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Introducing the special section on ‘arms export controls during war and armed conflict’

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The war in Ukraine has brought questions of arms exports, military aid and military spending to the forefront of western foreign policy agendas. Western state responses to Russia's invasion have accelerated trends that started after its 2014 annexation of Crimea. Since then, US military aid to Ukraine has increased to the point where it is now the largest single recipient of US security assistance in 2022 (Yousif, 2022), the EU has committed €3.1 billion under the European Peace Facility (European Council, 2023), and European states are making additional bilateral military commitments. Expert and public commentary is largely in favour of supporting Ukraine militarily on grounds of self-defence, even while noting the risks associated with arms transfers into conflict zones (Hudson, 2022; Yousif & Stohl, 2022). There is some dissent on the European left and from the peace movement (Berliner Zeitung, 2022; Broek, 2022), but it has been countered by the Ukrainian left and feminist movements in favour of arms exports for self-defence against invasion and occupation (Bilous, 2022; Tsymbalyuk & Zamurui, 2022).

Western states have also been major arms suppliers of Saudi Arabia and the UAE during - and long before - their participation in the war in Yemen. In this case, however, the war has received far less public attention overall, and expert and public opinion has been largely critical of arms exports to the Saudi- and UAE-led coalition. Commentators have focused on the coalition's unwillingness or inability to respect international humanitarian and human rights law in the conduct of the war (Human Rights Watch, 2022; Mwatana, 2018; Nasser, 2022). They particularly note the centrality of western military assistance to the coalition's ability to prosecute the war and the risk that western states could be complicit in war crimes as a result (Merat, 2019, Group of Eminent International and Regional Experts, 2019, 16). While some European states have started to restrict their arms exports to the coalition, especially in the aftermath of the murder of journalist Jamal Khashoggi, the coalition's main suppliers - the United States, UK and France - have continued to send weapons and associated engineering and logistical support.

These two cases illustrate the malleability of western policy and practice around arms transfers. In both cases, arms exporters have readily supplied weapons in the face of conflict, mobilising similar rhetoric linked to claims of assisting in the self-defence for legitimate governments (or government-in-exile, in the case of Yemen), and using the same legal and political framework to justify their practice in very different contexts. In the case of Yemen, arms exporters' justifications have been undermined by the conduct of the Saudi- and UAE-led coalition's conduct in nearly 8 years of war to date, which includes excessive civilian harm and the deliberate targeting of the population through air strikes and blockades. In the case of Ukraine, justifications based on self-defence hold more water and concerns about the perpetuation of conflict through arms sales are taking second place to efforts to maintain the national integrity of Ukraine as a state. Nonetheless, in both cases, the decisive factor has been neither ethics nor the legal framework surrounding arms exports, but the suppliers' perceived economic, security and/or strategic interests, with export control rules interpreted in ways, which suit them.

These similarities in rhetoric and practice despite differences in expert and public reception indicate the centrality of political interpretation to ostensibly neutral, technical and universally applicable rules of control.
They generate a series of questions for the interested observer: what are the drivers of arms export policy? What are the rules governing arms transfers? What happens to arms export controls once war breaks out? Why do export control systems that claim to restrain weapons supplies to conflicts nevertheless result in exporters steadily supporting conflicts around the world? In short, what are the politics of arms transfer regulation?

This special section addresses these questions via an analysis of the export policies and practices of three of the world’s largest arms exporters: the United States, the UK and France. Comprehensive assessments of the overall impact of policies designed to limit arms sales to countries involved in conflicts are limited: previous studies tend to focus on human rights and democracy, rather than conflict (e.g. Blanton, 2005; De Soysa & Midford, 2012; Erickson, 2013, 2015; Perkins & Neumayer, 2010). A key contribution comes from Perlo-Freeman (2021), who analyses the arms export records of the top 11 global major conventional arms exporters over the period 1990–2018 to assess whether and how the outbreak of conflict involving a recipient state affects their exports. He finds that, despite their many differences otherwise, the empirical record across major arms exporting states of weapons transfer practices during war and armed conflict is remarkably similar: conflict is not a significant source of restraint; and demand factors instead drive arms exports. In fact, he finds, “all major arms exporters supplied substantial volumes of arms to at least some of the wars of the current century, regardless of their stated policy” (Perlo-Freeman, 2021: 5).

Major arms exporters vary in the form and content of their formal policies regarding arms exports. One of the broad differences between them is that states that identify as liberal democracies have domestic control regimes that include reference to conflict prevention, human rights and humanitarian law, while other major exporters do not. Many liberal democratic states — with the important exception of the United States — are also States Parties to the 2014 UN Arms Trade Treaty (ATT), which seeks to limit arms transfers when there is an overriding risk they would undermine peace and security or could be used to commit or facilitate violations of human rights and international humanitarian law. All EU member states are also bound by the EU Common Position, which requires states to deny export licences if a proposed transfer would provoke or prolong armed conflicts. Yet Perlo-Freeman’s (2021) statistical analysis finds that, overall, the difference in arms export practices between exporters such as Russia and Ukraine — who do not reference conflict, human rights or humanitarian law in their policies — and the US and western European suppliers, who do, was relatively minor. This suggests the difference between control regimes on paper leads to less divergence in practice than we might expect.

These general patterns raise the question of what happens in specific exporting states and why different control regimes fail to control weapons flows in similar ways. We focus on the United States, the UK and France because all three are major exporting democracies whose control regimes include reference to the prevention of conflict. As a result, we might expect all three countries to exercise high levels of restraint when it comes to arms exports to conflict zones, an outcome we do not find. In addition, between them, they also showcase important variation in factors we might expect to affect their control regime implementation. In particular, these are states with varying levels of transparency, civil society activism and public engagement when it comes to the arms trade. These factors are generally associated with liberal democratic systems and are each, when present, expected to produce better compliance with domestic and international law. Nonetheless, these countries display remarkable similarities in terms of ongoing transfers of weapons to conflict zones.

As Jennifer Erickson’s article notes, the United States has what is commonly lauded as the ‘gold standard’ of national arms export control systems, even if it is not a State Party to the ATT (e.g. Stohl, 2010). Its export control system is considered highly transparent and includes reference to restraining arms supplies to regions of conflict and instability, alongside supporting US economic and national security needs. The 1976 Arms Export Control Act — the cornerstone of US controls — gives the president authority over arms imports and exports and positions Congress as a check on executive decision-making. Even so, the outbreak of conflict does not oblige the president to refuse arms export licences, and in practice, Congressional oversight and public engagement have been weak to non-existent. Consequently, the executive branch has considerable leeway to shape arms export policy around more narrowly focused economic and national security interests. The result has been that whatever recipients’ conflict status, when the United States wants to sell weapons to a state for security or economic reasons, it will.

UK arms export controls were revised after the 1996 Arms to Iraq inquiry and resultant Scott Report, which revealed that the UK had been arming both Iran and Iraq in their war in the 1980s despite a policy not to sell weapons to either. As Anna Stavrianakis’ article notes, since then, the UK has positioned itself as a ‘responsible’ arms exporter and a leader in multilateral arms transfer control, taking high-profile diplomatic and negotiating position in relation to both the EU Code of Conduct and the ATT. The UK also has high levels of civil society activism seeking to hold the government accountable to its domestic and international export control commitments. As a result, its arms export practices — once again less restrictive than its policies would lead observers to expect — have also routinely been subject to extensive public criticism from the earliest days of the revised controls, in light of controversies over arms sales to Indonesia in relation to its repression of East
Timor and Aceh, to India and Pakistan in the face of their nuclear tests and ongoing warring over Kashmir, to Zimbabwe for use in the war in the DRC; and most recently in relation to the war in Yemen, in which the UK is a leading supplier of weapons and military aid to the Saudi-led coalition. In the face of criticism from NGOs, MPs and the media, successive governments from both major parties have routinely and repetitively referenced the robustness of its control regime rather than engage with the substance of the concerns raised.

As Emma Soubrier’s article points out, France too sells its export control system as one of the most strict and responsible. Its export control system is based on the EU Common Position and ATT and applies what it refers to as “absolute respect [for its] international commitments...and considerations for conflict situations and risks of grave human rights violations” (Ministère de la Défense, 2012: 17). However, the French Code of Defence that governs arms exports “does not explicitly incorporate the ATT or the EU Common Position, nor does it clarify whether they can be invoked in court” (ATT Expert Group, 2021: 27). In practice, France has exported weapons to conflict parties on numerous occasions and is one of the exporters for which conflict appears to be associated with a higher probability of transfers (Perlo-Freeman, 2021: 5). Most of France’s weapons are exported to the Middle East and North Africa, a region that has been the site of many new and rejuvenated conflicts over the past decade and whose importance to France as an export market has increased. Given the relative lack of transparency in the French case and the enduring idea that arms sales are across the board good for the country’s ‘strategic autonomy’, civil society has struggled to mobilise the public and pressure the government to change its behaviour.

Four common themes emerge from the export patterns and control systems of the United States, UK and France. The articles that follow explore these in more detail in an attempt to demystify complex and opaque decision-making systems or debunk myths that have grown up around arms exports. First, despite legal obligations to the contrary, conflict is not a consistent restrictive factor in the granting of arms export licences, and the misuse of weapons exported by the United States, UK and France is a routine feature of wars rather than an occasional aberration. Second, arms export licensing decisions mostly promote policy objectives defined narrowly around economic and national security arguments, even where these clash with legal obligations. The drivers of these policy objectives are cast as ‘critical’ or ‘strategic’ but there is little democratic debate about the substance of these goals. Third, there are few real restrictions on the executive’s ability to use arms exports to meet policy goals. Licensing decisions are subject to little or no oversight from, or accountability to, the legislature, let alone the public. In all three cases, we see a lack of public engagement with or knowledge about arms export issues. Fourth, where states do implement their control obligations, they often apply the letter rather than the spirit of the law, enacting weak or legitimising measures to generate reputational benefit rather than strict control over the spread of weapons. This is the case even in a country like the UK, where there is the strongest and most active civil society engagement on the issue of arms exports of the three, and where we might expect recommendations or expertise to be translated into policy.

These common themes suggest at least three further avenues for future research and policy advocacy beyond this special section. First, further research comparing the export policy and practice of different major arms exporting states, in particular those that do not reference conflict prevention, human rights or international humanitarian law, would be valuable. There is currently more research in the public domain about western states’ export practices than non-western, but exporters like Russia, China, Israel and Ukraine also play key roles in shaping conflict dynamics around the world. Of all the exporters, for example, Russia supplies arms to the greatest number of wars, and Ukraine was a significant conflict supplier in relation to its overall level of exports (Perlo-Freeman, 2021: 5). In part, the greater attention to western exporters is due to relatively greater transparency and lower risks to researchers in relation to examining national security issues. The war in Yemen has served to massively increase levels of arms exports from western states to the Gulf, and the war in Ukraine is a major impetus to increases in military spending and arms transfers around the world. Some existing trends and historical patterns – such as US dominance of the arms market, the growth of Chinese arms exports, growing arms production by other non-western states, and increased security and military relations between Israel and the Gulf states – may be entrenched, while others - Russia’s role as a major arms exporter, for example – may be challenged.

Second, further research could analyse the purposes and strategic implications of export controls, given that their effect is not to restrict transfers. Having export control policies that reference conflict prevention, the protection of human rights and respect for international humanitarian law is an aspiration for many actors across state and civil society, supported by scholarship and research that assumes the progressive impact of such change. But if these commitments do not actually serve to restrict transfers, the arms trade community – and those that advocate ‘humanitarian’ controls in particular – need to think about the purposes and functions of controls. The codification of obligations in the potentially universalisable ATT has not in itself yet improved states’ practices. States have not internalised the norms contained in the ATT as a result of the diplomatic process of agreeing the treaty – norms, for liberal democracies, that often predate the ATT in national export control systems. Civil society actors continue
to make efforts to drag states towards tighter controls, as evidenced by the increase in legal cases in national jurisdictions on the basis of ATT commitments. But those legal processes, while potentially promising, are drawn out and uncertain, allowing governments to continue with ‘business as usual’ in the meantime.

Third, the articles in this special section focus on the mismatch between states’ written policies and their export practices, examining the failure of states to implement their publicly stated commitments. The articles all reference the drivers of the export policies that lead to transfers that contradict stated policy. Future research could fruitfully unpick the dynamics of what are often identified as national security or economic objectives, and the relationships between states and the arms industry that generate them. There is a strong transnational dimension to a trade that ostensibly protects national interests, and variations in the relationship between the state and arms industry in different countries. In the context of the uneven internationalisation of the arms industry and growing military collaboration between non-western states as well as between traditional arms suppliers and their clients, research into the changing political economy of the arms market is warranted. The policy implications of these findings, as ATT implementation proceeds and ‘new cold war’ dynamics of militarisation unfold, could be profound.

DATA AVAILABILITY STATEMENT
Data sharing is not applicable to this article as no new data were created or analyzed in this study.

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ENDNOTE
1 Based on data from the Stockholm International Peace Research Institute, in order by the volume of major conventional weapons transfers, the leading arms supplying states are: the USA, Russia, Germany, France, China, the UK, Spain, Israel, Italy, the Netherlands, and Ukraine.

REFERENCES
AUTHOR BIOGRAPHY

Anna Stavrianakis is Professor of International Relations at the University of Sussex, where she researches and teaches on the international arms trade, UK arms export policy, militarism and global (in)securities. She regularly works with campaigner, NGOs, journalists and parliamentarians on issues of arms export controls and (anti-)militarism.

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