

# A Health-Based Case against Canadian Arms Transfers to Saudi Arabia

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## Abstract

Under the Arms Trade Treaty, state parties must assess the extent to which the export of conventional arms might contribute to, *inter alia*, serious violations of human rights or international humanitarian law. The stated aims of Canada's arms export licensing decision-making process are, similarly, to assess such risks on a case-by-case basis. This paper examines Canada's ongoing arms transfer arrangements with Saudi Arabia in light of health-related international humanitarian and human rights law considerations enumerated in the Arms Trade Treaty. It assesses available information suggesting serious violations that implicate acts of commission by the Saudi-led coalition in the conflict in Yemen. The article centers on questions about the potential health-related consequences of Canadian-made, Saudi-coalition-used arms for people in Yemen and how risks are being assessed in export decision-making processes. Ultimately, it argues that Canada is failing to meaningfully take into account the possible negative impacts of its arms exports on people's health and health care in Yemen. It counters the government's approach to risk, which it argues is serviceable to exporter interests, with a health-based precautionary approach to exports.

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## Introduction

Canada's accession to the Arms Trade Treaty (ATT) in 2019 heralded a new era of oversight of its export-permitting regime. Pursuant to the aims of the ATT, including the reduction of suffering, state parties must, *inter alia*, assess the extent to which the export of conventional arms might contribute to serious violations of international human rights law (IHRL) or international humanitarian law (IHL).<sup>1</sup> Canada's amended Export and Import Permits Act includes a similar assessment.<sup>2</sup> However, the assessment criteria used by licensing authorities and the information provided by intended importers remains unavailable to the public. This paper examines Canada's health-related IHL and IHRL obligations as set forth in the ATT, in light of its ongoing arms transfer arrangements with Saudi Arabia. It highlights available information on violations that implicate acts of commission by the Saudi-led coalition in the conflict in Yemen. This research stems from questions about the human consequences of Canadian-made, coalition-used arms for people in Yemen and the effectiveness of Canada's transfer decision-making process. Ultimately, it argues that Canada is failing to meaningfully take into account the possible negative impacts of its arms exports on people in Yemen. It counters the government's approach to risk—which is serviceable to exporter and economic interests—with a health-based precautionary approach to exports.

To undertake this analysis, we first present an overview of the relevant obligations under the ATT and Export and Import Permits Act, particularly obligations to assess the potential of arms transfers to facilitate serious violations of health-related norms in IHL and IHRL. Second, we outline Canada's arms transfer arrangements with Saudi Arabia. Third, to demonstrate the risks of Canadian arms exports for people, we discuss the known impacts of arms import, accumulation, and use on population health. This includes the available information on the health implications of arms use by the Saudi-led coalition in Yemen. Finally, we argue that health-related risks to people in Yemen do not adequately inform Canada's arms transfer decisions.

## State party obligations under the Arms Trade Treaty

Included in the purposes of the ATT are contribution to international peace, reduction of human suffering, and increased transparency and responsibility in the arms trade.<sup>3</sup> State parties are obligated to “assess the potential that the convention arms or items ... could be used to commit or facilitate a serious violation” of IHL or IHRL.<sup>4</sup> According to article 7, states are to refrain from authorizing export if there is a significant risk of violations and available mitigating measures are inadequate.<sup>5</sup> To understand what is encompassed by these particular obligations, a number of phrases must be unpacked.

The nature of the assessment itself should be emphasized; states are obligated to consider *the potential or risk* for something to happen, and not to prove that a violation has or will definitively happen.<sup>6</sup> This distinction is significant in that the potential risk does not have to meet the threshold of an international crime, as Andrew Clapham et al. note in their commentary to the ATT.<sup>7</sup> They also assert that the requirement of states to assess the potential for the arms to “commit or facilitate” serious violations of IHRL or IHL “means that the weapons may be one or more steps removed from the actual violation.”<sup>8</sup> As a result, we must be concerned with the ways in which weapons might support activities that lead to violations. While a degree of deference to state parties' determination of risk is expected, article 7 is essentially a preventative provision that instructs states to consider the possibility and potential and not wait for evidence that items will definitively be used to violate international law.

The ATT obligates parties to conduct assessments, though it is up to each country to determine the format. Canada's amended Export and Import Permits Act employs the “substantial risk test,” as established through Canadian jurisprudence.<sup>9</sup> Substantial risk is found where there is a “direct, present and foreseeable risk that a specific good or technology proposed for export would result in one or more of the negative consequences specified in subsection 73(1) of the [Export and Import Permits Act],” which encapsulates the ATT criteria on vi-

olations.<sup>10</sup> The risk must be grounded in evidence and amount to more than a possibility.<sup>11</sup> The empirical emphasis suggests a narrow interpretation of the treaty's obligations, and a departure from the commentary authors' interpretation. This also runs counter to the preventative objective of the treaty and Canada's Export and Import Permits Act. Indeed, if we are concerned with human suffering, as the ATT states it is, then the potential for such "negative consequences"—even if falling short of IHRL or IHL violations—should be a compelling factor in risk assessments.<sup>12</sup> Yet, as Anna Stavrianakis writes of permit issuances in the United Kingdom, risk assessments become "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."<sup>13</sup> Consequently, she finds that "risk is mobilized as a permissive technology."<sup>14</sup> This is further accomplished by a reductive approach to potential harms, which encompasses only those that constitute violations, with an emphasis on their gravity.

States must also create guidelines for consistent decision-making processes. Although the details of the process are not public, the Canadian government's Backgrounder document provides some indication of what factors might be taken into account. For example, there are questions about the importer's human rights record and the existence of "substantiated information" that similar items might be used to commit serious violations.<sup>15</sup> A footnote to the Backgrounder reminds us that "serious violations" of IHL or IHRL are undefined in the ATT. It asserts that "[t]his is a legal question, to be assessed in light of the factual circumstances of each specific case," which may therefore require a legal challenge of permits issued.<sup>16</sup> Yet, as discussed in the next section, legal challenges to date have been dismissed without consideration of the factual circumstances inside Yemen. The Backgrounder cites attacks against medical personnel as an example of a serious violation. The International Committee of the Red Cross's guidelines on the implementation of the ATT list serious violations, including "directing attacks against hospitals, ambulances, or medical staff using the distinctive emblems of the

Geneva Conventions."<sup>17</sup> The committee notes that the meaning of the term "serious violations" differs according to the body deploying such language; a serious violation in international criminal law refers to crimes against humanity, while human rights monitoring bodies use the term more liberally, including for violations of socioeconomic rights.<sup>18</sup> It is worth noting that the ATT's *travaux préparatoires* indicate that multiple countries expressed the importance of considering violations of rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR) vis-à-vis the arms trade.<sup>19</sup> Still, socioeconomic rights appear to be secondary considerations in Canada's arms exports decisions and reviews.<sup>20</sup>

Only the International Committee of the Red Cross's guide to the ATT definitively encompasses socioeconomic rights. A guide by Amnesty International offers few comments on how socioeconomic rights such as the right to the highest attainable standard of physical and mental health (the right to health) should be incorporated into assessments.<sup>21</sup> Notwithstanding the limited discussion on socioeconomic rights with regard to arms transfers, the rights enumerated in the ICESCR form an integral part of IHRL, and Canada thus has an obligation to consider how arms exports might threaten them, including the right to health.<sup>22</sup> The Committee on Economic, Social and Cultural Rights espouses a wide definition of health; it finds that health is affected not only by genetics and access to facilities, goods, and services but also by access to the underlying determinants of health and the social context, including armed conflict.<sup>23</sup> Serious violations of the right to health include attacks on hospitals and a failure to provide basic services.<sup>24</sup>

Two of the main challenges in considering socioeconomic rights violations in assessment criteria are that violations of this subcategory of rights are less likely to be labeled "serious" (or gross for that matter) and that attribution of deprivations to an act or omission of the state can be difficult. These issues stem from the formulation of the ICESCR, which is more indeterminate than its civil and political rights counterpart. The obligation to realize rights progressively, according to "available

resources,” creates flexibilities that complicate the determination of violations and underlies arguments against the justiciability of socioeconomic rights.<sup>25</sup> However, the small but growing body of case law involving socioeconomic rights such as the right to health, particularly in the Global South, proves their justiciability.<sup>26</sup> Although Saudi Arabia has not ratified the ICESCR, this does not preclude an analysis based on IHRL and IHL norms, which are commonly said to be universal, especially considering that it is party to the Convention on the Rights of the Child and the Arab Charter on Human Rights, both of which enshrine the right to health.<sup>27</sup>

The Canadian government’s *post facto* review of export permits to Saudi Arabia and its halting and subsequent reissuing of permits (discussed in the following section) suggest that risk assessments are limited in scope and hinge on proven IHRL or IHL violations. As Stavrianakis finds, decision-making processes tend to rely on “keeping open the possibility that the future will not involve IHL violations, such that exports can be allowed.”<sup>28</sup> This approach to permit issuance does little to effectively reduce human suffering, particularly that which does not fit neatly within the legal categorizations created by IHRL or IHL. Adopting a preventative or precautionary approach re-centers the assessment around potential threats to people. It places the onus on state actors to demonstrate that weapons will not be used in contravention of international law. According to the precautionary principle, “persuasive evidence of harm does not have to exist before measures are taken to protect individuals and society from the harm.”<sup>29</sup> Notwithstanding the continued disagreement about what exactly the precautionary principle entails, it is part of customary international law, as recognized by various international adjudicative bodies.<sup>30</sup> In 2013, the United Kingdom appeared to act preventatively (albeit under pressure from rights organizations) when it temporarily suspended 48 arms export permits to conduct further review (17 of which were ultimately denied).<sup>31</sup>

IHRL governs the relationship between individuals and the state, and consequently it might be argued that only the acts or omissions of the

importing state toward people within that state must be included in the exporting states’ assessment. However, as argued by commentators, an actual violation of the law is not necessary to halt export permits. Understanding IHRL as a set of standard-setting norms (which create obligations *erga omnes*) can bring assessment processes in line with the express objective of the ATT and Canada’s permitting regime—to “reduce human suffering.”<sup>32</sup> Instituting a precautionary approach to permit issuance would enrich the preventative character of ATT article 7(1)(b)(i) and (ii) and would better respect the rights of people in importing or third-party countries.<sup>33</sup>

The stringent focus on the risk of IHRL and IHL violations, interpreted narrowly (and excluding socioeconomic rights considerations) rather than on harm, serves to “structure out certain key concerns before the process of risk assessment even begins.”<sup>34</sup> Ultimately, questions must be asked about the role of the assessment within the arms transfer decision-making processes; if assessments are intended to protect people, then the potential impact on the lives and health of the people in Yemen must be foregrounded—even when formal obligations of the ATT fail to ensure it. In other words, what is the *risk* that parties must assess? Is it the risk to lives and health? Or is it merely the risk that a legal rule might be broken?

### The socioeconomics of the deal in the context of the global arms trade

Some facts about the global conventional weapons trade are useful at the outset. The most recent estimate values the trade at over US\$95 billion, and the trend shows that the volume of weapons being transferred is increasing annually, with the exception of 2018.<sup>35</sup> According to the Stockholm International Peace Research Institute, purchases from countries in the Middle East account for the largest share of imports in 2015–2019, a 63% increase from the previous four years.<sup>36</sup> Saudi Arabia alone increased its arms imports by 130% during this same period, importing the largest share of arms in the world.<sup>37</sup>

The expected profit and employment opportunities generated by arms production are often invoked as the political rationale behind morally questionable arms transfer decisions.<sup>38</sup> But economic rationalization efforts tend to omit from their calculations the causal linkages between weapons and the harms caused by their use throughout their life cycle. As a result, the economic benefits for arms-producing (and assembling and training) communities tend to dominate political discourse about production and export.<sup>39</sup> Absent from such calculations are the findings showing relationships between arms availability and the duration and severity of conflict, mortality, and morbidity, as discussed in the next section.

In 2014, a deal was reached between Canada and Saudi Arabia whereby General Dynamics Land Systems, a weapons manufacturing company based in Ontario, would sell an undisclosed number of light armored vehicles (LAVs) and other items to Saudi Arabia for CAD15 billion.<sup>40</sup> The details of the arrangement were not made public and the items to be transferred were initially described as “trucks” and “jeeps,” thereby obscuring their military capabilities.<sup>41</sup> It was later revealed that 928 LAVs with “heavy assault,” “anti-tank,” and “direct fire” capabilities were included in this deal.<sup>42</sup>

In 2016, amid the escalating violence in Yemen and repression of rights in Saudi Arabia, the newly formed government granted six additional permits instead of reevaluating the deal signed by its predecessor.<sup>43</sup> A 2016 Global Affairs Canada memo explains that a consultation took place to examine the possibility that exported arms would be used to commit human rights violations in light of reports of Canadian-made weapons in Yemen.<sup>44</sup> However, the consultants found no connection between the exports and human rights violations and recommended approving the six permits.<sup>45</sup> Important parts of the memo are redacted—for instance, the number of LAVs exported and the type of weapons systems included.

In 2017, a request for legal review of Canada’s arms export permits for Saudi Arabia was filed based on concerns of the latter country’s human rights record and adherence to IHL.<sup>46</sup> Applicant

Daniel Turp argued that “the issuance of the permits to export LAVs to Saudi Arabia runs counter to the objectives of the [Export and Import Permits Act] and the Geneva Conventions Act.”<sup>47</sup> He asserted that there was sufficient evidence to establish a “reasonable risk” that the exported items would be used to violate human rights or threaten peace in the Arabian Peninsula, citing the country’s involvement in the conflict in Yemen specifically. He argued that the minister responsible for permit issuing applied the wrong test in dismissing the fundamental rights concerns, noting that

*[a]ll that is required is a reasonable risk that the arms will be used in a prohibited manner, there does not have to be evidence demonstrating that the arms have been so used. Saudi Arabia’s past and present conduct were sufficient to establish that risk.*

The Federal Court of Canada found that the minister had acted within his powers and adhered to all relevant obligations, noting that it could not pass moral judgement on the matter.

In 2018, Canada reviewed its export arrangements with Saudi Arabia again in light of reports of international law violations in Saudi Arabia and Yemen where the Saudi-led coalition is active. The review found “no evidence or credible reporting that would link any Canadian exports (e.g. ground vehicles, sniper rifles) to contraventions of international humanitarian law in Yemen.”<sup>48</sup>

Again, these findings ignore the nature of Canada’s obligations under the ATT and the amended Export and Import Permits Act, which do not require a determination of a direct link between the specific items exported and a violation. As Turp suggests, given Saudi Arabia’s past activities in contravention of IHRL and IHL norms, there is a possibility of misuse of transferred arms.

The Federal Court of Appeal dismissed Turp’s appeal, and his application for leave to appeal to the Supreme Court of Canada was not granted.<sup>49</sup> However, a new application is pending before the Federal Court of Canada.<sup>50</sup>

In response to the murder of journalist Jamal Khashoggi in 2018, Canada put a moratorium on the issuance of new permits to Saudi Arabia.<sup>51</sup> That

it was a single murder in contravention of international law that prompted the Canadian government to act—and not the continued attacks on and widespread suffering of civilians in Yemen—illustrates the subordination of socioeconomic rights considerations in arms export decisions.<sup>52</sup> In April 2020, during the COVID-19 pandemic and unfolding economic crises, including record-low oil prices that were damaging Canada’s export revenue potential, Canada announced the resumption of application reviews under a “renegotiated” deal.<sup>53</sup> Foreign Affairs Minister Chamberlain denied that the decision had any connection to Canada’s struggling oil industry.<sup>54</sup> A group of human rights organizations condemned the lifting of the moratorium in an open letter to Prime Minister Trudeau.<sup>55</sup> They noted the hypocrisy of the decision just days before the government released a statement calling for a global ceasefire on conflicts in order to cope with the COVID-19 pandemic. Furthermore, the \$15 billion deal illustrates inconsistencies with Canadian foreign policy rhetoric and reality. While Canada considers itself a champion of human rights, and the Trudeau government has explicitly expressed its commitment “to advancing feminist foreign policy objectives,” its arms exporting decisions to Saudi Arabia fail to uphold these values.<sup>56</sup> The resumption of export permit application reviews (and the deal itself) points to the calculated risk the government takes to maintain the Canadian defense industry by promoting violence abroad, even while acknowledging findings that the supply of weapons by third parties perpetuates and prolongs the suffering of people in Yemen.<sup>57</sup>

Global Affairs Canada’s 2019 memo and 2020 final report provide insight into the most recent review of export permits to Saudi Arabia. They conclude that based on a “robust” risk assessment process and taking into account the conflict in Yemen, current military exports to Saudi Arabia do not violate Canada’s obligations or create a substantial risk of violations.<sup>58</sup> Addressing recorded images of Canadian LAVs on Yemen’s border, it found that the images depict older LAVs stationed there for security purposes.<sup>59</sup> It must be noted, however, that the \$15 billion deal includes upgrade

packages for older model LAVs.<sup>60</sup> Other images of LAVs inside Yemen suggest that the LAVs are not confined to the Saudi-Yemen border.<sup>61</sup> On June 12, 2018, a video uploaded to Twitter showed a number of Canadian-made LAVs on Yemini territory in Hajjah Governorate.<sup>62</sup> The government views Saudi Arabia as an ally in “countering instability in Yemen” and believes that “the acquisition of the state-of-the-art vehicles will assist Saudi Arabia in these goals.”<sup>63</sup> Global Affairs Canada’s final report also claims that Canada’s arms exports to Saudi Arabia “are more likely to help ensure the stability of a key region for the global economy than to destabilize the region.”<sup>64</sup> The narrative that Canada’s arms exports to Saudi Arabia promote peace (rather than undermine it) is bolstered by United Nations Security Council Resolution 2216, which has been understood as affirming Saudi Arabia’s intervention in Yemen.<sup>65</sup>

The lack of publicly available information on arms transfer arrangements, even six years after the \$15 billion deal was signed, prevents a comprehensive critique of the assessment criteria. As Luca Ferro maintains, the “high standards” of export controls touted by governments are of little use if they are misapplied or unchallengeable as a result of the secrecy that surrounds decision-making processes.<sup>66</sup> While the federal government denies that Canadian-made weapons are contributing to violations in Yemen, the evidence of the human toll caused by arms use in the country continues to mount. In response to the documented human rights abuses in Yemen, other countries, including Germany, Denmark, and Finland, have halted arms sales to Saudi Arabia.<sup>67</sup> In a 2019 legal challenge brought by the Campaign Against Arms Trade, the UK Court of Appeal found that the United Kingdom’s decision-making process regarding arms exports to Saudi Arabia was “unlawful” and “irrational” because it had not assessed the importers’ history of IHRL violations.<sup>68</sup>

### Direct and indirect health consequences of arms transfers

The ATT’s preamble recognizes a direct link

between human suffering and arms flows: state parties “bear[] in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence” and “recogniz[e] the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion.”<sup>69</sup>

Although arms build-up is only one of many factors that lead to the onset of conflict—and increased military capacity might even be argued to deter violence directed from external threats—the simple fact remains that when weapons are discharged at human targets, the immediate consequences for human health and life are entirely negative. That the majority of transfers flow from the Global North to the Global South, where nearly all modern-day conflict occurs, often with devastating consequences, points to the disproportionately negative experience of those in importing and end-use countries.

In 2018, approximately 76,000 people died from armed conflict, although more people die from indirect effects than from bullets and battle wounds.<sup>70</sup> Indirect deaths occur when preventable diseases emerge from conflict-related disruptions of everyday life.<sup>71</sup> Although it is difficult to separate conflict-related mortality and morbidity from existing structures of ill health, it is estimated that for every direct conflict-related death there are an additional four indirect deaths.<sup>72</sup> The destruction of key institutions and infrastructure during conflict can make physical access to health care difficult or impossible; displacement relocates people away from key health care facilities; the loss of livelihoods or assets imperils financial access to health care; the erosion of the social determinates of health jeopardizes long-term health; and conflict encourages skilled practitioners to emigrate.

The spread of otherwise easily preventable diseases reflects the breakdown of health care services and supporting public infrastructure in Yemen and other areas experiencing conflict. Armed conflicts create subpar living conditions, such as cramped camps for forcibly displaced people, and unsafe water, both of which increase the risk of infectious

diseases. During armed conflict, people (especially women and girls) are also more susceptible to malnutrition.<sup>73</sup> The Food and Agricultural Organization recognizes a causal relationship between violent conflict and food (in)security.<sup>74</sup> Indeed, the largest human-made food crisis is currently taking place in Yemen. Conflict undermines the accessibility and availability of food: agricultural production declines due to loss of capital and damage to farmland, market disruptions lead to higher prices, and loss of livelihoods limit economic access to food.<sup>75</sup> Even in the absence of an armed conflict, increased arms imports and military spending are positively correlated with increased food insecurity.<sup>76</sup>

There are gender and age dimensions to the health effects of conflict as well, with women and children disproportionately affected. David Southhall points to the great disparities in child and maternal mortality between low-income countries experiencing armed conflict and the rich countries that supply them weapons, arguing that arms transfers can be considered a form of child and maternal abuse.<sup>77</sup> He asserts that it is not exclusively the use of arms but the indirect effects of their use—such as food deprivation, disability, and infrastructural damage—that cause most fatalities.<sup>78</sup> Conflict breaks down existing support and protection mechanisms and places women and girls in vulnerable situations (for example, internal displacement camps, where they are at risk of gender-based violence).

Violations of the right to health are consequences of the conditions that armed conflict produces: loss of livelihood, destruction of housing or shelter, food insecurity, unsanitary living conditions, lack of safe water and sanitation, and limited access to health services.<sup>79</sup> The indirect effects of arms imports tend to be widespread and long term. Zachary Wagner et al. find that mortality risk is increased for people up to 100 kilometers away for a period of eight years after the conflict ends.<sup>80</sup> The destruction of infrastructure and health systems has long-lasting effects and requires a significant amount of funding to reverse. Arms purchasing reallocates resources within public budgets, diverting resources away from social services such as health

care. Given these points, there is a clear imperative for arms-exporting countries to conduct risk assessments that ensure that exported arms do not have a role in the violation of human rights or humanitarian norms.

### *The known health-related consequences of arms use in Yemen*

Most direct and indirect health-related consequences of conflict are exemplified in Yemen. As one of the most impoverished nations in the Middle East, Yemen is undergoing a human-made, protracted crisis resulting from armed conflict. Approximately 80% of the population requires humanitarian assistance.<sup>81</sup> Notwithstanding the accusations against all parties to the conflict, this section examines the activities of Saudi Arabia and eight other coalition member states that are detrimental to health and health care to illustrate that Saudi Arabia is a risky destination for Canadian arms.<sup>82</sup> (A longer list of IHRL and IHL violations in Yemen has been compiled by David et al. to demonstrate the illegality of arms transfers to Saudi Arabia.<sup>83</sup>)

The Yemen Data Project has gathered data on 20,528 coalition air raids, a quarter of which have targeted civilians in residential dwellings, markets, funerals, weddings, and hospitals.<sup>84</sup> Over 17,500 civilians have been killed and injured in Saudi-led coalition bombing.<sup>85</sup> Human rights organizations warn that civilians are targeted by the Saudi-led coalition. One of the deadliest civilian bombings occurred in 2016, when 137 civilians were killed and 695 injured in a coalition-led airstrike on Al-Kubra Hall in Sana'a during a funeral.<sup>86</sup> In 2018, 40 Yemeni fishermen and seven children died as their fishing boats were attacked by Saudi-led coalition naval forces and helicopters.<sup>87</sup> Human Rights Watch argues that the coalition forces were close enough to see that the fishermen were waving white cloths and were in fact civilians.<sup>88</sup> A group of experts appointed by the United Nations High Commissioner for Human Rights, analyzing the violation of international human rights and humanitarian law in Yemen, concluded that parties to the conflict, including the Saudi-led coalition, "are responsible for ... serious violations of freedom of expression and

economic, social and cultural rights, in particular the right to an adequate standard of living and the right to health."<sup>89</sup>

### *Attacks on medical staff and facilities*

Attacks on medical facilities and staff have devastating repercussions for the health of an already vulnerable population. These attacks violate the principle of medical neutrality—that is, the "non-interference with medical services in times of armed conflict and civil unrest."<sup>90</sup> The International Rescue Committee and the United Nations Office for the Coordination of Humanitarian Affairs estimate that 50% of Yemen's health care infrastructure has been destroyed, closed permanently, or partially affected. For instance, in Taiz Governorate, only four out of the ten medical facilities are in operation.<sup>91</sup> Human Rights Watch, Amnesty International, and Physicians for Human Rights have continuously criticized the Saudi-led coalition's bombardment for breaches of medical neutrality.<sup>92</sup> The coalition's indiscriminate bombing and targeting of health care facilities and infrastructure effectively weaponizes health, as part of a "strategy of using people's need for health care as a weapon against them by violently depriving them of it."<sup>93</sup>

Examples of the weaponization of health by the Saudi-led coalition include an attack on a hospital operated by the country's Ministry of Health and supported by Médecins Sans Frontières and UNICEF in Abs District in northwestern Yemen (August 15, 2016); the bombing of a Médecins Sans Frontières medical clinic (June 11, 2018); and a missile attack on Kitaf hospital that killed eight people, including five children and a health worker (March 26, 2018).<sup>94</sup> The Kitaf hospital was located in a densely populated civilian area, and the facility's coordinates were shared with the coalition beforehand.<sup>95</sup> Evidence suggests that the coalition was behind another attack on a hospital supported by Save the Children in rural northwest Yemen (March 26, 2019). Attacks on health facilities place the lives of millions of Yemeni people at risk, for they have caused many health care staff to leave already overcrowded and under-resourced hospitals and have led patients to avoid going to hospitals.<sup>96</sup>

The Saudi-led coalition's bombardment of the few operating health facilities deprive 19.7 million Yemenis who require access to health care.<sup>97</sup>

### *Attacks on public infrastructure and naval blockade*

The effects of the armed conflict are compounded by the Saudi-led coalition's destruction of the health care system and its supporting infrastructure. One example of the negative health consequence is the cholera outbreak in Yemen. In the year between April 2017 and March 2018, a total of 1,111,653 cholera cases and 2,400 deaths were reported; between January 2019 and September 2019, another 696,537 cases and 913 associated deaths were reported.<sup>98</sup> Cholera is an easily preventable and treatable waterborne disease; however, without treatment, it can be fatal.<sup>99</sup> The deadly outbreak of cholera in Yemen has a direct relationship to the destruction of infrastructure during conflict.<sup>100</sup> For instance, in January 2016, the Saudi-led coalition destroyed a water desalination plant in the city of Mokha.<sup>101</sup> In June 2018, coalition airstrikes destroyed a water station that provides the majority of the water to the city of Hodeida.<sup>102</sup> Adding to the problem, Yemen experiences chronic water scarcity and sanitation issues, with 50% of the population requiring assistance in accessing safe drinking water and adequate human waste disposal.<sup>103</sup> Attacks on water supply, sanitation systems, and health care facilities fuel cholera outbreaks and violate international law.<sup>104</sup>

A further indirect consequence of Saudi coalition arms use is the naval blockade and resulting import restrictions on food, fuel, and humanitarian aid, which impede access to essential goods. The Food and Agriculture Organization reports that 15.9 million people (over half the population) are in urgent need of food and livelihood assistance, and approximately 63,500 Yemenis are facing famine.<sup>105</sup> The blockade is ostensibly aimed at restricting weapons inflows.<sup>106</sup> However, Yemen relies on imports for 90% of its food, and therefore the blockade and associated import restrictions on essential goods place millions of lives at risk.<sup>107</sup> There are reports that cargos carrying medicine and food cleared by the United Nations have been blocked.<sup>108</sup>

Similarly, Human Rights Watch reports seven cases of Saudi-led coalition forces "arbitrarily divert[ing] or delay[ing]" fuel tankers.<sup>109</sup> In turn, increasing transport costs due to fuel shortages have driven up food prices 137% (compared to their pre-conflict cost).<sup>110</sup> Increased fuel prices—along with damage to water systems and the aerial bombing of rural infrastructure—have also resulted in lower crop yields within the country.<sup>111</sup> Produced in part by coalition activities, the crisis in Yemen deprives people of their right to food and inflicts widespread harm on civilian health. In addition to causing food insecurity and hunger, if actions undertaken by parties to the conflict are intended to induce starvation, this constitutes a war crime, including in non-international armed conflicts.<sup>112</sup>

Moreover, the conflict in Yemen exacerbates gender inequality and has subjected approximately three million women and girls to gender-based violence.<sup>113</sup> The abuse of women has increased by 63% since the onset of the conflict, as conflict-induced vulnerabilities such as displacement heighten the risk of gender-based violence.<sup>114</sup> Kidnapping and sexual violence against displaced people by the 35th Armored Brigade (Yemen's armed forces) and by the Security Belt Forces (supported by the government of the United Arab Emirates) have also been documented.<sup>115</sup> In 2015, women made up the majority of the 2.5 million internally displaced persons.<sup>116</sup> The Group of Experts on Yemen has verified 37 cases implicating all parties to the conflict in the commission of gender-based violence, including sexual violence, rape, and the hostage-taking of women and girls.<sup>117</sup>

### Conclusion: Calculating costs, considering lives

The calls from human rights and humanitarian organizations urging Canada to cancel arms shipments to Saudi Arabia are based on extensive research on the impacts of arms use in Yemen. Clear risks have been identified in numerous reports, including those by United Nations experts, which have found that "the continued supply of weapons to parties to the conflict is perpetuating

the conflict and prolonging the suffering of the Yemeni people.”<sup>18</sup> Yet Canada has chosen to ignore these warnings, citing a lack of evidence that the specific items for export will contribute or have already contributed to violations.

The ATT is an imperfect instrument that may ultimately serve to legitimize the trade in certain arms.<sup>19</sup> Indeed, as illustrated by Global Affairs Canada, the government hinges the legitimacy of its export decisions on the question of strict legality. If the relevant legal rules allow the export of weapons that contribute to the suffering of people in other countries—but just below the threshold of international crimes—the law itself must be called into question. For the moment, however, and notwithstanding the shortcomings of the existing framework, the ATT is the criteria against which an argument can be made to adopt a more careful approach to permit issuance and to halt the transfer of arms to Saudi Arabia and other countries engaged in hostilities. Adopting a robust interpretation of ATT provisions and implementing the precautionary approach to arms-export-permitting decisions will make Canada better positioned to achieve the stated aim of the treaty: to reduce suffering. The economic benefit that the arms sales provide to Canadians must not override the true cost to human lives in other countries.

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