



Embassy of Saudi Arabia, Ottawa (photo credit: Chris Waters)

The Transnational Law and Justice Network, Windsor Law Presents:

Canada and Saudi Arabia: Legal Frameworks and Policy Options

Day 1: Thursday September 19 (open to public)

Room G102, Faculty of Law, University of Windsor

5:00 Opening Address & Welcoming Remarks, Chris Waters & Reem Bahdi

Session 1: Canada, Saudi Arabia and Human Rights

5:10 **Peggy Mason**, *Human Rights, International Security and Canada's Saudi Arms Exports: Is There a Way to Close the Rhetoric-Reality Gap?*

Jackie Hansen, *Criminalization of Peaceful Dissent in Saudi Arabia*

6:00 Q & A (Moderator, Chris Waters)

6:30 Reception, Lower Concourse, Windsor Law

7:00 Dinner for out of town and invited guests, 14 Restaurant and Sky Lounge
<http://fourteenrestaurantandskylounge.com/>

Day 2: Friday September 20, (closed sessions)

Alumni (Faculty) Lounge, 2nd Floor, Faculty of Law, University of Windsor

8:45 Welcome & Opening Remarks, Reem Bahdi & Chris Waters

Session 2: Saudi Arabia In Global and Regional Contexts (Chair, Sujith Xavier)

8:50 **Tom Najem**, *Understanding the Regional and International Relations of Saudi Arabia: A Power Transition Theory Approach*

James Devine, *The Iranian-Saudi Rivalry: What Role for Diplomacy?*

Atif Kabursi, *The Political Economy of Oil: Who is Determining the Price of Oil and Why?*

9:35 Q & A (including day 1 session)

10:20 Break

Session #3: *Canada's Relationship With Saudi Arabia: Historic Links and Future Directions (Chair, Kristen Thomasen)*

10:30 **Anthony Fenton**, *Kingdom of Opportunity: The Canadian State, Capital, and Saudi Arabia, 1960-2019*

Jeremy Wildeman, *Saudi Arabia in Canada's Foreign Policy, 1969 to 2019: A Review of The Literature*

Sharath Voleti, *Canadian Companies, Surveillance Technology and Saudi Arabia*

Walid Hejazi, *Canada, Saudi Arabia and Trade Diversification As Drivers of Reform*

11:30 Q&A

Session 4: *The Canadian Connection to Jamal Khashoggi and The Quest for Accountability*

12:00 **Mazen Masri**, (remotely from London, England) (Chair, Chris Waters)

12:30 Q &A

1:00 Lunch

Session 5: *Exploring International and Domestic Legal Avenues (Chair, Reem Bahdi)*

2:00 **Fatima Ahmed & Anneke Smit**, *#SaveRahaf: Configurations of Race, Gender and Domestic Violence in International Refugee Law*

Maureen Irish, *Canadian Export Controls and the Law of the WTO*

Hassan Ahmad, *Transnational Human Rights in the Courts: Litigating the Canada-Saudi Arms Deal*

3:00 Q&A

Session 6: *Conclusion*

3:45 Discussion of Next Steps and Closing Remarks, Reem Bahdi & Chris Waters

4:15 Taxis depart Windsor Law

Presenters & Abstracts

Anthony Fenton (PhD Candidate, Political Science, York University)

Kingdom of Opportunity: The Canadian State, Capital, and Saudi Arabia, 1960-2019: In order to appreciate the implications of the August 2018 rupture in relations between Canada and Saudi Arabia, a comprehensive account of the historical development of the relationship is needed. Scant scholarly research necessitated a deeper dive into primary and secondary sources – including the retrieval of a rich trove of declassified/archival documents which, for the first time, make such a comprehensive undertaking possible. In broad strokes, this submission will look at some of the key moments in the history of Canadian-Saudi Arabian political, economic, and military relations. Accordingly, it will seek to answer: when did Canada and Saudi Arabia first establish ties? How can the nature of the relationship be periodized? What has driven Canada’s courting of this Middle Eastern Kingdom? What precedents are there, if any, to the August 2018 diplomatic rift? What has been the trajectory of Canadian arms export policy with respect to Saudi Arabia? For which fractions of Canadian capital has Saudi Arabia been a priority market? How has the Canadian capitalist class organized itself in order to steer and shape Canadian policy towards the Kingdom? In answering these questions, we will see how this topic offers a profound case study in the development of an internationalizing Canadian state and capital. This submission has the potential to contribute to several academic (sub-)fields, stimulating discourse in Canadian political economy, Canadian political/diplomatic and economic history, Canadian foreign policy, as well as implications for popular discourse surrounding the Canadian-Saudi Arabian relationship, in policy and media circles.

Atif Kubursi (Professor Emeritus, Economics, McMaster University)

The Political Economy of Oil: Who is Determining the Price of Oil and Why?: This paper will discuss the political economy of oil and its strategic significance, particularly for Saudi relations with the United States. First, key concepts in the political economy of oil will be covered. The concentration of oil’s consumption and production in few areas and hands will be highlighted. For example, production, exploration and particularly refining and distribution are dominated, even in the oil exporting countries, by a handful of large fully integrated seven multinational corporations flying the flags of primarily two countries (five are US and two are European) that only too recently colonized or monopolized the production of oil. The dynamics and significance of oil prices on Saudi’s relationship with the West, particularly the US will then be explained and explored.

*Fatima Ahmed (JD Candidate, Law, University of Windsor) &
Anneke Smit (Associate Professor, Law, University of Windsor)*

#SaveRahaf: Configurations of Race, Gender and Domestic Violence in International Refugee Law: In recent times, Canada’s nonobligatory responses to domestic violence-based asylum

claims have demonstrated how Canada approaches issues of domestic violence in the context of refugee law. The public-private divide as well as the dichotomy of 'exotic' and 'familiar' harms greatly affect the Canadian notion of gender-based persecution, especially when concerning Muslim refugee women. In the context of the international refugee regime, Muslim women are forced to perform certain orientalist and cultural stereotypes which draw the attention of refugee receiving countries, such as Canada. In analyzing the case of Rahaf Mohammed, this paper proposes that Canada is less likely to offer protection to Muslim refugee women unless they "play the victim," and in this way, promotes sexist and racist treatment of Muslim refugee women.

Hassan M. Ahmad (SJD Candidate, Law, University of Toronto)

Transnational Human Rights in the Courts: Litigating the Canada-Saudi Arms Deal: Does a viable transnational claim exist against General Dynamics—the arms manufacturer that contracted with the Canadian government to provide light-armoured vehicles (LAVs) to Saudi Arabia? Despite denials by Canada's Foreign Affairs Minister, evidence suggest that LAVs sold to the Saudis have been used in an ongoing regional armed conflict with Yemeni rebels resulting in the loss of thousands of innocent lives. While jurisdictional and substantive law defences grounded in tort and international law principles still pose daunting barriers, the Supreme Court's pending judgment in Araya and, albeit minimal, successes in Hudbay and Garcia suggest that Canadian courts are becoming more amenable to expanding transnational tort and even public international law doctrines to allow for foreign plaintiffs to recover compensatory awards.

Jackie Hansen (Amnesty International, Canada)

Criminalization of Peaceful Dissent in Saudi Arabia: The space for civil society to peacefully advocate for human rights is shrinking all around the world, including in Saudi Arabia. People who advocate for freedom, justice, and equality in Saudi Arabia do so in an environment where they are demonized, criminalized, physically attacked, and sometimes even killed. The threats to women human rights defenders in Saudi Arabia are compounded because they are targeted both for who they are and what they're advocating for. The arrest of women human rights defenders is part of a broader crackdown in Saudi Arabia on freedom of expression, association, and assembly. Crown Prince Mohammad bin Salman continues to promote his 'reforms' to the international public, while silencing anyone at home who dares to question his policies.

James Devine, (Associate Professor and Department Head, Politics and International Relations, Mount Allison University)

The Iranian-Saudi Rivalry: What Role for Diplomacy?: The Iranian-Saudi rivalry is multifaceted, involving ideological and religious differences, balance-of-power politics and petro-politics. It is

also nested within Iran’s adversarial relationships with Israel and the United States. This paper will argue that tensions within the rivalry are driven primarily by political and military insecurity rather than historical identity. Further, it will argue that there is an important asymmetry in the rivalry. While Riyadh sees Iran as the primary source of threat, Tehran sees the Saudis as a lesser threat, secondary to the United States and Israel. Because Tehran’s strategies for defending itself against its two primary adversaries inflames Riyadh’s sense of insecurity, their rivalry is locked in place by political dynamics outside of their bilateral relationship. This not only complicates direct negotiations between the two states, it rules Washington out as a 3rd party mediator. This suggests a potential role for other western actors such as the EU and Canada. However, political differences between the Trump Administration and its Western allies make it unlikely they will be able to fill the diplomatic gap.

Jeremy Wildeman (Visiting Research Fellow, Political Science, University of Bath)

Saudi Arabia in Canada’s Foreign Policy, 1969 to 2019: As with much of Canada’s foreign policy towards the Middle East, its relationship with the Kingdom of Saudi Arabia (KSA) is rather underexplored in the existing scholarly literature. Attesting to the importance of this workshop, my proposed paper will present original research describing Canada’s recent historical and more contemporary foreign policy relationship with the Kingdom of Saudi Arabia, from 1969 to 2019. In this paper, I will engage with an overview of the secondary literature already written on that relationship, as well as with an overview of popular international relations theories used to explain the observed phenomenon. From there, I will provide a timeline of milestone events, such as the 1973 oil embargo, the 1979 furor over Canada’s announced plan to move its embassy in Israel to Jerusalem, operation Desert Storm in 1991, the 9-11 attacks, the 2003 invasion of Iraq, Harper and Trudeau-era arms deals, and the 2018 summer diplomatic row. This will be supplemented by a review of journalistic articles and primary data from Canadian archives, before concluding with a description of what theory, or theories, may best describe Canada’s relationship with the KSA.

Maureen Irish (Professor Emerita, Law, University of Windsor)

Canadian Export Controls and the Law of the WTO: This paper discusses export controls on trade in goods under the law of the World Trade Organization (WTO), particularly the provisions of the General Agreement on Tariffs and Trade (GATT). GATT Article XI prohibits bans and other quantitative restrictions on exports. Discussion in the paper examines two GATT exceptions and decisions in recent WTO disputes. One exception, GATT Article XXI, for security measures, was analyzed in the WTO Panel Report on Russia – Measures Concerning Traffic in Transit, WT/DS512/R, adopted April 26, 2019. In addition, GATT Article XX(a) provides an exception for “measures necessary to protect public morals.” Its potential application for trade measures relating to international human rights has been discussed in the literature. Article XX(a) was analyzed by the WTO Appellate Body in European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, WT/DS400/AB/R, adopted June 18, 2014.

Mazen Masri (Associate Professor, Law, City University, London, England)

The Canadian Connection to Jamal Khashoggi: Mazen Masri is part of the legal team representing Quebec based Omar Abdulaziz, a Saudi dissident who was close to murdered journalist Jamal Khashoggi. Abdulaziz is suing an Israeli spyware company, the NSO Group, alleging that NSO helped the kingdom monitor his communications with Khashoggi. The spyware, known as Pegasus, allows its customers to secretly listen to calls, record keystrokes, read messages, and track internet history on a targeted phone. It also enables customers to use a phone's microphone and camera as surveillance devices. This presentation will review the facts, allegations, cause of action and remedies sought before the Israeli courts. In addition to seeking a remedy for Abdulaziz, this legal action helps reveal the nature and extent of Israel's alliances with Saudi.

Peggy Mason (President, The Rideau Institute on International Affairs & Formerly Canada's Disarmament Ambassador to UN)

Human Rights, International Security and Canada's Saudi Arms Exports: Is There a Way to Close the Rhetoric-Reality Gap?: On 1 September 2019 the new legal regime for the export of Canadian – made military equipment came into effect. This legislation paves the way for Canadian accession to the global Arms Trade Treaty (ATT), which will formally take effect on 17 September, 2019. Thus, a 2015 Liberal election promise, that Canada would become an ATT states party, will finally be fulfilled. But that will not be the only newsworthy event on 17 September. On the same day, in the early afternoon, the leaders of several prominent civil society organizations, including former Ambassador Peggy Mason, of the Rideau Institute, will hold a press conference on Parliament Hill. In this press conference they will draw attention to the latest report of the UN Expert Panel on Yemen, documenting and denouncing the continued war crimes by all sides of the conflict, and the continued sale by third countries of weapons to the parties, which prolongs the conflict, undermines the fragile UN-led peace process and contributes, directly and indirectly, to the enormous suffering of the Yemeni people. Mason and the other civil society leaders will call on the Government of Canada to abandon its never-ending "review" of Canadian so-called Light Armoured Vehicle (LAV) exports to Saudi Arabia and to forthwith end any further such exports, as so many of our European allies have done. At the same time, another participant in the Press Conference, McGill Law professor Daniel Turp, will announce the launching that day of a new law suit against the Government of Canada, under the new, tougher standards now in place, to secure a court decision ending the LAV exports once and for all.

Peggy Mason asks:

- "How has it come to this?"
- How has Canada, one of the key architects of the International Criminal Court, become complicit in war crimes in Yemen?

- How can it be that Canadian jobs are said to depend on the torture, starvation, maiming and killing of innocent civilians, many of them children?
- And what has happened to our traditional role of supporting UN-led efforts to resolve conflicts through negotiations, instead of fanning the flames and thereby further undermining international and regional security?"

Peggy Mason's presentation will not only seek to answer these questions, but also to offer the prospect of a more hopeful way forward, in future, more commensurate with the principles of human rights and peaceful conflict resolution, that Canada – despite the rhetoric - currently honours more in the breach than in the observance.

Sharath Voleti (JD Candidate, Law, Windsor Law)

Exports in the Digital Era – The Sale of Surveillance Technology to Saudi Arabia: The sale of armoured vehicles and weapons to Saudi Arabia has received a great deal of media coverage in recent years. Comparatively little attention, however, has been devoted to the export of Canadian surveillance technologies that are used to censor the internet, repress populations and arrest dissidents. Netsweeper, a Canadian company, produces an internet filtering software that is used in Saudi Arabia and in countries such as Bahrain, UAE, India and Pakistan to censor the internet. It has received over \$434,000 in public grants from the federal and Ontario government since 2003. Until December 2018, Netsweeper software included pre-set filters such as “alternative lifestyles” that allowed governments to easily censor and locate LGBTQ content. In contrast to the US and EU, the export of these powerful technologies is not regulated in Canada. Consequently, this presentation will examine the use of Canadian surveillance technologies by authoritarian regimes in the Middle East, the legal regime governing their export, and potential legal and regulatory solutions.

Tom Najem (Professor, Political Science, University of Windsor)

Understanding the Regional and International Relations of Saudi Arabia, A Power Transition Theory Approach: The purpose of the presentation is to contextualize Saudi Arabia's regional and international relations, and the policies that emanate from them. This includes relations with fellow Arab states, Iran, Israel, and Turkey, and with global powers, especially the United States. Saudi Arabia's role in several hotspots – Iran, Syria, Yemen, Iraq, Lebanon – will receive particular attention. I will present within the framework of Power Transition Theory (PTT), a work initially developed by the International Relations theorist Walter Organski in the 1950s, and expanded on recently by a host of scholars including Tammen, Kugler and Lemke. PTT attempts to predict the likelihood of conflict (war) when the global or regional systems are in flux, and where a rising power challenges the existing dominant global and/or regional power. Interest in PTT revived recently for its explanatory abilities on US-China global dynamics, though it can be equally effective at the regional level as well. Saudi external relations are relatively straight forward, driven almost exclusively by deep concerns over its security vis-à-vis regional rival Iran, a rising power and historic enemy. Moreover, and perhaps unique to the Middle East,

security concerns extend to the very survival of the Saudi regime, whose internal political legitimacy is highly vulnerable to penetration by external rivals, most especially by the religious establishment in Iran. PTT goes a long way in explaining Saudi Arabia's role in regional civil wars. Further, conditions have been and continue to be ripe for military conflict between Saudi Arabia and Iran, a dynamic that has to date exacerbated conflicts throughout the region, and threatens to engulf the Middle East in a full-scale regional war.

Walid Hejazi (Associate Professor, Business Economics, Rotman School of Management, University of Toronto)

Canada, Saudi Arabia and Trade Diversification: The recent renegotiation of the NAFTA has highlighted the risks to Canada of being overly concentrated on the US market, where 75% of Canada's exports are destined. The Canadian government has now appointed a Minister of International Trade Diversification. This paper/presentation will highlight the potential for Canadian companies to deepen their trade and investment links with the Middle East in general, and Saudi Arabia in particular, thus creating more economic opportunities for Canadians. I also argue that Canada's engagement with the Kingdom, together with an exchange of executives and students, has had a positive impact on the Kingdom in terms of both social and economic reforms. The recent diplomatic difficulties between Canada and Saudi Arabia has impeded the ability of Canadians to do business in the broader GCC region and will set back positive influences Canada could have in helping shape the future of the Kingdom.

Windsor Law Faculty, Discussants & Chairs

Chris Waters

Kristen Thomassen

Reem Bahdi

Sujith Xavier

Rapporteurs & Guests:

Aadil Nathani (Student, Windsor Law)

Ahmad Khalifa (UWindsor Alumus, Political Science & Journalism)