

Understanding European Arms Export Controls

Material Interests and Competing Norms

Mark Bromley

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Academic dissertation for the Degree of Doctor of Philosophy in International Relations at Stockholm University to be publicly defended on Monday 13 June 2022 at 10.00 in hörsal 2, hus A, Universitetsvägen 10 A.

Abstract

This thesis seeks to better understand the formation and implementation of the restrictions that the EU and EU member states have imposed on exports of military and security equipment. Specifically, the thesis develops two norms-based theoretical frameworks for understanding how and why particular restrictions become integrated in states' national and collective export controls, why others are rejected, and the different ways this integration occurs. To develop these frameworks this thesis carries out two case studies comparing aspects of Sweden's, the UK's and the USA's arms export controls and examining the emergence of the EU's export control 'regime', conducts a review of past research on export controls, produces a historical narrative summarizing the evolution of states' restrictions on exports of military and security equipment, and draws from key aspects of the literature on norms in the fields of international relations and organizational theory. The first theoretical framework posits that the process of adopting particular restrictions on exports of military and security equipment can be best understood as a competition between different constitutive and regulative norms. Applying this 'competing norms' framework creates a better understanding of why certain efforts to impose restrictions fail while others succeed. The second theoretical framework is informed by the concept of organized hypocrisy and helps explain the outcomes that can emerge when different norms support and oppose the adoption of particular restrictions. Applying this 'organized hypocrisy' framework shows how export controls can be viewed as consisting of 'talk', 'decision' and 'action' and that each aspect can be adjusted in response to the pressures exerted by different norms. The thesis applies these theoretical frameworks in two case studies that explore recent processes of revising aspects of Sweden's arms export controls and the EU's export control regime. This thesis makes several novel contributions to the study of the trade in military and security equipment, export controls and arms control more broadly. Most substantively, it provides two new theoretical frameworks for understanding the role that norms play when states individually and collectively impose restrictions on their exports of military and security equipment. More broadly, the insights provided help to shed light on the norms dynamics at play in other areas of arms control, security policy and international relations more generally.

Keywords: *arms control, arms export controls, defence industry, dual-use export controls, EU, international relations, norms, organization theory, organized hypocrisy, Sweden.*

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Abstract

This thesis seeks to better understand the formation and implementation of the restrictions that the EU and EU member states have imposed on exports of military and security equipment. Specifically, the thesis develops two norms-based theoretical frameworks for understanding how and why particular restrictions become integrated in states' national and collective export controls, why others are rejected, and the different ways this integration occurs. To develop these frameworks this thesis carries out two case studies comparing aspects of Sweden's, the UK's and the USA's arms export controls and examining the emergence of the EU's export control 'regime', conducts a review of past research on export controls, produces a historical narrative summarizing the evolution of states' restrictions on exports of military and security equipment, and draws from key aspects of the literature on norms in the fields of international relations and organizational theory. The first theoretical framework posits that the process of adopting particular restrictions on exports of military and security equipment can be best understood as a competition between different constitutive and regulative norms. Applying this 'competing norms' framework creates a better understanding of why certain efforts to impose restrictions fail while others succeed. The second theoretical framework is informed by the concept of organized hypocrisy and helps explain the outcomes that can emerge when different norms support and oppose the adoption of particular restrictions. Applying this 'organized hypocrisy' framework shows how export controls can be viewed as consisting of 'talk', 'decision' and 'action' and that each aspect can be adjusted in response to the pressures exerted by different norms. The thesis applies these theoretical frameworks in two case studies that explore recent processes of revising aspects of Sweden's arms export controls and the EU's export control regime. This thesis makes several novel contributions to the study of the trade in military and security equipment, export controls and arms control more broadly. Most substantively, it provides two new theoretical frameworks for understanding the role that norms play when states individually and collectively impose restrictions on their exports of military and security equipment. More broadly, the insights provided help to shed light on the norms dynamics at play in other areas of arms control, security policy and international relations more generally.

Key words: arms control, arms export controls, defence industry, dual-use export controls, EU, international relations, norms, organization theory, organized hypocrisy, Sweden

Contents

Acknowledgements	1
1. Introduction	5
Research question and research aim.....	6
Developing the norms-based theoretical frameworks	9
Applying the norms-based theoretical frameworks.....	10
Theoretical and empirical contributions.....	12
Structure of the kappa.....	13
2. Definitions and delimitations	14
3. Epistemology and methodology.....	17
4. Previous research on export controls	22
Structural realist approaches	22
Norms-based approaches.....	24
Europeanization and export controls.....	26
Liberal international relations theory and export controls	28
Critical theory perspectives on export controls.....	29
5. A brief history of export controls and the role of norms	31
Pre-WWI period	31
Inter-war years.....	34
Cold War period	36
Post-Cold War period.....	39
The constitutive and regulative norms of export controls.....	45
The norms of EU arms export controls	52
6. A norms-based theoretical framework.....	53
Liberal international relations theory	54
Norms	55
Organization theory	61
The ‘competing norms’ theoretical framework.....	64
The ‘organized hypocrisy’ theoretical framework	65
Case study III and IV and the application of the theoretical frameworks	66
7. Key findings and suggestions for future research.....	68
8. Summaries of case studies I, II, III and IV	70
Abbreviations	73
References.....	74

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Uppsala, 10 May 2022

Swedish version

Denna avhandling har sökt avgöra vilka tillvägagångssätt från området för internationella relationer som är bäst lämpade för att hjälpa oss att förstå bildandet och genomförandet av staters individuella och kollektiva begränsningar av handeln med militär och säkerhetsutrustning. Som sådan var avhandlingens övergripande forskningsfråga:

Vad förklarar varför särskilda restriktioner inarbetas i staters individuella och kollektiva exportkontroller, varför andra avvisas och skillnaderna i hur dessa restriktioner tillämpas?

Avhandlingen utforskade denna forskningsfråga genom två fallstudier. Fallstudie I jämförde slutanvändningskontroller i Sverige, Storbritannien och USA och utvärderade hur väl strukturell realism kan förklara skillnader i länders politik. Fallstudie II undersökte framväxten av EU:s 'regim' för exportkontroll och bedömde dess inverkan på EU:s medlemsstaters exportkontroll. Avhandlingen presenterar också en genomgång av tidigare forskning rörande exportkontroll och en historisk berättelse som beskriver utvecklingen av staters syn på exportkontroll.

Resultaten från fallstudie I och fallstudie II såväl som genomgången av tidigare forskning och den historiska narrativ förändrade avhandlingens mål. Specifikt fokuserades den på exportkontroller från EU och EU:s medlemsstater, försökte tillämpa ett normativt perspektiv för att förstå de exportkontrollrestriktioner som stater inför, och syftade att utveckla en teoretisk ram för att bättre förstå hur och varför särskilda restriktioner antas.

För att utveckla det teoretiska ramverket utgick avhandlingen från organisationsteori och antog en förståelse för normer som överlappar distinktionen mellan värderingar och intressen, och som ser bortom en uppfattning av normer som något nödvändigtvis 'bra' eller 'progressivt.' För att bättre förstå fall där stater behöver hantera det tryck som skapas av motstridiga normer har forskningen i avhandlingen inspirerats av organisationsteoretikern Brunssons arbete och hans koncept 'organiserat hyckleri.'

Med utgångspunkt i detta arbete utvecklade avhandlingen två distinkta teoretiska ramverk för att förstå hur och varför särskilda restriktioner inarbetas i EU:s och EU:s medlemsstaters exportkontroller, varför andra avvisas och de olika sätten på vilka denna integration sker.

Det första ramverket föreslår att processen att anta särskilda restriktioner för export av militär- och säkerhetsutrustning bäst kan förstås som en konkurrens mellan olika konstitutiva och reglerande normer. Att tillämpa detta ramverk skapar en bättre förståelse för varför vissa ansträngningar att införa vissa restriktioner misslyckas medan andra lyckas. Det andra ramverket bygger på Brunssons koncept rörande 'organiserat hyckleri' och hjälper oss att bättre förstå de resultat som kan uppstå när konkurrerande normer stödjer motsatta

förslag. Att tillämpa detta ramverk visar hur exportkontroll består av ‘samtal’, ‘beslut’ och ‘handling’ och att varje aspekt kan justeras som svar på de påtryckningar som utövas av olika normer.

Avhandlingen utvecklade och tillämpade dessa två teoretiska ramverk, avseende ‘konkurrerande normer’ och ‘organiserat hyckleri’, genom fallstudie III och fallstudie IV.

Fallstudie III fokuserar på Sveriges system för kontroll av vapenexport och särskilt processen med policyöversikt och översyn som kulminerade 2018 och debatterna om att lägga till strängare nationella kontroller av överföringar av militär och säkerhetsutrustning till diktaturer. Att tillämpa ramverken för ‘konkurrerande normer’ och ‘organiserat hyckleri’ belyser hur Sveriges exportkontroller är föremål för motstridiga normativa påtryckningar. Hanteringen av denna konflikt har i sin tur inneburit en viss fränkoppling mellan deras retorik, beslut och handlingar avseende exportkontroller.

Fallstudie IV undersöker processen med att se över och revidera EU:s förordning om dubbla användningsområden som kulminerade 2020 med antagandet av ny lagstiftning och debatterna om att anta nya kontroller rörande export av övervakningsverktyg. Att tillämpa ramverken för ‘konkurrerande normer’ och ‘organiserat hyckleri’ hjälper till att förklara varför vissa föreslagna förändringar var framgångsrika medan andra misslyckades och hur trycket som genererades av konkurrerande normer löstes genom att skapa en nivå av urkoppling mellan samtal, beslut, och åtgärder från EU:s exportkontrollsystem.

Denna avhandling bidrar på flera sätt till forskningen på handeln med militär och säkerhetsutrustning, exportkontroller och vapenkontroll mer allmänt. Centrala bland dessa är två nya teoretiska ramverk för att förstå den roll som normer spelar när stater individuellt och kollektivt inför restriktioner för deras export av militär och säkerhetsutrustning. Dessa ramverk kan hjälpa oss att förstå varför vissa restriktioner får genomslag, varför andra misslyckas och varför vi ser inkonsekvens i tillämpningen av de restriktioner som antas. Till sammans med fallstudierna, genomgången av tidigare forskning och den historiska berättelsen ger ramverken en färdplan för granskning av studier av nationella och kollektiva exportkontrollsystem. Mer allmänt kan insikter från avhandlingen belysa dynamiken också på andra områden av vapenkontroll och säkerhetspolitik och internationella relationer mer generellt.

Nyckelord: Vapenexportkontroll, Sverige, EU, vapenkontroll, normer, försvarsindustri, vapenkontroll, organisationsteori, internationella relationer, exportkontroller med dubbla användningsområden.

1. Introduction

‘Arms control’ refers to the efforts that states make – collectively and individually – to place limits on the development, ownership, use and proliferation of weapons of mass destruction (WMD) and conventional weapons. This set of policies and their motivations, characteristics and impacts have been the focus of a wide range of theory testing and theory development in international relations. Studies have sought to determine what states are seeking to achieve through these controls, what motivates their adoption and what accounts for the differences between states and over time in the ways they are framed and implemented. This thesis examines one aspect of arms control – the restrictions that states impose on the trade in military and security equipment to prevent proliferation – while seeking to shed light on these broader debates.

States have imposed different types of restrictions on the trade in military and security equipment (hereafter ‘export controls’) since antiquity.¹ However, the focus of these restrictions has shifted significantly due to technological, economic and political developments. These shifts have been particularly significant during the post-Cold War period, which has been marked by two key developments. First, states have expanded the measures they use to coordinate their export controls, which include a range of regional, multilateral and international instruments and treaties (hereafter ‘regimes’). Second, at both the individual and regime level, states have expanded the set of values and concerns that they reflect in the restrictions they apply in their export controls, including preventing armed conflict, human rights abuses and violations of international humanitarian law (IHL).

The construction of these regimes, the drafting of these restrictions, and the effect they have on national decision-making on exports of military and security equipment have been contested aspects of foreign and security policy. In some states, the restrictions and their application have been the focus of a steady stream of political controversies and inter-governmental disagreements, which have grown in intensity in recent years. This can be seen in recent EU-wide debates about whether to allow supplies of arms to states engaged in the armed conflict in Yemen, debates in Sweden about whether to restrict arms exports to non-democratic states and debates between France and

¹ In this thesis, export controls are understood to be the policies, laws and administrative systems that states adopt and implement to impose restrictions on the international trade in military equipment and dual-use items. Dual-use items are goods and technologies that have the potential to be used in both civilian and military products. One of the key objectives of modern export control systems, particularly efforts to regulate the trade in dual-use items, is tackling the proliferation of weapons of mass destruction (WMD). Although this thesis addresses WMD proliferation, its primary focus is on the use of export controls to regulate the trade in military and security equipment.

Germany about what standards to apply to exports of jointly produced weapon systems.²

As these controversies show, the formation and application of states' export controls are influenced by many issues and dynamics, including their defence industrial policies, their industrial and political relations with foreign states, their wider foreign and security policy priorities, the size and scope of their domestic defence industry and the markets it has traditionally served, and the wider internationalization of the defence production process. They also underline that the formation and application of states' export controls generate both domestic and international disagreements about what is morally valid and appropriate. All of this points to both the policy and theoretical relevance of better understanding how and why states place restrictions on their exports of military and security equipment.

Research question and research aim

The process of developing and applying individual and collective restrictions on the trade in military and security equipment and the controversies generated have been the focus of a steady stream of literature from a range of academic disciplines, including history, international relations, international law, economics and political economy. In international relations, several attempts have been made to assess the motivation, content and impact of restrictions on the trade in military and security equipment using a variety of theoretical approaches, including structural realism, norms, Europeanization, liberal international relations theory and critical theory. Key lines of inquiry in the field of international relations have included determining why certain restrictions become integrated in national and collective export control standards and others do not, and why there are differences and inconsistencies in how these restrictions are applied.

This thesis seeks to contribute to these debates and discussions by determining which approach or set of approaches from the field of international relations are best suited for understanding the formation and implementation of export control policies. Hence, the thesis' research question is formulated as follows:

What explains why particular restrictions become integrated in states' individual and collective export controls, why others are rejected and the differences in how these restrictions are applied?

² Swedish Ministry of Foreign Affairs, 'Regeringen tog emot utredningen om export av krigsmaterial [Government receives investigation into the export of war material]', 26 June 2015; Maletta, G. 'Legal challenges to EU member states' arms exports to Saudi Arabia: Current status and potential implications', SIPRI, 28 June 2019; and Sprenger, S., 'French envoy presses Germany on stalling arms exports', *Defense News*, 26 March 2019.

Case study I and case study II address the research question by exploring the application of different approaches from international relations to the study of states' national and collective export control systems. These case studies were based primarily on a close analysis of primary and secondary literature. The results are presented in one journal article and one book chapter (see annex 1 and annex 2).

Case study I assesses Blackaby's system for defining types of arms exporters, which was grounded in structural realism and developed in the 1970s, to understand contemporary differences in states' export controls.³ In particular, case study I explores whether Blackaby's system can account for current variation in the end-use controls imposed by three states that Blackaby viewed as paradigmatic – i.e., Sweden, the USA and the UK. This case study highlights the need to move beyond structural explanations for differences in states' export controls and to pay closer attention to both domestic factors and the underlying concerns and values shaping national policies. The study also examines how similar export control policies can be justified in terms of contrasting national security, humanitarian, and market concerns and values.

Case study II applies Krasner's definition of 'regime' to an examination of emergence and evolution of the EU's set of export control instruments.⁴ The case study highlights that the EU and EU member states have developed the most comprehensive regional export control regime and taken the largest steps to integrate humanitarian concerns into the restrictions it imposes. However, the study also underlines that the EU's export control regime forms one part of a wider set of instruments through which European states define their export controls and shape their content and application. The study demonstrates that European states are a particularly useful focus of study for the thesis question and that policy processes at the national, EU, multilateral and international level need to be examined.

In parallel with case study I and case study II, the thesis also explores the research question through a detailed review of previous research on export controls on export controls. The results are presented in this kappa (see section 4).

³ Bromley, M. (2015), 'End-Use Controls: Recent Technology Developments and Emerging Trends', *Security and Peace*, Vol. 33, No. 2, pp. 84–91.

⁴ Bromley, M., 'Chapter 41 – Arms Transfers and Export Control Policies', in Meijer, H. and Wyss, M. (eds.), *The Handbook of European Armed Forces*, (OUP, 2018). Krasner defined regimes as 'sets of principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area of international relations.' Krasner, S. D., 'Structural Causes and Regime Consequences: Regimes as Intervening Variables' in Krasner, S. D. (ed.), *International Regimes* (Cornell University Press, 1983), pp. 1–22.

The review of theoretical literature on export controls examines the ways studies grounded in structural realism, norms, Europeanization, liberal international relations theory and critical theory have examined the motivations, processes and outcomes of states' individual and collective imposition of restrictions on transfers of military and security equipment. The review also details other theories that have been used to understand the emergence of the EU's export control regime, particularly the political scientist Moravcsik's version of liberal intergovernmentalism. Moravcsik's version of liberal intergovernmentalism provides a useful set of tools for understanding the emergence of both the EU's export control regime and the others that have been established. However, it does not provide all the tools needed to fully understand the dynamics at play during processes where particular restrictions become integrated into EU and EU member states export controls and the role that norms play in these processes.

The review underlines the limits of drawing from one theory and the value of drawing from multiple theoretical approaches to understand the restrictions that states impose through their export controls. In addition, the review underlines the value of applying a norms-based perspective to the study of this process. Here, the thesis draws from the international relations theorists Finnemore and Sikkink and their definition of norms as 'collective expectations for the proper behaviour of actors with a given identity' which can be both 'constitutive' in that they 'create new actors, interests, or categories of action' and 'regulative' in that they 'order and constrain behaviour.'⁵ A defining characteristic of post-Cold War developments in export controls is the application of restrictions focused on IHL, armed conflict, and human rights, concerns that have been at the heart of norms-based work in international relations.

The review also highlights some of the limits of previous attempts to apply a normative approach to export controls, particularly the way they have framed their analysis in terms of a contest between progressive humanitarian norms and security and economic interests. Work that has approached the issue from a critical theory perspective highlights how the issue can be better viewed as competition between different sets of norms. Finally, the review points to the lack of studies that take a broader historical view of the process through which particular restrictions become integrated in states' national and multilateral export controls.

To fill this gap and to analyse the evolution of states' individual and collective approaches to export controls since the 17th century, this thesis includes a detailed review of the historical literature on export controls. This review is based primarily on a close analysis of primary and secondary literature. The review is used to develop a historical narrative that outlines the origins and motivations of the regimes and restrictions states have established in the field

⁵ Finnemore, M. and Sikkink, K. (1998), 'International Norm Dynamics and Political Change', *International Organization*, Vol. 52, No. 4, pp. 887–917, p. 891.

of export controls and which is presented in this kappa (see section 5). The narrative also explores whether this process can be understood in terms of a competition between different sets of underlying constitutive and regulative norms rather than a competition between progressive norms and security and economic interests. The review supports this perspective and shows how the adoption of particular restrictions reflect constitutive and regulative norms grounded in national security, market and humanitarian concerns. Although the review indicates the presence of these underlying norms and their role in shaping the adoption of particular restrictions, it does not reveal the mechanisms where this occurs. Therefore, the review also points to both the potential and the value of developing a theoretical framework for understanding how norms shape and influence the adoption of particular restrictions in states' export controls.

* * *

The findings of case study I and case study II, and the reviews of the theoretical and historical literature shifted the orientation of the thesis. First, the thesis moved towards drawing from multiple theoretical approaches and not one theory. Second, it focused on the export controls of the EU and EU member states while also considering the wider set of multilateral and internal export control instruments. Third, it applied a normative perspective to understand the restrictions states impose through their export controls. Fourth, it developed a theoretical framework for better understanding how norms shape and influence the restrictions adopted. In sum, this thesis draws on a normative approach to develop a theoretical framework for understanding how particular restrictions become integrated in EU and EU member states' export controls, why others are rejected, and the different ways that this integration occurs.

Developing the norms-based theoretical frameworks

To develop the norms oriented theoretical framework, this thesis engages with literature from both international relations and organization theory. Particularly in the latter, norms and other related concepts are applied in ways that straddle the distinction between values and interests and look beyond a conception of norms as being something necessarily 'good' or 'progressive.' Drawing from this approach, the thesis applies a broad conception of norms as not only being grounded in humanitarian concerns but also in national security and market concerns and questions of sovereignty. To better understand cases where states need to manage the pressures created by conflicting norms, the research was inspired by the work of the organizational theorist Brunsson and his concept of 'organized hypocrisy', which he developed to understand

how political organizations operate when faced with the pressures and expectations generated by competing norms.⁶ Specifically, Brunsson posits that in such situations political organizations create a level of disconnect between their ‘talk’, their ‘decisions’ and their ‘actions.’

Building on this work, the thesis develops two theoretical frameworks for understanding how and why particular restrictions become integrated in EU and EU member states’ export controls, why others are rejected and the different ways that this integration occurs.

The first framework posits that the process of adopting particular restrictions on exports of military and security equipment can be best understood as a competition between different constitutive and regulative norms. The content of the norms, the pressures exerted by the norms, the ways the norms are used and the changes in policy that are produced are all subject to contingencies and particularities that can only be revealed through detailed case studies. The ‘competing norms’ framework helps to identify the norms that shape the process and the ways that they can both oppose and support each other during attempts to integrate particular restrictions in states’ national and collective export control systems. Applying this framework also creates a better understanding of why efforts to impose certain restrictions fail while others succeed.

The second framework, informed by Brunsson’s concept of ‘organized hypocrisy’, can be used to understand cases where the underlying norms that are shaping a particular debate about imposing restrictions on exports of military and security equipment directly contradict each other. In certain cases, the outcome of such debates is not an attempt to resolve the normative conflict but rather an attempt to manage it in ways that produce an acceptable outcome for all parties concerned. The ‘organized hypocrisy’ framework results in a better understanding of the outcomes that can emerge during processes of revising export controls when competing norms support opposing proposals. Specifically, it shows how export controls consist of several elements that can be grouped under the headings of ‘talk’, ‘decision’, and ‘action’, and that each can be adjusted in response to the pressures exerted by different norms.

Applying the norms-based theoretical frameworks

Case study III and case study IV address the research question by developing and applying the ‘competing norms’ and ‘organized hypocrisy’ theoretical frameworks. The case studies examine processes of review and revision in the field of export controls. Previous studies that have applied a normative approach to the study of export controls have focused on states’ actual transfers

⁶ Brunsson N., *The Organization of Hypocrisy: Talk, Decisions and Actions in Organizations* (John Wiley and Sons, 1989); and Brunsson N., *The Consequences of Decision-Making*, (OUP, 2007).

of military and security equipment and sought to determine whether they reflect the progressive norms states profess or their national security and economic interests. However, this thesis argues that the norms and causal pathways under examination are particularly visible when export control policies are revised and updated. These periods see lobbying, debate, and regulatory change that make it possible to identify the norms and examine how they both shape and are used to shape policy processes. The case studies employed methods of process tracing, a close analysis of primary and secondary literature, and key information interviews (KIIs). They were also informed by several research projects that I led or contributed towards as part of my work at SIPRI. The results are presented in one book chapter and one unpublished journal article (see annex 3 and annex 4).

Case study III focuses on Sweden's system of arms export controls, particularly the process of policy review and revision that culminated in 2018 and which saw debates about adopting stricter national controls on transfers of military and security equipment to non-democratic states.⁷ The study maps the key elements of Sweden's export controls and the impact and influence of different national, regional, and international policy debates and processes. The findings point to the value of examining the content of Sweden's export controls and the processes of policy review and revision using the 'competing norms' and 'organized hypocrisy' frameworks. Applying these frameworks highlights the way both Sweden's arms export controls and the process of policy revision are the subject of competing regulative and constitutive norms and that managing this conflict has involved a level of disconnect between the talk, decisions and actions of policy.

Case study IV examines the process of reviewing and revising the EU Dual-use Regulation, which culminated in 2020 with the adoption of new legislation.⁸ The study pays particular attention to the issue that caused the most debate during the process – i.e., attempts by the European Commission and European Parliament to expand the criteria and scope of the regulation by creating new controls on exports of cyber-surveillance items. The study draws from Moravcsik's version of liberal intergovernmentalism to understand why and how the EU's export control regime was established. The study uses the 'competing norms' framework to understand the process of revising the Dual-use Regulation and explain why certain changes were proposed and why some succeeded and others failed. The study also uses the 'organized hypocrisy' framework to understand some of the key outcomes of the process and the way the pressures generated by competing norms were resolved by creating a level of disconnect between the talk, decisions and actions of policy.

⁷ Bromley, M., 'Chapter 8 – Sweden's arms export controls: Balancing support and restraint' in Lustgarten, L., *Law and the Arms Trade: Weapons, Blood and Rules*, (Hart, 2020).

⁸ Bromley, M. (2022), 'The Dual-use Regulation, cyber-surveillance and human rights: The competing norms and organized hypocrisy of EU export controls', (forthcoming).

Theoretical and empirical contributions

This thesis makes several novel contributions to the study of the trade in military and security equipment, export controls and arms control more broadly. Specifically, it provides two new theoretical frameworks for understanding the role that norms play during the processes through which states both individually and collectively impose restrictions on their export of military and security equipment. These two frameworks, which the thesis develops and applies in studies of Sweden's and the EU's export controls, can be used more widely to develop new insights into why states individually and collectively impose certain restrictions on the trade in military and security equipment, why they fail to adopt other restrictions and why the implementation of those restrictions is often subject to inconsistencies and differences.

Case study I and case study II demonstrate both the value of drawing on multiple theories to better understand the process and outcome of policy developments in the field of export controls as well as the value and necessity of examining processes at both the EU and EU member state level when studying these issues in the European context.

The review of the theoretical literature on export controls details the way that different international relations theories have been applied to this field. It also points the way towards the further development and application of the theoretical frameworks that the thesis has developed as well as other potential areas of future work in the study of export controls.

The historical narrative places the recent development and application of norms grounded in humanitarian concerns to the field of export controls within a wider context and reveals what is and is not novel about this trend. It also lays the groundwork for the theoretical frameworks that can be used to better understand how and why certain attempts to increase the restrictiveness of export controls have succeeded while others have not and the ways that these processes occur.

The frameworks that this thesis develops and applies demonstrate the value of combining theoretical approaches to provide a better understanding of processes of adopting and implementing restrictions on the trade in military and security equipment. It also provides a set of tools that can be applied to other cases both inside and outside Europe.

In addition, the thesis highlights the formation of EU's and EU member states' export control regime as one aspect of a longer and larger process that a range of constitutive and regulative norms have been applied in states' export controls via a series of changes to their criteria and scope. Many of these norms, particularly the constitutive norms of states' rights and states' responsibilities in export controls and certain regulative norms grounded in national security and market concerns, have been present since the 19th century when states began to apply common standards and practices in this field. However, both the sets of norms, their content and the ways that they have shaped or

have been used to shape the criteria and scope of export controls have varied significantly against the background of broader technological, political and ethical developments.

The thesis also allows us to see how norms grounded in national security and market concerns have been supplemented by a range of norms grounded in humanitarian concerns that have either been established or gained prominence since the end of the Cold War. However, these humanitarian norms have neither replaced nor necessarily weakened the pre-existing constitutive and regulative norms, which continue to both drive and constrain state action. This broader network of constitutive and regulative norms constitutes an array of tools and constraints which are used when revising policies at the EU member state and EU level which set limits on the range of proposed changes and possible outcomes.

Finally, this thesis helps highlight some of the unique characteristics of the EU's export control regime. The EU promotes a wide range of constitutive and regulative norms in the field of export controls and acts as a vector through which member states influence each other's norms. Through these dynamics, the EU has played a lead role in establishing and applying regulative norms grounded in humanitarian concerns with respect to export controls. However, the EU also develops and applies regulative norms grounded in national security concerns and market concerns, particularly ones focused on promoting the consolidation of Europe's defence industry. Although the issue is contested, the EU's export control regime also affirms and asserts the constitutive norm of sovereign rights thereby ensuring that member states' national policies continue to be shaped by distinct domestic processes of norm development and application.

On a broader note, this thesis also demonstrates the value of a norms-based approach to the study of export controls. This thesis argues that when developing and implementing export controls, states are constrained by a wider set of constitutive and regulative norms and consciously draw on those norms when motivating and justifying certain restrictions. Applying this approach and the 'competing norms' and 'organized hypocrisy' frameworks helps reveal why certain restrictions gain traction, why others fail and why there is an inconsistency in the application of the restrictions adopted. These insights have the potential to shed light on the dynamics at play in other areas of arms control and security policy and international relations more generally.

Structure of the kappa

Section 2 presents the definitions and delimitations that have been developed and applied during this thesis. It outlines the contours of its area of focus – i.e., the EU's and EU member states' controls on exports of military and security equipment and the processes of review and revision where these policies integrate new restrictions via alterations to their criteria and scope.

Section 3 outlines the epistemology and methodology that have been developed and applied. It describes the use of process tracing methods and KIIs and how and why the thesis supports its findings and analyses using a historical narrative. It also highlights how the thesis builds on the four case studies and how it draws from the empirical research material gathered as part of my analytical work at the Stockholm International Peace Research Institute (SIPRI).

Section 4 presents the review of theoretical literature on export controls that the thesis has undertaken. It outlines past research and key findings from work that has applied approaches from structural realism, norms, Europeanization, liberal international relations theory and critical theory. The section also summarizes case study I and case study II and outlines the key theoretical points that were identified and how they contributed to the overall development of the thesis.

Section 5 presents the historical narrative that the thesis has developed. It outlines key changes in the content of states' national and collective export controls and the way new and evolving norms have both shaped and been used to shape these processes. The narrative focuses primarily on Europe since the 17th century and particularly the post-Cold War period.

Section 6 presents the theoretical framework that the thesis has developed. It outlines relevant aspects from liberal international relations theory and the broader literature on norms from both the international relations and organization theory that have been applied in developing the theoretical frameworks. It then outlines the two frameworks that the thesis has developed and how they can be used to better understand the content and outcomes of processes of reviewing and revising states' export controls. The section also outlines how these frameworks were applied in case study III and case study IV. Section 7 presents the conclusions and key findings and highlights some potential lessons for future research. Section 8 summarizes the four case studies that the thesis has produced.

2. Definitions and delimitations

This thesis is focused on the systems of export controls that states establish at both the national level and at the regional, multilateral and international level through the construction of regimes. In this context, export controls are understood as the policies, laws and administrative systems that states implement to impose restrictions on the international trade in military equipment and dual-use items.⁹

⁹ Dual-use items are goods and technologies that have the potential to be used in both civilian and military products.

For this thesis, export controls are viewed as having a framework, a process and a set of outcomes.¹⁰ The framework consists of the legal and regulatory system governing the trade in military equipment and dual-use items. The process consists of the mechanisms that a government uses to determine whether to grant an export license. The outcomes consist of the types of military equipment and dual-use items the country exports and their destinations. Throughout this thesis, the focus is on the framework and process of states' export controls, particularly on the periods when legislation is being revised. Specifically, the thesis focuses on the content of the restrictions that are implemented through these controls via their criteria (i.e., the factors that states consider when deciding whether exports should be approved) and their scope (i.e., the range of items and activities that are subject to control).

In this thesis, export controls are viewed as distinct from export promotion efforts. Other studies on arms export controls consider both promotion and export control as parts of a broader whole.¹¹ Here, the focus is only on the systems that states implement for licensing the export of military and security technology and the regimes that are established at the regional, multilateral and international level for developing and coordinating these policies. Here, the thesis applies Krasner's definition of regimes: '[Regimes are] sets of principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue-area.'¹²

For this thesis export controls are viewed as being both a key aspect of arms control but also something that is separate and distinct in certain respects. Arms control is generally viewed as having a 'narrow definition' that only encompasses efforts to place limits on the number of weapons states own and to regulate their use, and to have a 'broad definition' that also encompasses 'disarmament' (i.e., efforts to eliminate a specific type of weapon system) and 'non-proliferation' (i.e., efforts to limit the spread of weapon systems).¹³ Export controls are often presented as a subset of arms control, particularly their non-proliferation aspect. This thesis takes the view that export controls are the policy tools states use to implement the non-proliferation aspects of arms control but that they are also used to implement other aspects of state policy. In

¹⁰ See Bauer, S., 'The Europeanisation of arms export policies and its impact on democratic accountability', Doctoral thesis, Université libre de Bruxelles and Freie Universität Berlin, May 2003, p. 4.

¹¹ See Hansen, S. T. (2016), 'Taking Ambiguity Seriously: Explaining the indeterminacy of the European Union conventional arms export regime', *European Journal of Human Rights*, Vol. 22, No. 1, pp. 192–216.

¹² Krasner, S. D. (1982), 'Structural Causes and Regime Consequences: Regimes as Intervening Variables', *International Organization*, Vol. 36, No. 2, pp. 185–205, p. 185.

¹³ See Müller, H. 'Introduction', in Müller, H. and Wunderlich, C. (eds), *Norm Dynamics in Multilateral Arms Control: Interests, Conflicts and Justice* (University of Georgia Press, 2013), pp. 1-19; and Müller, H. 'Arms Control and Arms Reduction in Foreign Policy', *Oxford Research Encyclopedia of Politics*, (OUP, 2017).

particular, export controls are also used to implement economic and national security policy objectives, which are separate and distinct to the goals of arms control.

This thesis views export controls as encompassing controls on both arms and dual-use items. Many studies tend to treat the trade in arms and dual-use items as distinct, focusing on either one or the other. However, this thesis focuses on efforts to regulate the trade in both military and security equipment, which states operationalize via their controls on both arms and dual-use items. Moreover, within most Western states, all aspects of policy implementation in both areas are managed by the same government agency and are often governed by the same legal and regulatory mechanisms.¹⁴ Encompassing both aspects also enables the thesis to identify cases where processes that develop in one area have implications and spill over in the other area.

Finally, this thesis views export controls as something located at both the EU and EU member state level. The EU has created a common legal framework for controls on the export of dual-use items and, to a more limited extent, military items and is the only regional or multilateral organization to have done this. As such, export controls in the EU can be viewed as being part of a multi-level governance system, defined by the political scientists Marks and Hooghe as a ‘polity-creating process in which authority and policy-making influence are shared across multiple levels of government – subnational, national, and supranational.’¹⁵ They can also be viewed as being the most complex and complete example of the different export control regimes that states have developed.

The precise processes involved in the creation of this multi-level governance system and its extent and effects are discussed in more detail in this kappa and in case study II and case study IV. However, one of the key underlying assumptions of this thesis is that the processes of policy review and revision in export controls, which are the subject of study, occur at both the EU and EU member state level and in ways that directly and indirectly interact. Therefore, the thesis its ‘competing norms’ and ‘organized hypocrisy’ frameworks are intended to capture and understand the dynamics at play at both the EU and EU member state level when particular restrictions become integrated into export controls.

¹⁴ See ‘Participating States’, Wassenaar Arrangement.

¹⁵ Hooghe, L. and Marks, G., ‘Chapter 1 – Multilevel Governance in the European Union’, in *Multi-Level Governance and European Integration*, (Rowman & Littlefield, 2001), pp. 1-32, p. 2.

3. Epistemology and methodology

This thesis has adopted a policy-centred approach focused on examining the integration of particular restrictions in the systems of export controls that states adopt at the national and regime level.¹⁶ The intention has been to uncover the norms that shape these processes and particularly the ways in which the norms are both utilized by the policy actors involved and exert influence upon their choices. In terms of epistemology, the approach is informed by a form of limited constructivism that views norms as ‘social constructions’ with some level of objective existence and an ability to ‘restrain foreign policy choice and behaviour, and even alter state conceptions of national interests.’¹⁷ In addition, this thesis is informed by a form of limited positivism, which views these norms and the mechanisms through which they exert influence as having a weak form of objective existence that is both knowable and describable.

This middle path between constructivism and positivism is guided by Weber’s definition of sociology as ‘a science concerning itself with interpretive understanding of social action and thereby with a causal explanation of its course and consequences.’¹⁸ As such, this thesis aims to identify and understand the different norms that shape and are used to shape the particular restraints that states individually and collectively apply through their export controls. Moreover, by using Weber’s goal of ‘interpretative understanding’, this thesis hopes to say something deeper about the way states individually and collectively seek to manage an increasing array of normative pressures when they develop and implement their export controls.

Process tracing seemed to be the most appropriate mechanism for conducting this analysis and worked well with the empirical work that was conducted. Process tracing has become widely used in international relations and social sciences more broadly ‘for tracing causal mechanisms and how they play out within an actual case.’¹⁹ The use of this approach became more developed as the thesis progressed and was applied in a more structured and conscious manner in case study III and case study IV. At this stage, the thesis became more explicitly focused on both analysing individual cases and theory development, which are widely viewed as being particularly amenable to process tracing.²⁰ Here, the thesis follows the approach of social scientists George and Bennet

¹⁶ See Hague, R., Harrop, M. and Breslin, S., *Comparative Government and Politics: An Introduction*, (Macmillan, 1994).

¹⁷ Shannon, V., ‘International Norms and Foreign Policy’, Oxford Research Encyclopedia of Politics, June 2017.

¹⁸ Weber, M., *Economy and Society: An Outline of Interpretive Sociology*, (Bedminster Press, 1968), p. 4.

¹⁹ Beach, D., ‘Process Tracing Methods’, *Oxford Bibliographies*, 22 April 2020.

²⁰ See George, A. L., and Bennett, A., *Case Studies and Theory Development in the Social Sciences*, (MIT Press, 2005).

in terms of what it is seeking to achieve through theory development and the ways that case studies can support this goal. In particular, George and Bennet view the case study approach as particularly suited to the development of ‘middle-range typological theories’ that ‘draw together in one framework the research of many social scientists’ and which ‘identify recurring conjunctions of mechanisms and provide hypotheses on the pathways through which they produce results.’²¹ This description accurately captures the theoretical frameworks that the thesis has developed with their merging of aspects of international relations theory and organizational theory to understand how the restrictions states impose through their export controls are shaped by broader normative processes and pressures.

The thesis uses individual case studies and process tracing ‘to gain a greater understanding of the causal dynamics that produced the outcome of a particular historical case.’²² Therefore, this thesis does not claim to make a systematic attempt to employ comparative methods or make strong claims about the extent that the theoretical frameworks it has generated and applied are relevant to other cases and periods. Here, the thesis again follows George and Bennet’s disavowal of the innate primacy of ‘hypothesis testing’ in the field of international relations and their emphasis of the value of studies that are focused on ‘theory development [. . .] hypothesis formation and the historical explanation of individual cases.’²³ Nevertheless, section 8 provides some thoughts about the extent that the theoretical frameworks that the thesis develops are either particularly or exclusively relevant to Sweden and the EU, which form the focus of case study III and case study IV, why this might be the case, and if and how it could be applied to other national or multilateral cases.

The key source material the thesis has drawn from consists of official government documents and statements, particularly government policies, regulatory frameworks and negotiated texts, as well as media reports, journal articles and other secondary sources. Particularly for case study III and case study IV, this work has been supported by key informant interviews (KIIs) with relevant government officials, parliamentarians and industry representatives. These sources are widely used in individual case studies and process tracing as the researcher ‘examines histories, archival documents, interview transcripts and other sources to see whether the causal process a theory hypothesizes or implies in a case is in fact evident in the sequence and values of the intervening variables in that case.’²⁴

The ability of these types of sources to reveal the presence of norms for state action is widely recognized as is the assertion that norms ‘matter’ in international relations. However, it is also widely recognized that using these

²¹ *Ibid.*, p. 20.

²² Beach (note 19).

²³ See George and Bennett (note 20), p. 23.

²⁴ George and Bennett (note 20), p. 18.

types of source material to uncover these norms and reveal these processes is open to multiple interpretations and that uncovering the ‘real’ norms and the ‘real’ processes may ultimately be unachievable.²⁵ Rather than pushing against this line of thinking and asserting that I am revealing some underlying objective truth about the world, I acknowledge and accept this limitation. Hence, in making this analysis and identifying the norms and the roles they play, the thesis draws from my own interpretation of the policies in place and the proposals being made as well as those of the policy actors involved. Therefore, this thesis aims for what Pouliot describes in his application of Weber’s approach as ‘subjective’ analysis: ‘[an] inductive, interpretative and historical in order to develop not only objectified but also subjective knowledge about social and international life.’²⁶ I was also influenced by an evolving conception of what counts as a norm shaped by a broader engagement with the theoretical and historical literature (see sections 4, 5 and 6). This led the thesis to adopt a definition of norms that is broader than has often been applied in the international relations literature concerning export controls. By drawing on organization theory, this thesis understands norms as being both constitutive and regulative forces grounded in security, humanitarian and market concerns. It also understands norms as having the potential to be both a resource that policy actors draw on and a constraint that shapes their range of possible actions.

One key methodological problem that the thesis had to overcome is the level of secrecy that surrounds export controls in general and processes of policy review and revision in particular. Although a great deal of official documentation and secondary literature is available about the cases that the thesis focuses on, knowledge about why certain proposals were made, implemented, or rejected and the way that norms shape or are used to shape the process is available to only a limited set of policy actors.

To overcome this barrier, I drew upon the access I have to key decision-makers in national governments and the EU through my work at SIPRI. Since starting this PHD, I have combined my studies with my position as Director of the Dual-use and Arms Trade Control Programme at SIPRI. In this capacity, I have given presentations and chaired panels at numerous policy-focused conferences, workshops and seminars on issues related to states’ dual-use and arms trade controls. This work has allowed me to develop and maintain an advanced and up-to-date specialized knowledge in the area covered by my

²⁵ See Björkdahl, A., ‘Norms in International Relations: Some Conceptual and Methodological Reflections’, *Cambridge Review of International Affairs*, Vol. 50, No. 1, pp. 9–23; and Shannon (note 17).

²⁶ Pouliot, V., ‘Chapter 3. A “subjective” methodology for the study of practicality’, in Pouliot, V., *International Security in Practice: The Politics of NATO-Russia Diplomacy*, (Cambridge University Press, 2010), pp. 52–91, p. 53.

PHD. In addition, I have authored or co-authored a series of publications focused on aspects of states' dual-use and arms trade controls.²⁷ These projects involved carrying out wide-ranging literature reviews, designing and implementing surveys of states, companies, and research institutes, and conducting semi-structured interviews with government officials, industry representatives, and other experts working on dual-use and arms trade controls. As such, these projects have allowed me to further develop and improve my familiarity with the set of research methods relevant to this thesis and to gather knowledge and expertise that is of direct relevance to the subjects it covers.

Although this close interaction with policy actors has provided a detailed knowledge of the cases being studied and export controls more broadly, I am also conscious of the dangers it presents in terms of maintaining objectivity and critical distance. Government-funded research projects and advocacy campaigns on export controls have been a specific target of criticism for the ways that they can limit the independence of the institutions involved and dampen their critique of the governments providing funding.²⁸ I have attempted to counter these risks and maintain analytical independence and objectivity in part by presenting research findings at academic conferences and seminars where the audience is hopefully able to detect and highlight any loss of direction on these fronts.²⁹

²⁷ See Bauer, S., Bromley, M., Berton, F. and Plaisier, N., 'Data and Information Collection for EU Dual-use Export Control Policy Review, ECORYS and SIPRI, November 2015; Bauer, S., Brockmann, K., Bromley, M. and Maletta, G. 'Challenges and good practices in the implementation of the EU's arms and dual-use export controls: A cross-sector analysis', SIPRI, July 2017; Bromley, M., 'Export controls, human security and cyber-surveillance technology: Examining the proposed changes to the EU Dual-use Regulation', SIPRI, December 2017; Bromley, M. and Maletta, G., 'The challenge of software and technology transfers to non-proliferation efforts: Implementing and complying with export controls' SIPRI, April 2018; and Bauer, S. and Bromley, M. 'Detecting, Investigating and Prosecuting Export Control Violations: European Perspectives on Key Challenges and Good Practices' SIPRI, December 2019.

²⁸ See, Stavrianakis, A., *Taking Aim at the Arms Trade. NGOs, Global Civil Society and the World Military Order*, (Zed Books, 2010).

²⁹ See, Bromley, M., 'Promising much but delivering little? Recent trends and developments in EU arms export controls', Presented at 57th Annual Convention of the ISA, Atlanta, 16–19 March 2016; Bromley, M., 'Sweden's national systems of arms export controls', Presented at a panel on 'The Political Economy of War, Energy and Technology' at Tolfte Ekonomisk-Historiska Mötet, Stockholm University, Stockholm, 12–14 October 2017; Bromley, M., 'ICT surveillance systems and the application of human rights standards to dual-use export controls: The limits of the EU's integration of 'core state powers'', Presented at International Challenges in an Age of Nationalism Joint PhD Workshop Cornell University-Stockholm University, Stockholm University, Stockholm, 12–13 June 2017; and Bromley, M., 'ICT surveillance systems and the application of human rights standards to dual-use export controls: Norm formation, norm implementation and unintended consequences', presented at Trade, Commerce and Societal Values in the Digital Age: A European Perspective, Stockholm University, Stockholm, 16–17 March 2017.

The individual case studies have been supported by a review of the available historical literature on export controls and the production of a detailed historical narrative (see section 5). The historical narrative outlines the evolution of states' approach to export controls and the restrictions they have applied since the 17th century and identifies the norms that shaped these efforts. As is noted in section 4, the development of a historical narrative fills an important gap in previous research on export controls. It also addresses some of the perceived shortcomings of many of the analyses that have been produced and that have been highlighted by work taking a critical theory perspective. The value of drawing on historical narrative in the study of international relations has been widely noted. In addition to providing material for case studies, the study of history can also provide international relations scholars with 'an opportunity to sharpen their theoretical insights' and 'an understanding of the historical context of human existence and a corresponding ability to form intelligent judgment about human affairs.'³⁰ The value and indeed the necessity of drawing on historical narratives has also been particularly highlighted for studies broadly rooted in constructivist approaches. As Pouliot notes, social realities are 'the results of political and social processes that are rooted in history' and tracing them accurately requires constructing a 'dynamic account that tells the story of a variety of historical processes as they unfold over time.'³¹

One key piece of source material that the thesis has minimally used is data on states' actual exports of military and security equipment. Although there have been significant advances in the volume and level of detail in official data on states' exports of military and security equipment, particularly in Europe, much of the information about what states do and do not export and why they make these decisions remains shrouded in secrecy. To overcome this lack of data, many studies rely on figures produced by the SIPRI Arms Transfers Database or the United States Congressional Research Service (CRS).³² However, these data sets only provide a partial picture of the military and security equipment that states export and do not provide a level of disaggregation required to identify particular decisions to approve or deny particular exports and assess the reasons they were made.³³ As such, they provide a weak mechanism for determining the presence and influence of particular norms.

³⁰ Koliopoulos, C., 'International Relations and the Study of History', Oxford Research Encyclopedias: International Studies, 25 January 2019.

³¹ Pouliot (note 26), p. 53.

³² See SIPRI Arms Transfers Database, <<https://www.sipri.org/databases/armstransfers>>; and Theohary, C. A., 'Conventional Arms Transfers to Developing Nations, 2008-2015', Congressional Research Service, 19 December 2016.

³³ See Holtom, P., Bromley, M. and Simmel, V., 'Measuring International Arms Transfers', SIPRI Factsheet, December 2012.

4. Previous research on export controls

Since the 1970s, a variety of approaches, including ones grounded structural realism, norms, Europeanization, liberal international relations theory and critical theory, have sought to analyse and explain content and variation in how states structure and implement export controls. This section summarizes the types of questions these studies address, the way they apply theoretical approaches, and some of the main findings they have produced. In each case, the section outlines some of the key lessons that this work provided for the direction and focus of this thesis. The section also presents the key findings from case study I and case study II and shows how these studies both contribute to debates described in the summary of previous research and inform the evolution of this thesis.

Structural realist approaches

Structural realism emphasizes the essentially anarchic nature of the international system, where states are the primary actors and their main objective is to maximize their own relative security.³⁴ Structural realism has also been the central starting point for much of the work on how and why states differ in terms of how they structure and implement their export controls. One of the most enduring of these attempts was made by the economist Blackaby in 1971.³⁵ Blackaby distinguishes between three ‘patterns of supply’ describing exporting states behaviour in the international arms market.³⁶ These are ‘restrictive’, where arms are not supplied in situations used in a local or international conflict; ‘industrial’, where the primary motivation is to maintain an advanced domestic defence industry through the promotion of exports; and ‘hegemonic’, where a dominant power seeks to influence the behaviour of a recipient state through the supply or denial of armaments.

According to Blackaby’s framework, the position of the supplier state within the international system determines which pattern of behaviour it pursues. Hence, Sweden’s and Switzerland’s desire to maintain neutrality in the East-West struggle and avoid involvement in local conflict led them to pursue mainly restrictive patterns of behaviour. Meanwhile, the dominant positions within the two major systems held by the Soviet Union and the USA led them to pursue largely hegemonic patterns of behaviour. Lastly, the UK’s and France’s need to maintain an advanced domestic armaments base led them to pursue mainly industrial patterns of behaviour. Hence, Blackaby’s framework was couched within a structural realist perspective and views the international

³⁴ See Hyde-Price, A. (2006), ‘Normative’ Power Europe: A Realist Critique’, *Journal of European Public Policy*, Vol 13, No. 2, pp. 217–234.

³⁵ Blackaby, F., et al (eds), *The Arms Trade with the Third World*, (Almqvist & Wiksell, 1971).

³⁶ Blackaby et al (note 35).

political system as the organizing principle that structures the way states behave in the global arms market.³⁷

Structural realism has remained a reference point for a significant amount of subsequent work in the field of export controls. For example, in the 1980s and early 1990s, structural realism formed the underlying set of assumptions for a series of studies that focused on the nature of the supplier market and how this impacted government decision-making of export controls.³⁸ Theorists also sought to describe the major aspects or components of the international arms trade to compare different systems or eras.³⁹ More recently, the political scientist Béraud-Sudreau and colleagues used structural realism to compare the policies of the United States, France, the UK and Russia regarding exports of military equipment to China. As predicted under structural realism, states' policies 'reflected sensitivity to relative gains concerns in the face of changes in the international distribution of military capabilities.'⁴⁰ However, the study also found that these drivers are tempered by domestic considerations, particularly the relative level of autonomy in the state's defence industry.

Case study I contributes to broader discussions about the value of structural realism for analysing states' export controls by examining the ability of Blackaby's framework to account for contemporary differences in the restrictions states impose through their export controls. Case study I examines the way Sweden, the UK, and the USA formulate and implement their end-use controls. End-use controls are an important aspect of a state's export controls and consist of efforts to impose restrictions on how, where, and by whom transferred items are used after delivery. The study assesses the ability of Blackaby's model for describing and accounting for differences in the way states implement their export controls.⁴¹ The article highlights the continued value of Blackaby's framework but also the need for other theoretical tools to generate an understanding of domestic factors and influences to explain the way states' export controls are structured and implemented.

Case study I and the broader review of approaches grounded in structural realism helps demonstrate the limited explanatory depth provided by overarching theoretical frameworks in accounting for differences in the restrictions states impose through their export controls. They also highlight the need to

³⁷ Blackaby et al (note 35), p. 3.

³⁸ Ross, A., 'The International Arms Market: A Structural and Behavioral Analysis' in Ross, A. (eds.), *The Political Economy of Defense: Issues and Perspectives*, (Greenwood Press, 1991), pp. 114-133.

³⁹ Harkavy, R. E., 'The Changing International System and the Arms Trade' in Harkavy, R. E. and Neuman S. G. (eds), *The Arms Trade: Problems and Prospects in the Post-Cold War World*, (Sage Publications, 1994).

⁴⁰ Béraud-Sudreau, L. et al. (2017), 'Arming China: Major Powers' Arms Transfers to the People's Republic of China', *Journal of Strategic Studies*, Vol. 41, No. 6, pp. 850-886.

⁴¹ Blackaby et al (note 35).

consider an array of domestic political factors and other contingencies to provide a deeper understanding of the reasons for differences in policy. Case study I also indicates how norms can shape these policies and points to the notion, which is developed later in the thesis, that norms grounded in ostensibly distinct value frameworks can generate pressures that point in the same direction. Although the development and imposition of end-use controls in the United States appears to have been largely driven by national security and economic concerns, efforts to develop similar sets of controls in Europe have been driven by humanitarian concerns. As such, the findings of the case study helped focus this thesis on theory development and the way that norms shape and constrain particular processes through which restrictions become integrated in states' export controls.

Norms-based approaches

The idea that norms have explanatory power when it comes to understanding the motivations and constraints that drive and shape state behaviour in the field of foreign and security policy gained widespread reacceptance in international relations literature in the 1990s. Several studies apply a normative approach to the issue of export controls, primarily by examining the integration of humanitarian concerns in states' export controls. Following the work of Finnemore and Sikkink much of the work that has been done on norms defines them as 'collective expectations for the proper behaviour of actors with a given identity.'⁴² They include approaches that view norms as 'constitutive' (i.e., they produce internal constraints on state action by altering their identities and interests) as well as 'regulative' (i.e., they produce external constraints on state action on the basis of arguments generated by instrumental rationality). For the most part, these studies have focused on assessing the comparative impact of 'good' or 'progressive' norms grounded in humanitarian concerns and security and economic 'interests.'

A small number of these studies focus on the process of regime formation and the ways that progressive norms have been integrated into export licensing criteria. For example, the political scientist Hansen analyses the process of drafting and updating the language used in the eight export licensing criteria of the EU Common Position on Arms Exports (Common Position).⁴³ Hansen argues that the criteria are highly ambiguous. However, rather than an unintentional problem that can be fixed, this ambiguity should be viewed as an intentional aspect of a regime that undervalues humanitarian norms of restraint at the expense of economic and security interests.⁴⁴ A few studies assess processes of both regime formation and regime implementation. For example, the

⁴² Finnemore and Sikkink (note 5), p. 891.

⁴³ Hansen (note 11).

⁴⁴ Hansen (note 11), p. 192.

political scientist Erickson combines an examination of the negotiation and adoption of the Arms Trade Treaty (ATT) with an analysis of the exports of 20 leading arms suppliers to determine why humanitarian norms become embedded in export control policies and regimes and what effect this has on states' practices.⁴⁵ Erickson argues that both processes are closely tied to concerns associated with 'reputational damage', which significantly limits their actual and potential impact.⁴⁶

However, most studies are framed around an analysis of regime implementation and an examination of one or more states' exports of military and security equipment and an assessment of the extent that they reflect progressive norms or economic and security interests. For example, a 2010 study examining exports of military equipment by France, Germany, the UK, and the USA finds no correlation between the normative standards outlined in their export controls and their actual arms sales. Far more important is the extent that the exports serve the supplying state's 'domestic economic and security interests.'⁴⁷ A 2015 study examining EU member states' arms exports to Libya between 2005 (when the EU arms embargo on Libya was lifted) and 2011 (when the Arab Spring uprisings began) draws similar conclusions.⁴⁸ Other relevant studies include a 2016 study of German arms exports, which argues that 'normative issues play only a minor role in German arms export decision making' and that commercial and security interests dominate.⁴⁹

One common challenge faced by many of the studies that apply a normative approach to the study of export controls is presenting a clear logic for the distinction between progressive norms and security or economic interests. A related challenge is clearly demonstrating why the accounts they provide accurately describe state behaviour and, particularly, why their framing of a certain aspect of policy formation or policy implementation as being framed by a specific norm or interest is correct. A wide range of competing and convincing explanations can be provided for any set of data. In addition, a range of contingent factors other than government policy (e.g., the products produced by a states' defence industry and the dynamics in the international markets it has traditionally served) will always play a significant but hard to measure role in any set of outcomes.

⁴⁵ Erickson, J. L., *Dangerous Trade Arms Exports, Human Rights, and International Reputation* (Columbia University Press, 2015).

⁴⁶ *Ibid.*, p. 4.

⁴⁷ Perkins, R., and Neumayer, E. (2010), 'The organized hypocrisy of ethical foreign policy: Human rights, democracy and Western arms sales', *Geoforum*, Vol. 41, No. 2, pp. 247–256.

⁴⁸ Hansen, S. and Marsh, N. (2015), 'Normative power and organized hypocrisy: European Union member states' arms export to Libya', *European Security*, Vol. 24, No. 2, pp. 264–286.

⁴⁹ Platte, H. and Leuffen, D. (2016), 'German Arms Exports: Between Normative Aspirations and Political Reality', *German Politics*, Vol. 25, No. 4., pp. 561–580.

Europeanization and export controls

During the 2000s, several studies explored the development of the EU's export control regime and its impact on member states' export controls as an example of 'Europeanization.' Most of these studies focus on the impact that processes of Europeanization in the field of export controls have had on member states' policies at the national level. They explore the transfer of competencies and processes of socialization and norm diffusion and argue that these have had a direct impact on the formation and implementation of national level decision-making processes.⁵⁰ This finding has been challenged by later studies that have questioned the ability of EU policy-making in the field of export controls to have a significant impact on member states' national policies. These studies have highlighted the particularly complex nature of EU policy-making in the field of export controls which means that compliance with the policies agreed at the EU level lies entirely in the hands of member states' national legal systems and the pressures to harmonize and converge are minimal.⁵¹

This complexity means that the EU's export control regime is more of a resource that member states can use and one whose impact is both filtered through national level processes and hard to predict. This finding resonates with a study by Erickson from 2013 on the impact of the EU's export control regime on the arms export controls of EU member states.⁵² The study draws on work by Woll and Jacquot who highlight the way that processes of policy-making at the EU level 'become a vector of change by providing new resources, references and policy frames, which national policy actors use strategically.'⁵³ This point supports the findings of Béraud-Sudreau in her work on France's system of export controls. Béraud-Sudreau shows that rather than reacting to the pressures generated by the EU's export control regime, France actively influenced its key aspects to help pursue nationally defined policy objectives.⁵⁴

Case study II study makes an important empirical contribution to work on the Europeanization of EU member states' export controls by mapping the emergence and impact of the EU's export control regime. The study traces the

⁵⁰ Bauer, S. and Remacle, E., 'Theory and practice of multi-level foreign policy: the European Union's policy in the field of strategic trade controls', in Tonra, B. and Christiansen, T. (eds.), *Rethinking European Union Foreign Policy* (Manchester University Press, 2004).

⁵¹ Lustgarten, L. (2013), 'The European Union, the Member States and the Arms Trade: A Study in Law and Policy', *European Law Review*, Vol. 4.

⁵² Erickson, J. L. (2013), 'Market Imperative Meets Normative Power: Human Rights and European Arms Transfer Policy', *European Journal of International Relations*, Vol. 19, No. 2, pp. 208–233.

⁵³ Woll, C. and Jacquot, S. (2010), 'Using Europe: Strategic action in multi-level politics', *Comparative European Politics*, Vol. 8, No. 1, pp. 110–126.

⁵⁴ See Béraud-Sudreau, L., *French Arms Exports: The Business of Sovereignty*, (Routledge, 2020).

range of different actors and stakeholders that played a role in pushing for more coordination and convergence in EU member states' export controls and the contrasting and often conflicting objectives they were seeking to achieve. The study also maps the overlapping set of policy instruments that have been created in the field of export controls and the limited amount of EU-level coordination that exists in terms of how they are implemented and developed. The study argues that the creation of the EU's export control regime has had an impact on aspects of both the framework and process of member states' export controls, but evidence of a systematic influence on their outcomes is harder to detect. Here, differences in key aspects of member states' foreign and security policies continue to act as a strong counterweight to processes of policy convergence.

Case study II demonstrates how aspects of EU member states' export controls are increasingly determined at the EU level, demonstrating that this is a 'location' where decisions are made about the restrictions these policies adopt. However, the study also shows that it is at the national level where implementation is determined, and that anything decided at the EU level is filtered through this lens. Importantly, case study II also places the process of establishing the EU's export control regime within the wider context of other multilateral and international export control instruments and processes. The study shows that the EU's regime is only one aspect of the broader multilateral framework through which EU member states coordinate and structure their export controls. EU member states have played an active role in establishing the set of multilateral and international export control regimes, and these are also important influences on the policies they adopt. This supports other work on the Europeanization of defence and security policy, which has sought to make the EU only one of several areas of focus and to not artificially delimit the number of actors and the types of mechanisms involved.⁵⁵

Case study II develops and outlines the definition of 'export controls' that the thesis went on to utilise (see section 2). Case study II also helped to shift the thesis' focus from major arms exporters to the EU and EU member states by emphasizing their appropriateness for a study of the emergence of export control regimes and the integration of restrictions grounded in humanitarian concerns. The findings generated by case study II also helped to shift the thesis' attention away from looking for evidence of the impact of a particular set of norms in the outcomes of states' export controls. Case study II, case study I and the wider review of previous literature on export controls all made it increasingly apparent that attempts to measure impact in the outcomes of states' export controls would ultimately yield limited results. In response, the

⁵⁵ Britz, M., 'The Europeanization of Defence Industry Policy', PhD thesis, Stockholm University, 2004, p. 13.

thesis focuses on the content of states' export control systems and the processes of review and revision since these areas provide the best opportunity to identify particular norms and the impact they have.

Liberal international relations theory and export controls

Liberal international relations theory contains a wide array of theoretical approaches that have a general tendency to focus more explicitly on domestic considerations be they political, cultural, or economic in their analysis of how states behave and emphasizes the potential for and benefits of international cooperation. Several studies that apply approaches falling within this broad definition have sought to understand the way that individual state's export controls have developed. For example, the political scientist Brzoska, uses concepts relating to the domestic division between 'policy' and 'polity' to understand debates in Germany during the 1960s about implementing more restrictive export controls that would have banned transfers of military equipment to a wide range of destinations.⁵⁶ More recently, Meijer, also a political scientist, has conducted a detailed analysis that shows the complex interplay of domestic and international factors in the evolution of US export controls and their application to transfers of military goods and dual-use items to China since the 1960s.⁵⁷ Meijer demonstrates of how 'feedback loops' push policy developments in a particular direction. This was true in the 1990s when a range of self-reinforcing tendencies drove the United States to apply ever more restrictive policies towards China and during the Obama presidency when another set of tendencies pushed US policy in the opposite direction.

Approaches from liberal international relations theory and particularly Moravcsik's version liberal intergovernmentalism have also been used to describe the process of establishing the EU's export control regime. Moravcsik's approach focuses on combining 'realist' and 'ideational' explanations of the emergence and expansion of international regimes. In particular, he argues that only by considering 'the domestic political self-interest of national governments' can the processes through which states form, and then subsequently engage with, international regimes be understood.⁵⁸ At its heart, the theory builds on three propositions: 'the assumption of rational state behaviour, a lib-

⁵⁶ Brzoska, M. (1989), 'The Erosion of Restraint in West German Arms Transfer Policy', *Journal of Peace Research*, Vol. 26, No. 2, pp. 165–177.

⁵⁷ Meijer, H., 'Trading with the Enemy: The Making of US Export Control Policy Toward the People's Republic of China', PhD Dissertation, Institut d'Etudes Politiques (Sciences Po), Paris, 2013.

⁵⁸ Moravcsik, A. (2000), 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe', *International Organization*, Vol. 54, No. 2, pp. 217–252, p. 220.

eral theory of national preference formation, and an intergovernmentalist analysis of interstate negotiation.’⁵⁹ Hence, the theory proposes a two-step process where states first determine their preferences at that national level and then negotiate with other member states. Moravcsik applies this concept to the process of EU integration, arguing that it could be viewed and analysed in the same way as any other ‘successful intergovernmental regime designed to manage economic interdependence through negotiated policy co-ordination.’⁶⁰

Writing in late 1990s about the establishment of the EU Dual-use Regulation, Hofhansel, a political scientist, argues that both Moravcsik’s version of liberal intergovernmentalism and neo-functionalism accounts are needed to gain a full understanding of the origins and directions of this process.⁶¹ As predicted by neo-functionalism, a key driver of the process was a strong interest in the European Commission in achieving greater coordination in export control policies to facilitate cross-border cooperation. However, as predicted by Moravcsik’s version of liberal intergovernmentalism, the outcome was determined by the way powerful EU member states (particularly France, the UK and Germany) sought to transfer their existing domestic policy frameworks to the EU level.

Critical theory perspectives on export controls

The issue of export controls has also been a focus for academics taking a critical theory approach. These academics use export controls as a test case for uncovering underlying power relations and patterns of domination within the international system. For example, Cooper, a historian and political scientist, has examined the efforts by European powers to regulate the flow of arms into and within colonial spaces during the 19th and early 20th century. Cooper argues that the way these restrictions were grafted on to anti-slavery norms exposes a deeper truth about the ‘reality’ of modern arms control efforts, which is seldom addressed in both progressive and conservative literature. Specifically, arms control has been and continues to be fundamentally concerned with defining and managing ‘which gradations of people could legitimately own, trade and use which gradations of weapons in what contexts.’⁶²

⁵⁹ Moravcsik, A. (1993), ‘Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach’, *Journal of Common Market Studies*, Vol. 31, No. 4, pp. 473–524, p. 480.

⁶⁰ *Ibid.*, p. 475.

⁶¹ Hofhansel, C. (1999), ‘The Harmonization of EU Export Control Policies’, *Comparative Political Studies*, Vol. 32, No. 2, pp. 229–256.

⁶² Cooper, N. (2018), ‘Race, Sovereignty, and Free Trade: Arms Trade Regulation and Humanitarian Arms Control in the Age of Empire’, *Journal of Global Security Studies*, Vol. 3, No. 4, pp. 444–462.

The political scientist Stavrianakis has also applied a critical theory lens to the study of export controls. For example, Stavrianakis has analysed the negotiation, adoption, and implementation of the ATT, arguing that the apparent contest that took place between arguments grounded in sovereignty, political economy, or human security are better understood if they are viewed less as opposing positions and more as frames for different ‘modes of militarism.’⁶³ Because these modes are ‘underpinned by ongoing imperial relations: racial, gendered and classed relations of asymmetry and hierarchy’, they are unable to generate any significant challenge to the established role of military interests in Western society. Stavrianakis has also examined the UK’s arms exports to Saudi Arabia and the UK high court’s failure to support attempts to challenge the legality of this policy.⁶⁴ Stavrianakis argues that the ‘risk-based’ criteria that have been established in EU and UK controls can, when combined with the use of classified information and the deference of the courts to the authority of the executive, create a system that facilitates rather than prevents exports that have a high-likelihood of being used in IHL violations.

The work grounded in critical theory highlights the potential to move beyond the distinction between norms and interests, which characterizes much of the work that has applied a normative perspective to the study of states’ export controls. For example, in the study of arms export regulations in the 19th century, Cooper argues that contemporary developments have been constituted out of deeper historical processes in which norms and claims grounded in ‘either humanitarian, free trade or strategic frameworks’ compete for influence.⁶⁵ This points to a sense in which the process of developing and applying restrictions on exports of military and security equipment can be better understood if it is viewed less as a contest between norms and interests and more as a competition between different norms.

As noted in section 3, one of the best tools for uncovering the presence and influence of different norms is historical narrative. However, the review of previous research on export controls highlights that very few studies in this field seek to provide this broader context. In the wider field of arms control, there are a small number studies that seek to provide a broader historical context when analysing contemporary developments. These include studies focused on small arms controls in Africa and the global prohibition on chemical weapons.⁶⁶ However, very little equivalent work has been done in the field of

⁶³ Stavrianakis, A. (2019), ‘Controlling weapons circulation in a postcolonial militarised world’, *Review of International Studies*, Vol. 45, No. 1, pp. 57–76.

⁶⁴ Stavrianakis, A. (2019), ‘Requiem for risk: non-knowledge and domination in the governance of weapons circulation’, *International Political Sociology*, Vol. 13, No. 3, pp. 233–251.

⁶⁵ Cooper (note 62).

⁶⁶ See Grip, L. (2015), ‘History Never Repeats? Imports, Impact and Control of Small Arms in Africa’, *Contemporary Security Policy*, Vol. 36, No. 1, pp. 79–103; and Price, R. (1995), ‘A Genealogy of the Chemical Weapons Taboo’, *International Organization*, Winter, Vol. 49, No. 1, pp. 73–103.

export controls. The examples from the field of arms control serve to highlight the lack of historical context in the literature on export controls and demonstrate the value of integrating this context into an analysis of contemporary developments. Hence, the final insight provided by the review of previous research on export controls was the value of producing a broader historical narrative to identify the presence and influence of different norms in the development and adoption of particular restrictions on transfers of military and security technology.

5. A brief history of export controls and the role of norms

The review of previous research presented in section 4 highlights the growth in attempts to study export controls using norms-based approaches. However, it also illustrates some of the limitations of viewing the process of imposing restrictions on the trade in military and security equipment via states' individual and collective export controls as a contest between progressive humanitarian norms and security and economic interests. Rather, it might be better to view the process as a contest between different sets of constitutive and regulative norms. To identify the presence of these norms and highlight their possible role in shaping the adoption of restrictions on the trade in military and security equipment, this section presents the results of a review of the historical literature on export controls. The section also fills an important gap in the literature on export controls by addressing the absence of studies that have taken a broader historical view of the process through which particular restrictions become integrated in states national and multilateral export controls.

Pre-WWI period

There have been attempts to develop and enforce controls over the production and trade in military and security equipment since antiquity. For example, in 419, Rome passed an edict that 'proscribed death for as the punishment to any Roman who taught ship-building skills to any Barbarian tribes.'⁶⁷ However, systems of export controls that bear comparison with those in place today only began to be established in the late 17th century with the emergence of the modern 'Westphalian' state system. This period saw advances in the capabilities of weapon systems, particularly the use of gunpowder and the development of cannons, which both drove and were driven by the growing economic, political and military dominance of European powers. This period also saw the emergence of networks of arms production and trade and more regularized

⁶⁷ Gillespie, A., *A history of the laws of war. Volume 3, The customs and laws of war with regards to arms control*, (Hart, 2011), p. 9.

systems for controlling exports of military and security equipment. For example, 16th century Italian city states dominated the production and trade of firearms, and 16th century Liege and England emerged as key centres for the production and trade of cannons, which the authorities sought to regulate through licensing systems.⁶⁸

This period can be understood as one in which states developed and applied what remains one of the key underlying constitutive norms of export controls – sovereign right – and applied it via national laws and practices. Specifically, since the 17th century, states have asserted and acknowledged that they have a sovereign right to determine their export controls, particularly the level of restrictiveness they apply through their criteria and scope. The emergence and application of this norm are both closely tied to broader normative processes, particularly that of defining the rights states have in lieu of being sovereign members of the international community.

The rationales behind the specific restrictions on exports of military and security equipment that states developed and applied in the 17th century primarily involved what could be characterized today as ‘national security’ concerns. These included ensuring that domestic forces were able to acquire the arms they needed and preventing supplies to actual or potential rivals. Both motivations can be seen in 1574 when Elizabeth I ordered that the number of guns produced in England be limited to the amount needed only for the ‘use of the realm.’⁶⁹ Hence, the period saw the emergence of what can be seen as two of the main regulative norms of export controls (i.e., maintaining domestic supply and constraining rivals access to arms) and their application via the implementation of restrictions on exports of military materiel.

By the 19th century states had begun to apply a wider range of rationales when developing and applying restrictions on the trade in military and security equipment. States continued to impose restraints to ensure domestic supply and, increasingly, to prevent supplies to actual or potential rivals. For example, during the Crimean War, the UK introduced an ad hoc export licensing system for arms and certain war materials to prevent them from reaching Russia.⁷⁰ However, the period also saw the application of what can be viewed as another important regulative norm – demonstrating solidarity – with states imposing restrictions on arms exports to honour treaty commitments. For example, during the war between Denmark and Prussia, the UK, acting on the basis of treaties signed with Denmark, prevented the export of arms ‘which might be intended to be used against Denmark.’⁷¹

⁶⁸ Krause, K., *Arms and the State: Patterns of Military Production and Trade*. Cambridge Studies in International Relations, (Cambridge University Press, 1992), p. 39.

⁶⁹ *Ibid.*, p. 41.

⁷⁰ Atwater, E. (1939), ‘British Control Over the Export of War Materials’, *The American Journal of International Law*, Vol. 33, No. 2, pp. 292–317, pp. 292–293, and p. 296.

⁷¹ *Ibid.*, p. 295.

All these controls on the trade in military and security equipment remained mainly ‘wartime’ restrictions. When it came to the peacetime trade between states that were not in conflict or at risk of conflict, the default position was to treat the trade in military and security equipment as essentially the same as the trade in civilian goods. In the absence of overriding national security concerns, states largely applied the logics dictated by the broader economic philosophy that guided their approach to other areas of the economy.⁷² Hence, policies were framed by what can be seen as another regulative norm – facilitating trade. Economically developed states generally pursued a largely laissez-faire approach when it came to the peacetime trade in defence and security equipment among their peers, exerting little effort to regulate either production or exports except with regards to certain discrete categories of pariah weapons.⁷³

An important exception to this principle concerned the trade in arms into and around the European colonies in Africa, Latin America and Asia. Here, norms concerning slavery and colonialism shaped restrictive arms export policies. As Cooper has noted, accounts that emphasize the laissez-faire nature of European states’ approach to export controls in the 19th century ignore the existence of a two tier system where economically advanced states allowed arms to be traded freely between themselves but tightly regulated transfers into and around colonial territories.⁷⁴ For example, under the 1814 Treaty of Peace between the UK and Spain, the UK lifted restrictions on the supply of arms to Spain but agreed to impose restrictions on the supply of arms to the Spanish colonies in the Americas, which were pushing for independence.⁷⁵

Efforts to regulate the trade in arms into and around colonial territories were also a key focus for some of the first attempts to develop agreed international standards in export controls in the late 19th and early 20th centuries. These included the imposition of a comprehensive set of regulations on the import, possession and use of firearms in colonial Africa in the 1890 Brussels Act, a collection of anti-slavery measures that the European colonial powers agreed to adopt and implement, as well as a range of other measures that lacked any anti-slavery focus and were more clearly focused on limiting transfer into and around colonial spaces.⁷⁶ Hence, within 100 years, norms of both slavery and anti-slavery framed policies aimed at restricting the supply of arms into and around colonial territories.

The other key goal for these first attempts to develop export control standards related to the norm of demonstrating neutrality and involved formalising the principle that neutral states should not supply arms to conflict parties.

⁷² Cooper (note 62).

⁷³ Krause, K. and MacDonald, M. K., ‘Regulating arms sales through World War II’, in Burns, R. D. (ed.), *Encyclopedia of arms control and disarmament*, (Scribner, 1992), pp. 707–24.

⁷⁴ See Cooper (note 62).

⁷⁵ Atwater (note 70), pp. 294–295.

⁷⁶ See Cooper (note 62).

These efforts formed part of a broader process aimed at establishing the rights and obligations of states that remain neutral during armed conflicts and the obligations that belligerent states have toward those states. These issues had been the subject of legal argument and treaty making since at least the 16th century although mainly in relation to outlawing privateering and establishing common definitions of contraband.⁷⁷ The specific content of these rights and obligations and their implications for states' export controls only became formally codified in the 1856 Declaration of Paris, the 1907 Hague Convention V (neutrality in land war), and the 1907 Hague Convention XIII (neutrality in maritime war).⁷⁸ In particular, Article 6 of the Hague Convention XIII forbids neutral powers from supplying 'directly or indirectly [. . .] war-ships, ammunition, or war material of any kind whatever' to a belligerent power.

Inter-war years

During the inter-war years, Western states' understanding of the purpose of export controls shifted significantly, mainly because of the range of concerns generated by the horrors and upheavals of World War I. The post-war period also saw a significant expansion in international efforts aimed at regulating the international trade in arms during times of peace. These efforts included the 1919 St Germain Convention, the 1925 Geneva Traffic Convention and discussions at the League of Nations Disarmament Conference in the 1930s. These initiatives failed to produce stable and effective export control regimes and were often grounded in the same sets of national security norms that shaped similar efforts in the pre-World War I period.⁷⁹

However, concerns about unregulated stockpiles of weapons and public anger at the role of arms traders in fomenting World War I were also key drivers of state action. Indeed, the post-World War I period is often viewed as the point in history when levels of anti-war sentiment and opposition to the production and trade in armaments were at their highest.⁸⁰ As a result, these international efforts also included a strong focus on using restrictions on the trade in military and security to promote peace and prevent armed conflict,

⁷⁷ See US Department of the Navy, 'Chapter 7 – The Law of Neutrality', in *The Commander's Handbook on the Law of Naval Operations* (US Department of the Navy, 2007).

⁷⁸ ICRC, 'Treaties, States Parties and Commentaries.'

⁷⁹ For example, the aspects of the 1919 St Germain Convention that had the greatest effect were the ones motivated by efforts to maintain order in the colonial spaces of Africa and the Middle East. See Atwater (note 70), p. 298.

⁸⁰ One reflection of these sentiments is the content of the League of Nations Covenant, which noted that League members 'agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections' and tasked the League with 'the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest' (Article 8 and Article 23, *The Covenant of the League of Nations*).

factors that were largely absent from pre-World War I initiatives. Indeed, efforts during the post-WWI can be viewed as an attempt to develop another constitutive norm in the field of export controls – i.e., the assertion that the production and trade in military and security equipment were incompatible with efforts to promote a peaceful international order.

Although these efforts ended in failure, the post-World War I period saw the growing application of another regulative norm (i.e., preventing armed conflict) with several examples of collective state action aimed at using restrictions on the trade in military and security to halt or prevent civil wars and military aggression. For example, in 1919, nine states, including France, the United States and the UK, imposed an arms embargo on China in an attempt to halt the ongoing civil war.⁸¹ Meanwhile, in 1935, the Coordination Committee of the League of Nations recommended that all states respond to the Italian invasion of Ethiopia by lifting any prohibitions they had in place on the export of arms to Ethiopia and imposing an arms embargo on Italy.⁸²

Although the post-World War I period did not see the creation of any international treaties on export controls, it did see the majority of arms-producing states create their first modern mechanisms of export controls.⁸³ The UK introduced export controls legislation in 1931, Belgium in 1933, the United States, Sweden, and the Netherlands in 1935, and France in 1939.⁸⁴ As such, a consensus began to emerge on the need for states to maintain not only ad hoc ‘wartime’ measures for regulating the trade in military and security equipment but also systematic ‘peacetime’ controls. The period can therefore be seen as one in which a second constitutive norm (i.e., sovereign responsibility) was developed and applied in the field of export controls. This norm asserts that controls on the trade in military and security equipment are more than just a set of tools that states can apply on an ad hoc basis in response to nationally determined rationales grounded in security and market concerns. Rather, controls on the trade in military and security equipment are also tools that states have a responsibility to apply on a systematic basis if they want to be viewed as a legitimate member of the international system.

⁸¹ The embargo proved difficult to enforce and the trade in certain items that had a key role in the conflict, particularly aircraft, appear to have been unaffected. See Pugach, N. H. (1974), ‘Anglo-American Aircraft Competition and the China Arms Embargo, 1919–1921’, *Diplomatic History*, Vol 2, No. 4., pp. 351–371.

⁸² Atwater (note 70), p. 307.

⁸³ Stone, D. R. (2000), ‘Imperialism and sovereignty: The League of Nations drive to control the global arms trade’, *Journal of Contemporary History*, Vol. 35, No. 2, pp. 213–230.

⁸⁴ Stanley, J. and Pearton, M., *The International Trade in Arms*, (Chatto & Windus, 1972), p. 5. Cited in ‘Introduction’ in Anthony, I. (ed), *Arms Export Regulations*, (OUP, 1991), p. 9.

Cold War period

The post-War War II period saw a shift in focus at the multilateral and international level with a move away from using export controls as tools of peace promotion and conflict prevention and a reassertion of norms grounded in national security concerns. In comparison with the League of Nations Covenant, the UN Charter made fewer and milder references to disarmament issues and no references to the evils of the global arms trade.⁸⁵ However, the UN Charter clearly asserted norms of state sovereignty and state responsibility, and the period saw their clear application in export control regimes and processes. Article 51 states that ‘nothing in the present Charter shall impair the inherent right of individual or collective self-defence.’ As Erickson has noted, the article’s articulation of ‘states’ right to provide for their own defense as a fundamental principle of national sovereignty [. . .] has been upheld as justification for states to transfer arms as they choose.’⁸⁶ Meanwhile, Article 2.5 commits states ‘to give the United Nations every assistance in any action it takes in accordance with the present Charter.’ As Anthony, an expert on export controls, has noted, the article ‘creates an indirect obligation on all governments [. . .] to establish standing mechanisms for the national regulation of their arms exports in order to be in a position to enforce mandatory UN arms embargoes.’⁸⁷

Within the broader context of the broader Cold War rivalry, national security concerns re-asserted themselves as a key focus of collective action in the field of export controls. At the same time, states also began to take a far more comprehensive and wide-ranging perspective of the ways that restrictions on the trade in military and security equipment could be used to pursue these concerns. In particular, through the Coordinating Committee on Multilateral Export Controls (COCOM), Western states imposed restrictions on transfers of both military equipment and dual-use items to the eastern bloc in order to limit the eastern bloc’s ability to expand and develop their defence and technology industrial base (DTIB).⁸⁸

During the Cold War, attempts were made to use restrictions on the trade in military and security equipment to prevent armed conflict. However, these efforts appear to have been grounded in the long-standing regulative norm of

⁸⁵ Anderson, D. (1991), ‘The International Arms Trade: Regulating Conventional Arms Transfers in the Aftermath of the Gulf War’, *American University International Law Review*, Vol. 7, No. 4, pp. 749–806, pp. 765–766.

⁸⁶ Erickson (note 45), p. 4.

⁸⁷ ‘Introduction’ in Anthony, ed. (note 84), p. 1.

⁸⁸ Mastanduno, M., *Economic Containment: CoCom and the Politics of East-West Trade*, (Cornell University Press, 1992); and US Office of Technology Assessment, ‘Ch. VIII: Multilateral Export Control Policy, The Coordinating Committee (CoCom)’, *Technology and East-West Trade* (US Office of Technology Assessment, 1979).

constraining rivals and another emerging regulative norm – preventing destabilising arms acquisitions. Therefore, they were much more grounded in states’ national security concerns than the measures discussed in the post-World War I period, which were also grounded in the norm of preventing armed conflict. This dynamic is particularly evident in the 1950 Tripartite Declaration on security in the Middle East, a multilateral agreement between the United States, Britain, and France aimed at achieving some level of coordination and restraint in the supply of arms to states in the Middle East, which lasted until 1955.⁸⁹ Although the instrument was motivated by a desire to avoid war in the region, the main objective was to maintain a regional balance of forces between Israel and the Arab states and limit Soviet influence. Therefore, it differed from equivalent efforts in the post-World War I, which were grounded in a mix of regulative norms on preventing armed conflict and colonialism.

Another key development in the field of export controls during the Cold War, one that saw the first successful attempts to develop functioning and long-lasting multilateral and international export control regimes, was also grounded in states’ national security concerns and particularly efforts to implement prohibitions on the possession and use of Weapons of Mass Destruction (WMD). After India’s 1970 test of a nuclear weapon, Canada, West Germany, France, Japan, the Soviet Union, the UK and the USA formed the Nuclear Suppliers Group (NSG) in 1974.⁹⁰ Following a 1984 UN report alleging that Iraq had used chemical weapons in the Iran-Iraq War, a group of 15 states and the European Commission established the Australia Group (AG) in 1985.⁹¹ Finally, in 1987, Canada, France, Germany, Italy, Japan, the UK and the USA established the Missile Technology Control Regime (MTCR).⁹²

⁸⁹ Anderson (note 85), p. 766.

⁹⁰ See Anthony, I., Fedchenko, V. and Ahlström, C., *Reforming Nuclear Export Controls: The Future of the Nuclear Suppliers Group*, (OUP, 2007). The NSG establishes common standards for regulating the trade in nuclear technology and seeks to prevent states that are not recognized as nuclear weapons possessors under the 1970 Nuclear Non-Proliferation Treaty (NPT) from acquiring these weapons.

⁹¹ See Kimball, D., ‘The Australia Group at a Glance’, Arms Control Association, March 2021. The AG establishes common standards on the trade in chemicals to help enforce the prohibition on the possession of chemical weapons established by the 1925 Geneva Protocol and later strengthened by the 1997 Chemical Weapons Conventions (CWC). In 1991, biological organisms were added to the coverage of the AG.

⁹² See Brockmann, K., ‘Controlling ballistic missile proliferation Assessing complementarity between the HCoC, MTCR and UNSCR 1540’, HCoC Research Papers No. 7, June 2020. The MTCR was initially aimed at ‘establishing common standards on the transfer of missiles defined as capable of delivering nuclear weapons as well as their related equipment, material and technology’ although in 1992 the scope was expanded to cover ‘ballistic and cruise missiles and all unmanned aerial vehicles’ capable of delivering chemical, biological and nuclear weapons.

Although the Cold War was a period of contraction when it came to multi-lateral and international efforts aimed at using export controls to pursue humanitarian concerns, the period did see a significant expansion in national initiatives in this area. Numerous states, particularly in Europe, adopted national criteria in the field of export controls that made references to the goal of preventing armed conflict. However, the most novel aspect of the developments of states' national criteria in export controls was the development of a new regulative norm in the field of export controls – respecting human rights.

Except for anti-slavery norms in the 19th century, human rights norms had been absent from restrictions on the trade in military and security equipment. The integration of these concerns into export control restrictions reflects broader shifts in the role and importance of human rights as a motivation and justification for state action. This process began in the 1970s and has been mapped in the work of the historian Moyn. As Moyn argues, 'over the course of the 1970s, the moral world of Westerners shifted, opening a space for the sort of utopianism that coalesced in an international human rights movement that had never existed before.'⁹³

An early sign of the impact of this shift in the field of export controls was in 1963 when the UN Security Council adopted resolution 181. Resolution 181 called on all states to cease 'the sale and shipment of arms, ammunition of all types and military vehicles to South Africa' due to its apartheid policies.⁹⁴ However, the process gathered real pace in the 1970s and 1980s when a range of NGO-led efforts sought to pressure governments to restrict exports of military and security equipment to the Pinochet Regime in Chile, the dictatorship in El Salvador, the Idi Amin government in Uganda, the apartheid government in South Africa, and the white-minority government in Rhodesia.⁹⁵ This period saw many European states either integrating language on human rights into their export control legislation or issuing guidance that specified their relevance for export licensing decision-making.⁹⁶ Particularly noteworthy is that these were often broad-based prohibitions on all exports of military and security equipment to states engaged in human rights violations rather than attempts to identify and prevent exports that were likely to be used in violations of human rights.⁹⁷

⁹³ Moyn, S., *The Last Utopia: Human Rights in History*, (Harvard University Press, 2012), p. i.

⁹⁴ UN Security Council Resolution 181, 7 August 1963.

⁹⁵ For example, see Amnesty International, 'The Repression Trade', January 1981.

⁹⁶ Sweden did so in 1971, the Netherlands in 1979, Belgium in 1981, Austria in 1982, Spain in 1988, Norway in 1989, and Italy in 1990. See Anthony, ed. (note 84), pp. 151, 116, 25, 33, 125, 144, and 89.

⁹⁷ For example, Austria banned exports 'to countries where serious and repeated human rights violations have occurred' whereas Italy banned exports 'to countries which violate human rights.' See Anthony, ed. (note 84), pp. 25 and 89.

Post-Cold War period

How states structure their export controls has evolved significantly since the end of the Cold War. First, the period has seen a significant expansion in the complex set of regional, multilateral and international regimes in the field of export controls. Second, the period has seen the integration of more detailed language on humanitarian concerns, such as preventing IHL and violations of human rights and promoting economic development, into the criteria of these regimes. The remainder of this section will map the key characteristics of these developments. In both cases, the main focus will be on developments in the EU's export control regime. In doing so, this section highlights the role that the EU has played as both a source of new norms and a vector through which EU member states affect and constrain each other's norms.

Post-Cold War export controls and multilateralism

The 1991 Gulf War had a major impact on the way states view export controls as a tool of state policy. In increased states' interest in expanding both the level of restraint and the scope of their export controls and generated a greater willingness to engage in multilateral processes of standard setting and information sharing. First, the way that the Iraqi government drew on a range of suppliers, including all five permanent members of the UN Security Council, to build up substantive conventional military capabilities and to develop its WMD programmes highlighted the lack of intergovernmental policy coordination. This led to a series of multilateral efforts aimed at imposing more restraint on export controls and improving mechanisms of information sharing and transparency.⁹⁸ Second, the way that the Iraqi government had sourced many weapon systems and dual-use items exposed significant gaps in many states' national export controls. This led to many states adopting new legislation that expanded the level of restraint and the scope of their export controls and created new mechanisms of parliamentary oversight.⁹⁹

This shift was reflected in a range of efforts within the UN Security Council and UN General Assembly to create greater restraint and transparency in the trade in conventional arms.¹⁰⁰ These efforts took place within a broader international context where the end of the Cold War and the easing of East-West tensions had increased states' willingness to develop multilateral security

⁹⁸ See Anderson (note 85), pp. 775–776.

⁹⁹ See Cornish, P., *The Arms Trade and Europe*, (Royal Institute for International Affairs, 1995).

¹⁰⁰ Meeting of the Five on Arms Transfers and Non-Proliferation, UN, 17-18 Oct. 1991; and UN General Assembly Resolution 46/36 L, 6 December 1991.

tools and expanded their conception of the issues that these tools could potentially address.¹⁰¹ A related example of this expansion was the growing willingness of states to discuss the proliferation and use of small arms and light weapons (SALW), which was viewed largely as a domestic security issue until the 1980s but emerged as a legitimate and concerted focus for collective state action in the 1990s.¹⁰²

These UN level efforts in the field of export controls were primarily motivated and shaped by national security concerns, but the content of the instruments that were put in place also reflected and applied regulative norms grounded in humanitarian concerns. These included preventing armed conflict but also new regulative norms grounded in the nascent ‘human security’ agenda and particularly that of promoting economic development.¹⁰³ For example, the 1991 P5 guidelines called on states to avoid transfers which would ‘seriously undermine the recipient state’s economy.’¹⁰⁴ The 1996 ‘UN guidelines for international arms transfers’ were less precisely worded but went further in terms of integrating language on economic development.¹⁰⁵

The P5 and UN guidelines remained political declarations. However, they helped sow the seeds for continued efforts at the UN level aimed at reviving the long-standing goal of creating an international regime for regulating the trade in military and security equipment. This eventually led to the adoption of the Arms Trade Treaty (ATT) in 2013. The ATT initiative emerged from a civil society campaign aimed at improving the regulation of the international arms trade and whose key principles were outlined in the Nobel Peace Laureates’ International Code of Conduct on Arms Transfers (1997).¹⁰⁶ Of all the criteria that the Nobel Laureates proposed for inclusion in the draft of the International Code of Conduct, perhaps the one that proved most influential in terms of establishing new regulative norms in the field of export controls was

¹⁰¹ See Keohane, R. (1990), ‘Multilateralism: An Agenda for Research’, *International Journal*, Vol. 45, No. 4, pp. 731–764.

¹⁰² See United Nations, General Assembly, Report of the Panel of Governmental Experts on Small Arms, Note by the Secretary-General, annex to A/52/298, 27 August 1997; and Krause, K., ‘Norm-building in security spaces: the emergence of the light weapons problematic’, Notes de recherche du GERSI/REGIS Working Papers, 2001.

¹⁰³ The term ‘human security’ gained widespread acceptance in the early 1990s. It was an attempt to broaden the notion of security, which was seen to be excessively focused on state security, to include a range of other components, including ‘economic security, food security, health security, environmental security, personal security, community security and political security.’ UNDP, *Human Development Report 1994*, (OUP, 1994).

¹⁰⁴ Meeting of the Five on Arms Transfers and Non-Proliferation, UN, 17–18 Oct. 1991.

¹⁰⁵ In particular, the Guidelines noted—albeit somewhat ambiguously—that the ‘factors in international arms transfers’ shouldn’t include just ‘(e)conomic or commercial considerations’ but also ‘inter alia ... promoting social and economic development, peacefully resolving regional conflicts, preventing arms races and achieving disarmament under effective international control.’ United Nations, ‘Report of the Disarmament Commission’, A/51/42, 22 May 1996.

¹⁰⁶ ‘Nobel Peace Laureates’ International Code of Conduct on Arms Transfers’, May 1997.

language on respect for IHL.¹⁰⁷ The inclusion of language on IHL in states' export controls is viewed today as a well-established principle of international law.¹⁰⁸ Nonetheless, before the 1990s language on IHL does not appear to have featured in national, regional or international restrictions on the international trade in military and security equipment.

The shock of the Gulf War and the collapse of the Soviet Union also saw a resurgence of concerns about WMD proliferation, which helped drive both a redirection and an expansion in the development of multilateral regimes for coordinating export control policies. COCOM was disbanded in March 1994 and replaced with the Wassenaar Arrangement in December 1995. The Wassenaar Arrangement was established 'in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies.'¹⁰⁹ Membership was offered to Russia and the other former members of the Warsaw Pact.

The broader post-Cold War shift towards greater multilateralism in states' export controls has been most apparent and far-reaching in the EU. Since the 1957 Treaty of Rome, arms exports, along with other defence- and security-related issues, have been largely exempted from European Community and EU rules.¹¹⁰ EU member states traditionally pursued widely divergent arms export policies and, with the exception of multilateral arms embargoes, were reluctant to give up any element of national control in this area.¹¹¹ However, since the early 1990s, there have been ongoing efforts at the EU level to increase the level of coordination and convergence in the field of export controls.¹¹²

¹⁰⁷ 'Article 4: Compliance with international humanitarian law', 'Nobel Peace Laureates' International Code of Conduct on Arms Transfers', May 1997.

¹⁰⁸ Indeed, it is often argued that all states have an obligation under Article 1 common to the Geneva conventions of 1949 to 'respect and ensure respect' for IHL and that this creates a requirement that they take steps to assess whether their arms exports will be used in violation of IHL. 'Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria, a Practical Guide', ICRC, Aug. 2016, p. 24.

¹⁰⁹ Wassenaar Arrangement, 'Introduction', <<http://www.wassenaar.org/>>.

¹¹⁰ The Treaty Establishing the European Economic Community (Treaty of Rome) was signed on the 25 March 1957 and entered into force on 1 January 1958. The formal title was changed in 1992 to the Treaty Establishing the European Community and again in 2009 to the Treaty on the Functioning of the European Union. Article 223 of the original treaty, Article 296 of the 1992 treaty and Article 346 of the 2009 treaty exempted 'the production of or trade in arms, munitions and war material' from EU treaty provisions. The various versions of the Treaty of Rome.

¹¹¹ Davis, I., *The Regulation of Arms and Dual-Use Exports: Germany, Sweden and the UK*, (OUP, 2002).

¹¹² Bromley, M., 'The Impact on Domestic Policy of the EU Code of Conduct on Arms Exports: The Czech Republic, the Netherlands and Spain', SIPRI, May 2008.

This EU process was largely driven by the efforts of national governments aimed at uploading policy preferences developed at the national level. A series of export control-related scandals gained a high-level of public recognition in the 1980s and 1990s and implicated nearly all the major arms-producing countries in Europe.¹¹³ These scandals led to the enactment of new legislation, often under pressure from NGOs and parliaments, which created stricter and more transparent export licensing procedures in several European states, particularly the Netherlands, the UK and Germany.¹¹⁴ The governments of these states then sought to offset any potential loss of competitiveness incurred by their domestic arms industry by uploading their policy changes to the EU level and having other governments adopt similar standards.¹¹⁵

The expansion and further development of the EU's export control regime has been largely sustained by this process of uploading.¹¹⁶ However, it was also enabled, driven and shaped by wider frameworks and agendas. Particularly important were attempts to harmonize EU foreign and security policy more broadly and to expand the range of defence-related tasks that can be coordinated and decided at the EU level. These efforts began in the 1970s and intensified with the adoption of the Common Foreign and Security Policy (CFSP) in 1993 and the European Security and Defence Policy (ESDP) in 1999.¹¹⁷ These processes created both a legal basis and a broader rationale for EU coordination and activity in the field of export controls.

NGOs also played a key role in driving the development of the EU's export control regime, particularly the aspects concerning the trade in military equipment.¹¹⁸ As such, NGOs played a role in pushing for the adoption of the EU Code of Conduct on Arms Exports (Code of Conduct) in 1998 and, particularly, the Common Position in 2008. The European Parliament has pushed for more harmonized and restrictive arms export controls since the 1970s and had

¹¹³ These scandals included the so-called 'Bofors affair' in Sweden, which involved the unlicensed export of arms to the Middle East and the payment of bribes to secure deals in India, the so-called 'arms to Iraq' affair in the UK, which involved officials bypassing export control procedures to facilitate transfers of arms and dual-use items, and a series of cases in Germany involving firms supplying equipment and precursors that were used in Iraq's chemical weapons programme. See Lohr, S., 'The Swedish Quandary: Arms Deals or Pacificism?', *New York Times*, 17 May 1987; Bartlett D., 'The Scott Inquiry: Matrix Churchill and the Arms to Iraq Affair', in Cliffe, L. Ramsay, M. and Bartlett D., *The Politics of Lying*, (Palgrave Macmillan, 2000); and Hippler, J., 'Iraq's Military Power: The German Connection', Middle East Research and Information Project, Jan/Feb 1991.

¹¹⁴ Davis (note 111).

¹¹⁵ Davis (note 111), pp. 53–54.

¹¹⁶ For examples see Bromley (note 112), p. 40.

¹¹⁷ See Holmberg, A., Britz M. and Hallenberg, J., 'European Defence Issues and Policy', in *European Union Encyclopedia and Directory 2012*, (Routledge, 2011).

¹¹⁸ Joachim, J. and Dembinski, M. (2011), 'A contradiction in terms? NGOs, democracy, and European foreign and security policy', *Journal of European Public Policy*, Vol. 18, No. 8, pp. 1151–1168.

some level of influence in both processes.¹¹⁹ They continue to publish regular reports on the issue; however, since they are formally excluded from having a say on CFPS issues, their input is hard to measure. In contrast, since the Lisbon Treaty in 2009, the European Parliament has had co-decision powers with respect to the EU Dual-use Regulation and therefore now has a formal role in the development of at least one aspect of the EU's export control regime.

Another important rationale and motivating factor for the development of the EU's export control regime was the consolidation of Europe's defence sector, which has proceeded in fits and starts since the 1980s, and led to the formation of several larger companies with holdings and production facilities in multiple EU member states.¹²⁰ A related and crucial driver has been efforts by the EU and NATO to encourage the common development and procurement of weapon systems to reduce procurement costs, facilitate security cooperation, and strengthen Europe's DTIB.¹²¹ These goals of consolidation and coordination led Europe's defence industry, the European Commission, and key member states to push for greater harmonisation of export controls to facilitate the intra-EU trade in parts and components and the extra-EU export of complete weapon systems.¹²²

Post-Cold War export controls and criteria

One of the most significant developments in the criteria that the international, multilateral, and regional instruments developed in the post-Cold War period has been the integration of language on IHL, human rights and economic development. These issues are a central focus of the export licensing criteria outline in the EU Code, Common Position and ATT.¹²³ However, rather than creating a single standard of restrictiveness, these concerns have been drawn on to formulate a range of criteria that differ in terms of their novelty, clarity and universality. Moreover, they have been embedded within export control instruments that also promote and support other standards focused less on restricting trade and more on trade facilitation. This is particularly apparent in the way this process has played out in the context of the EU's export control regime.

¹¹⁹ Hansen (note 11), p. 201.

¹²⁰ Jackson, S. T., 'Key developments in the main arms-producing countries, 2011–12', in *SIPRI Yearbook 2013*, (OUP, 2013), pp. 205–217.

¹²¹ Mölling, C., 'State of Play of the Implementation of EDA's Pooling and Sharing Initiatives and its Impact on the European Defence Industry', European Parliament, June 2015.

¹²² See Bauer, S., 'The EU Code of Conduct on Arms Exports – much accomplished, much to be done', in Haglind, K. (ed.), 'Arms Trade: Final report from the 2nd ecumenical conference in Gothenburg' Christian Council of Sweden, 2004, pp. 31–47; and 'Introduction', in Anthony, ed. (note 84), p. 2.

¹²³ Bromley, M., Cooper, N. and Holtom, P. (2012), 'The UN Arms Trade Treaty: the human security agenda and the lessons of history', *International Affairs*, Vol. 88, No. 5, pp. 1029–1048.

The application of human rights concerns to controls on exports of military and security equipment is referenced in the ATT and the Wassenaar Arrangement's Best Practice Guidelines.¹²⁴ However, the Common Position goes further than both instruments in terms of the level of detail provided. Specifically, Criterion 2 of the Common Position requires member states to deny an export license for military goods if 'there is a clear risk that the military technology or equipment to be exported might be used for internal repression.' It also requires member states to exercise 'special caution and vigilance' when issuing licenses for exports to countries where 'serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe.'¹²⁵ Hence, while it is more clearly defined and more expansive than the language contained in the ATT and Wassenaar Arrangement, the language of the Common Position is also narrower than the broad-based prohibitions on exports to states that violate human rights, which many European states introduced in the 1980s.

The Common Position is also comparatively forward leaning with regards to its integration of norms of economic development in its criteria. Specifically, criterion 8 of the Common Position obliges states to consider the 'Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country.'¹²⁶ This criterion was added to the EU Code at the insistence of Germany. However, UK and French opposition ensured that the criteria is more narrowly phrased than Germany and other states had originally proposed, and it remains one the most under-used criterion in terms of being cited when denying export license applications.¹²⁷

The 1998 EU Code made no reference to IHL. This deficit was rectified in 2008 with the adoption of the Common Position, which saw language added on IHL standards. Criterion 2 of the Common Position requires EU member states to deny an export license for military goods if 'there is a clear risk that the military technology or equipment to be exported might be used [. . .] in the commission of serious violations of international humanitarian law.' Here, the

¹²⁴ The Wassenaar Arrangement recommends that exporting states consider whether there is 'a clearly identifiable risk that the weapons might be used to commit or facilitate the violation and suppression of human rights and fundamental freedoms.' The Wassenaar Arrangement, 'Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons', was adopted in 2004 and revised in 2011. According to Article 7(1) of the ATT, parties are required to 'assess the potential' for the exported arms to be used, among other things, to 'commit or facilitate a serious violation of international human rights law.' United Nations, 'The Arms Trade Treaty', adopted 2 April 2013, entered into force 24 December 2014.

¹²⁵ Council of the European Union, Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L335/99, 13 December 2008.

¹²⁶ *Ibid.*

¹²⁷ Hansen (note 11), p. 204.

Common Position goes further than both the Wassenaar Arrangement guidelines, which state that exports should not be approved if there is a ‘clearly identifiable risk’ that the arms might be used to violate IHL, and the ATT, which says that exports should not be approved if the state ‘has knowledge at the time of authorization’ that they will be used to violate IHL or if there is an ‘overriding risk’ of this happening.

Although there has been an expansion in the prominence of humanitarian norms in the criteria developed at the EU’s export control regime in the post-Cold War period, national security norms and market norms remain present and the Common Position reflects them in its criteria. For example, the Common Position makes a strong effort to ensure that the imposition of export controls does not impede defence industry collaboration, a key indication that the norm of facilitating trade continues to be a major influence on states’ export controls. One of the key challenges to defence-industrial collaboration are situations in which there are differences in the participating states’ export control standards which create limitations on where the finished product can be exported. In these situations, the Common Position makes clear that member states ‘shall fully apply the Common Position’ but may also consider a range of other factors, including ‘the importance of their defence and security relationship with that country.’¹²⁸

Meanwhile, processes of internationalization in arms production, which the EU has sought to promote, have increased the range of situations where the export of components for integration and re-export occur, making it harder for individual states to maintain policies more restrictive than other suppliers. For example, France has recently pushed Germany to abandon national restrictions on exports to states in the Middle East to facilitate the export of arms produced jointly by French and German companies.¹²⁹ The most visible result of this effort has been the 2013 the Intra-Community Transfers Directive (ICT Directive), which seeks to remove licensing restrictions on intra-EU transfer of military goods and their parts and components.¹³⁰

The constitutive and regulative norms of export controls

The historical narrative outlined above indicates that states have constructed a complex set of export control regimes and national systems that have established a range of criteria grounded in both constitutive and regulative norms

¹²⁸ Council of the European Union, User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, Brussels, 16 September 2019, p. 8.

¹²⁹ See Sprenger (note 2).

¹³⁰ Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, *Official Journal of the European Union*, L146, 10 June 2009.

(Table 1). Summarizing these norms and indicating the ways they have supported both increases and decreases in restrictiveness in export controls at both the national and regime level serve several purposes. Most substantively, it reveals the many and varied norms operating at the national and regime level and the importance of factoring these into any analysis of states' export controls. However, it is important to note that this thesis does not claim to be producing a definitive or comprehensive list of the constitutive and regulative norms that have shaped and have been used to shape the criteria and scope of states' export controls. Given the nature of norms, the length of time covered, and the multiple ways events and policies can be interpreted, there is no way that such a list could be produced. Rather, the thesis claims to generate a list that can be used to inform the theoretical frameworks it outlines.

Table 1. The constitutive and regulative norms of export controls

	Peak strength /		
Emergence (Basis)	Basis / level	Current strength	Application
CONSTITUTIVE NORMS			
<i>Sovereign right</i>			
Antiquity (State practice)	Today / EUCP, ATT, UN Charter / High	High	<ul style="list-style-type: none"> • States have a right to determine the criteria and scope of their controls + States have a right to impose end-use controls on exports of arms and dual-use items
<i>Sovereign responsibility</i>			
Post-WWI (League Charter)	Today / EUCP, ATT, UN Charter / High	High	+ States have a responsibility to have a system of export controls

	Peak strength /		
Emergence (Basis)	Basis / level	Current strength	Application
<i>Peace and disarmament</i>			
Post-WWI (League Charter)	Post-WWI / League Charter / Medium	Low	+ The production and trade in arms undermines peace and security
REGULATIVE NORMS (SECURITY)			
<i>Maintaining domestic supply</i>			
17th century (State practice)	17th century / State practice / High	Medium	+ Restrict exports of arms to ensure domestic availability – Allow exports of arms to help industry find markets and customers
<i>Constraining rivals</i>			
17th century (State practice)	Cold War / COCOM / High	High	+ Restrict exports of arms to rival states ++ Restrict exports of all arms and dual-use items to rival states
<i>Colonialism</i>			
19th century (1890 Brussels Act)	19th century / 1890 Brussels Act / High	Weak	+ Restrict exports of arms into and around colonial spaces
<i>Demonstrating solidarity</i>			
17th century (State practice)	Today / EUCP / High	High	+ Restrict exports of arms to rivals of treaty partners – Allow exports of arms to treaty partners

	Peak strength /		
Emergence (Basis)	Basis / level	Current strength	Application
<i>Demonstrating neutrality</i>			
19th century (Hague Convention)	19th century / Hague Convention / High	Weak	+ Restrict exports of arms to both sides of an armed conflict – Allow exports of arms to both sides of an armed conflict
<i>Preventing destabilizing arms acquisitions</i>			
Cold War (Tripartite Agreement)	Today / WA, EUCP / High	High	+ Restrict exports that will contribute to arms race
<i>Preventing WMD proliferation</i>			
Cold War (NSG)	Today / NSG, EU Dual-use Reg / High	High	+ Restrict exports of arms and dual-use items that will be used in ‘illegal’ WMD programmes ++ Restrict exports of arms and dual-use items to states engaged in ‘illegal’ WMD programmes
REGULATIVE NORMS (HUMANITARIAN)			
<i>Anti-slavery</i>			
19th century (1890 Brussels Act)	19th century / 1890 Brussels Act / High	High	+ Restrict exports of arms into and around colonial spaces

	Peak strength /		
Emergence (Basis)	Basis / level	Current strength	Application
<i>Preventing armed conflict</i>			
Post WWI (League Charter)	Today / ATT, EUCP, WA / Medium	Medium	+ Restrict exports of arms that are likely to be used in an armed conflict ++ Restrict exports of arms to both sides of an ongoing armed conflict
<i>Respecting human rights</i>			
Early Cold War (State practice)	Today / ATT, EUCP, WA / Medium	Medium	+ Restrict exports of arms that will be used to violate human rights ++ Restrict exports of arms to states that violate human rights
<i>Respecting IHL</i>			
Late Cold War (ATT, EUCP, WA)	Today / ATT, EUCP, WA / Medium	Medium	+ Restrict exports of arms that will be used to violate IHL ++ Restrict exports of arms to states that violate IHL
<i>Promoting economic development</i>			
Post-Cold War (UN Guidelines, EUCP)	Today / EUCP / Low	Low	+ Restrict exports of arms that will undermine economic development
REGULATIVE NORMS (MARKET)			
<i>Slavery</i>			
17th century (State practice)	19th Century / State practice / High	Low	+ Restrict exports of arms into and around colonial spaces

Emergence (Basis)	Peak strength / Basis / level	Current strength	Application
<i>Supporting domestic industry</i>			
Cold War (State practice)	Cold War / State practice / High	Medium	– Allow exports of arms to help industry find markets and customers
<i>Facilitating trade</i>			
17th century (State practice)	19th century / State practice / High	Medium	– Allow exports of arms to friendly states – Lift all restrictions on exports of arms to a particular region

Key

- : neutral impact on restrictiveness
- + : increases in restrictiveness
- ++ : stronger increases in restrictiveness
- : reductions in restrictiveness
- AG : Australia Group
- ATT : Arms Trade Treaty
- EUCP : EU Common Position on Arms Exports
- EUDU : EU Dual-use Regulation
- NSG : Nuclear Suppliers Group
- WA : Wassenaar Arrangement

These norms derive their strength both from their integration into these regimes and from their embeddedness within wider normative frameworks concerning issues such as IHL, sovereignty, and human rights. These norms have acted as both constraints that shape what is possible in the field of export controls as well as resources that states and sub-state actors have used to justify and motivate the integration of particular restrictions in states' individual and collective export controls.

The meaning of these norms and the ways that they have shaped and been used to shape changes in the criteria and scope of export controls have shifted significantly against the backdrop of broader technological, political and ethical developments. For example, the norm of demonstrating neutrality was consolidated in the 19th century at a time 'when nations customarily issued

declarations of war before engaging in hostilities (and) the transition between war and peace would be clear and unambiguous.’¹³¹ In the years since, the expansion of collective security arrangements and the extension of the concept of warfare to include insurgency and counter-insurgency operations have blurred the distinction between belligerents and neutral states.¹³² Similarly, the regulative norm of preventing armed conflict emerged in the wake of WWI when states believed it was potentially possible to outlaw the use of military force to settle international disputes. However, the goal of outlawing armed conflict has not been a topic of serious discussion at the international level since the outbreak of WWII. These broader developments in the wide framework that these regulative norms are embedded have reduced their ability to shape debates about restrictions on exports of military and security equipment.

A similar process can be detected in the integration of norms grounded in IHL concerns into export controls. Efforts to apply this norm in export controls emerged in the 1990s when most of the recipients of Western arms exports had either taken steps to embed IHL principles in their military doctrines or, in the case of the main buyer states in the Middle East, were viewed as unlikely to use the equipment they were buying. The active involvement of Saudi Arabia and the UAE in the armed conflict in Yemen has upended this assumption and created a scenario where Europeans are among the main suppliers to states that have not taken steps to embed IHL principles in their military doctrines and are engaged in ongoing armed conflict. Although many European states have restricted arms supplies, France and the UK have continued while also engaging in contorted efforts to maintain that they are still applying the regulative norm of respecting IHL.¹³³

Taking a broader historical perspective also helps reveal cases where apparently different norms have supported or been used to support similar sets of restrictions. For example, constitutive norm of peace and disarmament and the regulative norm of preventing armed conflict often support broadly similar objectives in terms of the types of exports trying to be prevented. More dramatically, the norms of both slavery and anti-slavery both played a role in supporting proposals aimed at restricting supplies into and around colonial spaces in the 19th century. It is also important to underline that the application of particular norms can be conflicting and inconsistent depending on the state and circumstances involved. For example, the norm of demonstrating neutrality has often formed the basis for the imposition of restrictions. In 1823, however, the UK sought to maintain its neutrality in the conflict between Spain

¹³¹ US Department of the Navy (note 77).

¹³² Ibid.

¹³³ Maletta, G. (2021), ‘Seeking a Responsible Arms Trade to Reduce Human Suffering in Yemen’, *International Spectator*, Vol. 56, No. 1, pp. 73–91.

and France by lifting the restrictions on exports of arms to Spain and the Spanish colonies.¹³⁴

This inconsistency in the way they can be applied is true even for constitutive norms. For example, in asserting its right to define its own export controls and therefore asserting and applying the constitutive norm of sovereign right, the USA also resists any attempt by other states to impose foreign constraints on its controls while also imposing aspects of its own controls extraterritorially, overriding the sovereignty claims of other states. Hence, all exports of military items and many dual-use items from the USA are subject to strict end-use controls, which means that any onward re-exports require prior permission from the US authorities.¹³⁵ Particular norms are also open to different interpretations when it comes to determining their concrete implications for the criteria and scope of export controls. Hence, the regulatory norm of promoting human rights can form the basis for the application of broad-based prohibitions on the export of arms to states that violate human rights. This more expansive application of the regulatory norm has been promoted by NGOs and states and was integrated into the national export controls of several European states in the 1980s. However, it can and has formed the basis for narrower risk-based prohibitions on exports of arms that may be used by states in human rights violations. This limited application of the norm is more compatible with regulatory norms grounded in national security and market concerns.

The norms of EU arms export controls

The EU's export control regime has played a lead role in establishing and defining regulative norms grounded in humanitarian concerns. Less acknowledged is the extent that it has also integrated and applied the constitutive norms of export controls. The constitutive norm of sovereign responsibility is deeply embedded within all aspects of the EU's export control regime as it is within all international, regional and multilateral export control instruments. By contrast, the integration and application of sovereign right has been regularly debated and contested. However, the broader pattern seems to be that while EU member states are often willing to support or agree to the Commission's attempts to devolve aspects of their export controls to the intra-state or supra-state level, they remain opposed to the creation of mechanisms that create permanent constraints on if and how that occurs.

Less acknowledged is how inter-state bargaining and the creation of the EU's export control regime led to an integration of regulative norms grounded in national security concerns. This process also led to a filtering of some of the more progressive ways that humanitarian norms were proposed in the 1990s, particularly those focused on promoting economic development. It has

¹³⁴ Atwater (note 70), p. 295.

¹³⁵ US State Department, 'Overview of U.S. Export Control System', [N/D].

also led to a filtering out of the more expansive broad-based prohibitions on human rights that states had adopted in the 1980s in favour of the narrower risk-based prohibitions.

Similarly, the unique way that the EU has placed regulative norms grounded in market concerns at the heart of its export control regime has also often been downplayed. This is in large part due to the influence of the Commission and the underlying focus on market integration and deregulation, which steers much of EU policymaking. This can be seen in key aspects of the Common Position, particularly the guidance on integration and re-export, as well as in the goals and objectives of the ICT Directive. The application of these market norms and the ongoing integration of the European defence industry limits the ability of individual member states to pursue policies that are more restrictive than those with whom they are cooperating.

Conversely, the application of the constitutive norm of sovereign right means that additional regulative norms grounded in national security, market concerns, and humanitarian concerns continue to be drawn from and applied in domestic processes of revising export controls. For example, the regulative norms of demonstrating neutrality and preventing armed conflict continue to influence and be used in domestic debates about Sweden's export control criteria.¹³⁶ This is in spite of the fact that the regulative norm of demonstrating neutrality is essentially absent from the Common Position and ATT and the regulative norm of preventing armed conflict is only present in a much weaker form.

6. A norms-based theoretical framework

The historical narrative presented in section 5 supports the idea that the adoption of particular restrictions on exports of military and security equipment reflected constitutive and regulative norms grounded in national security concerns, market concerns and humanitarian concerns. Although the review indicates the presence of these underlying norms and their role in shaping the adoption of particular restrictions, it does not reveal the mechanisms through which this occurs. To fill this gap, the thesis has developed two theoretical frameworks to understand the integration of particular restrictions in states export controls at both the national and regime level.

Reflecting some of the key findings of the review of previous research on export controls presented in section 4, this thesis draws from a mix of the approaches in developing these theoretical frameworks. Accounts of the way international relations theory have evolved and been shaped by external events indicate that it is not possible to develop broad overarching theories that can

¹³⁶ See Bromley (note 7).

account for developments over multiple decades.¹³⁷ Rather, the way states and individuals operate has evolved and changed and as a result the theories that seek to explain and predict these processes have had to evolve as well. Following Katzenstein and Sil, the study pursues an approach based on ‘analytical eclecticism.’¹³⁸ This approach recognizes and embraces the inherent messiness of social science research and draws on multiple theoretical approaches.

Liberal international relations theory

To explain the emergence of the broader EU export control regime, this thesis draws from liberal international relations theory and particularly Moravcsik’s version of liberal intergovernmentalism. The model Moravcsik outlined, and which has been developed in the years since, provides the broader framework needed to understand how and why states have created the various regional, multilateral and international export control regimes and the role that key sub-state and supra-national actors, such as the European Commission and European Parliament, played in the process. As noted, a key factor driving the adoption and development of the Code of Conduct and Common Position was an interest among EU member states in uploading national preferences and policy processes to the EU level. Moravcsik’s model can also be used to explain other elements of the export control regime that have emerged since the end of the Cold War, including the ATT and the Wassenaar Arrangement, which also saw processes of domestic preference formation and intergovernmental bargaining.

However, although Moravcsik’s version of liberal intergovernmentalism can describe the process through which the EU’s export control regime was established, it struggles to explain why it happened when it did, the underlying reasons for its success, and the key aspects of policy development once the regime has been established. This last gap is noted by Moravcsik in his work on the European Convention on Human Rights where he states that ‘the theory advanced here cannot be the sole, or even the major, explanation for the subsequent deepening of the regime. A social process intervenes between original intent and ultimate evolution.’¹³⁹ More substantively, Moravcsik’s liberal intergovernmentalism, particularly its view of policy formation and promotion as a process where a single coherent position is adopted at the national level and promoted internationally, does not provide all the tools needed to fully understand the dynamics at play during processes of revising export controls.

¹³⁷ Schmidt, B. C., ‘On the History and Historiography of International Relations’, in Carlsnaes, W., Risse, T., and Simmons, B. A. (eds.), *Handbook of International Relations*, (Sage Publications, 2012).

¹³⁸ Sil, R., and Katzenstein, P. J. (2010), ‘Analytic Eclecticism in the Study of World Politics: Reconfiguring Problems and Mechanisms across Research Traditions’, *Perspectives on Politics*, No. 8, pp 411–431.

¹³⁹ Moravcsik (note 58), p. 246.

How and why the EU's export control regime emerged in the 1990s only becomes fully clear if the range of underlying norms that were both shaping the process and being drawn from by the state and sub-state actors involved are examined. Hence, although NGOs framed the push for standardized controls and practices as a means of applying humanitarian norms relating to human rights, armed conflict, and IHL, states and industry groups were making a similar push in order to apply market norms relating to facilitating industry integration. This alignment of the logics generated by humanitarian norms and market norms helps explain the success of the process of policy integration and the emergence of the EU's export control regime.

To better understand the processes through which restrictions in export controls are proposed and adopted at the national and EU level, this thesis draws from work on norms. This approach allows the thesis to build on the historical narrative presented in section 5 and the range of constitutive and regulative norms and accompanying restrictions that it identified. In addition, this allows the thesis to outline two theoretical frameworks for understanding why certain attempts to increase the restrictiveness of an export control system through changes to its criteria and scope succeed while others do not, the processes through which they take place, and the outcomes they produce.

Norms

Following the work of Finnemore and Sikkink, much of the work that has been done on norms defines them as 'collective expectations for the proper behaviour of actors with a given identity.'¹⁴⁰ Although there is a high level of agreement about the value of this definition, there is also significant disagreement about what counts as a norm, how norms emerge, and the mechanisms through which they shape state behaviour. Rather than seeking to adjudicate the rights and wrongs of all of these discussions, this thesis focuses on highlighting key points where there is a relatively high level of agreement among scholars working on norms to assemble the main building blocks for the theoretical frameworks that it develops.

'Constitutive' and 'regulative' norms

One key point of debate within the international relations literature on norms is whether norms should be primarily thought of as 'constitutive' (i.e., they 'create new actors, interests, or categories of action') or 'regulative' (i.e., they 'order and constrain behaviour.'¹⁴¹) For some theorists, the difference between 'constitutive' and 'regulative' norms relates to a deeper distinction concerning what does and does not count as a norm. Hence, for some theorists applying a constructivist approach, norms must be 'constitutive' to be counted as such,

¹⁴⁰ Finnemore and Sikkink (note 5), p. 891.

¹⁴¹ Finnemore and Sikkink (note 5), p. 891.

and they affect state behaviour by generating a ‘logic of appropriateness.’ Such a logic produces internal constraints that are adhered to because they alter the identities and interests of states and therefore transform what lies inside and outside the boundaries of what is permitted and possible.¹⁴² However, for some theorists applying a rationalist approach, norms can only be ‘regulative’ and they affect state behaviour by generating a ‘logic of appropriateness’ that produces external constraints that are followed or ignored largely on the basis of arguments generated by instrumental rationality.¹⁴³

Others have sought to remove the distinction between constructivist and rationalist approaches by arguing that norms can be both ‘constitutive’ and ‘regulative.’ In this approach, norms can generate both ‘logics of appropriateness’ and ‘logics of consequence.’ Uncovering the precise mechanics of how this happens requires a close analysis of cases and resists broader generalization. For example, the political scientist Checkel has noted that one possible determinate of which logic applies may be the role domestic institutions – ‘the bureaucracies, organizations, and groups that channel and define policy-making within states’ – play in policy-making processes.¹⁴⁴ Hence, in liberal polities norms serve to ‘mobilize domestic groups that pressure elites to change policy in ways consistent with the norms’ and a logic consequence may be more apparent. In contrast, in closed political systems, elites learn ‘new beliefs and values in the absence of any obvious domestic pressures’ and a logic appropriateness may play a clearer causal role. Various efforts have been made to apply both logics when examining the role of norms in international relations. For example, in his 2005 study on the NATO bombing campaign in Yugoslavia, the political scientist Farrell argues that specific aspects of the policies that states pursued were shaped by a complex interplay of constitutive norms, or ‘world culture’, and regulative norms regarding the structure and conduct of national armed forces.¹⁴⁵

This thesis argues that states have established and applied a range of both constitutive and regulative norms in the field export controls and that these norms both shape and are used to shape debates about the level of restrictiveness in states’ controls via both ‘logics of appropriateness’ and ‘logics of consequence.’ However, it is important to note that in taking this approach the thesis does not claim to resolve the many complexities and disagreements concerning the nature of the distinction between constitutive and regulative norms. These disputes play out across multiple academic disciplines and

¹⁴² Wendt, A. (1992), ‘Anarchy is What States Make of It’, *International Organization*, Vol. 46, No. 2, pp. 391–425.

¹⁴³ See Axelrod, R. (1986), ‘An Evolutionary Approach to Norms’, *American Political Science Review*, Vol. 80, No. 4, pp. 1095–2011.

¹⁴⁴ Checkel, J. F. (1998), ‘The Constructivist Turn in International Relations Literature’, *World Politics*, Vol. 50, pp. 324–48, p. 346.

¹⁴⁵ See Farrell, T. (2005), ‘World Culture and Military Power’, *Security Studies*, Vol. 14, No. 3, pp. 448–488.

quickly lead towards broader conceptual issues such as the nature and meaning of rationality and rational choice, which are beyond the scope of this thesis. Rather, the thesis is employing the concepts of constitutive and regulative norms as a means of helping to identify and broadly categorize the norms that are either shaping or being used to shape processes of increasing or reducing the level of restrictiveness in states' individual and collective export control systems.

Norms and 'regimes'

One key point of agreement in the norms literature is that a key way in which they both shape and constrain state action is through their integration into international 'regimes.'¹⁴⁶ Taking a similar line, Finnemore and Sikkink distinguish between norms and 'institutions', where the norm 'isolates single standards of behavior' and the institutions emphasize 'the way in which behavioral rules are structured together and interrelate (a 'collection of practices and rules').'¹⁴⁷ Hence, in their 'norm cascade' model, they argue that 'for an emergent norm to reach a threshold and move toward the second stage it must become institutionalized in specific sets of international rules and organizations.'¹⁴⁸

This thesis argues that that the main mechanism through which norms shape and constrain the restrictions states' impose through their export controls, and where it is possible to find evidence for their existence and strength, is through their incorporation into the various export control regimes that have been established at the regional, multilateral and international level.

Norms and 'embeddedness'

Another point of agreement is that a key determinant of which norms gain acceptance is a broader process of 'embeddedness' or 'nesting.' As the international relations theorist and arms control expert Müller notes, 'normative systems are not free-standing but are integrated within hierarchies of increasing abstraction and comprehensiveness.'¹⁴⁹ Different versions of this concept appear throughout the literature on norms, emphasizing in different ways that norms need to reinforce or agree with each other to become part of the wider architecture that shapes or restricts state action. For example, in his study of the evolution and impact of the ban on landmines, the political scientist Bower

¹⁴⁶ Krasner (note 12), p. 185.

¹⁴⁷ Finnemore and Sikkink (note 5), p. 891.

¹⁴⁸ Finnemore and Sikkink (note 5), p. 900.

¹⁴⁹ Müller (note 13).

argues that norms ‘are embedded within an international social system composed of legal and non-legal elements, and these structural features generate social pressures that bear on formal members and non-parties alike.’¹⁵⁰

This thesis argues that the constitutive and regulative norms that have been developed and then applied through changes to the criteria and scope of states’ export controls have their origin and support in the wider normative framework that states have constructed. This wider normative framework both supports and is used to support proposed changes to the criteria and scope of states’ export controls.

Norms and ‘goodness’

A more contentious question is whether norms must be in some sense ‘good’ or ‘progressive’ to be counted as norms. Much of the early work in the field of international relations on norms tended to focus on a single so-called ‘good’ norm or set of norms (e.g., IHL, human rights, and opposition to apartheid), and whether and how they shaped or constrained state behaviour in the face of resistance generated by a states’ economic and security interests.¹⁵¹ Since the 1990s, there has been awareness of the limits and risks associated with focusing exclusively on so-called ‘good’ norms.¹⁵² However, this tendency persists and is clearly apparent in much of the work that has applied the concept of norms to export controls (see section 4).

This view of norms as being something necessarily progressive contrasts with the approach taken by other academic disciplines. For example, rather than speaking of norms and interests, institutional theory speaks of ‘institutional logics’, defined as ‘the set of material practices and symbolic systems including assumptions, values, and beliefs by which individuals and organizations provide meaning to their daily activity, organize time and space, and reproduce their lives and experiences.’¹⁵³ Studies analyse how and why these institutional logics compete with each other during changes in organizational structure or policy orientation and the outcomes that these processes produce.¹⁵⁴ However, although these institutional logics are seen as being grounded in contrasting standards and values, they are not necessarily viewed as being either more or less progressive. Several studies from the field of international relations have applied the concept of institutional logics to aspects

¹⁵⁰ Bower, A. (2015), ‘Norms Without the Great Powers: International Law, Nested Social Structures, and the Ban on Antipersonnel Mines’, *International Studies Review*, Vol. 17, No. 3, pp. 347–373.

¹⁵¹ For example, see Klotz, A., *Norms in International Relations: The Struggle against Apartheid*, (Cornell University Press, 1995).

¹⁵² See Checkel (note 144), p. 339.

¹⁵³ See Thornton, P. H., Ocasio, W. and Lounsbury, M., ‘The Institutional Logics Perspective: A New Approach to Culture, Structure and Process’, Oxford Scholarship Online, 2013.

¹⁵⁴ See Reay, T. and Hinings, C. R. (2005), ‘The Recomposition of an Organizational Field: Health Care in Alberta’, *Organization Studies*, Vol. 26, No. 3, pp. 351–384.

of security policy. For example, the political scientists Bremberg and Britz have analysed conflicting national positions on the future direction of EU civil protection, and the inability of the EU to assimilate and resolve these differences, as an example of competing institutional logics.¹⁵⁵ However, the concept does not appear to have been applied previously to the field of export controls.

International relations literature has also made an effort to move beyond a focus on ‘good’ or ‘progressive’ norms by paying attention to so-called ‘bad’ or ‘oppositional’ norms and the ways that these compete against each other.¹⁵⁶ This has included a focus on both ‘security norms’, such as the counter-terrorism policies pursued in the wake of the September 11th attacks, and ‘market norms’, such as the liberalization and de-regulation agenda that has dominated state thinking since the 1970s.¹⁵⁷ Some attempts have been made to apply this expanded conception of what constitutes a norm to the field of export controls. As noted in section 4, Cooper’s work on arms trade regulation in the 19th century is based on an examination of ‘the influence of competing foundational and constitutive norms such as sovereignty, self-defence and free trade.’¹⁵⁸ Another example is a study by the political scientist Grillot in which she attributes the failure of ‘small arms control norms’ to ‘competing coalitions that promote opposing norms and ideas.’¹⁵⁹ However, the issue remains under-theorized and has yet to be applied to an analyses of more contemporary developments in states national and collective export control systems.

Drawing from both the concept of ‘institutional logics’ and past work on ‘security norms’ and ‘market norms’, this thesis applies a concept of norms that does not view them as something that is necessarily ‘good’ or ‘progressive.’ Rather, this thesis argues that via their national export control systems and the various export control regimes they have established states have applied a range of restrictions on trade in military and security equipment that reflect norms grounded in national security concerns, humanitarian concerns and market concerns.

Norms and agency

One early critique of the constructivist work on norms in the 1990s was that it failed to ascribe agency to states and sub-state actors in the processes of

¹⁵⁵ See Bremberg, N. and Britz, M. (2009), ‘Uncovering the Diverging Institutional Logics of EU Civil Protection’, *Cooperation and Conflict*, Vol. 44, No. 3, pp. 288–308, p. 289.

¹⁵⁶ Müller (note 13).

¹⁵⁷ See Heller, R., and Kahl, M. (2013), ‘Tracing and understanding “bad” norm dynamics in counterterrorism: the current debates in IR research’, *Critical Studies in Terrorism*, Vol. 6, No. 3, pp. 414–428; and Orbie, J. and Khorana, S. (2015), ‘Normative versus market power Europe? The EU-India trade agreement’, *Asia Europe Journal*, Vol. 13, pp. 253–264.

¹⁵⁸ Cooper (note 62).

¹⁵⁹ Grillot, S. R. (2011), ‘Global Gun Control: Examining the Consequences of Competing International Norms’, *Global Governance*, Vol. 17, No. 4, pp. 529–555.

developing, interpreting and applying norms. In a 1998 review article Checkel argued that recent work by Finnemore, Katzenstein and Koltz and its development of the concept of norms ‘lacks a theory of agency. As a result, it over-emphasizes the role of social structures and norms at the expense of the agents who help create and change them in the first place.’¹⁶⁰ He went on to state that ‘[h]aving demonstrated that social construction matters, they must now address when, how, and why it occurs, clearly specifying the actors and mechanisms bringing about change, the scope conditions under which they operate, and how they vary across countries.’¹⁶¹

Since Checkel made this argument a significant amount of work has been conducted with a view to unpacking and demonstrating the agency that individuals, political parties, NGOs and states demonstrate when both developing and promoting norms and then interpreting and applying them. For example, in a series of comparative case studies concerning the domestic application of international norms in human rights, Risse and Sikkink argue that change occurs through processes of socialization where a key determinant of the level of impact is the extent that domestic non-governmental actors can network internationally and influence domestic political processes. Hence, ‘the diffusion of international norms in the human rights area crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who manage to link up with international regimes, to alert Western public opinion and Western governments.’¹⁶²

A significant body of work has also sought to highlight and explain the level of agency that states and political elites are able to show when interpreting and applying a particular norm. This agency becomes clear in studies that seek to distinguish the norms themselves from the specific rules and practices that they shape or are used to justify. As Farrell and others have noted, seeing and understanding this distinction requires that constructivists ‘incorporate power and politics into their theories of world politics’¹⁶³ Hence, ‘norms structure policy options (both by constraining and creating the possible), but they do not eliminate policy choice.’¹⁶⁴ Similarly, the economist Sandholtz argues that much of the constructivist work on norms views the norms themselves as the outcomes, an image that fails to account for both the level of diversity in the practices of states that profess common adherence to a norm and the way that the content and application of particular norms has evolved over history.

¹⁶⁰ Checkel (note 144), p. 325.

¹⁶¹ Checkel (note 144), p. 325.

¹⁶² Risse, T. And Sikkink, K., ‘The socialization of international human rights norms into domestic practices: introduction’, in Risse, T., Ropp, S. C. and Sikkink, K. (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999), pp. 1–38, p. 5.

¹⁶³ Farrell (note 145), p. 486.

¹⁶⁴ Farrell (note 145), p. 487.

To bridge this gap, Sandholtz proposes a ‘cycle theory’ of international norm change, which draws on both international society approaches to international law and earlier work by Kratochwil on the interaction between actors, norms and rules.¹⁶⁵ The cycle begins with ‘the constellation of existing norms’, which ‘provides the normative structure within which actors decide what to do, decide how to justify their acts, and evaluate the behaviour of others.’¹⁶⁶ Differences in interpretation and the relevance of particular norms inevitably arise and these generate conflict and debate. The effect of this conflict and debate ‘is always to change the norms under dispute, making them stronger or weaker, more specific (or less), broader or narrower.’¹⁶⁷

This work points towards the potential agency of states and sub-state actors in the use of norms during processes of policy review and revision in export controls. Norms shape the parameters of what is possible in the field of export controls but NGOs, parliamentarians and political parties play a key and conscious role in using these norms to promote a particular change in policy. At the same time, Sandholtz and others point towards the potential agency that states and sub-state actors can show when interpreting and applying a particular norm. Therefore, this work also opens up the possibility for cases where the same norm can be interpreted and applied in ways that push for and against greater restrictiveness in export controls and instances where apparently conflicting norms both push or are used to push for the same policy outcomes.

Organization theory

As the thesis developed and work began on case study III and IV it became apparent that additional theoretical tools would be needed to understand all of the outcomes that can be generated by norm-driven processes of policy review and revision in export controls. This is particularly true when the set of underlying norms that shape or are being used to shape these processes directly contradict each other. When states or groups of states are required to make specific decisions about whether to impose an arms embargo or permit or deny a particular export of military or security equipment these processes need to reach a concrete resolution and one proposal and underlying norm needs to emerge as dominant. However, during processes of policy review and revision the goal is often not to resolve this conflict but rather to manage it in ways that produce an acceptable outcome for all the key parties concerned. To map these outcomes more effectively this thesis draws on approaches from the field of organization theory and particularly Brunsson’s concept of ‘organized hypocrisy.’

¹⁶⁵ Sandholtz, W., ‘Chapter 1. Explaining International Norm Change’, in Sandholtz, W., *International Norms and Cycles of Change* (OUP, 2009), pp. 1–26.

¹⁶⁶ *Ibid.*, p. 6.

¹⁶⁷ *Ibid.*, p. 6.

Organization theory is a term that ‘encompasses a wide variety of theories that have been used to analyze decision-making in public and private organizations.’¹⁶⁸ The field can be divided into three types or perspectives: ‘instrumental’, ‘cultural’ and ‘myth.’¹⁶⁹ ‘[The] instrumental perspective digs into the importance of the formal structure of an organization, to influence models of thought and actions’ while the ‘cultural perspective digs more into the importance of informal norms and values, cultural uniqueness, path dependency and cultural compatibility related to changes.’¹⁷⁰

Particularly relevant for this thesis is the myth perspective, which takes as its point of departure ‘the importance of institutional macro environments, broad social and cultural processes, the shaping and spreading of myths, isomorphism and “double-talk”.’¹⁷¹ The myth perspective is particularly concerned with the ways organizations respond to normative pressures and expectations. Hence, ‘[a] key conception is that organizations operate within institutional environments where they are confronted with socially created norms for how they should be designed and how they should function. Organizations must try to incorporate and reflect these norms outwardly, even if they do not necessarily make the organization’s activities more effective.’¹⁷²

A key assumption of the myth perspective is that the normative pressures to which political organizations are subject will often exert strongly competing or directly opposing pressures. This, in turn, creates a focus on understanding how the organizations respond to these competing pressures. Another common theme of the myth perspective is that the normative pressures primarily concern ways of managing and organizing workflows. One key example is the work of the sociologists Meyer and Rowan who look at the way organizations respond to the tensions between the myths of the ‘institutional environments’ which emphasize bureaucratic rationality and ‘the demands of their work activities’ which emphasize the value of more ad hoc working practices.¹⁷³

However, other examples of the myth perspective allow for a broader conception of what counts as the types of normative pressures that organizations

¹⁶⁸ Christensen, T., ‘Organization Theory and Public Administration’ in *Oxford Research Encyclopedia of Politics*, (OUP, 2019).

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Christensen, T., Lægreid, P., Roness, P. G. and Røvik, K. A., ‘Chapter 4: A Myth Perspective’, in *Organization Theory and the Public Sector: Instrument, Culture and Myth*, (Routledge, 2007), pp. 57–78.

¹⁷³ Meyer and Rowan argue that ‘[o]rganizations whose structures become isomorphic with the myths of the institutional environment – in contrast with those primarily structured by the demands of technical production and exchange – decrease internal coordination and control in order to maintain legitimacy.’ Meyer, J. W. and Rowan, B. (1977), ‘Institutionalized Organizations: Formal Structure as Myth and Ceremony’, *American Journal of Sociology*, Vol. 83, No. 2 pp. 340–363.

experience, one that encompasses the underling constitutive and regulative norms of export controls that are outlined above. Particularly useful is Brunsson's work on 'organized hypocrisy.'¹⁷⁴ Brunsson developed his theory based on studies of the work of Swedish local authorities in the 1980s but then later developed and applied the concept with reference to other political organizations. Brunsson argues that the range of competing norms these organizations experience makes it impossible from them to consistently interpret and assimilate external inputs. In response, the organisations seek to manage these pressures by creating a disconnect between their 'talk', their 'decisions' and their 'actions.' Hence, '[they] talk in a way that satisfies one demand [. . .] decide in a way that satisfies another, and [. . .] supply products in a way that satisfies a third.'¹⁷⁵ Therefore, the ideals they profess often bear little or no relation to the actions they take, but this represents a perfectly rational response to the complexities of the world that they inhabit where efficiency is not measured in terms of the ability to generate coordinated action but rather the ability to reflect inconsistent norms.

Brunsson's notion of what constitutes a norm is wide ranging and encompasses both moral values such as environmental standards and animal welfare provisions as well as ways of structuring and organising working procedures. Brunsson's concept of 'organized hypocrisy' has been applied in studies examining UN and collective state action in the fields of peacekeeping, state building and security policy more broadly. These include studies of the African Union's response to the Libya Crisis, UN Peacekeeping, international state building and Sweden's evolving position on possible NATO membership.¹⁷⁶ These studies often present the disconnect between talk, decisions and actions that the Brunsson's theory highlights as a problem that needs to be

¹⁷⁴ See Brunsson, 1989 (note 6); and Brunsson, 2007 (note 6).

¹⁷⁵ Brunsson, 1989 (note 6).

¹⁷⁶ See Zähringer, N. and Brosig, M. (2020), 'Organised hypocrisy in the African Union: The responsibility to protect as a contested norm', *South African Journal of International Affairs*, Vol. 22, No. 1, pp. 1–23; Lipson, L. (2007), 'Peacekeeping: Organised Hypocrisy?', *European Journal of International Relations*, Vol. 13, No. 1, pp. 5–34; Egnell, R. (2010), 'The Organised Hypocrisy of International Statebuilding', *Conflict, Security & Development*, Vol. 10, No.4, pp. 465–91; Hirschmann, G. (2012), 'Peacebuilding in UN Peacekeeping Exit Strategies: Organized Hypocrisy and Institutional Reform', *International Peacekeeping*, Vol. 19, No. 2, pp. 170–185; and Ydén, K., Berndtsson, J., and Petersson, M., 'Sweden and the issue of NATO membership: exploring a public opinion paradox', *Defence Studies*, Vol. 19, No. 1, pp. 1–18. Krasner also refers to Brunsson's work in his influential 1999 book *Sovereignty: Organized Hypocrisy*. However, it is not clear that Krasner seeks to apply Brunsson's model. Rather, Krasner is focused on the understanding of the logics of appropriateness that flow from the notions of 'international legal sovereignty' and 'Westphalian sovereignty' and then mapping how and when logics of consequence lead states to pursue actions that ignore their precepts. Hence, Krasner argues that '[g]iven the absence of authoritative institutions and power asymmetries, rulers can follow a logic of consequences and reject a logic of appropriateness. Principles have been enduring but violated.' Krasner, S. D., *Sovereignty: Organized Hypocrisy*, (Princeton University Press, 2000) p. 40.

overcome. However, some studies also view it as a dynamic process that can drive norm development.¹⁷⁷

The concept of ‘organized hypocrisy’ has been applied in several studies on the implementation of state’s export controls.¹⁷⁸ Here, the term is mainly used to argue that states voice support for progressive norms while systematically ignoring them when deciding which military and security equipment to export. However, the creation of conscious mechanisms for masking one’s true interests and goals was not what Brunsson was describing when he coined the term ‘organized hypocrisy’ and is not what this thesis is seeking to demonstrate. Rather, what Brunsson describes is the way political organizations sometimes act when they are subject to multiple and contradictory norms. In Brunsson’s theory ‘hypocrisy is not necessarily a problem; sometimes it can be a solution. And hypocrisy can be seen as morally valuable, at least compared to its options.’¹⁷⁹ When combined with an attempt to look beyond the progressive norms that have been the main focus of past work export controls and an attempt to include the wider set of constitutive and regulative norms at play, Brunsson’s concept of organized hypocrisy allows for a better understanding of the outcomes that are often produced by attempts to increase the restrictiveness of states’ export controls through changes to their criteria and scope.

The ‘competing norms’ theoretical framework

Several dynamics are revealed by focusing less on the specific content or motivation of the norms and more on the ways they push and are used to push for changes to the criteria and scope of export controls. First, it helps show how process of policy revision in the field of export controls are less a contest between progressive norms grounded in humanitarian concerns and security and economic interests and more a contest between a variety of constitutive and regulative norms that both compete with and support each other depending on the particular process and issue in question. Hence, the various state and sub-state actors with a role in the process put forward proposals grounded in new and existing security norms, humanitarian norms and market norms. However, the ability of these proposals to gain support and generate changes in the criteria and scope of states’ national and collective export controls reflects whether their underlying norms are embedded within a broader normative framework and if they align or compete with existing constitutive and regulative norms.

¹⁷⁷ See, Zähringer and Brosig (note 176).

¹⁷⁸ For example, Hansen and Marsh (note 48); and Perkins and Neumayer (note 47).

¹⁷⁹ Brunsson, 2007 (note 6), p. 113.

The ‘competing norms’ framework builds on the historical narrative presented in section 5 and the review of literature on norms outlined in this section. Both the historical narrative and the literature on norms demonstrate how the restrictions that states have individually and collectively imposed on their exports of military and security equipment reflect security norms, humanitarian norms and market norms. The reviews of the theoretical and historical literature on export controls also highlight the conscious and reflective way policy actors interpret and apply these norms when pushing for the adoption of particular restrictions. Finally, the historical literature demonstrates the enduring importance of security and market norms in framing the restrictions that states have individually and collectively adopted. This is true even in the context of the restrictions that the EU and EU member states have adopted, restrictions that are often analysed solely in terms of their reflection and application of humanitarian norms. In line with this theoretical framework we would expect to see the following:

Attempts to push for greater restraint in states’ export controls are more likely to succeed when (a) the demands are supported by multiple regulative norms and the constitutive norms of export controls, and (b) when the regulative norms concerned include ones that are grounded in national security or market concerns.

The ‘organized hypocrisy’ theoretical framework

During discussions about particular exports and the imposition of arms embargoes, these processes of competing norms have to reach a concrete resolution. Here, the goal is to resolve the process of norm contestation by reaching a concrete decision about whether to permit or deny a particular export or to impose or not impose an arms embargo. However, during periods when export controls are the subject of processes of review and revision, the goal is not necessarily to resolve but rather to manage the process of norm contestation by ensuring that some aspect of the process designed or implemented addresses several sets of competing pressures. A deeper understanding of the nature of these processes can be ascertained by drawing from organization theory and particularly Brunsson’s concept of ‘organized hypocrisy.’

The application of Brunsson’s concept of ‘organized hypocrisy’ to the field of export controls requires translating and applying his notions of an ‘organization’ and its ‘talk’, ‘decisions’ and ‘actions.’ In the field of export controls, the organization can be understood as a particular national export control system or a regional, multinational or international export control regime. The ‘talk’ of the organization can be viewed as consisting of its criteria and scope as well as the broader objectives outlined in its policy documents that it aims to achieve. The ‘decisions’ of the organization can be viewed as consisting of its level of transparency and parliamentary oversight. Finally, the ‘actions’ of

the organization can be viewed as the actual processes of deciding which exports require a license and which licenses are approved and denied. These aspects of an export control system or regime often align. However, when it is subject to competing normative pressures that need to be simultaneously addressed the result can be a process of disconnect where certain aspects are aligned with one norm or set of norms and other aspects are aligned with another norm or set of norms. Although this creates mechanisms through which certain norms and policy actors can be favoured at the expense of others, it can also create new avenues through which those that are pushed to the side can continue to press their case and push for change. In line with this theoretical framework we would expect to see the following:

When confronted by competing proposals and competing norms states sometimes manage the conflict in ways that echo Brunsson's concept of 'organized hypocrisy' in that they (a) adjust certain aspects of their controls to meet the demands supported by one norm, and (b) adjust other aspects of their controls to meet the demands of another norm.

Case study III and IV and the application of the theoretical frameworks

Case study III examines how Sweden structures and implements its export controls in the face of competing pressures generated by broader regulative and constitutive norms that push and are used to push for more and less restrictiveness. The most influential of these are two constitutive norms that appear to be grounded in Sweden's self-image as a neutral state and the policy of non-alignment that it pursued during the Cold War. Although Sweden has shifted away from this policy since the end of the Cold War, the manner in which this shift has taken place has served to bolster the arguments of both those pushing for more and less restrictiveness in Sweden's exports of military and security equipment. The study examines the key aspects of Sweden's export controls and how they operate in the face of these competing norms. In particular, it explores the strong emphasis on building and maintaining consensus, the focus on 'depoliticizing' the issue of arms exports, and the attempt to simultaneously reflect the concerns of those calling for both more and less restraint in Sweden's arms exports.

The case study also examines the recent review of Sweden's arms export controls, which began in 2012 with a parliamentary enquiry and ended in 2018 with the adoption of new legislation. The outcome saw small changes to the criteria and level of transparency of Sweden's export controls but left the processes through which export licenses are assessed and issued largely intact. Although the changes are limited, they have created new avenues through which norms favouring greater restrictiveness in Sweden's export controls can continue to press their case. Moreover, the process also attempts to reduce

some of the ‘disconnect’ in different aspects of Sweden’s export controls, particularly by creating a more consistent set of export licensing criteria.

The case study develops and applies the ‘competing norms’ theoretical framework by showing how an analysis of a states’ export controls can be framed and examined in terms of a competition between different sets of regulative and constitutive norms. The case study also shows how particular constitutive norms, in this case ones drawn from Sweden’s self-image as a neutral state, can be interpreted and applied in ways that push for both greater and less restrictiveness in export controls. The case study also develops and applies the ‘organized hypocrisy’ theoretical framework by showing how it can be applied to an analysis of a state’s export control system. Finally, the case study served to further refine the thesis’ definition of the key aspects of a state’s export control and directed the focus of attention towards processes of policy revision where evidence of the impact of conflicting norms can best be measured.

Case study IV examines the process and outcome of the review and recast of the Dual-use Regulation, the EU’s main legislative instrument in the field of dual-use export controls, which concluded in 2020. The study pays particular attention to debates among EU member states and between the European Council, European Commission and European Parliament about controlling exports of ‘cyber-surveillance items’ through changes to the criteria and scope of the regulation. The study seeks to fully apply the theoretical frameworks developed during the thesis. Hence, it uses liberal intergovernmentalism to understand the creation of the EU’s export control regime, the ‘competing norms’ theoretical framework to understand the process of revising the Dual-use Regulation, and the ‘organized hypocrisy’ theoretical framework to understand some of the key outcomes that were produced.

Applying the ‘competing norms’ theoretical framework, the case study argues that the recast can be better understood if it is viewed less as a competition between norms and interests and more as one where a variety of proposals grounded in different norms competed for influence. As such, certain proposals gained little traction due to the lack of a wider normative framework concerning the appropriate uses of cyber-surveillance items, others generated opposition because they challenged the constitutive norm of sovereign right, and others gained conditional support because their content aligned with regulative norms relating national security and market concerns.

Applying the ‘organized hypocrisy’ theoretical framework, the case study also argues that the outcome of the review and recast process can be better understood if it is viewed less as one where a single norm achieved dominance at the expense of all others and more as a set of compromises that sought to simultaneously address demands grounded in several competing norms. Although this means the outcomes often prioritized security and market norms at the expense of humanitarian norms, it has also given the European Parliament

greater influence over the future implementation of the Dual-use Regulation and therefore created new avenues for both norm development and promotion.

7. Key findings and suggestions for future research

This thesis was conceived as an attempt to determine which approaches from the field of international relations explain the way states individually and collectively develop and implement restraints on the trade in military and security equipment through their export controls. During the reviews of the theoretical and historical literature production of case study I and case study II, the thesis evolved and became focused on trying to address its overarching research questions through a focus on theory development. Specifically, the thesis develops and then applies two theoretical frameworks that can be used to understand why certain restrictions become integrated into the export controls of EU member states and the EU, why others are rejected, and the impacts that are generated.

To support this analysis, the thesis draws from the review of historical literature to identify the constitutive and regulative norms that have shaped and been used to shape past changes in states' export controls as well as more contemporary processes of policy review and revision. The thesis draws from liberal intergovernmentalism to understand the creation and overall structure of the EU's export control regime. The thesis then develops a 'competing norms' framework, which shows how attempts to integrate new restrictions into export controls can be better understood if they are viewed as periods where broader constitutive and regulative norms both shape and are used to shape the outcomes that are achieved. The thesis also develops a second framework, drawn from Brunsson's concept of 'organized hypocrisy', to understand cases where the process has to resolve the pressures generated by norms pushing for contradictory policy outcomes.

Focusing on processes of policy review and applying aspects of the broader literature on norms and the literature on organization theory allows the thesis to reveal hierarchies in the ability of different norms to influence the content of state's export controls. The thesis finds that even among states where regulative norms grounded in humanitarian concerns are particularly influential, changes in the content of export controls are more likely in the less important areas of 'talk' and 'decision' and less likely in the more important areas of 'action.' Moreover, regulative norms grounded in humanitarian concerns are more likely to be successful when the direction of pressure they exert aligns with those grounded in national security and market concerns and when they support rather than challenge established constitutive norms.

However, in line with the model Brunsson outlined, the thesis also argues that changes made to the less important areas of export controls can also have

real long-term implications. Changes made to the ‘talk’ and ‘decision’ of export controls create pathways and commitments that serve to increase the ability of norms grounded in humanitarian concerns to press or to be used to press for change in the more important areas of ‘action.’ Therefore, this understanding of how states develop their export controls in the face of competing norms can also help show how and why EU member states’ export controls evolve and the growing ability of NGOs and parliamentarians to engage in efforts aimed at influencing their content and implementation.

Conversely, the thesis also argues that in seeking to reflect and address several sets of norms that directly compete or are otherwise incommensurable the EU and EU member states have created a system of export controls that lacks a clear and coherent set of underlying goals and objectives. That is, what has emerged is a system that seeks to address and reflect a wide range of regulative norms but where there is little scope or interest in formulating new sets of constitutive norms that would be needed to generate real and meaningful changes to their criteria and scope.

The broad outlines of the theoretical frameworks were developed while producing a thematic study on states’ end-use controls, a regional study on the EU’s export control regime and, more substantively, a national case study on Sweden’s arms export controls. The national case study indicates that recent attempts in Sweden to introduce more restrictive practices in arms exports and, particularly a democracy criterion, have considerable weight due to the extent they were grounded in both regulative norms and constitutive norms concerning Sweden’s view of itself as a neutral state. However, they were confronted by competing pressures that were also grounded in Sweden’s view of itself as a neutral state. Moreover, aspects of the way Sweden structures its export controls seem to fit well with Brunsson’s ‘organized hypocrisy’ framework.

The theoretical frameworks were then more fully applied in a second regional case study on the recast of the Dual-use Regulation. Liberal intergovernmentalism seemed well suited to explain the existence and overall structure of the regulation but did not provide all the tools needed to explain the process and outcome of the recast. The ‘competing norms’ framework helps show how aspects of the attempt to expand controls on exports of cyber-surveillance items gained traction due to the extent that they were aligned with regulative norms grounded in national security and the constitutive norm of state responsibility. However, attempts to introduce more open-ended controls on these items and apply a broader range of considerations related to human rights when determining whether exports should take place are resisted due to their conflict with the constitutive norm of sovereign right. Finally, the outcome of the process aligned closely to the ‘organized hypocrisy’ framework in the sense that success depends on creating a certain level of disconnect between the ‘talk’, ‘decisions’ and ‘actions’ of the Dual-use Regulation.

The thesis and its findings point to several questions and areas for future research that could serve to both test and develop the frameworks it has produced:

1. How well do the theoretical frameworks function if they are applied beyond the EU and EU member states to studies of other major arms exporters and other export control regimes?
2. Do all aspects of the theoretical frameworks apply when examining other export control regimes or does it only work fully when looking at the EU?
3. Are there any predictions that the theoretical frameworks generate that could be tested through thematic, national or regional case studies?
4. Does the ‘competing norms’ theoretical framework work when looking at other processes of export control revision, such the United States’ export control review, which concluded in 2018?
5. Does the ‘organized hypocrisy’ theoretical framework work better in states where more voices have a desire and an ability to influence processes of revising export controls?

8. Summaries of case studies I, II, III and IV

Case study I – Bromley, M., (2015), ‘End-Use Controls: Recent Technology Developments and Emerging Trends’, *Security and Peace*, Vol. 33, No. 2, pp. 84–91.

Abstract: This article looks at the end-use controls of the US and European states, the application of new technologies for tracking, controlling and deactivating arms in this area, and recent debates about arms transfers to the Middle East. States’ end-use controls are employed in the pursuit of a variety of normative, economic and strategic objectives. However, the article finds that only the US has used new technologies to improve its end-use controls and only in the pursuit of strategic objectives. The article also argues that recent arms transfers to non-state armed groups in Libya and Syria may undermine broader attempts to improve global standards in end-use controls. As part of this analysis, this article assesses the ability of Blackaby’s system for defining types of arms exporters, which is grounded in structural realism and developed

in the 1970s, for understanding contemporary differences in states' export controls.

Case study II – Bromley, M., 'Chapter 41– Arms Transfers and Export Control Policies', in Meijer, H. and Wyss, M., (eds), *The Handbook of European Armed Forces*, (OUP, 2018).

Abstract: This book chapter examines the attempt to coordinate and harmonize the dual-use and arms export control policies of EU member states, focusing on the use of EU arms embargoes and the implementation of the EU Dual-use Regulation and the EU Common Position on Arms Export. The chapter examines the original motivations that drove and sustained this effort and assesses its impact on member states' national policies. Specifically, the chapter pays particular attention to the dual-use and arms export control policies of Europe's major powers (France, Germany and the United Kingdom), highlighting areas where states' policies have been affected by EU processes of coordination and convergence and where they remain driven by primarily national considerations. The chapter also assesses and compares the impact of these processes among a selection of smaller EU member states.

Case study III – Bromley, M., 'Chapter 8 – Sweden's arms export controls: Balancing support and restraint' in Lustgarten, L., *Law and the Arms Trade: Weapons, Blood and Rules*, (Hart, 2020).

Abstract: Sweden is both an appropriate and important subject of study in any comparative analysis of states' arms export controls largely due to strong and conflicting pressures. Political actors on both the left and right of its political spectrum argue that Sweden needs to maintain an independent defence industry supported by foreign sales. On the other hand, there is an almost constant national discussion about arms exports in Sweden and a sizeable majority of the public favours imposing tighter restrictions than are agreed at the international and European level. Moreover, this view is shared by mainstream political parties on both the left and right of Sweden's political spectrum. This chapter explores how Sweden structures and implements its arms export controls in the face of these conflicting pressures. In making this analysis, the chapter also draws on Brunsson's notion of 'organized hypocrisy', which he developed in 1980s to understand how political institutions seek to manage conflicting normative pressures.

Case study IV – Bromley, M. (2022), 'The Dual-use Regulation, cyber-surveillance and human rights: The competing norms and organized hypocrisy of EU export controls', (forthcoming).

Abstract: This article analyses the process and outcome of the review and recast of the EU Dual-use Regulation, which concluded in 2021. The review and recast was dominated by conflicts both among EU member states and between the European Council, European Commission, and the European Parliament about the interlinked issues of expanding the range of human rights that states should consider when implementing the Dual-use Regulation and using the instrument to expand controls on exports of ‘cyber-surveillance items.’ The article argues that the process of the recast, particularly which proposals were put forward and which were adopted, can be better understood if viewed as a competition between different constitutive and regulative norms. The article also argues that the outcome of the recast can be better understood by applying Brunsson’s concept of ‘organized hypocrisy’ and viewing it as a set of compromises which sought respond to proposals grounded in several competing norms. The article concludes by reflecting on the possible wider application of the ‘competing norms’ and ‘organized hypocrisy’ theoretical frameworks that it outlines for other studies of the formation and implementation of states’ national and collective export control systems.

Abbreviations

AG	Australia Group
ATT	Arms Trade Treaty
COCOM	Coordinating Committee on Multilateral Export Controls
CFSP	Common Foreign and Security Policy
DTIB	Defence and Technology Industrial Base
EC	European Community
ESDP	European Security and Defence Policy
EU	European Union
ICT	Information and Communications Technology
ICT Directive	Intra-Community Transfers Directive
IHL	International Humanitarian Law
IHRL	International Human Rights Law
MTCR	Missile Technology Control Regime
NSG	Nuclear Suppliers Group
WMD	Weapons of mass destruction

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