for an unauthorized end-use.⁴⁸

Domestic Legal Obligations under the EIPA

Enacted in 1947, the EIPA delegates to the Minister of Foreign Affairs wide discretionary powers to control the flow of specified goods.⁴⁹ Canada controls exports through the Export Control List.⁵⁰ The Governor in Council (Cabinet) then decides which goods require ministerial approval through the issuance of a permit.⁵¹

Bill C-47 amended the EIPA by creating a more rigorous process for assessing whether there is a “substantial risk” that a proposed export would result in international human rights or humanitarian law violations.⁵² More specifically, Bill C-47 added mandatory considerations for export and brokering under 7.3(1) of the EIPA.⁵³ The addition reads:

In deciding whether to issue a permit (...) 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

46 Ibid., at art 7(3).

47 Ibid., at art 11.

48 Brian Wood, *The Arms Trade Treaty: Obligations to Prevent the Diversion of Conventional Arms*, UNIDIR, Issue Brief No.1 (23 June 2020), <https://unidir.org/publication/arms-trade-treaty-obligations-prevent-diversion-conventional-arms>, at 10. In GAC’s March 2021 *Final Report: Review of export permits to Turkey*, the department concludes that diversion has occurred if exported military goods or technology are “used in a manner that is inconsistent with their authorized end-use or used by actors other than the authorized end-users.” <https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/exp-permits-turkey-licences-turquie.aspx?lang=eng#a10>.

49 Global Affairs Canada, “About Us,” https://www.international.gc.ca/controls-controles/about-a_propos/index.aspx?lang=eng.

50 Export Control List, SOR/89-202, <https://laws-lois.justice.gc.ca/eng/regulations/sor-89-202>.

51 Export and Import Permit Act, RSC 1985, c. E-19, <https://laws-lois.justice.gc.ca/eng/acts/e-19>, at s. 5(1).

52 Bill C-47, Legislative Summary, <https://www.parl.ca/DocumentViewer/en/42-1/bill/c-47/royal-assent>, s 7.

53 Ibid., s 7.3(1).

(v) serious acts of gender-based violence or serious acts of violence against women and children.⁵⁴

Moreover, s 7.4 of the EIPA adds that the 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 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.”⁵⁵

This addition to the EIPA purports to comply with Articles 6 and 7 of the ATT; as noted above, these articles include a list of prohibitions and the export authorization assessment process, respectively.⁵⁶ Considerations found in s 7.4 of the EIPA form what Canada refers to as the “substantial risk” assessment, or the Canadian equivalent of the “overriding risk” assessment found in Article 7 of the ATT.

Legal Deficiencies in Canada’s Domestic Legislation

Several civil society organizations, including Amnesty International and Project Ploughshares, have argued that the amended EIPA does not fully incorporate the ATT into Canadian law.⁵⁷ Bill C-47 failed to enact three obligations under the ATT: prohibition under Article 6, the comprehensive risk assessment under Article 7, and diversion under Article 11.⁵⁸ As such, contrary to Canada’s assertion, Canadian law is not compliant with the ATT. As will be discussed in subsequent chapters, these deficiencies of incorporation, along with the problematic interpretation of Canada’s legal obligations under the ATT, have allowed transfers that should have been prohibited under the treaty.

54 Export and Import Permits Act, RSC 1985 c E-19, s 7.3(1) (EIPA).

55 Ibid., s 7.4.

56 Bill C-47, Legislative Summary, <https://www.parl.ca/DocumentViewer/en/42-1/bill/c-47/royal-assent>.

57 A number of civil society organizations (CSOs) testified as witnesses on Bill C-47 before the Standing Committee on Foreign Affairs and International Development in 2017; they included Canadians for Justice and Peace in the Middle East (7 November 2017), Oxfam and Project Ploughshares (2 November 2017), and Amnesty International Canada and the Rideau Institute on International Affairs (31 October 2017). In further response to Bill-C-47, the Rideau Institute on International Affairs appeared before the Standing Senate Committee on Foreign Affairs and International Development on 29 November 2018 and Oxfam International on 22 November 2018. The Canadian Red Cross, the International Committee of the Red Cross, Amnesty International Canada, Canadians for Justice and Peace in the Middle East, Oxfam Canada, Oxfam Quebec, Project Ploughshares and the Rideau Institute on International Affairs also provided submissions in November 2018.

58 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 30: “The proposed export would be used to violate the general prohibition on the threat or use of force, as provided under Article 2(4) of the Charter of the UN”; “the proposed export would be used to intervene in matters which are essentially within the domestic jurisdiction of another State”; “the proposed export would contribute to destabilizing and excessive accumulation of arms – for example, affecting the regional balance of forces and the situation in the region.”

IV. CANADA'S ASSESSMENT OF WEAPONS EXPORTS TO THE KINGDOM OF SAUDI ARABIA

Canada has routinely suspended, reviewed and ultimately authorized arms exports to KSA. Despite serious human rights and humanitarian concerns, all processes have ultimately ended with the Canadian government's proceeding with arms transfers.

The earliest review of Canadian arms exports to KSA on the public record dates back to a 21 March 2016 memorandum. GDLS-C applied for six permits to export LAVs and weapons systems, spare parts and technical data to KSA under, and in support of, the then \$14.8 billion contract with the CCC.⁵⁹ The Minister's decision was sought as an "exceptional measure" in light of GDLS-C's public profile and the value of the proposed export permits.⁶⁰ The six permits were approved on the basis that the exports were consistent with Canada's defence and security interests in the Middle East, and that the exports would not be used to commit human rights violations.⁶¹

Another memorandum was issued on 10 October 2017, concerning Terradyne's permits after GAC was alerted to reports that Canadian-made "Gurkha" armoured vehicles operated by Saudi interior forces were alleged to have been involved in violence against civilians in KSA's Eastern Province.⁶² GAC stated that it was likely that some vehicles used in the operation were in fact Gurkhas, but claimed that there was no credible information that KSA committed serious human rights violations.⁶³ In the memorandum, Canadian officials applauded KSA's efforts to minimize civilian casualties during the operation and reinstated Terradyne's export permits.⁶⁴

Most recently, GAC reaffirmed the propriety of Canada's arms transfers with KSA by issuing a memorandum for information on 17 September 2019—the very same day that Canada became a State Party to the ATT. In a six-page memo later rebranded as "interim findings," GAC advised the Minister of Foreign Affairs that there was no "credible evidence linking Canadian exports of military equipment or other controlled items to any human rights or humanitarian law violations" and "that no existing permits or pending applications would be of concern under the standard robust risk assessment framework."⁶⁵ GAC further noted that armoured vehicles and sniper rifle exports were not at issue, as KSA's military operations have primar-

59 Global Affairs Canada, *Memorandum for Action Re: Export of light armoured vehicles and weapons systems to Saudi Arabia*, 21 March 2016, https://www.international.gc.ca/controls-controles/assets/pdfs/documents/Memorandum_for_Action-eng.pdf, at 1.

60 Ibid.

61 Ibid.; The long history of Canadian defence exports to Saudi Arabia and the fact that GDLS was never denied a permit, were raised in support of approving the permits at para 7.

62 Global Affairs Canada, *Memorandum for Action re: Export permit suspension: Munitions list item to Saudi Arabia*, 10 October 2017, <https://www.international.gc.ca/controls-controles/assets/pdfs/documents/memorandum-memo.pdf>, at 1.

63 Ibid.

64 Ibid.

65 Global Affairs Canada, *Memorandum for Information re: Update on export permits to Saudi Arabia* [Interim Findings], 17 September 2019, https://www.international.gc.ca/trade-commerce/controls-controles/arms-export-saudi-arabia_exportations-armes-arabie-saoudite.aspx?lang=eng, at 1.

ily consisted of airstrikes and naval operations in Yemen and therefore did not constitute a threat to peace and security.⁶⁶ Faced with mounting pressure from the public, GAC released its *Final Report: Review of Export Permits to Saudi Arabia* in May 2020.

Canada's Final Report

In its Final Report, GAC concluded that there was no evidence that Canadian weapons exports to KSA carry a substantial risk of being used to commit any of the “negative consequences specified in s 7.3(1) of the EIPA.”⁶⁷ The report focuses on mandatory criteria to be taken into account when considering the issuance of an export permit. Additionally, the Minister is required to deny the issuance of a permit if, after considering all available mitigating measures, there is a “substantial risk” that the export would result in any negative consequences listed in s 7.3(1).⁶⁸

The Final Report outlined the test that GAC used to determine when proposed exports would be found to undermine international or regional peace and security.⁶⁹ Canada concluded that military exports to KSA posed no risk to peace and security and, furthermore, that there was no direct or indirect threat to Canada's national security.⁷⁰ Even though KSA has not committed to the same international standards as Canada, the assessment noted that KSA had signed the Biological Weapons Convention and the Chemical Weapons Convention.⁷¹ Canada further noted the unlikelihood that KSA would use Canadian exports of military equipment and technology against Canada, Canadians or Canada's allies.⁷²

GAC similarly found that there was no substantial risk that Canadian weapons exports would be used to commit or facilitate acts of terrorism or acts of transnational organized crime.⁷³ Regarding the conflict in Yemen, GAC concluded that Canadian exports of military goods and technology to KSA, even if used in Yemen, would not violate the general prohibition on the threat or use of force. This finding was justified on the premise that the Yemeni government had requested military support from the Gulf Cooperation Council, the League of Arab States and the UN Security Council.⁷⁴

With respect to IHL, GAC concluded that there was a substantial risk of IHL violations relat-

66 Ibid., at para 13.

67 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 9.

68 Ibid., at para 13.

69 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 30: “The proposed export would be used to violate the general prohibition on the threat or use of force, as provided under Article 2(4) of the Charter of the UN”; “the proposed export would be used to intervene in matters which are essentially within the domestic jurisdiction of another State”; and “the proposed export would contribute to destabilizing and excessive accumulation of arms – for example, affecting the regional balance of forces and the situation in the region.”

70 Ibid., at paras 22-24.

71 Ibid., at para 25.

72 Ibid., at para 26.

73 Ibid., at paras 71-80.

74 Ibid., at para 34.

“

Canada concluded that military exports to KSA posed no risk to peace and security and ... that there was no direct or indirect threat to Canada's national security.

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ed to certain types of arms—such as air-to-surface missiles and aircraft used to conduct airstrikes—for use in combat operations, but that there were no concerns with respect to Canadian weapons exports, including armoured vehicles.⁷⁵ This determination was based on Canada's finding that there is “no credible evidence that Canadian exports of military goods and technology are being used by the KSA-led coalition in Yemen” and that “there are no incidents of IHL violations identified by UN fact-finding missions that implicate the types of military equipment being exported from Canada.”⁷⁶ Canada further determined that any export of military goods or technology used to violate IHL must have occurred indirectly, with equipment that had been obtained through battlefield losses.⁷⁷

In September 2019, Houthi forces opposed to the internationally recognized Yemeni government claimed that when three Saudi brigades had surrendered following a three-day operation on KSA territory, thousands of Coalition forces and hundreds of armoured vehicles had been captured.⁷⁸ After reviewing photographs of captured and destroyed Saudi equipment, experts at Canada's Department of National Defence (DND) admitted that some of the vehicles were likely LAV-25s produced in Canada and purchased by KSA in the 1990s. However, DND was unable to confirm when the photographs were taken, thus concluding that they likely illustrated “battlefield losses” rather than the diversion of arms exports to proxy forces in Yemen.⁷⁹ Additionally, Canadian-made sniper rifles reportedly made their way into Yemen, but were similarly considered to be “battlefield losses.” Canada claimed that the existing evidence was not a ground for denying an export permit, as the diversion of weapons was not intentional.⁸⁰

⁷⁵ Ibid., at para 40.

⁷⁶ Ibid., at para 58.

⁷⁷ Ibid., at paras 32, 54.

⁷⁸ Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 54.

⁷⁹ Ibid., at para 54.

⁸⁰ Ibid., at para 55.



Canadian-made LAV-25 reportedly destroyed following clashes with Houthi militants in August 2019. Houthi Military Media.⁸¹



Two Canadian-made LAVs reportedly destroyed following clashes with Houthi militants in August 2019. Houthi Military Media.⁸²

81 Levon Sevunts, "Ottawa reviews footage of destroyed Canadian-made Saudi armoured vehicles," Radio Canada International, 7 October 2019, <https://www.rcinet.ca/en/2019/10/07/ottawa-reviews-footage-of-destroyed-canadian-made-saudi-armoured-vehicles>.

82 Ibid.

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Canada's assessment as outlined in the Final Report raises serious concerns about Canada's compliance as signatory to the ATT, particularly with respect to the definition of 'substantial risk.'

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GAC also found no substantial risk that exports would be used by KSA to commit or facilitate serious violations of IHRL or internal repression.⁸³ Although the presence of internal repression is useful for identifying types of human rights violations related to the export of military goods, GAC claimed that it did not identify any credible evidence that KSA had used Canadian-made military goods to commit IHRL violations.⁸⁴ Canada saw the use of military equipment to control civilian protests and demonstrations as a legitimate public security operation.⁸⁵ Furthermore, Canada relied on its 25-year export relationship and lack of credible evidence that Canadian-made armoured vehicles were used to commit or facilitate serious violations of IHRL⁸⁶ to justify ongoing arms exports to KSA.

Finally, Canada concluded that no credible evidence linked Canadian-made military goods or technology to gender-based violence (GBV) by KSA security forces and that, therefore, there was no substantial risk that these goods would be used to commit serious violations against women, particularly in the Yemen conflict.⁸⁷ GAC also cited a lack of evidence that KSA is directly engaged in the recruitment and use of child soldiers or supplying military goods to armed groups in Yemen who may use these weapons in the recruitment of child soldiers.⁸⁸

83 Canada, Final Report, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/an-nex-a-ksa.aspx?lang=eng>, at para 59.

84 Ibid., at para 61.

85 Ibid., at para 70.

86 Ibid., at para 70.

87 Ibid., at para 82.

88 Ibid., at para 88.

Flaws in Canada's Final Report

DEFINITION OF SUBSTANTIAL RISK

Canada's assessment as outlined in the Final Report raises serious concerns about Canada's compliance as signatory to the ATT, particularly with respect to the definition of "substantial risk" (or, in the language of the ATT, "overriding risk"). The Final Report adopts a definition that substantial risk requires 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."⁸⁹ The Final Report also states that the threshold for substantial risk 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.⁹⁰

In contrast, the "overriding risk" formulation used in the ATT has been interpreted as a risk that cannot be substantially reduced or eliminated using mitigating measures. The latter standard is far more restrictive of arms exports than the "direct, present and foreseeable" definition adopted by Canada.⁹¹ When there is an overriding risk and no mitigating measures, Article 7(3) of the ATT requires that the state party not authorize the export.⁹² Absent in GAC's assessment is the ATT's mandatory consideration about whether Canadian-made weapons **could** be used to facilitate these prohibited acts.

Moreover, the Final Report's definition⁹³ of "substantial risk" fails to account for the different standards reflected in Article 7(1)(a) and 7(1)(b) of the treaty. While the former, dealing with peace and security, uses the higher standard of "would," all of the acts under the latter (including violations of IHL and IHRL), are to be assessed on the lower standard of "could." This distinction is neither reflected in the Final Report nor the EIPA. Finally, GAC redacted a major portion of its interpretation of "substantial risk," thus undermining transparency around the

89 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 14.

90 Ibid., Annex, at para 4.

91 Control Arms et al., *Interpreting the ATT: International human rights law and gender-based violence in article 7 risk assessments*, April 2019, <https://hrp.law.harvard.edu/wp-content/uploads/2019/04/Interpreting-the-Arms-Trade-Treaty.pdf>.

92 ATT, Article 7(3).

93 The Government of Canada expanded on its definition of "substantial risk," in the *Final report: Review of export permits to Turkey* published in April 2021, <https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/exp-permits-turkey-licences-turquie.aspx?lang=eng>. This revised definition is helpful, as it clarifies the concepts of "directness" and "foreseeability," yet there is no indication that this is the final formulation of Canada's concept of "substantial risk," or that such a formulation will be added to the EIPA. As is the case with the definition of "substantial risk" found in the *Final report: Review of export permits to Saudi Arabia*, a portion of the updated definition was redacted. In June 2021, the department published an "Inquiry of Ministry" in response to the Standing Committee on Foreign Affairs and International Development's study into the granting of arms export permits to Turkey. The document included a further definition of substantial risk; however, it was not substantively different from that published in the *Final report: Review of export permits to Turkey*. There is also no indication that this will be Canada's final formulation of "substantial risk," <https://www.ourcommons.ca/content/Committee/432/FAAE/WebDoc/WD11389025/11389025/DepartmentOfForeignAffairsTradeAndDevelopment-e.pdf>.

way in which the department has opted to understand the term.⁹⁴ The censoring of the Final Report's definition of "substantial risk" is not consistent with the promotion of transparency as called for in Article 1 of the ATT.

DIVERSION

The Final Report does not meaningfully address the issue of diversion. Article 11 of the ATT requires that exporters "shall seek to prevent the diversion of the transfer of conventional arms ... by assessing the risk of diversion of the export and considering the establishment of mitigation measures." Such mitigation measures include, but are not limited to, "examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures."⁹⁵

The Final Report also makes contradictory statements on whether Canadian weapons and technology have been used by the Coalition in Yemen. Intelligence reports "suggest that the KSA army has used older Canadian-made LAVs in cross-border operations into Yemen."⁹⁶ This statement contradicts the findings of the Final Report that, "[t]o date, there is no credible evidence that Canadian exports of military goods and technology are being used by the KSA-led Coalition in Yemen."⁹⁷

As well, the Final Report argues that "any purported use of LAV-25s by the Saudi army for the protection of KSA's territorial integrity"—implicitly including uses within Yemen—is "consistent with the intended use of the vehicle."⁹⁸ This is a problematically broad interpretation of end-use that lends itself to abuse on the part of an importing party. Lastly, the Final Report does not contemplate any such risk of diversion and does not engage with any steps considered or taken to mitigate the diversion of Canadian arms exports, but rather narrowly identifies risks related to specific weapons.⁹⁹

PEACE AND SECURITY

Canada pre-empts any future prohibition of KSA exports by making a blanket determination

94 Canada, *Final Report*, 2020, Annex, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at paras 2-3.

95 ATT, art 11(2). In GAC's March 2021 *Final Report: Review of Export Permits to Turkey*, the department offers the following examples of mitigation measures when a proposed export is deemed to pose a substantial risk: "[se-curing] end-use assurances provided by the end-user; or a more formal declaration regarding the intended use of the transferred goods or technology, accompanied by an undertaking not to use them for other purposes or in a manner that would run counter to the provisions of the ATT"; "post-shipment controls, such as delivery verification certificates or record-keeping requirements or checks"; and "information exchange and transparency provisions between Canada and the government of the destination country, including the provision of information on weapons or items stolen, lost or otherwise unaccounted for"; <https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/exp-permits-turkey-licences-turquie.aspx?lang=eng>.

96 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 54.

97 Ibid., at para 58.

98 Ibid., at para 54.

99 Ibid., Annex, at para 4.

that such transfers are more likely to stabilize a region for the global economy by countering the expansionist policies of Iran, Al Qaeda in the Arabian Peninsula, and Daesh.¹⁰⁰ GAC states that the “underlying rationale for supplying military equipment to partners in the Middle East is a direct consequence of the West’s involvement in the first major Gulf War,” and affirms KSA as a bulwark against Iranian influence and a key partner in allied efforts to resolve the Syrian civil war.¹⁰¹

Such considerations are disingenuous under the ATT; an export recipient’s contributions to peace and security in one context do not offset destabilizing actions taken in another. Moreover, GAC’s conclusions with respect to KSA’s support for regional stability stand in direct contrast to the findings of the Group of Eminent International and Regional Experts on Yemen (GEEY) that found that the provision of arms to any parties to the conflict were helping to “perpetuate the conflict and the suffering of the population” in Yemen.¹⁰² As such, the GEEY recommended that states “refrain from providing arms that could be used in the conflict.”¹⁰³

INTERNATIONAL HUMANITARIAN LAW

The Final Report determined that KSA has not engaged in **repetitive behaviour** resulting in **serious violations** of international humanitarian law. There are two related critical flaws in this approach. First, while repetitive violations could be an indicium of substantial risk, they do not need to have taken place for a substantial risk of misuse to be present, with the latter being the standard set in the ATT. Second, this approach is entirely retrospective. Instead of considering the prospective risk of the exports being used in the future, Canada considers the purported absence of IHL violations to conclude that exports to KSA are not prohibited.

More specifically, the Final Report identified one factor as a “key element” in determining substantial risk: “whether the country of end-use has shown a pattern of repetitive behaviour.”¹⁰⁴ This reveals a misunderstanding of Canada’s obligations under the ATT. The overarching objectives of the ATT are to reduce human suffering and prevent the international trade and transfer of arms that provoke or prolong armed conflict.¹⁰⁵ The government’s interpretation, in contrast, discards the concept of prevention and focuses on evidence of use. GAC’s narrow interpretation and lack of guidance on the term “substantial risk” has resulted in an analysis contingent on actual use, which has no basis in Canadian law or the ATT.

100 Ibid., at para 38.

101 Ibid., at paras 35-36.

102 *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, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/17, at para 92.

103 Ibid., at para 99(B); it should be noted that, although not yet published at the point of the release of the *Final Report*, the GEEY’s subsequent 2020 report directly viewed Canada’s provision of arms to conflict parties as “helping to perpetuate the conflict” in Yemen. Advanced edited version of 2020 report available online: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/2020-09-09-report.pdf>, at para 25.

104 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 52.

105 ATT, at art 1; Amnesty International and International Action Network on Small Arms, *Key Elements of the Arms Trade Treaty*, 2012, <https://www.amnesty.ca/sites/default/files/act300682012en.pdf>, at 10.

GAC also failed to appropriately consider UN and other civil society reports,¹⁰⁶ which found that KSA committed serious violations of IHL and that certain types of exported goods and technology carried a substantial risk of misuse.¹⁰⁷ For example, GAC selectively relied on the GEEY Report,¹⁰⁸ 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.¹⁰⁹ GAC disregarded many of the report's other findings, including:

- That third states influence conflicts between States Parties through arms exports and that the continued flow of arms to KSA fuels the conflict in Yemen;
- An overall "pervasive lack of accountability" for violations of international law committed by all parties to the conflict in Yemen;¹¹⁰ and
- Concerns with respect to the independence and impartiality of the Joint Incidents Assessment Team (JIAT).¹¹¹

Rather than engaging with these findings, GAC determined that these factors did not need to be included in its assessment because Canadian weapons have not been used in incidents in which IHL violations have been alleged. It seems clear that Canada drew selectively upon GEEY analysis to justify Canadian exports, while dismissing findings that complicate the legality of Canadian exports.

The Final Report also betrays a lack of understanding of basic concepts of IHL. For example, when considering the alleged diversion of Canadian sniper rifles, GAC deemed that "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."¹¹² This confuses the means and methods of warfare; the relevant question is not whether the rifle is a permissible means of warfare, but whether there is a substantial risk that the weapon will be used to commit violations of IHL, either by the intended export recipient or by others through diversion.¹¹³

106 See, for example, Oxfam, *The Gendered Impact of Explosive Weapons Use in Populated Areas in Yemen*, Briefing Paper, November 2019, <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620909/bp-yemen-gendered-impact-explosive-weapons-261119-en.pdf>; Amnesty International, *Amnesty International Report 2015/16: The State of the World's Human Rights*, 2016, <https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF> at 403; Amnesty International, *"Nowhere Safe for Civilians: Airstrikes and Ground Attacks in Yemen"*, 2015, <https://www.amnesty.org/download/Documents/MDE3122912015ENGLISH.pdf>.

107 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at paras 8, 40-41.

108 Ibid., at para 57.

109 Ibid., at para 57.

110 *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, Human Rights Council, Forty-second session, 3 September 2019, A/HRC/42/CRP.1, https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A_HRC_42_CRP_1.PDF, at para 899.

111 Ibid., at paras 887-888. The JIAT is comprised of members of the Saudi-led coalition that includes Saudi Arabia, the United Arab Emirates, Kuwait, Egypt, Jordan, Morocco, Sudan and Qatar.

112 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 55.

113 Ibid.

Canada reached its conclusion that no risks to IHL existed because KSA and other neighbouring countries, including Yemen, continued to inspect cargo and seize shipments of illegal arms, even though such actions are not relevant to the possible misuse of Canadian weapons.¹¹⁴ Canada ignored the GEEY findings that all parties to the conflict had conducted attacks against objects indispensable to the survival of the civilian population.¹¹⁵ By looking for actual use and abuse of arms exports, Canada applied the incorrect standard. Consequently, the entire body of available evidence that identified such risks, including the GEEY Expert Report, were not given appropriate consideration by Canadian authorities.

INTERNATIONAL HUMAN RIGHTS LAW

Similar to its considerations of IHL, GAC's risk analysis with respect to IHRL is selective. Canada adopted the European Council's framework¹¹⁶ to assess the risk that exports would be used to commit or facilitate human rights violations, and whether the goods or technology might be used for "internal repression" in the country of final destination.¹¹⁷ Invoking this framework, the European Parliament adopted multiple resolutions condemning the transfer of weapons to KSA in light of the war in Yemen,¹¹⁸ and several European Union member states have suspended or permanently ceased certain weapons exports due to human rights concerns.¹¹⁹ Despite adopting the same framework, Canada came to the opposite conclusion,¹²⁰ made no mention of the European Parliament's resolutions, and provided no justification for the apparent contradiction.

Overall, GAC's assessment is dismissive about the risks that ongoing weapons exports pose in light of KSA's record of human rights violations. Canada notes:

- KSA's attempted cover-up of the murder of Jamal Khashoggi in 2018;¹²¹

114 Ibid., at para 40 (as mandated by UNSCR 2216 [2014]).

115 Ibid., at para 46; *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, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/17, at para 52.

116 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at paras 61-62.; European Council Position, "Defining common rules governing control of exports of military technology and equipment," 13 December 2008, 2008/944/CFSP, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008E0944>.

117 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 60.

118 European Parliament resolution of 25 February 2016 on the humanitarian situation in Yemen, 25 February 2016, RC-B8-0151/2016, https://www.europarl.europa.eu/doceo/document/TA-8-2016-0066_EN.html, at para 7.

119 For instance, see Aljazeera, "Italy permanently halts arms sales to Saudi Arabia, UAE," 29 January 2021, <https://www.aljazeera.com/news/2021/1/29/italy-makes-permanent-arms-sale-freeze-to-saudi-arabia>; Aljazeera, "'Makes no difference': Saudi minister slams German arms ban," 15 November 2020, <https://www.aljazeera.com/news/2020/11/15/saudi-minister-slams-german-arms-ban-kingdom-doesnt-need-them>; and Arabian Business, "Belgian region halts arms sales to Saudi Arabia," 6 February 2020, <https://www.arabianbusiness.com/politics-economics/439541-belgian-region-halts-arms-sales-to-saudi-arabia>.

120 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at paras 61-70.

121 Ibid., at para 62.

- KSA's actions during the Arab Spring, when Canadian-made armoured vehicles were sent into Bahrain to protect public infrastructure;¹²²
- That KSA has ratified neither the International Covenant on Civil and Political Rights, nor the International Covenant on Economic, Social and Cultural Rights,¹²³ and chose not to vote on the Universal Declaration of Human Rights¹²⁴; and
- That various human rights reports note that KSA continues to perpetuate grave human rights violations, including arbitrary and unlawful killings, torture, and other cruel and inhuman treatment; arbitrary arrest and detention; denial of minimum international standards of due process; and significant limitations of freedom of expression, assembly and religion.

In spite of this “troubling” record, GAC upheld its determination that Canadian arms exports are not at risk of being used to commit or facilitate human rights violations. The Final Report references KSA's recent limited social reforms, including easing restrictions on women—lifting the ban on driving and removing guardian consent for adult women seeking to obtain a passport for travel—and stipulates that the distinction between “internal repression and the legitimate protection of public safety is not always clear.”¹²⁵ It reaffirms previous findings that in Canada's 25-year export relationship with KSA, weapons exports have not been used in “internal repression.”¹²⁶ In so doing, GAC once again incorrectly applied a standard of evidence of actual use rather than prospective risk, and largely ignored KSA's long record of non-compliance with international human rights law and standards.¹²⁷

GENDER-BASED VIOLENCE

The Final Report acknowledges that acts of GBV and acts of violence against women and children are not defined in the EIPA, and that consideration be given to an indicator identified by the United Nations Office of Disarmament Affairs (UNODA) as to:

[w]hether or not there is evidence that the type of arms described in the export authorization application or a similar type has been used repeatedly in the commission of serious acts of violence against women or serious acts of gender-based violence in the commission of serious acts of violence against children, in particular recruitment of child soldiers in the recipient state.¹²⁸

GAC relied exclusively on this indicator from the UNODA's ATT Implementation Toolkit and did not consider the entirety of suggested indicators, which include:

- Whether or not the recipient state has legislation and effective procedures in place to

122 Ibid., at para 69; Ethan Bronner and Michael Slackman, “Saudi troops enter Bahrain to help put down unrest,” *New York Times*, 14 March 2011, <https://www.nytimes.com/2011/03/15/world/middleeast/15bahrain.html>.

123 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 62.

124 Ibid.

125 Ibid., at paras 65-66.

126 Ibid., at para 70.

127 Ibid., at para 60.

128 Ibid., at para 81.

investigate serious acts of gender-based violence and serious acts of violence against women and children committed by the state or its agents;

- Whether or not accountable authority structures exist with the capacity and will to ensure respect for international human rights law pertaining to women's rights and children's rights;
- Whether or not there is a record of impunity for offenders who commit serious acts of gender-based violence and/or serious acts of violence against women and children in the recipient state; and
- Whether or not there are patterns of gender-based violence in the recipient state.¹²⁹

In addition to selectively invoking the UNODA's ATT Implementation Toolkit, the Final Report did not rely on any other guidance documents that have been published to support the interpretation of the ATT's requirements with respect to GBV.¹³⁰

In respect to violations against children, the Final Report said only that KSA would not use Canadian military goods to recruit or use child soldiers.¹³¹ GAC's analysis exclusively focused on the recruitment or supply of child soldiers, with only passing reference to the other grave violations of children's rights. While acknowledging that other violations have been documented in the context of the conflict in Yemen, GAC undertook no analysis to determine whether Canadian exports could be used to commit or facilitate serious acts of violence against children, as required by Article 7(4) of the ATT. In this regard, Canada continued to erroneously conflate evidence of past rights violations with future risk.¹³²

129 UNODA ATT Implementation Toolkit, "Module 6: Export," 2015, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2015/08/2015-08-21-Toolkit-Module-6.pdf>, at 20.

130 See, for example, Control Arms & International Human Rights Clinic at Harvard University, *Interpreting the Arms Trade Treaty: International Human Rights Law and Gender-Based Violence in Article 7 Risk Assessments*, April 2019, <https://hrp.law.harvard.edu/wp-content/uploads/2019/04/Interpreting-the-Arms-Trade-Treaty.pdf> and ICRC, *International Humanitarian Law and Gender-Based Violence in the Context of the Arms Trade Treaty*, Working Paper, 2019, <https://www.thearmstradetreaty.org/hyper-images/file/CSP5%20-%20working%20paper%20-%20GBV%20and%20IHL/CSP5%20-%20working%20paper%20-%20GBV%20and%20IHL.pdf>.

131 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at paras 88-92.

132 Ibid., at para 82.

V. COMPREHENSIVE LEGAL ASSESSMENT OF WEAPONS EXPORTS TO SAUDI ARABIA

Canadian weapons exports to KSA are contrary to Canada's legal obligations under the ATT. The GEEY has found that arms transfers to parties to the conflict in Yemen perpetuates the conflict, which would amount to contributing to undermining peace and security, contrary to Article 7(1)(a). Moreover, these transfers could be used to commit serious IHL and IHRL violations, contrary to Article 7(3) of the ATT. Finally, these exports risk being used to commit or facilitate serious acts of GBV and serious acts of violence against women and children, as contemplated in Article 7(4) of the ATT.

Peace and Security

Article 7(1)(a) of the ATT requires that States must assess the potential that the conventional arms or items "would contribute to" or "undermine" peace and security.

KSA has been a party to the ongoing armed conflict in Yemen since 2015. While KSA continues to wage war in Yemen, it is impossible to view Canada's ongoing weapons transfers as contributing to peace and security.¹³³ The GEEY has concluded that "the continued supply of weapons to parties involved in the conflict in Yemen perpetuates the conflict and the suffering of the population."¹³⁴

Saudi naval vessels have also blocked the delivery of food and relief supplies to Yemen while undertaking an operation to intercept illegal shipments of arms.¹³⁵ While Canadian exports may not be directly implicated in these activities, the GEEY Report determined that third states perpetuate the conflict by transferring arms to parties to the conflict.¹³⁶

Moreover, there is evidence that the Saudi Arabian National Guard has conducted "operations in northern and central Yemen"¹³⁷ and that Canadian-made LAVs, manufactured by GDLS-C were being used in those operations.¹³⁸ Additionally, a former Pentagon official responsible for Saudi foreign policy confirmed that there is evidence that the Saudi Arabian

133 Generally, Amnesty International takes no position on the resort to force between states but rather focuses on violations of IHL and human rights that result from such conflicts. The information herein is presented as relevant context for assessing Canada's compliance with the relevant provision of the ATT.

134 *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, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, <https://undocs.org/en/A/HRC/42/17>, at para 92.

135 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 32.

136 *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, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, <https://undocs.org/en/A/HRC/42/17>, at para 92.

137 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 32.

138 Martin Lukacs, "Is Saudi Arabia deploying Canadian-made weapons in Yemen?" *National Observer*, 30 November 2018, <https://www.nationalobserver.com/2018/11/30/news/experts-say-theres-proof-canadian-made-weapons-are-being-used-saudi-war-yemen>.

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Either through misuse by KSA, or through diversion to other parties to the conflict that have disregarded IHL, there is an overriding risk that Canadian weapons will be used to commit or facilitate violations of IHL in Yemen.

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National Guard has used Canadian-made armoured vehicles in Yemen.¹³⁹

Violations of International Humanitarian Law

Article 7(1)(b)(i) of the ATT requires States to contemplate the “risk” that exported weapons “could” be used to “commit” or “facilitate” a serious violation of IHL. If after considering mitigating measures there is a substantial risk of arms being used to commit such a violation, the export shall not be authorized.

There is extensive evidence that Canadian arms exports to KSA could be used to commit or facilitate IHL violations, particularly in the context of the war in Yemen. The word “use” is “understood as the discharge of a firearm, the firing of a bullet, or the launching, firing, or dropping of another weapon, such as a rocket or bomb,”¹⁴⁰ while “facilitate” means that the weapons may be one or more steps removed from the actual violation,¹⁴¹ may be “only an incidental factor in the commission of the primary act, and may have contributed only to a minor degree, if at all, to the injury suffered.”¹⁴² When these definitions are applied to the export of Canadian weapons to KSA, it is clear that there is an overriding risk that they could be used to commit or facilitate serious violations of IHL.

According to the 2019 GEEY Report, the parties to the armed conflict in Yemen, including KSA, have committed a substantial number of violations of IHL.¹⁴³ The GEEY found that

¹³⁹ Ibid.

¹⁴⁰ S. Casey-Maslen et al., “Article 7. Export and Export Assessment,” in *The Arms Trade Treaty: A Commentary*, OSAIL, 2016, https://thearmstradetreaty.org/hyper-images/file/OSAIL_The_Arms_Trade_Treaty_A_Commentary_Art7_Export_and_Export_Assessment/OSAIL_The_Arms_Trade_Treaty_A_Commentary_Art7_Export_and_Export_Assessment.pdf, at 274.

¹⁴¹ Ibid., at 255.

¹⁴² *Report of the International Law Commission*, “Draft Articles on State Responsibility: Commentary to Article 16,” General Assembly, Fifty-third session, 2001, A/56/10, [https://undocs.org/en/A/56/10\(SUPP\)](https://undocs.org/en/A/56/10(SUPP)), at 159, para 10.

¹⁴³ *Situation of human rights in Yemen, including violations and abuses since September 2014*, Report of the

actions of the parties involved in the conflict may amount to war crimes, including murder, torture, cruel or inhuman treatment, rape, outrages upon personal dignity, denial of a fair trial, and enlisting children under the age of 15 or using them to participate actively in hostilities.¹⁴⁴ The GEEY Report documented cases of incommunicado detention of up to three years and torture, including electrocutions, mock executions and forced nudity, at the unofficial joint Yemeni Armed Forces/Saudi Arabia Al-Tin detention facility in Seiyoun city.¹⁴⁵ It further described that some Yemeni fishermen have been held incommunicado in detention facilities in KSA.¹⁴⁶ Similarly, numerous Amnesty International reports have documented the Coalition's persistent disregard for IHL.¹⁴⁷ While these IHL violations may not be directly linked to the use of Canadian weapons, the general disregard of IHL by the parties to the conflict, including KSA, is important contextual information when considering risk.

The GEEY Report further indicated that there may have been a series of "violations of international humanitarian law in connection with (...) airstrikes."¹⁴⁸ In the first year of its mandate, the GEEY analyzed a number of emblematic Coalition airstrikes, many of which implicated civilian casualties, and found "concerns with coalition processes and procedures for target selection and execution of airstrikes based upon the apparently disproportionate impact on civilians."¹⁴⁹ When analyzing 2018-2019 airstrikes, the GEEY similarly found that the "patterns of harm caused by airstrikes remained consistent and significant."¹⁵⁰ Subject to a determination by an independent and competent court, the GEEY concluded that individuals in the Government of Yemen and the Coalition, including KSA and the United Arab Emirates, may have conducted airstrikes in violation of the principles of distinction, proportionality, and precaution.¹⁵¹ Again, while such airstrikes do not explicitly implicate Canadian exports, they are nonetheless relevant to the risk analysis that is to be performed under the ATT, as they provide insight into the country's overall compliance with IHL.

The GEEY Report also found that the Yemeni population has been deprived "of objects indispensable to its survival," noting "deep concerns that starvation may have been used as

Group of Eminent and International and Regional Experts on Yemen, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, <https://undocs.org/en/A/HRC/42/17>, at para 96.

144 Ibid., at para 96(b).

145 Ibid., at para 66.

146 *Situation of human rights in Yemen, including violations and abuses since September 2014*, Report of the United Nations High Commissioner for Human Rights containing the findings of the Group of Eminent International and Regional Experts, Human Rights Council, Thirty-ninth session, 27 September 2018, A/HRC/39/43, <https://undocs.org/en/A/HRC/39/43>, at para 72.

147 Amnesty International, *Air Strikes and Cluster Munitions Attacks: Amnesty International Documentation of Coalition Attacks in Yemen: 2015 – Present*, 2019, <https://www.amnesty.org/download/Documents/MDE3110942019ENGLISH.PDF>; Amnesty International, *Stranglehold: Coalition and Huthi Obstacles Compound Yemen's Humanitarian Crisis*, 2018, <https://www.amnesty.org/download/Documents/MDE3185052018ENGLISH.pdf>.

148 *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, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, <https://undocs.org/en/A/HRC/42/17>, at para 30.

149 Ibid., at para 24.

150 Ibid.

151 Ibid., at para 96(a).

a method of warfare by all parties to the conflict.”¹⁵² The Saudi-led air and naval blockades have exacerbated the humanitarian situation in Yemen by causing shortages of food, fuel and medical supplies.¹⁵³ The use of starvation of the civilian population as a method of warfare is prohibited under IHL.¹⁵⁴ Furthermore, the Coalition has attacked vital infrastructure critical to the survival of the civilian population, including “farmland, water facilities, essential port infrastructure and medical facilities.”¹⁵⁵

An absence of evidence linking KSA use of Canadian-made weapons to crimes in the ongoing conflict with Yemen does not mean that the transfers of such weapons are compatible with the ATT. The ATT requires an evaluation of risk that arms exports could be used to commit or facilitate a serious violation of IHL, and there are at least three factors that demonstrate that such a risk is present with respect to Canadian arms exports. First, as discussed above, KSA has a persistent disregard for IHL evidenced by its conduct in the war in Yemen. Second, military vehicles have been diverted by Coalition partners and used to commit IHL violations in southern Yemen.¹⁵⁶ Finally, Canadian-made weapons have been located and identified in northern and central Yemen.¹⁵⁷ Either through misuse by KSA, or through diversion to other parties to the conflict that have disregarded IHL, there is an overriding risk that Canadian weapons will be used to commit or facilitate violations of IHL in Yemen.

Violations of International Human Rights Law

Article 7(1)(b)(ii) of the ATT requires States to contemplate the “risk” that exported weapons “could” be used to “commit” or “facilitate” a serious violation of international human rights law. Similar to violations of international humanitarian law, if after considering mitigating measures there is a substantial risk of arms being used to commit such a violation, the export shall not be authorized.

There is substantial evidence demonstrating that KSA could use Canadian-made weaponry to commit or facilitate serious IHRL violations, both domestically in KSA and in the ongoing conflict in Yemen.

As noted earlier, KSA is not a party to the International Covenant on Civil and Political

152 Ibid., at para 56.

153 Jonathan Kennedy, “Blame the Saudis for Yemen’s cholera outbreak - they are targeting people,” *The Guardian*, 2 August 2017, <https://www.theguardian.com/global-development/2017/aug/02/blame-saudi-coalition-for-yemen-cholera-outbreak>.

154 International Committee of the Red Cross, *Study on Customary International Humanitarian Law*, “Practice Relating to Rule 53. Starvation as a Method of Warfare,” 2005, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule53.

155 *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, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, <https://undocs.org/en/A/HRC/42/17>, at para 52.

156 See, for example, Amnesty International, “Yemen: UAE recklessly supplying militias with windfall of Western arms,” 6 February 2019, <https://www.amnesty.org/en/latest/news/2019/02/yemen-uae-recklessly-supplying-militias-with-windfall-of-western-arms>.

157 Canada, *Final Report*, 2020, at paras 54-55.

Rights or the International Covenant on Economic, Social and Cultural Rights, raising serious questions about its commitment to upholding international human rights law. In addition to KSA's involvement in serious violations in Yemen, human rights organizations have extensively documented a wide range of human rights violation within Saudi borders. These include: crushing of freedom of expression and peaceful dissent; arbitrary detention and harassment of human rights defenders, including women's rights activists, and other civil society activists; systematic discrimination against women and girls and minorities; exploitation of migrants; rampant torture in custody; grossly unfair trials; and extensive use of the death penalty and other cruel punishments.¹⁵⁸

The UN's most recent Universal Periodic Review (UPR) of KSA identified ongoing violations of civil and political rights, including the right to life, liberty and security of the person. The UPR relied on the Committee against Torture's expression of deep concern about the existence of the death penalty and the increase in executions.¹⁵⁹ The Committee also raised concerns that KSA imposed corporal punishment, including flogging/lashing and amputation.¹⁶⁰ Human rights violations of fundamental freedoms and the right to participate in public life in KSA persist.

To address these violations, that UPR urged KSA to move to eliminate all forms of discrimination on religious grounds and to ensure the free practice of religion without interference from the state.¹⁶¹ The UPR additionally urged that those laws and regulations that restrict freedom of opinion and expression, including vaguely defined offences such as insulting "God or the Prophet" be repealed as they resulted in severe sentences, including the death penalty, not only to adults but to children.¹⁶²

One particularly concerning incident that illustrates the risk that Canadian weapons could be used to commit or facilitate IHRL violations took place in the Eastern Province of KSA in 2017, when the Shiite-majority province became the centre of violent clashes between

158 For instance, see Human Rights Watch, "Saudi Arabia events of 2018," *World Report 2019*, 2019, <https://www.hrw.org/world-report/2019/country-chapters/saudi-arabia>; Freedom House, "Democracy in retreat," *Freedom in the World 2019*, 2019, <https://freedomhouse.org/report/freedom-world/2019/democracy-retreat>; Georgetown Institute for Women, Peace and Security and Peace Research Institute Oslo, *Women, Peace and Security Index 2019/20: Tracking Sustainable Peace through Inclusion, Justice, and Security for Women*, 2019, <https://giwps.georgetown.edu/wp-content/uploads/2019/12/WPS-Index-2019-20-Report.pdf>; Human Rights Watch, "Saudi Arabia events of 2019," *World Report 2020*, 2020, <https://www.hrw.org/world-report/2020/country-chapters/saudi-arabia>; Amnesty International, *Saudi Arabia 2020*, 2021, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/saudi-arabia/report-saudi-arabia>; Amnesty International, *Saudi Arabia: Muzzling Critical Voices: Politicized Trials before Saudi Arabia's Specialized Criminal Court*, 6 February 2020, <https://www.amnesty.org/en/documents/mde23/1633/2020/en>; Amnesty International, *Saudi Arabia: Assessment of Human Rights Risks in Saudi Arabia for Businesses and Investors*, 9 November 2020, <https://www.amnesty.org/en/documents/mde23/3321/2020/en>; Amnesty International, *Saudi Arabia: "This is Worse than COVID-19": Ethiopians Abandoned and Abused in Saudi Prisons*, 2 October 2020, <https://www.amnesty.org/en/documents/mde23/3125/2020/en>.

159 *Compilation on Saudi Arabia: Report of the Office of the United Nations High Commissioner for Human Rights, Working Group of the Universal Periodic Review, Thirty-first session, 30 August 2018*, A/HRC/WG.6/31/SAU/2, <https://undocs.org/en/A/HRC/WG.6/31/SAU/2>, at para 15.

160 Ibid., at para 20.

161 Ibid., at para 31.

162 Ibid., at para 32.

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According to the UNHCR, as of April 2019, there were 3.65 million internally displaced persons (IDPs) in Yemen, 76% of them women and children.

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Saudi forces and residents. At that time, Shiite citizens in KSA constituted roughly 10-15% of the Saudi population and were routinely subjected to ill treatment, sectarian propaganda, and unequal treatment in the justice system.¹⁶³ Residents of KSA's Eastern Province alleged that Saudi security forces had been “arbitrarily shooting at or arresting anyone who emerged from their houses.”¹⁶⁴ At the height of this violence, Canada received news that Canadian-made Gurkha armoured vehicles manufactured by Terradyne were being operated by Saudi forces in the Eastern Province,¹⁶⁵ and allegedly were used in violence against the civilian population.¹⁶⁶ Residents of Al-Awamiyah at the time told human rights researchers that “[a]nything that moved became a target” of the Saudi security forces.¹⁶⁷

Reports that KSA has used Canadian weapons against its civilian population in the recent past indicates an overriding risk that such weapons will be misused in the future and thus should not be transferred to KSA, in accordance with the ATT. Until there is compelling evidence to the contrary, the risk that Canadian arms exports could be used to commit human rights violations in that country remains real.

The ongoing conflict in Yemen presents additional risks. The GEEY has found that the governments of Yemen, KSA and the United Arab Emirates violated the right to liberty and security of person through enforced disappearances, arbitrary arrest and detention, and torture and other ill-treatment, including sexual violence.¹⁶⁸ The GEEY is also of the view

163 Adam Coogle, “Anti-Shia bias driving Saudi Arabia unrest,” Human Rights Watch, 24 August 2017, <https://www.hrw.org/news/2017/08/24/anti-shia-bias-driving-saudi-arabia-unrest>.

164 Ibid.

165 Global Affairs Canada, *Memorandum for Action re: Export Permit Suspension*, 10 October 2017, <https://www.international.gc.ca/controls-controles/memorandum-for-action-memoire-pour-decision.aspx?lang=eng>.

166 Levon Sevunts, “New video purports to show Canadian-made LAVs being used in Saudi crackdown,” CBC News, 8 August 2017, <https://www.cbc.ca/news/politics/rci-saudi-arabia-lavs-armoured-vehicles-canada-1.4239525>.

167 Adam Coogle, “Anti-Shia bias driving Saudi Arabia unrest,” Human Rights Watch, 24 August 2017, <https://www.hrw.org/news/2017/08/24/anti-shia-bias-driving-saudi-arabia-unrest>.

168 *Situation of human rights in Yemen, including violations and abuses since September 2014*, Report of the

that these governments, to the extent they exercise effective control over parts of Yemen, are responsible for human rights violations, including arbitrary deprivation of the right to life, enforced disappearances, arbitrary detention, rape and other forms of sexual violence, torture, ill-treatment and child recruitment, and violations of fundamental freedoms and economic, social and cultural rights.¹⁶⁹

The evidence demonstrates that Canadian-made weapons have been used in operations involving the civilian population in KSA's Eastern Province. When combined with KSA's persistent and prevalent historical and existent record of human rights violations, there is an overriding risk that these exports could be used to commit or facilitate violations of IHRL. Furthermore, the evidence of Canadian weapons in a combat theatre in which there are documented human rights violations by KSA and other Coalition partners strongly illustrates that there is an overriding risk of Canadian exports being used to commit or facilitate serious violations of IHRL.

Gender-Based Violence

Article 7(4) of the ATT requires that a State Party take into account the risk that exported weapons "could" be used to "commit" or "facilitate" serious acts of gender-based violence or serious acts of violence against women and children.

Canada, as a state party to the ATT, must take into account the risk of the exported arms being used to commit or facilitate serious acts of GBV, or serious acts of violence against women and children.¹⁷⁰ Even after authorization has been granted, if Canada or any exporting state party becomes aware of new or relevant information, it is encouraged to reassess the authorization after consultations, when appropriate, with the importing state.¹⁷¹

This stage of the export assessment process requires a determination of whether and how weapons exports could be used by the recipient state to commit or facilitate GBV. The exporting state must predict the likelihood that violations under Articles 6(3) and 7(1) will occur, with due regard to evidence of past behaviour and indications of likely future behaviour.¹⁷²

Article 7(4) aims to overcome the historical tendency to overlook GBV and promote consideration of more specific mitigation measures as compared to those suitable for more visible violations.¹⁷³ GBV is not the same as violence against women. It is defined as "violence that is

Group of Eminent and International and Regional Experts on Yemen, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, <https://undocs.org/en/A/HRC/42/17>, at para 69; Amnesty International, "God Only Knows if he's Alive": Enforced Disappearance and Detention Violations in Southern Yemen, 2018, <https://www.amnesty.org/download/Documents/MDE3186822018ENGLISH.PDF> at 23.

169 Ibid., at paras 94-95.

170 ATT, at art 7(4).

171 Ibid., at art 7(7).

172 Andrew Clapham et al., *The Arms Trade Treaty: A Commentary*, Oxford Commentaries on International Law, 16 June 2016, at 207.

173 Control Arms, *How to use the Arms Trade Treaty to address Gender-Based Violence: A Practical Guide for Risk Assessment*, August 2018, https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide_ONLINE.pdf,

directed against a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.... While women, men, boys and girls can be victims of GBV ... women and girls are the main victims.”¹⁷⁴ However, GBV does need to be sexual in nature.¹⁷⁵ GBV can take place within or outside armed conflict, and risks should be assessed whether or not a conflict is taking place in the recipient state.¹⁷⁶

It is well established that KSA’s ongoing participation in the conflict in Yemen has resulted in indiscriminate attacks against civilians and civilian objects.¹⁷⁷ However, the disproportionate impact of such attacks and the wider conflict in Yemen on women and children is striking. According to the UNHCR, as of April 2019, there were 3.65 million internally displaced persons (IDPs) in Yemen,¹⁷⁸ 76% of them women and children.¹⁷⁹ When women and children are displaced, the threat of GBV greatly multiplies, as has been the case in Yemen.¹⁸⁰ As indicated in the Harvard *ATT and Gender-Based Violence* guide, the word “facilitate” in the ATT is to be given a broad interpretation – it can be one or more steps removed from the violation.¹⁸¹ As such, arming one of the parties to the conflict could be viewed as facilitating acts of GBV.

at 3.

174 United Nations General Assembly, Declaration on the Elimination of Violence against Women, 23 February 1994, A/RES/48/104, <https://undocs.org/en/A/RES/48/104>, Articles 1 and 2; see also, Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19, Violence against women*, 11th Session, 1992, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/3731&Lang=en, at para 6.

175 ICRC, *International Humanitarian Law And Gender-Based Violence in the Context of the Arms Trade Treaty*, International Committee of the Red Cross Working Paper, April 2019, <https://www.thearmstradetreaty.org/hyper-images/file/CSP5%20-%20working%20paper%20-%20GBV%20and%20IHL/CSP5%20-%20working%20paper%20-%20GBV%20and%20IHL.pdf> at 4.

176 *The Arms Trade Treaty’s Gender-Based Violence Risk Assessment: A Questionnaire for Information Sources*, The Stimson Center and International Human Rights Clinic at Harvard Law School, February 2021, <https://www.stimson.org/wp-content/uploads/2021/03/GBV-Report-WEB-final1-1.pdf>, at 6.

177 WILPF et al., *Women and girls paying the heaviest price in Yemen*, Joint submission to the Universal Periodic Review of Yemen, 12 July 2018, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=6264&file=English-Translation>, at 17.

178 UNHCR, *Yemen: UNHCR Operational Update*, 5 April 2019, <https://reliefweb.int/report/yemen/yemen-unhcr-operational-update-5-april-2019>.

179 UN Women, “Take five: ‘Yemeni women and girls are the ones who are paying the price of war,’” 12 September 2018, <https://reliefweb.int/report/yemen/take-five-yemeni-women-and-girls-are-ones-who-are-paying-price-war>.

180 For instance, see Humanity & Inclusion, *Death Sentence to Civilians: The Long-Term Impact of Explosive Weapons in Populated Areas in Yemen*, May 2020, https://handicap-international.de/sn/uploads/de/document/Study2020_HI_YEMEN_EWIPA_EN-web.pdf, at 19; International Rescue Committee, *Protection, Participation and Potential: Women and Girls in Yemen’s War*, January 2019, <https://www.rescue.org/sites/default/files/document/3550/yemenwomenandgirlspolicybrieffinalreadyfordissemination.pdf>, at 7; WILPF et al., *Changes Ahead: Yemeni Women Map the Road to Peace*, December 2018, https://www.wilpf.org/wp-content/uploads/2019/04/WILPF_Yemen-Publication_web.pdf, at 4 and 6.

181 Control Arms & International Human Rights Clinic at Harvard University, *Interpreting the Arms Trade Treaty: International Human Rights Law and Gender-Based Violence in Article 7 Risk Assessments*, April 2019, <https://hrp.law.harvard.edu/wp-content/uploads/2019/04/Interpreting-the-Arms-Trade-Treaty.pdf> at 6-7.

Although neither the UN Secretary-General nor the GEEY has documented specific cases in which KSA military personnel have committed sexual violence or GBV inside or outside its jurisdiction, as noted in the Final Report,¹⁸² the UN Secretary-General has acknowledged that the humanitarian catastrophe in Yemen has led to more incidents of sexual violence against women and girls.¹⁸³ The UN Secretary-General has concluded that in 2018 there was an increase of reported sexual violence, including sexual assault, rape and sexual slavery; and an increased risk of trafficking, sexual violence and exploitation – all of which can be connected to the parties in the conflict, including KSA.¹⁸⁴

After its removal from the list of parties killing and maiming children in 2016, the Coalition claimed that measures had been taken to improve the protection of children; however, children continued to be injured and killed by Coalition airstrikes.¹⁸⁵ For example, the GEEY verified that a Coalition airstrike of 9 August 2018 on a bus in Saada Governorate killed at least 11 boys between 10 and 15 years of age and injured at least 12 others.¹⁸⁶ In the *2019 Report on Children and Armed Conflict*, the UN Secretary-General noted that 43% of child casualties – a total of 729 children – were attributed to the Coalition.¹⁸⁷ In 2018 alone, 12 attacks on Yemeni schools and three attacks on Yemeni hospitals were also attributed to the Coalition.¹⁸⁸

The UNODA Toolkit identifies other indicators to determine if accountable authority structures exist to ensure respect for women's and children's rights under IHRL, and whether there is a record of impunity for offenders who committed serious acts of GBV or serious acts of violence against women and children.¹⁸⁹ At the launch of the 2019 Report In September 2019, members of GEEY said, "Five years into the conflict, violations against Yemeni civilians continue unabated, with total disregard for the plight of the people and a lack of international action to hold parties to the conflict accountable."¹⁹⁰ It appears that neither shifts in legislative processes or procedures, nor investigative re-

182 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 84.

183 Ibid., at para 83.

184 Report of the UN Secretary-General, *Conflict-related sexual violence*, 20 March 2019, S/2019/280, <https://undocs.org/en/S/2019/280>, at para 94.

185 *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, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, <https://undocs.org/en/A/HRC/42/17>, at para 81.

186 *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, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, <https://undocs.org/en/A/HRC/42/17>, at para 82.

187 *Children and armed conflict*, Report of the Secretary-General, General Assembly Security Council, seventy-third session, 20 June 2019, A/73/907-S/2019/509, <https://reliefweb.int/sites/reliefweb.int/files/resources/N1918621.pdf>, at para 191.

188 Ibid., at para 193.

189 UNODA ATT Implementation Toolkit, "Module 6: Export," 2015, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2015/08/2015-08-21-Toolkit-Module-6.pdf>, at 11, 19-20.

190 United Nations Human Rights Council, "Yemen: Collective failure, collective responsibility – UN expert report," Press release, 3 September 2019, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24937&LangID=E>.

ports from the JIAT, have addressed the ongoing violence experienced by women and children;¹⁹¹ similarly, as the GEEY has concluded, “[c]redible and viable accountability options are few.”¹⁹²

Finally, the UNODA Toolkit asks whether or not there are patterns of GBV in the recipient state.¹⁹³ The human rights abuses committed by KSA against its citizens are highly gendered. KSA ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 2000, with two reservations.¹⁹⁴ Although discrimination on the basis of sex is a violation of CEDAW,¹⁹⁵ KSA has long held and implemented discriminatory policies that disenfranchise women and girls. In the same year that KSA allowed women to obtain driver’s licenses, Saudi authorities arrested prominent civil and women’s rights activists.¹⁹⁶ Many women activists who have been jailed for their political demands reported mistreatment, abuse and torture.¹⁹⁷ Canada is aware of KSA’s human rights record with respect to GBV, and has publicly condemned KSA for detaining women’s rights activists.¹⁹⁸ This context is relevant in determining the risks that arms transfers pose with respect to GBV.

This record illustrates that there are many GBV risk factors under Article 7(4) that can be associated with weapons exports to KSA. These include: KSA’s involvement in the war in Yemen, which has produced significant GBV and serious violence against women and children; KSA’s record of human rights violations and systematic discrimination against women; and the absence of Coalition processes to investigate violations of IHL and IHRL.

191 Amnesty International, *Amnesty International Report 2015/16: The State of the World’s Human Rights*, 2016, <https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF> at 402-403.

192 *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, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/17, at paras 88-93.

193 UNODA ATT Implementation Toolkit, “Module 6: Export,” 2015, <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2015/08/2015-08-21-Toolkit-Module-6.pdf>, at 20.

194 See Convention on the Elimination of all forms of Discrimination Against Women, 18 December 1969, 13 U.N.T.S. 1249, entered into force 3 September 1981, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-8&chapter=4#EndDec The first reservation made by Saudi Arabia is formulated as follows: “In case of contradiction between any term of the Convention and the norms of Islamic Law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.” The second reservation reads as follows: “The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention.” Article 9(2) states: “States Parties shall grant women equal rights with men with respect to the nationality of their children.”

195 CEDAW, art. 2.

196 Human Rights Watch, *World Report 2020: Saudi Arabia Events of 2019*, 2019, <https://www.hrw.org/world-report/2020/country-chapters/saudi-arabia>.

197 Fadi al-Qadi, “Do not forget the jailed Saudi women’s rights activists,” *Aljazeera*, 8 March 2020, <https://www.aljazeera.com/indepth/opinion/forget-jailed-saudi-women-rights-activists-200305103951988.html>.

198 The Canadian Press, “Saudi Arabia freezes new trade, investment after Canada demands activists be freed,” CBC News, 5 August 2018, <https://www.cbc.ca/news/politics/saudi-arabia-suspends-trade-canada-ambassador-1.4775133>. Former Foreign Affairs Minister Chrystia Freeland is quoted as saying, “Canada will always stand up for the protection of human rights, very much including women’s rights, and freedom of expression around the world. Our government will never hesitate to promote these values and believes that this dialogue is critical to international diplomacy.”

“

There are also numerous allegations that Canadian weapons systems exported to KSA, namely LAVs and sniper rifles, have indeed been diverted to the war in Yemen.

”

Diversion

Article 11(2) of the ATT requires that a State Party “prevent the diversion of the transfer of conventional arms” by “assessing the risk of diversion of the export,” which includes “mitigation” and “prevention” measures such as “examining parties involved in the export; requiring additional documentation, certificates, assurances; not authorizing the export; or other appropriate measures.”

Stopping the diversion of weapons is a central aim of the ATT. The prevention and eradication of diversion is explicitly mentioned in the treaty’s preamble, and is listed as one of two objects of the treaty under Article 1.

Under Article 11(2) of the ATT, officials must “seek to prevent the diversion of the transfer of conventional arms” by “assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.” Mitigating measures listed under Article 11(2) include “examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.”¹⁹⁹

In the context of the ongoing war in Yemen, KSA is alleged to have diverted weapons procured from Spain,²⁰⁰ Germany,²⁰¹ Belgium²⁰² and Serbia.²⁰³ Moreover, armoured vehi-

199 ATT, art 11(2).

200 Miguel González, “Why are Spanish weapons being used in the war in Yemen?” *El Pais*, 17 October 2016, https://english.elpais.com/elpais/2016/10/14/inenglish/1476453870_656521.html.

201 Arab Reporters for Investigative Journalism, “The end user: How did Western weapons end up in the hands of ISIS and AQAP in Yemen?” 28 February 2019, <https://en.arij.net/investigation/the-end-user-how-did-western-weapons-end-up-in-the-hands-of-isis-and-aqap-in-yemen>.

202 Allan Hope, “Proof that Belgian arms sold to Saudi Arabia are being used in Yemen,” *The Brussels Times*, 8 May 2019, <https://www.brusselstimes.com/news/business/56362/proof-that-belgian-arms-sold-to-saudi-arabia-are-being-used-in-yemen>.

203 Eric Woods, “Saudi Arabia & murky European weapons transfers to Janjaweed successor group,” *Bellingcat*,

cles diverted by the United Arab Emirates – a KSA Coalition partner – have been linked to IHL violations.²⁰⁴ Although these instances do not pertain directly to Canadian weapons, they illustrate a pattern of allegations that KSA has diverted weaponry to the conflict in Yemen, which should inform Canada's assessment of risk that Canadian weapons could similarly be diverted by the Saudi government.

There are also numerous allegations that Canadian weapons systems exported to KSA, namely LAVs and sniper rifles, have indeed been diverted to the war in Yemen.²⁰⁵ A year-long investigation conducted by Arab Reporters for Investigative Journalism (ARIJ) alleged that KSA disregarded authorized end-use assurances made to Canada among other states, allowing the diversion of sophisticated armoured vehicles, rocket launchers, grenades and rifles to local armed factions and groups in Yemen.²⁰⁶

GDLS-C LAV-25s that were allegedly diverted to Yemeni government forces have been photographed on more than one occasion. The ARIJ reported that between July and October 2018, Canadian LAVs were spotted six times in Yemeni government convoys in Hajjah and Saada provinces.²⁰⁷ In some cases, markings on the vehicles identifying the Saudi Arabian National Guard were crudely replaced with Coalition markings. KSA is the only known member of the Coalition to have acquired these weapons systems, a further indication that Yemeni government forces illicitly acquired the vehicles from KSA.²⁰⁸ Canadian LAVs transferred from Saudi forces to Yemeni government forces without the prior consent of Canadian officials would constitute a breach of end-user assurances and thus constitute diversion.

28 August 2019, <https://www.bellingcat.com/news/2019/08/28/saudi-arabia-murky-european-weapons-transfers-to-janjaweed-successor-group>.

204 Amnesty International, "Yemen: UAE recklessly supplying militias with windfall of Western arms," 6 February 2019, <https://www.amnesty.org/en/latest/news/2019/02/yemen-uae-recklessly-supplying-militias-with-wind-fall-of-western-arms>.

205 With thanks to Anthony Fenton for feedback on this section.

206 Allegations were made in an Arabic-language documentary film, *Yemen and the Global Arms Trade*. The documentary aired on YouTube on 4 December 2018. The film was also covered in *The Guardian*, 28 November 2018, <https://www.theguardian.com/global-development/2018/nov/28/arms-yemen-militia-were-supplied-by-west-find-analysts>.

207 Arab Reporters for Investigative Journalism, "The end user: How did Western weapons end up in the hands of ISIS and AQAP in Yemen?" 28 February 2019, <https://en.arij.net/investigation/the-end-user-how-did-western-weapons-end-up-in-the-hands-of-isis-and-aqap-in-yemen>.

208 For instance, see the Stockholm International Peace Research Institute Arms Transfers Database, <https://www.sipri.org/databases/armstransfers>; Project Ploughshares Canadian Military Industry Database, [available by request via <https://ploughshares.ca/conventional-weapons/canadian-military-production>]; and International Institute for Strategic Studies, *The Military Balance 2020*, Chapter Seven: "Middle East and North Africa," at 324-387.



Canadian-made LAVs reportedly operated by Yemeni government forces in Hajjah Province, Yemen, May 2018.²⁰⁹



Canadian-made LAVs reportedly operated by Yemeni government forces in Hajjah Province, Yemen, second angle, May 2018.²¹⁰

209 The Media Center of the Fifth Military District - Yemen, "Watch the process of liberating the first villages of the Hiran District, Hajjah Governorate, by the National Army," YouTube, 18 July 2018, <https://youtu.be/8mH-Kq2l6tS8>. This source video was brought to our attention by Mohamed Abo-Elgheit in Spring 2021.

210 Ibid.



Mohammed bin Abdullah Al-Ajabi, Brigadier General in the Yemeni armed forces, allegedly firing a Canadian-made PGW Defence Technologies sniper rifle.²¹¹

Canadian-made PGW Defence Technologies sniper rifles have also been photographed on several occasions, allegedly in the possession of Yemeni government or proxy forces. The same ARIJ investigation alleged that Mohammed bin Abdullah Al-Ajabi, Brigadier General of the Yemeni forces, was photographed on two different occasions in 2018 brandishing a PGW Defence Technologies Timberwolf sniper rifle.²¹² Social media users have identified other instances of Yemeni forces allegedly in possession of PGW Defence Technologies sniper rifles.²¹³

211 Arab Reporters for Investigative Journalism, "The end user: How did Western weapons end up in the hands of ISIS and AQAP in Yemen?" 28 February 2019, <https://en.arij.net/investigation/the-end-user-how-did-western-weapons-end-up-in-the-hands-of-isis-and-aqap-in-yemen>.

212 Ibid.

213 For instance, see https://twitter.com/leone_hadavi/status/1108026819280801792?s=20; also see Martin Lukacs, "Is Saudi Arabia deploying Canadian-made weapons in Yemen?" *National Observer*, 30 November 2018, <https://www.nationalobserver.com/2018/11/30/news/experts-say-theres-proof-canadian-made-weapons-are-being-used-saudi-war-yemen>.



Brigadier General Mohammed bin Abdullah Al-Ajabi shown later in the same video, with Yemeni military uniform and Yemeni flag shoulder patch visible.²¹⁴

It is well established that PGW Defence Technologies has been a prime supplier of multiple varieties of sniper rifles to KSA.²¹⁵ According to the UN Register of Conventional Arms, KSA is also the sole member of the Coalition to have received Canadian sniper rifles since at least 2014, apart from four unspecified “rifles and carbines”²¹⁶ exported to Jordan in 2017.²¹⁷

214 Sky News Arabia, “The Yemeni army advanced on the edge of the Razih mountains,” 17 July 2018, <https://www.skynewsarabia.com/video/1164912-%D8%AA%D9%82%D8%AF%D9%85-%D9%84%D9%84%D8%AC%D9%8A%D8%B4-%D8%A7%D9%84%D9%8A%D9%85%D9%86%D9%8A-%D8%AA%D8%AE%D9%88%D9%85-%D8%AC%D8%A8%D8%A7%D9%84-%D8%B1%D8%A7%D8%B2%D8%AD>. This source video was brought to our attention by Mohamed Abo-Elgehit in Spring 2021.

215 Michael Smallwood, “North American anti-materiel rifles with Houthi forces in Yemen,” *The Hoplite*, Armament Research Services, 19 November 2015, <https://armamentresearch.com/north-american-anti-materiel-rifles-with-houthi-forces-in-yemen>; Martin Lukacs, “Is Saudi Arabia deploying Canadian-made weapons in Yemen?” *National Observer*, 30 November 2018, <https://www.nationalobserver.com/2018/11/30/news/experts-say-theres-proof-canadian-made-weapons-are-being-used-saudi-war-yemen>.

216 “Rifles and carbines” is the classification used by UNROCA for “bolt-action and semi-automatic rifles,” as defined in each annual report, and includes PGW Defence Technologies sniper rifles. According to UNROCA, between 2014 and 2019, Canada reportedly exported 5,399 rifles and carbines to KSA.

217 See Canada’s reports to the UN Register of Conventional Arms (UNROCA), 2019, <https://www.unroca.org/canada/report/2019>; 2018, <https://www.unroca.org/canada/report/2018>; 2017, <https://www.unroca.org/canada/report/2017>; 2016, <https://www.unroca.org/canada/report/2016>; 2015, <https://www.unroca.org/canada/report/2015>; 2014, <https://www.unroca.org/canada/report/2014>. Statistics Canada data published in the Canadian International Merchandise Trade (CIMT) Database, <https://www5.statcan.gc.ca/cimt-cicm/home-accueil?lang=eng>, indicates that the UAE began importing large volumes of small arms and light weapons from Canada in 2020. However, only data relevant to the timeframe covered in the Final Report was included in this analysis.

“

Given the overriding risk posed by Canadian weapons exports to KSA, Canada must immediately revoke existing arms export permits to KSA and suspend the issuance of new ones.

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Therefore, it appears overwhelmingly likely that any PGW Defence Technologies sniper rifles allegedly possessed by Yemeni forces have been supplied via KSA; again, if such transfers were not authorized by Canadian officials, they would be a breach of end-user assurance and therefore constitute diversion.

As demonstrated, KSA is credibly alleged on numerous occasions to have deliberately diverted foreign-sourced weapons, including those procured from Canada, to the war in Yemen. Canadian officials are obligated to seek measures to mitigate and prevent further occurrences, in order to satisfy Article 11 of the ATT and, critically, reflect the spirit of the treaty as a whole.

Conclusion

It has been established through investigations and expert reports that Canadian weapons exports to KSA are contrary to Canada's legal obligations under the ATT. Experts, including the GEEY, have presented evidence that arms transfers to the KSA-led Coalition have exacerbated the armed conflict, thereby undermining peace and security. Additionally, there is an overriding risk that Canadian weapons could be used to commit or facilitate violations of IHL and IHRL, and reports illustrate that the KSA-led Coalition's participation in the conflict in Yemen has been responsible for GBV, forced displacement, and direct attacks on civilian objects. Finally, there is persuasive evidence that weapons exported from Canada to KSA, including LAVs and sniper rifles, have been diverted for use in the war in Yemen.

Given the overriding risk posed by Canadian weapons exports to KSA, Canada must immediately revoke existing arms export permits to KSA and suspend the issuance of new ones.²¹⁸

218 It should be noted that an application for judicial review to quash these export permits is currently pending before the Federal Court of Canada in the case of *Daniel Turp v. Minister of Foreign Affairs*, T-1658-19. On this and previous applications filed by Professor Turp, see Daniel Turp, "Green Light for Arms Exports to Saudi Arabia - Ca-

Canada should thereafter fully incorporate all provisions of the ATT into the EIPA, including a definition of “substantial risk.” The government should then consider introducing greater parliamentary scrutiny of Canadian export controls, policy and practice, and complement it with the creation of an arm’s-length advisory panel of experts to review best practices and support State Parties’ compliance with the ATT. These considerations would not only ensure Canada’s full compliance with the international obligations to which it has acceded, but would also reduce the likelihood that Canadian weapons will be used to violate human rights abroad.



LAVs pictured outside of Moncton, New Brunswick, en route to the Port of Saint John for transport to Saudi Arabia, 18 September 2018.²¹⁹

nadian Government Persists in Selling Arms to Saudi Arabia," Relations, September-October 2020, <https://www.erudit.org/fr/revues/rel/2020-n810-rel05477/93978ac>, at 6-7. Similar legal challenges have been brought in Belgian, British, French and Italian courts: see Éric David, Daniel Turp, Brian Wood and Valentina Azarova, *Opinion on the International Legality of Arms Transfers to Saudi Arabia, the United Arab Emirates and other Members of the Coalition military involved in Yemen*, December 2019, https://ipisresearch.be/wp-content/uploads/2019/12/191209-Yemen-EN_WEB-2.pdf, at 6, footnote 1.

219 Containerman2, “Military LAVs! CN Train 406 West Departing Moncton Gordon Yard,” YouTube, 22 September 2018, https://www.youtube.com/watch?v=_7hWPpn7yCU&ab_channel=containerman2.

2011

NOVEMBER 2011: The UN brokers and implements the Gulf Cooperation Council Initiative, aimed at assisting a peaceful political transition in Yemen from the former President, Ali Abdullah Saleh, to incoming President, Abdrabbuh Mansur Hadi.²²⁰

FEBRUARY 2014: The Canadian Commercial Corporation announces a 14-year, multi-billion-dollar deal for the export of hundreds of LAVs to KSA.²²¹

DECEMBER 2014: In Yemen, opposition to President Hadi escalates when the Houthis unite with former President Saleh and stage a coup against the official government, taking control of the Yemeni capital, Sana'a, and initiating a march to take control of the country.²²²

2014

CANADIAN ARMS EXPORTS TO SAUDI ARABIA

A TIMELINE

FEBRUARY 2014: A Panel of Experts on Yemen is established to gather, examine and analyze information from states, relevant UN bodies, regional organizations and other interested parties regarding the implementation of the measures laid out in UN Security Council Resolution 2140 (2014).²²³

MARCH 2015: Houthis threaten to capture the city of Aden; the UN Security Council condemns the actions of the Houthis and urges all parties to abide by the Gulf Cooperation Council Initiative.²²⁴

MARCH 2015: The Coalition begins military operations in Yemen in response to a call for help from President Hadi.²²⁵

EARLY 2017: Approximate start date of Canadian LAV exports to KSA arranged under the 2014 deal.²²⁷

JULY 2017: Media sources report that Canadian-made Terradyne "Gurkha" armoured vehicles are being used to suppress an uprising by the Shi'a minority in Al Qatif.²²⁸ Existing permits for the export of these vehicles to KSA are suspended by GAC.²²⁹

AUGUST 2017: Canada's ambassador is expelled by the Saudi government after Canada criticizes actions of the Coalition in the Yemeni conflict.²³⁰

2015

2016

2017

APRIL 2016: The UN Security Council imposes an arms embargo on the Houthis and forces loyal to former President Saleh, calling on member/neighbouring states to inspect all cargo to Yemen and seize any illegal shipments of arms.²²⁶

OCTOBER 2017: Memorandum for Action "Export permit suspensions: Munitions list item to Saudi Arabia" (BPTS: 03120-2017) is issued to the Minister of Foreign Affairs, suggesting permits for the export of Terradyne Gurkhas to KSA be reinstated.²³¹

AUGUST 2018: KSA institutes “punitive diplomatic and trade measures” against Canada, as the bilateral relationship deteriorates.²³²

OCTOBER 2018: Jamal Khashoggi is assassinated.²³³

DECEMBER 2018: Bill C-47 receives royal assent.

2018

NOVEMBER 2018:

- Canada orders a review of all arms exports to KSA and imposes a moratorium on the issuance of new export permits to KSA pending the completion of the review.²³⁴
- No existing valid export permits are suspended or cancelled during the period of assessment. During this period, GAC processes another 48 permit applications for exports of controlled goods to KSA under its standard risk assessment process.²³⁵
- Officials examine areas of human rights concerns, but find no credible evidence linking Canadian exports of military equipment or other controlled items to any international human rights or humanitarian law violations committed by the Saudi government.²³⁶

FEBRUARY 2019: The European Commission recommends adding KSA to its “blacklist” of high-risk third countries with “strategic deficiencies” in their anti-money laundering and counter-terrorist financing regimes.²³⁷

FEBRUARY 2019: CNN reports that US-made weapons sold to KSA and UAE might have been diverted to various military elements waging war in Yemen, including Al-Qaeda in the Arabian Peninsula, through alliances with pro-Saudi militias operating in Yemen.²³⁸

AUGUST 2019: The Group of Eminent International and Regional Experts on Yemen (GEEY) presents their report *Situation of human rights in Yemen, including violations and abuses since September 2014* to the Office of the United Nations High Commissioner for Human Rights. The report adopts the “reasonable grounds to believe” standard of proof,²³⁹ and, on this basis, finds that KSA and other members of the Coalition might have:

- “conducted airstrikes in violation of the principles of distinction, proportionality and precaution, and may have used starvation as a method of warfare, acts that may amount to war crimes”,²⁴⁰
- “committed acts that may amount to war crimes, including murder, torture, cruel or inhuman treatment, rape, outrages upon personal dignity, denial of fair trial, and enlisting children under the age of 15 or using them to participate actively in hostilities.”²⁴¹

In consideration of the report’s findings, the GEEY advises third states to take “all reasonable measures to ensure respect for international humanitarian law by all parties to the conflict, taking into account their level of influence; in particular, refrain from providing arms that could be used in the conflict.”²⁴²

2020

2019

JUNE 2019: Canada deposits its instrument of accession to the ATT.

SEPTEMBER 2019: Canada accedes to the ATT.

SEPTEMBER 2019: GAC issues a Memorandum for Information, *Update on export permits to Saudi Arabia* (BPTS: 03575-2019), suggesting that 48 suspended export permits for Canadian weapons transfers to KSA be approved.²⁴³

APRIL 2020: The Government of Canada publishes the *Final Report: Review of export permits to Saudi Arabia*.²⁴⁴

TIMELINE NOTES

- 220 Marwa Rashad, "Yemen's Saleh signs deal to give up power," Reuters, 23 November 2011, <https://www.reuters.com/article/us-yemen-idUSTRE7AM0D020111123>.
- 221 Murray Brewster, "Canada's arms deal with Saudi Arabia includes 'heavy assault' vehicles," CBC News, 20 March 2018, <https://www.cbc.ca/news/politics/canada-saudi-arms-deal-1.4579772>.
- 222 April Longley Alley, "Yemen's Houthi takeover," Middle East Institute, 22 December 2014, <https://www.mei.edu/publications/yemens-houthi-takeover>.
- 223 United Nations Security Council, "Security Council adopts Resolution 2140 (2014), welcoming Yemen's peaceful transition towards new constitution, general elections," 7119th Meeting, 26 February 2014, SC/11296, <https://www.un.org/press/en/2014/sc11296.doc.htm>, at para 21.
- 224 UNSC, "Condemning Houthi actions, spiraling violence, Security Council, in Statement on Yemen, urges non-state actors to withdraw from government facilities," 7411th Meeting, 22 March 2015, SC/11828, <https://www.un.org/press/en/2015/sc11828.doc.htm>.
- 225 Dan Roberts and Kareem Shaheen, "Saudi Arabia launches Yemen air strikes as alliance builds against Houthi rebels," *The Guardian*, 26 March 2016, <https://www.theguardian.com/world/2015/mar/26/saudi-arabia-begins-air-strikes-against-houthi-in-yemen>.
- 226 UNSC, Resolution 2216 (2015), 7426th Meeting, 14 April 2015, S/RES/2216(2015), [https://www.undocs.org/S/RES/2216%20\(2015\)](https://www.undocs.org/S/RES/2216%20(2015)), at paras 14-17.
- 227 Murray Brewster, "Canada's arms deal with Saudi Arabia includes 'heavy assault' vehicles," CBC News, 19 March 2018, <https://www.cbc.ca/news/politics/canada-saudi-arms-deal-1.4579772>.
- 228 Steven Chase, "Ottawa calls for probe into apparent Saudi use of Canadian-made armoured vehicles against citizens," *The Globe and Mail*, 28 July 2017, <https://www.theglobeandmail.com/news/politics/saudi-arabia-ap-pears-to-be-deploying-canadian-made-armoured-vehicles-against-its-own-citizens/article35831864>.
- 229 Global Affairs Canada, *Memorandum re: Export permit suspension: Munitions list item to Saudi Arabia*, 10 October 2017, <https://www.international.gc.ca/controls-controles/memorandum-for-action-memoire-pour-decision.aspx?lang=eng>, at para 5.
- 230 Jon Gambrell, "Saudi Arabia expels Canadian ambassador over criticism," Associated Press, 6 August 2018, <https://apnews.com/article/yemen-ap-top-news-international-news-ottawa-riyadh-a861fc0eb-8c94985bb64399912329364>.
- 231 Global Affairs Canada, *Memorandum for Action re: Export permit suspension: Munitions list item to Saudi Arabia*, 10 October 2017, <https://www.international.gc.ca/controls-controles/assets/pdfs/documents/memorandum-memo.pdf>, at 1.
- 232 Global Affairs Canada, *Memorandum for Information re: Update on export permits to Saudi Arabia*, 17 September 2019, https://www.international.gc.ca/trade-commerce/assets/pdfs/controls-controles/arms-export-saudi-arabia_exportations-armes-arabie-saoudite_eng.pdf, at para 5.
- 233 Shane Harris, Greg Miller and Josh Dawsey, "CIA concludes Saudi crown prince ordered Jamal Khashoggi's assassination," *The Washington Post*, 16 November 2018, https://www.washingtonpost.com/world/national-security/cia-concludes-saudi-crown-prince-ordered-jamal-khashoggis-assassination/2018/11/16/98c89fe6-e9b2-11e8-a939-9469f1166f9d_story.html.
- 234 Global Affairs Canada, *Memorandum for Action re: Export permit suspension: Munitions list item to Saudi Arabia*, 10 October 2017, <https://www.international.gc.ca/controls-controles/assets/pdfs/documents/memorandum-memo.pdf>, at 1.

235 Ibid.

236 Ibid, at para 8.

237 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>, at para 74.

238 Nima Elbagir et al., “Sold to an ally, lost to an enemy,” CNN, 5 February 2019, <https://www.cnn.com/interactive/2019/02/middleeast/yemen-lost-us-arms>.

239 *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, Human Rights Council, Forty-second session, 9 August 2019, A/HRC/42/17, <https://undocs.org/en/A/HRC/42/17>, at para 5.

240 Ibid., at para 96(b).

241 Ibid., at para 96(c).

242 Ibid., at para 99(b). [Emphasis added.]

243 Global Affairs Canada, *Memorandum for Information re: Update on export permits to Saudi Arabia*, 17 September 2019, https://www.international.gc.ca/trade-commerce/assets/pdfs/controls-controles/arms-export-saudi-arabia_exportations-armes-arabie-saoudite_eng.pdf, at 1.

244 Canada, *Final Report*, 2020, <https://www.international.gc.ca/trade-commerce/controls-controles/memo/annex-a-ksa.aspx?lang=eng>.

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