Requiem for risk: non-knowledge and domination in the governance of weapons circulation

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Anna Stavrianakis, Department of International Relations, University of Sussex, UK.

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It is now widely accepted that risks must be socially constructed, discursively produced, generated through practice or somehow otherwise constituted and mobilised in order to generate a response. And whilst risk has become a leitmotif of the contemporary era, we know that not all issues are amenable to being accepted as risky: not all constructions, discourses or practices are equal. This is both an epistemological question – how do we know where potential harm comes from, to whom or what, and how? – and a political one – who has the ability to generate a constituency to accept, mobilise and act on the risk? These questions are thrown into sharp relief by the international arms trade, which has been increasingly but unevenly regulated by risk-based regimes over the past three decades. One of the most significant contemporary controversies is over the role of western weapons exports in violations of international humanitarian law (IHL) in the war in Yemen since March 2015. Yemeni and international activists, journalists, NGOs and inter-governmental organisations including the United Nations (UN) have marshalled widespread empirical evidence that indicates likely IHL violations committed by the Saudi-led coalition in the course of the war. Empirically, if not normatively, the preventive rationale of risk means that such information should trigger restrictions on weapons exports. Yet the UK – the second largest arms supplier to Saudi Arabia and a leading proponent of the risk-based control regime, publicly and legally committed not to allow arms sales where there is a clear risk they might be used in serious violations of IHL – has continued to transfer weapons for use in a war in Yemen that has been widely condemned for unnecessary and illegal civilian harm.

In this article I ask how evidence from Yemen is being interpreted, managed and marshalled by officials and ministers of the UK state to suggest that there is no clear risk of serious IHL violations, and thus no reason to refuse weapons exports to the Saudi-led coalition. In short, how is risk being made *not* to matter? And what are the ramifications for the risk paradigm as a mode of managing uncertainty? To answer these questions, I make an empirical and conceptual argument about weapons control, non-knowledge and the risk paradigm. Empirically, I argue that risk has been made not to matter in the governance of weapons circulation through an active strategy of not knowing about IHL violations. Without knowing that there *have* been breaches of IHL, the UK government deems the *risk* of future violations not to be clear; hence there is no need to refuse arms exports. The UK state claims that if excessive civilian harm does seem to have happened, it must have been unintended or accidental – a strategy to mitigate the demands of IHL and manage the reputation of a friendly state. And state actors mobilise a temporal claim that even if there have been violations of IHL in the past, the risk of future harm is not clear. Overall, the effect of these practices is to make negotiable the limits of what is deemed legally and normatively permissible.

This detailed empirical tracing generates a conceptual claim about how risk operates as a political technology: that is, as a set of practices, processes and operations

embedded in, shaping and shaped by political governance, rather than external influences or interventions that undermine it. Conceptually, I argue that the process of risk assessment creates and capitalises on shifting dynamics of secrecy, partial transparency and managed openness in order for state actors to navigate the demands of an ostensibly preventive risk rationale. Articulating this as the production of non-knowledge in a strategy of antiepistemology, I argue that the effect is to generate a regime of recklessness. While claims of harm in the form of serious IHL violations in Yemen have been made public and are circulating, they are repeatedly structured out of decision-making, prevented from resonating and facilitating preventive action, and simultaneously mobilised as evidence of the government's commitment to IHL and risk-based governance. Mundane practices of non-knowledge belie the asymmetries of power involved in the regulation and contestation of risk.

The effects of this regime of recklessness indicate that risk has been mobilised as a mode of domination. Domination comes in two forms: the ability of pro-export actors to repeatedly secure outcomes favourable to them despite the involvement of pro-control actors in the risk assessment process; and the effects of UK arms export policy that facilitate likely war crimes in Yemen. In contrast to what the wider literature demonstrates about the preventive and pre-emptive effects of risk, the operation of risk in the arms trade generates a permissive rather than a restrictive logic: it facilitates ongoing arms exports despite the potential for harm. This does not suggest a failure of risk as a governance strategy, however, or a contradiction in the operation of risk. Rather, it illustrates the generative character of risk when it becomes embedded as a regulatory technology and indicates the importance of attending to the asymmetrical power dynamics of the operation of such technologies. If the potential for domination is built in to the operation of risk, we need a requiem for risk and a search for alternative grounds of repoliticisation that can generate different modes of regulation and accountability that minimise the scope for domination.

To make this argument, I draw on a range of primary sources: UK government licensing statistics; records of parliamentary debates; legal documents and witness statements released during 2017 and 2019 hearings in a judicial review of arms exports to Saudi Arabia, made publicly available by Campaign Against Arms Trade (CAAT) to increase transparency around weapons exports; and Freedom of Information (FOI) requests by myself and others. These have been supplemented with interviews with licensing officials from across the departments involved in UK arms export control (Department of International Trade (DIT), Foreign and Commonwealth Office (FCO), Ministry of Defence (MOD) and Department for International Development (DFID), mostly in 2015 and 2016), as well as participant observation over more than a decade with NGOs and campaign groups working to restrain the arms trade (such as Amnesty International, CAAT, Control Arms, Oxfam and Saferworld), observation of the judicial review hearings, and my own participation in the parliamentary scrutiny process through giving oral and written evidence to parliamentary committees (2016-19).

Risk assessment as domination

The UK has long been a major weapons supplier to Saudi Arabia, second only to the USA, the main military, economic and diplomatic supporter and patron of the Saudi state. Most recently, under a series of confidential government-to-government agreements signed in the 1980s, BAE Systems (formerly British Aerospace) acts on behalf of the UK state to provide weapons and support services to the Saudi military. Weapons transfers under these agreements are licensed by the UK state as part of its wider policy of arms transfer regulation. This functional separation between the state and arms capital belies an organic relationship with deep historical roots. It also provides a mutually beneficial denial of responsibility for the effects of weapons transfers, in which the state claims not to have "full visibility" of the company's actions (Secretary of State for International Trade et al 2016, 8), and the company displaces responsibility on to the state (Merat 2019).

UK policy is to assess arms export license applications from companies on a case-by-case basis against what are known as the Consolidated Criteria, the UK's national rules that incorporate EU and international standards. In particular, Criterion Two states that the UK government will not licence weapons exports where there is a "clear risk" that they "might" be used in serious violations of IHL (Cable 2015). Allegations of corruption have dogged the UK-Saudi relationship for years; and political violence in Yemen has a long, transnational history. But it was with the involvement of a Saudi-led coalition in the war in Yemen in March 2015 that arms sales became more overtly politicised. Controversy has been generated by Yemeni and international activists, NGOs and journalists who have mobilised a host of credible allegations of IHL violations committed by all parties to the war and in the Saudi-led aerial campaign in particular; a campaign that would be impossible without US and UK military aid and support.

It is difficult to capture in one scholarly paragraph the scale and depth of destruction and suffering of individuals, communities and infrastructure of collective life in Yemen. Allegations of violations of IHL by the Saudi-led coalition include the targeting of entire towns, attacks on hospitals, schools, markets, weddings and other civilian objects, and the bombing of a funeral in Sanaa, including double-tap strikes (where a second strike follows on quickly from a first, in order to also hit those who rush to the scene to help the wounded) (e.g. Bellingcat 2019; Craig 2017; Human Rights Watch 2016; Mwatana 2018; Panel of Experts on Yemen 2016). The Saudi-led coalition is deemed to be responsible for twice as many civilian casualties "as all other forces put together, virtually all as a result of air strikes" according to the UN human rights chief (BBC 2016). The coalition aerial and naval blockade have contributed to politically-induced famine in which three quarters of the population of 28 million are experiencing food insecurity and of those, 8.4 million people are "wholly dependent on food aid to survive" (de Waal 2018). One million people are suffering from cholera – the worst outbreak since 1949, when modern records began (Lyons 2017). In 2019, the UN Group of Independent Eminent International and Regional Experts on Yemen reported that the practices of the Saudi-led coalition and its allies in the Government of Yemen may amount to war crimes and that arms-supplying states "may be held responsible for providing aid or assistance for the commission of international law violations if the conditions for complicity are fulfilled" (Human Rights Council 2019).

Nonetheless, since 2015, rather than a suspension of or restrictions on arms transfers to members of the Saudi-led coalition, there has been an increase in volume of UK arms exports and a speeding up of the licensing process – all accompanied by the repeated stock insistence by the UK government that it operates one of the most robust risk-based licensing regimes in the world (see CAAT n.d.). While there is no visible dissent to policy within the state, challenges to the government's practices have come intermittently from Parliament and more sustainedly from a range of journalists, NGOs, campaigners and international organisations. Most prominently, CAAT – a small anti-militarist peace organisation based in London – launched a judicial review of government policy in 2016. Despite its reservations about the potential for a risk-based regulatory framework to restrict arms exports, it followed a legal route that sought to demonstrate the government's failure to implement its own risk assessment practices. In July 2017 the High Court found in favour of the government; in June 2019 the Court of Appeal ruled that the government's policy was irrational and unlawful. The government has been granted the right to appeal, and the case remains ongoing. At the time of writing, no new licences are being granted for exports to the Saudi-led coalition, but transfers of weapons under extant licences are ongoing. Internationally, several EU Member States have restricted transfers to the Saudi-led coalition, leaving the UK and France as outliers; the USA also continues to provide military aid to the coalition in the face of opposition of both Houses of Congress.

The catalyst for the development of a risk-based arms export control regime was the use of European-supplied weapons by Iraqi troops against Coalition forces during Operation Desert Storm in 1991. The European control regime that came into force in 1998 was a practical exemplar of the "global risk management" thesis: a concern with the diffuse, inchoate nature of risks facing the west, and the high-technology, combined civil-military and pre-emptive responses to them (e.g. Beck 1992; Coker 2009; Heng 2006; Rasmussen 2006). Risk was primarily conceived in terms of protecting western soldiers and societies from risks posed by non-western actors and the boomerang effects of western policy. A key effect is the systematic transfer of risk away from western militaries and societies on to southern ones, in what Martin Shaw characterises as the contemporary era of risk-transfer militarism (Shaw 2005, ch. 5). The inclusion of any normative concern for non-western populations in the European regime was largely down to the activism of insider NGOs, who were central to the agreement of the EU Code of Conduct on Arms Exports and later the UN Arms Trade Treaty, which signal the nascent institutionalisation of a risk-based multilateral arms transfer regulation regime (Stavrianakis 2010; Erickson 2015).[1] European NGOs, in particular UK-based ones such as Amnesty International, Oxfam and Saferworld, tried to generate a win-win situation in the changed ideological climate of the post-Cold War era, by harnessing human security concerns to the risk bandwagon. They tried to insert concern for Southern populations into the risk equation, using their expertise and normative leverage to mobilise risk as a

[1] This institutionalisation is internationalising unevenly: the USA is a signatory but not State Party to the ATT and major exporters such as Russia and China do not incorporate IHL or human rights concerns into their regulatory regimes, and are not signatories to the ATT. A risk-based regime is simultaneously held up by proponents as best practice and does not have universal appeal.

political technology to generate a criteria-based licensing regime that would help protect Southern populations from harm.

The emergence of risk in the governance of weapons circulation paralleled the wider turn to risk as a means of managing uncertainty through preventive and precautionary measures and the development of new techniques for generating and mobilising knowledge about potential risks (e.g. Amoore 2009, Aradau and van Munster 2007, Best 2008, Kessler and Werner 2008). Risk is deemed by its proponents to be a more fine-grained way of making weapons control policy, with its demand to mitigate risks rather than put in place absolute measures such as blanket bans (e.g. Amnesty International 2011): it accepts that there are legitimate uses of weapons. This is an effort to depoliticise arms transfers and find technocratic means for proponents and critics to find common ground and make incremental progress in a sensitive policy area – no mean feat given the centrality of weapons issues to national security practices and claims, and the historical exclusion of civil society actors from regime-making.

The overlapping interest in risk between proponents and critics of arms exports in the 1990s was the start of a community of "risk professionals" (Bigo 2002; Leander 2011) that mobilised risk in distinct ways. The foreign policy and military wings of states, in alliance with arms capital, wanted to carry on exporting arms but protect themselves and their populations from blowback; NGOs, meanwhile, were integrated into networks with state development actors and aid agencies who wanted to mobilise risk to protect foreign populations from harm (Stavrianakis 2010, 89-91). The optimism of the 1990s led to hopes from pro-control actors that their concerns would be inserted into policy processes and stricter controls on weapons circulation would result. Restrictions on the margins of major exporters' policies did occur, in the form of much-publicised controls on pariah weapons and pariah states (Cooper 2011). Since the advent of the so-called war on terror, arms transfer control has become awkwardly bound up with the wider deployment of risk that de Goede describes as articulating "two worlds of post-9/11 globalization: the world of legitimate and productive movement that is to be fostered and expedited, and the world of illegitimate and suspect movement that is to be stopped, questioned and detained" (de Goede 2008, 158). That is, arms export licensing is simultaneously a means of facilitating exports, protecting the reputation of industry and protecting western societies from terrorism; and also an ostensibly preventive measure that protects southern societies from human rights and IHL violations.

Within this field of action, NGO efforts have been oriented towards redressing the imbalance in "the commensurability of political and life-risks" (Shaw 2005, 98; Shaw 2002). That is, while there is a core ideological commitment to weapons exports and support for authoritarian Middle Eastern regimes by western states, NGOs have tried to mobilise and make commensurable commitments to humanitarian and human rights ideals and obligations. This effort is visible in Criterion Two of the Consolidated Criteria, with its articulation of "clear risk". Serious violations of IHL, then, are the catastrophic future to be prevented. While the UK government will also "give full weight to the UK's national interest" including its "economic, financial and commercial interests", and its "international relations" as "other factors," these factors "will not affect the application of the criteria in the common position" (Cable 2014). So whilst there is ambiguity in arms

export rules that are meant to give states freedom of action (Hansen 2015), the commitment to IHL is explicit and ostensibly non-negotiable. When setting out an updated account of the Consolidated Criteria in 2014, the then-Secretary of State Vince Cable emphasised that "we will not refuse a licence on the grounds of a purely theoretical risk of a breach" (Cable 2014).

On what basis, then, is a risk deemed to be "clear" rather than "purely theoretical"? The UK risk assessment process is administered by DIT via its Export Control Organisation (ECO), who take advice from DIT, MOD and FCO officials, including input from geographical desks and thematic teams such as those focused on human rights. DFID is involved where weapons are to be exported to a country with sustainable development concerns: but Saudi Arabia is not poor, and the *use* of weapons in a third country to *cause* a developmental disaster falls outside of this remit, meaning DFID has been excluded from the decision-making over weapons exports to Saudi Arabia, whilst leading on the UK's humanitarian response to Yemen. The institutional arrangements for assessing risk structure out certain key concerns before the process of risk assessment even begins: the quasi-objective rationality of criteria and emphasis on process serve to mask this preliminary narrowing of the parameters of risk.

According to officials, ECO uses a "circulation matrix" that helps identify the characteristics of a case. This technocratic attempt at risk assessment based on indicators includes risk categorisations for certain countries and goods, which identifies who should advise on a case, in a process administered via a licensing database. There are three broad categories, as described to me by officials in 2015: unproblematic destinations; middle income or transition states; and states coming out of civil war and sanctions. By 2018 these categories had been colour-coded as Red, Grey and Green, but details of which countries or types of equipment received which ratings remain confidential (Stuart 2018). Officials describe using "a standard set of sources – our geographical desks, posts, our human rights people, other government departments; also press and NGO reports" (also FCO 2016a). The licensing process is marked by claims of a "whole-of-government" approach from officials, expressed most visibly in the creation of an Export Control Joint Unit in 2016. Decision-making is an intersubjective process based on officials' readings of qualitative sources. There is a claim to consensus, a weekly "denials meeting" where cases are discussed if FCO, MOD or DIT propose that a licence should be refused and an internal "dispute resolution mechanism" to pursue "a consolidated solution" (FCO 2016b).

In the first quarter of the new Joint Unit, no export licence applications for Saudi Arabia were refused, and none were discussed at the weekly refusals meetings (FCO 2017). There is also extensive political direction, including ministerial correspondence, where cases are very contentious or sensitive. The Foreign Secretary has given direction on all applications to export precision-guided weapons and munitions to Saudi Arabia that are likely to be used in Yemen since 2015 (Crompton 2016, 8; FCO 2016a). In August 2016, for example, the Foreign Secretary indicated he was "content to advise DIT to approve" export licences to Saudi Arabia (FCO 2019), days after a Saudi-led coalition airstrike on a food factory (Sabbagh 2019). In this process, the FCO Arms Export Policy Team – which is responsible for the government's assessment of IHL concerns under

Criterion Two – recommended that licences be granted and that "Legal Advisers' views have been incorporated" (FCO 2019). Any dissent internal to inter-departmental decision-making fails to register anywhere formally during the licensing process.

What we've seen so far is an explicit commitment from the UK state to prevent serious violations of IHL via risk assessment, arrived at in collaboration with NGOs, with an emphasis on whole-of-government and consensual decision making. This is set against the exclusion of DFID from decision making, the wording of a policy that excludes the development angle of the Saudi-led war in Yemen, no refusals of export licences, and no calls for refusals heard within government. Parliamentary scrutiny of policy that takes place after decisions have been made has been inconsistent and divisive. A legal stamp of approval was given to the government's policy in 2017 when the High Court ruled that the government was "rationally entitled to conclude" that the Saudi-led coalition was not deliberately targeting civilians and that it respects and is committed to complying with IHL (CAAT vs. Secretary of State for International Trade 2017a). This decision was overturned in June 2019 when the Court of Appeal found the government to have acted unlawfully as it "made no concluded assessments of whether the Saudi-led coalition had committed violations of international humanitarian law in the past, during the Yemen conflict, and made no attempt to do so" (Court of Appeal 2019). The government was granted the right to appeal this decision at the Supreme Court, a process that remains ongoing at the time of writing.

All risk actors agree that it would be "irresponsible not to take the prudent, preventive, and/or precautionary … measures necessary to protect oneself (and others)" (Leander 2011, 2256) from risk. What we see in the case of arms exports is precisely this agreement that masks domination: in practice pro-export and pro-control actors do not agree on who is being protected, from what catastrophic future, and how. Pro-control actors attempted to make complementary the different politics of risk – but they repeatedly lose out, in that their concerns are marginalised when commercially, strategically or politically important weapons sales are in view. And domination takes full effect with the practices that are facilitated by a positive decision on an arms export licence: the transfer of military equipment and weapons that have been used in likely war crimes. The way in which the licensing process screens out any potential dissent via claims of joined-up-ness and efforts at consensus and agreement facilitates exports despite the remit of assessing "clear risk". There is an emphasis on bureaucratic process and deference to the moment of executive decision, rather than the effects of the decision. One effect of this process-based mobilisation of risk is to "displace responsibility for … decision-making" (de Goede 2004, 213) – indeed, to "immunise decision-making against failure'" (Luhmann, quoted in de Goede 2004, 213). Even if UK-made weapons are misused, the government can be deemed to have acted correctly because it engaged in significant amounts of risk assessment process. This is what compounds domination: the ability of pro-export actors not only to generate an ostensibly perverse outcome, but to claim to be benevolent in doing so.

Regimes of recklessness

The war in Yemen has generated the biggest controversy over UK arms sales since the arms to Iraq scandal of the late 1980s, when British-made weapons were supplied to Iraq despite an embargo in relation to the Iran-Iraq war. One key development since then has been the increase in, and changing shape of, transparency around arms exports. Government reporting on arms export licensing decisions (but not actual deliveries) has become more frequent and more detailed; the 2000 Freedom of Information Act has opened small windows on to the official record, albeit with strong qualifications for national security and commercial concerns; and the system of parliamentary scrutiny has operated with varying degrees of vigour. Secrecy is thus no longer the deadening blanket it was in the past: the policy of supporting Saudi Arabia is explicit, and certainly not secret in the way that policy towards Iraq was. But the managed release of information and manipulation of commonsense understandings of risk run alongside older strategies of obfuscation, partial responses, and official denial (Stavrianakis 2017, 2018). Transparency, then, is a "contingent, contextual, political choice" rather than simply "a neutral form of information provision" (Birchall 2014, 79, 83).

Contingency, context and politics are all central to the ways in which risk is managed and weapons transfers are justified, legitimised and challenged. To get at this contingency, I find it fruitful to understand the shifting dynamics of secrecy and managed openness – from classification, exemption and refusal of information, to partial revelation and obfuscation, to non-response, deferral and reputation management – as constituting a regime of recklessness. Thinking about these shifting dynamics in terms of the power relations indicated by the concept of recklessness helps capture the potential for domination built into risk practices in the governance of weapons exports. Recklessness combines a failure or unwillingness to pay attention with indifference to the consequences of (in)action. Its etymology "reck", means to know about or be aware of, as well as to take care of something and favour it (OED, nd). This duality captures the ways in which non-knowledge is mobilised in a policy that claims explicitly to take risk seriously and care about preventing IHL violations, whilst being indifferent to the consequences of ongoing arms exports. What is so striking in the case of Yemen is the ongoing, increased level of harm that comes from exponentially increased weapons transfers, despite all the attention to a risk-based process and claims to benevolence on the part of the UK state.

In earlier work (Stavrianakis 2017, 2018) I articulated a critique of UK policy based primarily on knowledge and secrecy, a policy-oriented position that the UK state could know about the risk of the misuse of weapons if it chose to. But as the war in Yemen and controversy over arms exports have ground on, with ongoing claims about civilian harm and the dogged insistence by the UK government that there is no "clear risk" and that its policy is robust, I became increasingly interested in how doubt, ambiguity and *not* knowing were strategically and actively being mobilised in order to facilitate exports, and in how our conceptual understanding of risk and non-knowledge shape and are shaped by political engagement. The argument presented here thus represents a shift from an emphasis on knowledge to a focus on non-knowledge and antiepistemology, an accompanying methodological shift in focus from secrecy to managed openness, and a next step in thinking about the political life of concepts. Thinking in terms of recklessness

contributes to the move beyond a binary understanding of secrecy and visibility (Bosma et al, 2019; Horn 2011; Walters 2015), towards an understanding of the "symbiotic relationship" between secrecy and transparency (Birchall 2011). Paying attention to the dynamics of this relationship helps us grasp the political work that risk assessment performs, as a means of making some information highly visible, some invisible, and some made not to matter despite its visibility.

I read regimes of recklessness as an expression of "the enactment of non-knowledge" (Aradau 2017, 339) in security practices as part of a strategy of "antiepistemology" (Galison 2004). In this rendition of the concept, non-knowledge is "enacted and not just 'tamed'" (Aradau 2017, 327): it is an active practice. And while epistemology "asks how knowledge can be uncovered and secured", we might also think productively about antiepistemology, or "how knowledge can be covered and obscured" (Galison 2004, 237). Common usage of "reckless" does not require intent – just a lack of care about the consequences. This helps avoid the impression of the assumption of an instrumental and fully effective effort at duplicity by a monolithic state. Such an assumption "projects onto actors a coherence in action and a competence in ability which might well be unwarranted," as Rappert reminds us (2012, 43), and understates the extent to which knowledge is contested from outside the state, and possibly within. "[N]on-event[s], a deferred decision, a question ignored in the hopes of its disappearance" (Belcher and Martin 2013, 409) are also important. But the active dimension of non-knowledge puts a different emphasis on the term compared to some other uses, for example the articulation of non-knowledge as "insufficient knowledge about a certain issue or problem to be solved and when the actors involved are aware of what it is they don't know" (Gross 2016, 388; Gross 2007, 751). My use of non-knowledge is distinct from such usage: here, it is the making of things be not-known precisely so the state does not have to take them into account in present action for future planning.

The strategy of making certain knowledge not count, the active reliance on uncertainty as a means not to act preventively on risk, the generative effects of such practices, and the relations of domination that facilitate and result from them, are the reason I prefer the term non-knowledge to that of ignorance, which is often used synonymously, and has its own growing literature (e.g. Bakonyi 2018; Code 2014 a,b; McGoey 2012; Proctor and Schiebinger 2008), and why I prefer antiepistemology to "epistemologies of ignorance" (Mills 1997; Tuana and Sullivan 2006). While domination gets a mention in some of the literature (e.g. Aradau 2017, 330; Mallard and McGoey 2018, 22) and scholars of ignorance remind us that it is more than "a simple lack of knowledge" but rather "intertwined with practices of oppression and exclusion" (Tuana and Sullivan 2006, vii; also Mallard and McGoey 2018, 1; Sullivan 2007, 154), the case of the arms trade underscores the importance of putting domination front and centre. While non-knowledge can be assembled and reassembled to generate possibilities for intervention and resistance (Aradau 2017), such opportunities are heavily structured by power asymmetries.

Given that Yemeni and international activists, international organisations, NGOs and journalists have been generating knowledge about Saudi military strategy in Yemen and the effects of UK arms exports since 2015, "the blocking of knowledge transmission"

(Galison 2004, 234) by the UK state requires attention. In my reading, antiepistemology is more than simply the blocking of transmission of knowledge: it is also the blocking of its resonance and legitimation, so as to make certain knowledges not count. Knowledge of Saudi practices *is* circulating and being transmitted to a certain degree but the UK state is trying to generate ambiguity to block the demands that stem from that knowledge (i.e. a halt to weapons sales). A good example of this can be seen in the judicial review of UK arms export policy. Above and beyond the imposition of secrecy through evidence being heard in closed sessions and withheld from the public domain, a key dynamic of the open hearings was the refusal of the UK government to respond to the publicly available material provided by CAAT and others, whilst not disputing its factual veracity (Secretary of State for International Trade 2016, para. 46). As Galison reminds us, "Classification, the antiepistemology *par excellence,* is the art of nontransmission" (Galison p237). What we see here is an additional dynamic of domination: the state's refusal to engage with publicly available information that makes a *prima facie* case against the it, combined with a dismissal of those producing that information as "liable to be inherently unreliable" because they don't have "equivalent access" to Saudi systems (CAAT vs. Secretary of State for International Trade 2017b).

The issue is not primarily a lack or absence of information, or information that exists in some form or location but is made or kept secret. Rather, the issue is whose knowledge or which knowledges count and can be made to resonate. What is at stake here is not so much "knowing the *least* amount possible" as "the most indispensable tool for managing risks" (McGoey 2012, 3), but rather, an elaborate process of constructing an infrastructure that ostensibly assesses risk but inevitably has the outcome that the risk is not clear, and exports will continue, indeed, increase. Such a move "call[s] for a subtle shift in the epistemological gaze that seeks to offer non-knowledge its full due as a social fact, not as a precursor or an impediment to more knowledge, but as a productive force in itself, as the twin and not the opposite of knowledge" (McGoey 2012, 3). This productive force is augmented when we complement the study of non-knowledge with the concept of recklessness. This helps us better understand how antiepistemology functions – through the blocking of certain information, mobilisation of uncertainty, and reliance on secret information – and its effects, namely indifference to the consequences of arms exports. Conceptualising the governance of weapons circulation in terms of recklessness also amplifies the call for a requiem for risk: to tackle the relations of domination that it facilitates. Having laid out the parameters of this argument, I turn more specifically to the question of how the risk of the misuse of weapons is deemed not to be clear, given the growing evidence of civilian harm in Yemen that continues to be forced into the public domain.

Making risk unclear: non-knowledge, intention, temporality

The (im)possibility of knowing about IHL violations

A central strategy in the management of risk has been the mobilisation of doubt and ambiguity by the UK state about what it can be expected to know about the conduct of the war in Yemen. This happens through the generation of non-knowledge in an

attempt to stave off reputational and legal damage; and the operation of non-knowledge through bureaucratic-administrative procedures. An email released during the judicial review spelled out the political stakes of knowing or not knowing about IHL violations. The head of the government's Export Control Organisation wrote in February 2016 to the Permanent Secretary of the Department of Business, Innovation and Skills (as it was then) and others that:

> There is a lot at stake here politically but if you accept that the threshold for 'clear risk' of a serious violation of International Humanitarian Law has not been breached then it is permissible to take wider factors – such as diplomatic and economic relations – into account. If you do not accept this then it's not permissible to do so (Bell 2016).

In one sense, this email – published by CAAT as part of its strategy of redistributing power by making public as much documentation as possible in the judicial review - is the proverbial smoking gun (c.f. Stavrianakis 2019): a senior civil servant advising ministers of the political ramifications of their legal obligations and the parameters of different courses of action. The implicit sub-text, of course, is that the "clear risk" threshold cannot *be seen* to have been breached. There are thus clear political interests in *not* knowing about, or *not being seen to know about*, potential IHL violations. Five months later, the FCO published a set of corrections to the official record on arms exports to Saudi Arabia: an unusual move in itself, and one that took place in the final hours of the last day of Parliament before the summer recess of 2016. Previous statements that "we have assessed that there has not been a breach of IHL by the coalition", and "The MOD assessment is that the Saudi-led coalition is not targeting civilians", were amended to read that: "we have not assessed that there has been a breach of IHL by the coalition", and "The MOD has not assessed that the Saudi-led coalition is targeting civilians" (Ellwood 2016). This shift from a position of certainty to one of uncertainty served as a defensive measure against the judicial review that had been initiated by CAAT early in 2016, in order to legally buttress the position that the government did not know whether there had been breaches of IHL and thus any risk could not be said to be "clear."

Such deliberate moves are an important part of the explanation of how risk is managed so as to permit rather than prevent weapons exports, and any explanation that ignores them is insufficient. They are not in themselves a rich enough explanation of how risk operates, though, because there are legitimate epistemological questions at stake beyond mere political manipulation. How *is* the UK state supposed to know about the effects of the weapons it licences for export? And what are the effects of the regulatory practices it fashions in response? To answer these questions, we also need to pay attention to the more mundane yet still generative operation of non-knowledge through bureaucratic-administrative procedures, practices and objects.

A good illustration of this comes via the MoD's "Tracker", a database of "Coalition fast jet operational reporting data", "sensitive MOD sourced imagery," intelligence reports and battle damage assessments (Watkins 2016a, 16), discussion of which featured prominently in the judicial review despite - indeed, because of - it being classified. Such a database brings together a variety of secret information to ostensibly

permit the UK state to monitor Saudi-led coalition airstrikes with a view to assessing their compliance with IHL and thus assess the risk of misuse of UK-supplied weapons. The discussion of the Tracker during open sessions of the judicial review yielded a series of features of the technology as an object of non-knowledge creation that helped generate a permissive rather than preventive interpretation of risk. The parameters of investigation are extremely narrow: the MOD is only able to track a "a very, very small percentage of the overall coalition airstrikes" by the government's own admission (Chew 2016, 3). Nonetheless, although the MoD identified military targets in only approximately one third of the cases, its judgment was that "This does not mean that there was no legitimate military target in the remaining cases" (MOD 2018). The MOD's "inability to identify a military object should not … be interpreted as the absence of a legitimate target at the time of a strike" (Watkins 2016b, 8). There was also an un-minuted, un-noted "decision, or change of position" in early 2016 to remove the column headed "IHL breach?" from the Tracker and therefore stop seeking to answer the question of whether the Saudi-led coalition was violating IHL. And the MOD conceded to the court that it "does not have access to all of the information which would allow us to make an accurate judgement" (MOD 2018).

While the Tracker database is classified, its power as a technology of risk is more generative than the mere property of secrecy suggests. Security-cleared state actors who have access to the Tracker seem to actually know very little through it, admit that they cannot make accurate judgments through it – indeed, abandon the attempt to even make such judgments. And yet this lack of knowledge does not prevent judgments about risk: the UK state continually makes an overall assessment that the risk of the misuse of weapons is not clear. The key effect of the Tracker is to allow the UK state to conclude that Saudi Arabia "is seeking to comply with IHL", that "it is not clear that a pattern of violations can be discerned," and thus, while "there is a risk here, that risk is not 'clear'" (Chew 2016, 3). The overall effect of the Tracker is to allow the government to claim to be monitoring a controversial situation whilst doing little to substantively assess the risk of the misuse of weapons in a preventive fashion. However, there is always potential for disruption of domination: as I discuss in more detail later, while the High Court found in favour of the government, the Court of Appeal interpreted the MoD's removal of the "IHL breach?" column from the Tracker as a failure to fulfil its obligations to assess risk.

Intentions, friendship and transnational reputation management

A second way that the risk of serious IHL violations is deemed not to be clear is through the mobilisation of the trope of accidental or unintentional harm. So far we've seen the generation of non-knowledge about potential IHL violations. But this isn't enough to quell controversy, as reports of civilian harm are exceeding these efforts. According to the UK government, if civilian harm *has* happened, it was accidental, committed without deliberate intent on the part of the Saudi-led coalition, which is willing to learn from its mistakes and make amends. There is thus deemed to be no clear risk of future misuse, and hence no reason to refuse transfers. Civilian deaths and harm are not necessarily violations of IHL. Rather, IHL spells out a set of conditions to distinguish between lawful and unlawful civilian harm, based on the principles of distinction, proportionality, necessity, and humanity. The doctrine of "double effect"

means that civilian deaths must not be intended (although they may be foreseen), and that the military advantage must outweigh the unintended effects on non-combatants (Smith 2010, Owens 2003). There is an "important space of indeterminacy" in which "conflicting yet plausible legal claims" over the "permissible limits" compete (Kaempf 2009, 668-9). Risk assessment is one means of navigating this space of indeterminacy.

One of the key mechanisms through which this indeterminacy is managed is training. For example, even specific incidents "of very real concern" to the UK government, such as the bombing of a Médecins Sans Frontières hospital in Haidan, do not constitute a clear risk of misuse, because "the Saudis admitted responsibility for the attack and put in place procedures to prevent a recurrence" (CAAT vs. Secretary of State for International Trade 2017a, §157) and have been "willing to learn from errors" (Crompton 2016, 10). The Saudi-led coalition has had operational advice from the US Department of Defense through a Joint Combined Planning Cell (JCPC) since the start of its campaign in 2015 (Lewis 2019, 7) and employs legal advisers to work with planning and targeting cells, as well as using precision and guided weapons "in order to avoid any mistakes, collateral damages and casualties" (CAAT vs. Secretary of State for International Trade 2017, §135). The UK has provided workshops and training on both targeting practices and media management, given the UK's "considerable experience of prosecuting air campaigns in the full view of the world's media" - workshops that, in the view of the MoD, "may provide additional evidence to support our defence of the Judicial Review" (Jones 2016). So the UK government's assessment "remained that there was not a clear risk for the future that Saudi forces would commit serious International Humanitarian Law violations" (CAAT vs. Secretary of State for International Trade 2017a, §157).

Despite the advice and training provided, incidents continued to mount. In May 2016 the Saudi-led coalition established a Joint Incident Assessment Team (JIAT) in response to US and UK pressure. Modelled on NATO International Security Assistance Force (ISAF) JIAT teams in Afghanistan, the JIAT was established with training from the US and UK (Lewis 2019, 9) and has become one of the key ways the UK assesses the coalition's overall approach and attitude to IHL. The JIAT has investigated only a limited number of the total overall allegations and its methodology, sources and case selection criteria remain unclear and contested (another good example of the non-knowledge practices discussed above, in which the capacity to adequately assess likely harm is structured out in the design of assessment mechanisms). From the material that has been made public, three main types of result emerge from the JIAT investigations: blanket denial (e.g. Bashir 2018); admission of limited, accidental civilian harm (e.g. Saudi Press Agency 2016), with unspecified compensation recommended in response and a lack of clarity about accountability procedures (Human Rights Watch 2017); and the most frequent response, a defence of air strikes in which the "procedures of Coalition Forces were correct" "and carried out in accordance with the rules and customs of international humanitarian law" (e.g. Royal Embassy of Saudi Arabia 2017).

These transnational training and investigation practices have been challenged by journalists, NGOs and independent experts. They did so primarily by challenging the veracity of the JIAT's findings (e.g. Amnesty International 2017; Human Rights Watch

2017, MSF 2016) and the effectiveness of training and oversight (Lewis 2019, 13, 17; Dispatches; Townsend 2019). And the Court of Appeal concurred: without making assessments as to past patterns of IHL violations, "how was the Secretary of State to reach a rational conclusion as to the effect of the training" (CAAT vs. Secretary of State for International Trade 2019a, para. 144). Yet the knowledge claims as to what the government should have been able to know are mitigated by claims of friendship. One crucial dimension to the operation of claims to knowledge and non-knowledge is the close, enduring and friendly relationship between the UK and Saudi Arabia via a "framework of cooperation" based largely on the UK "responsibly and reliably" selling them weapons (Watkins 2016a, 6). A key contextual claim in the government's defence is that its aim is to form "an overall view" on Saudi Arabia's approach and attitude to IHL (Lancaster 2018a). Specifically, and crucially, the MOD "does not investigate allegations of Saudi-led coalition IHL violations" (Lancaster 2018a), but, rather, "monitors incidents of alleged IHL violations" (Ellwood 2016) as part of forming this overall view. This framing and limiting of the UK government's responsibilities is accompanied by repeated invocations and defences of Saudi sovereignty, as they "have the best insight into their own military procedures," and should be afforded the right to be held to "the standard we set ourselves and our allies" (Ellwood, 2016) in investigating allegations.

Friendship means some actors and actions are less risky than others; friendship leads to the structuring out of evidence that would likely otherwise indicate risk. This is a domestic practice to manage relations between the state and civil society: certain branches of the state (here FCO and MOD) trying to bat away demands from NGOs and journalists. While national security secrets are most commonly managed inside the state for protection against actions by a foreign power (Galison 2004, 239), here we see the UK state trying to mitigate attempts at knowledge claims from within in order to protect a relationship *with* a foreign power – adding a crucial transnational dimension to the demands of studying non-knowledge claims.

The temporality of future risks

Having generated doubt and ambiguity about what can reasonably be known about civilian harm in Yemen and having issued reassurance about Saudi attitudes and intentions through claims of friendship, the third way in which the UK state deems not to be clear is through the inherent temporal dimension of risk. Risk revolves around the prevention of future, yet currently unknown, dangers through assessment of the past and present (Aradau et al 2008, Bourne 2013). This means a risk assessment "does not need to prove the existence of a threat in the present, but merely asserts a continued pattern where manifestation of threat is possible but not precisely predictable" (Bourne 2013, 110). How, then, are the temporal politics of risk assessment engaged in export licensing practice? The UK government's position is that, "even if there were an established serious violation of IHL by the proposed end user, this would not automatically mean that a clear risk … had been established" (Crompton 2016, 10): past or present misuse does not equal a future risk. Nonetheless, simultaneously, "Where there is no established violation of IHL this does not, by itself, mean there is no clear risk" (Crompton 2016, 10). As summed up by a senior civil servant during the judicial review: "Past behaviour is a helpful indicator

of attitude towards IHL and towards future behaviour, but it is not necessarily determinative" (Crompton 2016, 10).

Yet civil service advice to policymakers during the licensing process and legal argumentation during the judicial review rest on keeping open the possibility that the future will *not* involve IHL violations, such that exports can be allowed. In interviews pre-dating the judicial review, officials repeatedly identified a combination of epistemological uncertainty and temporal urgency: "In the heat of the moment, you can't recall equipment, just because you don't like what they are doing with it." Officials articulated the desire for a "crystal ball" – "People might have imagined that the Arab Spring, or 9/11, or the Berlin Wall might have happened – but no-one thought they actually would." The practical question then becomes: "How do you factor a big 'maybe' into a concrete decision now?" The irony, of course, is that *imagining* something that *might* happen and acting preventively in the present, is exactly what risk-based regulation entails. Yet officials articulate a position of helplessness, of an inability to act preventively. In the immediate term, civil servants say the focus is on "knowing what was licensed, and future risk. Then there is the broader and longer-term human rights and governance dialogue with them." This kicks responsibility for dealing with the consequences of arms exports into the future: a deferral of responsibility that is itself a form of temporal politics, one that serves to increase rather than decrease the risk of the harms to be prevented by the UK's arms export rules. It is difficult to imagine civil servants or government lawyers articulating such a temporal position if they were working in counter-terrorism policy, an issue area that operates on the basis of suspicion, intuition and an absence of evidence. In terrorism trials, the futures appealed to "are not so much based on prediction or probability but are increasingly oriented toward the potentiality of disaster and destruction" (de Goede and de Graaf 2013, 317; also Martin 2014). Yet in arms export licensing, the descriptions of disaster and destruction in Yemen that have been widely circulating and been explicitly linked to UK arms export policy have failed to resonate in ways that generate preventive practices.

While the High Court accepted the government's claims and found in its favour in the first round of the judicial review, the Court of Appeal judges posed many more questions about the relationship between potential past violations and future risks. They concluded that the question of whether there was a "historic pattern of breaches" "was a question which required to be faced" – "at least the attempt had to be made" (CAAT vs. Secretary of State for International Trade 2019a, para. 138). And as noted earlier, they were more exercised about the removal of the "IHL breach?" column than the High Court judges. The judges insisted the state had a responsibility to attempt to come to a decision, even an incomplete one. This was the basis on which they found the government's policy to be unlawful, despite the government's insistence that this required a "binary yes/no answer" that was at odds with a prospective risk assessment based on "overall assessment" (see CAAT vs. Secretary of State for International Trade 2019b). And having been found unlawful, the government response was that "the judgment emphasises that there would not be only one answer on future risk if historical violations were found to have taken place; in other words, changing the process as set out by the Court does not necessarily mean any of the decisions would be different" (Fox 2019). Here we see a

battle over the knowledge and non-knowledge claims that can be made about temporality. CAAT mobilises the claim that government should have tried to know whether there was a pattern of historic breaches, while the state insists it is not obliged to assess whether there is a past pattern in order to assess future risk. The High Court found in favour of the government, while the Court of Appeal found in favour of CAAT (and also granted the government the right to appeal). All the while, exports have been continuing – up to July 2019 when a "stay" was ordered, which meant the government was prohibited from granting any new licences but was permitted to continue to transfer weapons under licences already made.

Conclusion

The ongoing play and counter-play of knowledge claims by critics and non-knowledge claims by the UK state has on the one hand exposed UK arms export policy to its biggest controversy in several decades, imposed symbolic and diplomatic costs on both the UK and Saudi governments, and eventually resulted in a legal ruling that exports are unlawful and a suspension of new licences. On the other hand, weapons transfers have been ongoing for the four and a half-year duration of the war so far; the government has absorbed the symbolic and diplomatic costs to continue to make claims of benevolence; is appealing the legal ruling; and continues to transfer weapons under licences already granted. Overall, the political technology of risk has primarily served to facilitate exports rather than protect populations on the receiving end of violence. I draw two main conclusions from this analysis, to make my call for a requiem for risk.

The first is that the war in Yemen exposes the irony of the idea that weapons exports are amenable to risk assessment. If friction makes war unpredictable and therefore always risky (Rasmussen 2006, 152), weapons transfers and use will always carry the risk of misuse. The way in which the UK state effectively deems risk to be an uncrossable threshold when it comes to the actions of a friendly state rubs up against the ostensibly neutral, depoliticised virtue of arms transfer controls – practices that are themselves deeply imbued with and generative of ongoing North-South asymmetries in international politics. The preventive and pre-emptive operation of risk seen in other empirical sites is displaced by a permissive logic when it comes to projects and practices that cut to the core of the state's geopolitical and ideological commitments. As a political technology, then, risk is deeply asymmetrical and scholarship needs to attend to both the centrality of power and potential for domination in the ability to make risk resonate and also the variety of empirical sites in which it operates.

The second conclusion is that the possibilities for re-assembling non-knowledge (Aradau 2017) are tempered by these power asymmetries and that the seemingly mundane choreography of non-knowledge practices within the state have devastatingly violent effects outside. While domination is never total, it is pervasive and entrenched, significantly structuring the possibilities for resistance. While the Court of Appeal assembled non-knowledge differently to the High Court, for example, finding the government's failure to try and know about IHL violations to be unlawful, it also quickly granted the government the right to appeal and the government has indicated that it anticipates a change of process will not lead to a change in outcome. The ways in which

knowledge generated by activists, NGOs and journalists about the effects of arms exports in the war in Yemen has been countered with antiepistemological strategies by the UK state and turned into non-knowledge in order to facilitate ongoing exports raises significant analytical and political questions about the operation of risk as a political technology. The strategies of agents working for more restrictive governance rely on embarrassment and reputational damage through the exposure of the gap between stated policy and actual practice as a means of redistributing power. But what we see happening in the Yemen war is the UK government trying to manage that gap through reference to risk assessment: it is mobilising risk to try to protect itself from reputational and legal damage rather than to protect the population of Yemen from IHL violations. This strategy has imposed costs on the state: time and resources have to be spent managing this criticism, and there are symbolic costs. But even a legal decision that exports are unlawful was presented as an administrative technicality; and how a legal decision translates to a change in policy remains unclear.

Drawing together these conclusions for the risk and non-knowledge literatures suggests that NGOs that were central to the emergence of risk-based regulation have become part of what Anna Leander calls the "accountability paradox," in which "the quest for accountability and improved regulation is entrenching the fundamental lack of accountability of the [military] markets" (Leander 2011, 2260). Risk was supposed to be a way to make the protection of southern populations commensurable with western foreign policy interests. Even the anti-militarist campaign group, CAAT, which has long been sceptical about the restrictive potential of the licensing regime, nonetheless took the decision to try and hold the government to account on the basis of the risk criterion because that is the legal grounding of the state's commitments. Risk, which was established as the framework for governance in the 1990s, has become part of the problem in the governance of weapons transfers: it has been mobilised not only to authorise arms exports but to facilitate, justify and legitimise them. Antiepistemological strategies of non-knowledge are indicative of how risk operates as a mode of domination in the arms trade: hence the call for a requiem for risk. The questions that remain for future research are around the grounds of repoliticisation and strategic moves to engage non-knowledge in pursuit of more adequate, restrictive governance that could minimise the domination implications of regulation.

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