

GREAT RESPONSIBILITY:

A Legislative Reform Agenda for U.S. Arms Transfers and Civilian Harm



Cover Image:
U.S. Capitol, February 2019.
John Brighenti

EXECUTIVE SUMMARY

At a moment when U.S. arms transfers¹ are making headlines for the wrong reasons – from Yemen to the Philippines and Latin America – members of Congress find themselves with few options to withhold U.S.-made weapons from governments that suppress democracy, systematically violate human rights, or devastate civilian populations caught in armed conflict.

Since the passage of the hallmark Arms Export Control Act in 1978, Congress has gradually relinquished to the executive branch all meaningful oversight over who receives U.S. weapons and how they are used. Congress’ deference has allowed the executive to prioritize the perceived short-term strategic and economic benefits of arms transfers to the detriment of more enduring national interests, foreign policy objectives, and fundamental U.S. values. The result is a clear association between U.S.-made armaments and the death of children in Yemen; human rights abuses in Cameroon and Nigeria; and the spread of weapons to groups like the Islamic State and criminal gangs in Central America. In 2019, President Trump used emergency powers to authorize an arms transfer to Saudi Arabia and the United Arab Emirates (UAE) despite overwhelming bipartisan opposition, exposing the true limits of Congressional power. The current state of affairs is untenable, and reform is long overdue.

Congress has the tools to ensure that arms transfers and related services better reflect American values and promote long-term American interests. Congress can accomplish this through a concerted focus on re-establishing its role and fulfilling its responsibilities, along with creative legislation and targeted oversight. This report identifies several opportunities for much-needed legislative reform to the U.S. arms transfers system.

First, this brief identifies **four major categories of concern with the current state of U.S. arms transfers**:

- Current protocols and controls fail to adequately protect human rights, increasing

- the risk of provoking further regional and global instability;
- U.S. arms transfers risk facilitating corruption abroad;
- The executive branch has significant discretion to circumvent Congress’ oversight and approval on arms transfers; and
- A lack of transparency in the arms transfer process precludes appropriate public scrutiny and debate about arms transfer decisions.

On the basis of these concerns, and drawing from the most common recommendations made by leading experts and organizations, **this brief presents a legislative reform agenda composed of recommendations for Congress that achieve three main goals:**

1. Clarifying additional requirements and responsibilities for the executive branch when negotiating and engaging in arms transfers, in order to mitigate against human rights violations and corruption risks;
2. Strengthening Congressional oversight and responsibility for approving or disapproving arms transfers; and
3. Increasing public transparency and awareness of both proposed and completed arms transfers.

The intent of this brief is to provide lawmakers with a comprehensive summary of existing recommendations for arms transfers reform that can be implemented through legislation and oversight.

METHODOLOGY

The following recommendations reflect consensus points of emphasis derived from in-depth analysis of policy reports and publications by individuals and organizations at the forefront of arms transfers reform. This includes Transparency International, the American Bar Association, CATO Institute, Center for International Policy, Friends Committee on National Legislation, Stimson Center, RAND Corporation, and Center for Civilians in Conflict.

Recommendations reflect the areas of greatest concern among these leading experts. This paper also draws upon previous legislative reform efforts, in particular the work of Senator Ben Cardin², Congresswoman Ilhan Omar³, Senator Chris Murphy⁴, and Senator Robert Menendez⁵.

PART I: GAPS IN THE ARMS TRANSFER REGIME

Executive branch agencies have a clear responsibility to ensure that regulation and policy serve to limit or prevent problematic arms transfers.⁶ Congress, meanwhile, has an important role to play in balancing the full range of long-term American interests against short-term incentives that can motivate ill-considered transfers by the executive. A forty-year legacy of delegating most authority for arms sales to the executive branch has left the Congress with a set of under-utilized and significantly weakened legislative instruments. This brief recommends that Congress strengthen its hand through both legislation and oversight by applying urgent attention to four main areas of focus:

1. The executive branch does not sufficiently weigh human rights and risks of civilian harm in sales decisions;
2. Arms transfers are inadequately monitored to ensure they do not contribute to foreign corruption or other criminal activities, including diversion of weapons to illicit activities;
3. Congress has given the executive nearly unchecked power in making arms transfer decisions; and
4. The arms transfers system is almost entirely devoid of public oversight and transparency.

1. Human Rights and Civilian Harm Concerns

According to the Arms Export Control Act (AECA), the broad purpose of American arms transfers is to further “world peace and the security and foreign policy of the United States.”⁷ Arms transfer decisions are legally required to account for the possibility of adverse foreign policy consequences, such as the outbreak or escalation of conflict.

However, the AECA does not contain specific reference to human rights law or international humanitarian law (IHL).

Under the AECA, arms transfers are authorized only for certain purposes, including to bolster a country’s internal security and for legitimate self-defense. However, because the law does not define these terms, they are unevenly interpreted and applied. For certain transfers, the AECA requires end-use monitoring to ensure that U.S. arms and equipment are only used for permitted purposes; requires congressional notification of potential end-use violations; and prohibits future transfers in the wake of substantial end-use violations.⁸

Unlike the AECA, the Foreign Assistance Act (FAA) does impose human rights conditions on the sales of defense articles and services. But historically, these restrictions have been ignored or weakly enforced.⁹ For example, under Section 502B of the FAA, sales to regimes engaged in a consistent pattern of abuses are prohibited without a presidential certification to Congress, yet regularly go forward sans certification. Additionally, although the Leahy laws¹⁰ specifically prohibit assistance to security force units that have violated human rights, the executive branch does not currently vet most arms transfers under the Leahy laws due to its narrow interpretation of “assistance.”¹¹

The increased volume of arms transfers regulated or implemented by the Defense and Commerce Departments further weakens these protections. Both departments oversee the transfer of training and equipment or the provision of nominally regulated defense services to foreign security forces that are not subject to meaningful end-use monitoring or human rights restrictions. Yet annually, these sales total tens of billions of dollars.¹²

In the absence of more explicit direction and oversight from Congress, the executive branch has issued policy guidance in an attempt to address the continuing risks of human rights violations and civilian harm. However, it has repeatedly come up

short. The Obama administration’s Conventional Arms Transfer policy (PPD-27) broke from historical trends by acknowledging the ways in which arms transfers can undermine U.S. security and foreign policy goals.¹³ Yet the policy did not go far enough to protect human rights, and simply recommended that recipient’s human rights record be considered among a variety of other factors.¹⁴ Meanwhile, like its predecessors, PPD-27 did not prohibit ongoing transfers to partners with a clear record of misusing U.S. weapons.¹⁵ Despite clarifying that the United States should not sell arms when it has knowledge at the time of sale that the weapons in question would be used in the commission of atrocity crimes or certain IHL violations, the Obama-era policy did not commit the United States to proactively ending transfers when there was *substantial risk* of these abuses. Flouting already insufficient safeguards, the Trump administration replaced PPD-27 with an even weaker policy

that eliminated the requirement to examine a recipient country’s general human rights record when assessing the merits of a transfer.¹⁶ Under the newest policy, arms transfers are restricted in circumstances where the United States has actual knowledge that the recipient will *intentionally* use them to engage in atrocity crimes, a standard much weaker than PPD-27 that conflicts with the duties required by the FAA.¹⁷ Though the Trump Administration’s policy was the first to set forth a commitment to working with partners to mitigate civilian casualties, this commitment has not been fully realized. For example, in the 2019 decision to sell arms to Saudi Arabia, the State Department failed to consider civilian casualties in Yemen.¹⁸ In fact, the current administration has repeatedly executed arms transfers to countries with records of committing human rights abuses and impeding humanitarian aid.



An A-29 Super Tucano light attack aircraft that can be armed with two 500-pound bombs, twin .50-caliber machine guns and rockets. The United States sold twelve A-29 Super Tucano light-attack aircraft to Nigeria despite the Nigerian military’s high-profile bombing of a refugee camp in January 2017, which killed 200 civilians displaced by Boko Haram. April 2016. U.S. Air Force photo/Capt. Eydie Sakura



A Bahraini demonstrator runs away from tear gas fired by the Bahraini regime. From 2011 to 2012, the Obama administration hid military equipment sales to Bahrain by breaking them into denominations below the financial threshold required for congressional notification. Sales continued even after the Bahraini government teargassed and beat anti-monarchy protesters, February 2013. **Ammar Abdulrasool**

Transfers of U.S.-manufactured weapons to countries that violate human rights and IHL are a feature rather than a bug of the U.S. arms transfer system, transcending political parties and executive administrations. In the past 10 years, arms transfers to abusive governments included:

- In May of 2019, \$8.1 billion in arms transfers to **Saudi Arabia, the UAE, and Jordan** supported consistent violations of human rights and IHL, including the deaths of tens of thousands of civilians killed by U.S.-made munitions in Yemen.¹⁹
- In the **Philippines**, Trump-era sales supported the government-sponsored “War on Drugs,” a campaign characterized by systematic extrajudicial killings that has left thousands dead and injured, including political activists, environmentalists, journalists, and community leaders.²⁰ Despite repeated calls to end sales to the Philippines, the Trump administration approved a nearly \$2 billion sale of U.S. helicopters, firearms, and ammunition.²¹ The helicopter sale reportedly stalled due to the Philippines’ inability to finance the purchase, rather than as a result of human rights concerns.²²
- In 2018, the United States donated 150 J8 armored Jeeps to the **Guatemalan** police, which were subsequently used to harass diplomats and the Commission Against Impunity in Guatemala.²³ Ignoring this abuse, the Trump administration donated more J8 Jeeps.²⁴
- The United States sold twelve A-29 Super Tucano light-attack aircraft to **Nigeria** despite the Nigerian military’s high-profile bombing of a refugee camp in January 2017, which killed 200 civilians displaced by Boko Haram.²⁵
- Despite evidence of excessive use of force against thousands of peaceful protesters in **Egypt**, the United States has continued to sell arms to the Egyptian government. Arms include military rifles, machine guns, ammunition, and tear gas, as well as spare parts for AH-64 Apache attack helicopters used by Egyptian forces in surveillance of the Cairo protest camps, and armored Caterpillar D7R bulldozers to break up those camps.²⁶
- From 2011 to 2012, the Obama administration hid military equipment sales to **Bahrain** by breaking them into denominations below the financial threshold required for congressional notification.²⁷ Sales continued even after the Bahraini government teargassed and beat anti-monarchy protesters.²⁸

Legal loopholes and lack of oversight further compound the lack of executive branch safeguards against arms transfers to abusive actors. Clarifying the law and expanding expectations for the executive are important first steps in restoring a balanced approach to arms transfers.

2. Foreign Corruption Concerns

Corruption and arms transfer risks are intimately intertwined: corruption abroad increases the risk that U.S. arms will fall into dangerous hands, while arms transfer contracts can fuel corruption in abusive and poorly governed states. Key concerns around corruption and arms transfers include:

- The use of arms sales and offset deals to fund bribes, kickbacks, and the looting of public treasuries, exacerbating systems of patronage and diverting resources away from essential social spending. For example, U.S. defense companies have bribed Latin American governments to purchase aircraft instead of investing in healthcare and education services, and Nigerian military leaders skimmed \$15 billion off of arms procurement scams;²⁹
- The diversion or resale of U.S. weapons from authorized purchasers to unauthorized actors. This is much more likely to occur in states with high levels of security sector corruption and low levels of transparency.³⁰ In the past decade, U.S. weapons have been diverted to the Islamic State, resold on the black market in Yemen, and illicitly delivered to abusive gangs in Central America, posing great risks to U.S. interests, civilian communities, and the lives of U.S. service members;³¹
- The role of arms transfers in increasing the risk of corruption-driven violence, including military coups, arms races, armed conflict, human rights violations, terrorist recruitment, and economic instability;³² and
- The role of arms transfers in legitimizing or exacerbating corrupt governance and strengthening a country’s military might against civilian authorities, thereby undermining the rule of law.

Despite these risks, the United States government is under no obligation under the AECA or the FAA to identify and mitigate corruption risks in arms transfers to foreign countries.

3. Executive Authority

Arms transfers are the most common method through which the United States involves itself in war, with the number of countries that receive U.S. weapons exceeding the number in which the U.S. conducts hostilities.³³ But rather than asserting its authority over sales that involve the U.S. in conflict and threaten human rights and civilian protection abroad, Congress has increasingly delegated decision-making power to the executive without sufficient oversight or ability to intervene in problematic sales.

The AECA delegates near-total authority over arms transfers to the executive. Congress’ oversight role is limited to sales exceeding certain financial thresholds that vary based on the type of sale and the specific recipient.³⁴ If a sale meets the dollar-value threshold for congressional notification, the executive must provide Congress with a formal notification at least 30 days prior to the finalization of a foreign military sale or the issuance of a commercial export license for non-NATO countries generally, or 15 days for NATO allies and Australia, Israel, Japan, New Zealand, or South Korea (the “NATO+5”). Typically, the executive also informally notifies the Senate Foreign Relations and House Foreign Affairs committees prior to the formal notification. Informal notification offers the Chairs and Ranking Members of congress an additional opportunity to ask questions and raise concerns before informally granting or withholding permission for the formal notification of potential sales. However, the informal notification process is a mere convention that the executive branch can stop at any time. Indeed, the Trump administration recently threatened to end this decades-long practice, potentially decreasing the amount of time Congress is aware of a sale before it is finalized. The limited time and information about a transfer pose challenges to Congress’ ability to curtail potentially risky sales. Additionally, the current

notification process does not provide adequate time or information for civil society organizations and the public to share opinions and concerns with members of Congress.

During the 15- or 30-day notification period, Congress is technically able to halt a transfer. To successfully block an arms transfer, the House and Senate must proactively pass a privileged resolution of disapproval. And because the president is likely to veto the resolution, it must be passed by a veto-proof two-thirds majority of both houses. Because of this exceptionally high threshold, it is extremely challenging for Congress to block a notified arms transfer. This is an unnecessarily high bar, which runs contrary to the original intent of the AECA: to offer Congress a mechanism to check executive authority after it delegated arms transfers to the president.³⁵ Despite instances of bipartisan opposition, Congress has never successfully prevented a notified arms transfer through legislation.³⁶ For example, in June 2019 the Senate passed a bipartisan resolution in a 53-45 vote to block \$8.1 billion in arms sales to Saudi Arabia, which has used U.S. weapons to wage a devastating war in Yemen with thousands of civilian casualties.³⁷ The House passed the resolution in July, again by a bipartisan, but not veto-proof, majority.³⁸ President Trump vetoed the resolution, later issuing an emergency declaration to conclude the sale without a congressional right of review.³⁹

The AECA’s emergency provision is meant to provide the executive with the authority to act quickly and decisively in the face of a national security emergency. But the law is vague and does not ensure that the invoked emergency is genuine. This allows the president to circumvent congressional opposition to an arms transfer, undermining democratic oversight and accountability.⁴⁰

Finally, thousands of arms transfers evade public scrutiny each year when large sales are split into multiple transactions, each of which individually falls below the financial threshold for congressional notification. The executive branch has used this

loophole to transfer arms to abusive governments without congressional oversight.⁴¹ For example, in August 2020, the State Department inspector general found that the department had approved 4,221 arms transfers worth \$11.2 billion to Saudi Arabia and the United Arab Emirates since January 2017.⁴² Transfers of this magnitude should be subject to congressional oversight; therefore, Congress must close this loophole.

4. Public Transparency and Accountability

The executive’s management of arms transfers has created an opaque system with little public accountability. Government-to-government Foreign Military Sales, private-sector Direct Commercial Sales, and 600 and 500 Series Commerce Department sales⁴³ lack sufficient oversight and transparency. For example, information on DCS unavailable to the public includes specific equipment to be purchased, the timeline for the sale and delivery of equipment, the final dollar amount of the sale, the foreign policy objectives of the sale, and the service or unit level end-user. In many cases, the public does not know which defense companies are involved in a deal. Without these key facts, it is impossible for members of the media, civil society organizations, and the public to comprehensively assess the wisdom or risk of various arms transfers.

The most comprehensive source of public information on transfers is the formal congressional notification process, which only covers FMS and DCS. And the Section 655 report for DCS merely provides overall figures based on categories of weapons, rather than information on individual sales. The media, civil society, and the public are made aware of arms transfers too late in the process, after the political momentum to proceed with an arms transfer is greatest due to the diplomatic risks to American foreign policy involved in reneging on commitments. This information deficit is compounded by a lack of financial transparency. Scant mandatory reporting on lobbying, political contributions, marketing fees, or commissions and defense offsets associated with major arms transfers makes it difficult to



Yemenis walk past rubble after deadly airstrikes in and near the presidential compound in Sanaa in May 2018. The following year the U.S. approved \$8.1 billion in arms transfers to Saudi Arabia, the UAE, and Jordan, which supported consistent violations of human rights and IHL, including the deaths of tens of thousands of civilians killed by U.S.-made munitions in Yemen. Felton Davis

monitor corruption and conflicts of interest, both in the United States and in the recipient country.⁴⁴ Defense offsets exist when U.S. firms “agrees to spend money in the recipient country to ‘offset’ the foreign currency cost of the [arms transfer].”⁴⁵ Offsets are usually worth upwards of 50 percent of the total value of the transfer contract and are banned by the World Trade Organization in all industries other than defense for their propensity to fuel corruption.⁴⁶ Without adequate information and time to address concerns, defense companies remain unanswerable to the American public despite their outsized role in U.S. foreign policy.

Through expanded congressional and public reporting requirements, Congress can shine a light on existing practices and allow civil society to weigh in on transfers. Accessible and comprehensive public information on arms transfers to foreign countries and the financial benefits to U.S. and foreign firms is essential for the media and civil society organizations to flag concerning sales and build public awareness. Public oversight of government actions is the

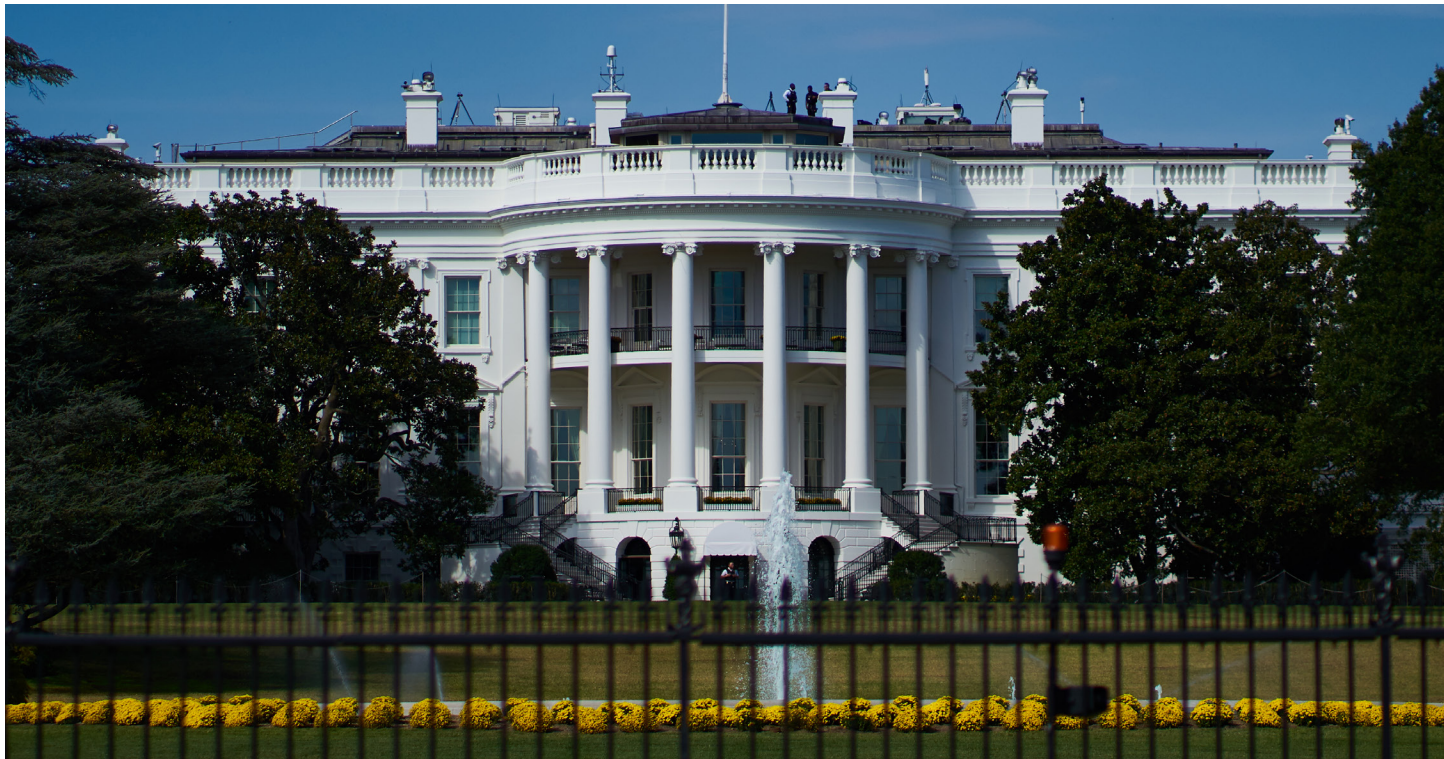
bedrock of American democracy and must be enabled for arms transfers through expanded access to information and data.

PART II: RECOMMENDATIONS

To address the concerns detailed above, Congress should adopt a legislative agenda that achieves the following goals:

- 1. Clarify additional requirements and responsibilities for the executive branch when negotiating and engaging in arms transfers, in order to mitigate against human rights violations and corruption risks;
- 2. Strengthen Congressional oversight and responsibility for approving or disapproving arms transfers; and
- 3. Increase public transparency and awareness of both proposed and completed arms transfers.

The following section will provide a selection of recommendations meant to address existing gaps in each of these three categories.



The White House, September 2019. Radek Kucharski

1. Clarify Executive Requirements and Responsibilities Through Legislation and Oversight

Congress can ensure that the executive adequately weighs human rights and civilian harm concerns in arms sale decisions through a combination of thorough oversight, more forceful interpretation of existing statutes, and new legislation.

Note that when incorporating any of these recommendations into legislation, Congress should either provide specific definitions or use terms already explicitly defined within the U.S. code or policy documents.⁴⁷ In doing so, Congress can more clearly specify its intent and reduce ambiguity in the executive’s development of enforcement mechanisms and regulations.

Pre-Sale:

- Amend Section 3 of the AECA to make clear that violations of international human rights and humanitarian law constitute violations of relevant end-use agreements. Require

standard terms and conditions in arms transfer agreements to include adherence to international human rights law, IHL, the Foreign Corrupt Practices Act (FCPA), and the Anti-Bribery Convention.⁴⁸

- Require the executive to certify that recipients have not nor are foreseeably likely to use U.S. arms in the commission of gross violations of human rights, violations of IHL, or mass atrocities;⁴⁹ and certify that transfers include adequate risk mitigation measures, such as conditions on use or training in proper use of an item. Certification should require concurrence from the Assistant Secretary of the Bureau of Democracy, Human Rights, and Labor (DRL) and be informed by intelligence community assessments of risk and credible non-governmental investigations.
- Promote accountability for arms transfer decisions by requiring the designation of a senior State Department official at the level of Assistant Secretary or higher,⁵⁰ responsible for overseeing interagency coordination on arms sales and a mandated human rights certification process.
- Require the executive branch to create

a risk profile of potential buyers that assesses the likelihood of corruption, violations of international human rights or humanitarian law, unapproved transfer of weapons, or poor military justification for acquisition.⁵¹ The analysis should consider any impairments or restrictions faced by civil society or parliamentary bodies in conducting oversight of security forces. Risk assessments should incorporate analysis by credible intergovernmental and civil society organizations such as the World Bank, Human Rights Watch, Freedom House, and Transparency International.

- For the sale of any items identified as more likely to fuel human rights abuses or cause disproportionate civilian harm,⁵² require congressional notification and the inclusion of a risk mitigation plan before the executive enters into a formal letter of agreement. For example, this requirement could apply to any sale of certain categories of weapons, or to all weapons sales to any country identified by the Secretary of State as “fragile” in accordance with the Global Fragility Act.⁵³
- Stipulate that items more likely to cause disproportionate civilian harm be restricted to FMS, including the furnishing of training, services, and equipment pursuant to Title 10 authorities. Require more restrictive conditions and terms of sale for these items, to include training requirements, stronger terms of use, access to partner government operations, and enhanced end-use monitoring.⁵⁴
- Clarify AECA language to subject all FMS to Leahy vetting, not just sales under the Foreign Military Financing (FMF) program, to ensure that U.S. weapons are not transferred to units or forces that have engaged in gross violations of human rights.⁵⁵
- Require the executive to establish the demonstrated capability of a partner to responsibly deploy any system prior to final delivery. This may include the requirement of technical, operational, and international human rights- and humanitarian law-related training.⁵⁶
- Ensure that the Departments of Defense, State, and Commerce effectively vet arms

intermediaries, defense offsets, and other contracts for corruption risks.⁵⁷

- Restore export oversight of firearms to the State Department. Reverse the move of large categories of firearms and other lethal weapons from the jurisdiction of the State Department to the Department of Commerce, where they are subjected to less transparency, oversight, and congressional scrutiny.⁵⁸

Post-Sale:

- Require all end-use monitoring programs to continuously and comprehensively monitor use and behavior in addition to diversion risks, including human rights violations, violations of IHL, civilian casualties, and association with corrupt acts and actors.⁵⁹ Mandate timely congressional notification of all end-use violations.⁶⁰
- Require renewed risk assessments every time a country enters a new armed conflict, experiences an onset or escalation of domestic political violence, or engages in mass atrocity crimes.⁶¹
- Hold annual hearings to review the Section 655 report, end-use monitoring reports, and the annual Country Reports on Human Rights Practices to ensure that no country engaged in a consistent pattern of abuses is receiving defense articles or training that are likely to facilitate abusive behavior.

2. Enhance Congressional Oversight and Approval of Arms Transfers

Current levels of congressional oversight are insufficient to prevent arms transfers that engender significant risks to U.S. foreign policy, including human rights, civilian harm, and corruption objectives. Congress needs a full picture of the risks and benefits of an arms transfer and the power to block concerning sales.

The following recommendations enhance Congress’ role in arms transfers and provide Congress with the information necessary to conduct responsible oversight:

Bolster congressional power to limit, condition, or block concerning sales:

- Place meaningful limitations on the president’s ability to sell arms through emergency powers to ensure that these powers are only used for legitimate national security emergencies rather than to circumvent Congress.⁶² For example, limit emergency sales to NATO and key treaty allies; limit emergency sales to equipment that can be transferred in a 30-day period to adequately respond to emergency situations; and require a detailed justification of how the specified equipment would fill a critical gap.
- Require affirmative congressional approval for the subset of arms transfers that engender the greatest human rights, civilian harm, and corruption risks, rather than assuming sales will go forward unless Congress votes them down by a veto-proof majority.⁶³ Arms transfers requiring affirmative approval should include defense articles and services that are more likely to fuel human rights abuses or cause disproportionate civilian harm, such as items under U.S. Munitions List (USML) categories 3, 4, 5, and 8 (missiles, bombs, helicopters, and attack aircraft); transfers of high value and volume; and transfers to non-treaty allies. Other criteria may include human rights and civilian harm records, involvement in armed conflict, and unfavorable end-use monitoring reviews.
- Subject DCS to greater scrutiny by requiring congressional approval of license offers greater than \$10 million.⁶⁴ These sales also contribute to human rights violations, civilian harm, and corruption in import countries, but are currently not adequately monitored by Congress.
- Require congressional notification immediately prior to FMS deliveries to inform Congress of its last opportunity to halt a sale and allow Congress to consider how changes in the security environment or humanitarian circumstances during the time between notification and delivery – often several years – may have altered the risk calculus around arms transfer decisions.⁶⁵
- Improve House oversight by allowing members of the House of Representatives to force a vote

on a resolution of disapproval on specific sales, as is the case in the Senate.⁶⁶

Improve congressional oversight by providing Congress with the necessary information to make well-informed decisions on potentially concerning sales:

- Close the loophole enabling the evasion of congressional notification on low-denomination transfers by mandating congressional notification once the total monetary value of smaller transfers to a country in a fiscal year exceeds the existing financial thresholds for notification of a single sale.
- Require congressional notifications to include additional information and planned mitigation measures regarding human rights and civilian harm, including analysis of human rights and civilian harm risks; dissenting opinions within the executive branch; accompanying technical training and planned sequencing; terms of sale; and end-use monitoring.⁶⁷
- Establish time-bound requirements for congressional notification when recipients of U.S. defense equipment violate terms of sale or end-use agreements, and make such notifications public.⁶⁸ Require specific reporting on cases assessed as derogatory for human rights abuses.
- Bar arms transfers to specific countries in cases where the executive fails to hold end-users accountable for violations of terms of sale and end-use agreements, including human rights violations and civilian harm.⁶⁹ Relief from arms sanctions should be conditioned upon specific behavioral changes and compliance with human rights law and IHL.⁷⁰

3. Public Transparency and Accountability

As the world’s leading arms exporter, the United States should serve as an example for arms control systems that are responsible, transparent, and accountable. Improving public awareness of arms transfers strengthens congressional oversight to ensure transfers reflect American standards for human rights, anti-corruption,



An AH-64 Apache attack helicopter. Despite evidence of excessive use of force against thousands of peaceful protesters in Egypt, the U.S. has continued to sell arms to the Egyptian government, including spare parts for AH-64 Apache attack helicopters used by Egyptian forces in surveillance of the Cairo protest camps. June 2017. NATO Photo

and good governance abroad. Accessible and comprehensive public information on arms transfers to foreign countries and the financial benefits to U.S. and foreign firms is essential for the media and civil society organizations to flag concerning sales and build public awareness.

Recommended legislative reforms include:

- Ensure information on arms transfers is comprehensive and accessible to the public by mandating additional unclassified, public reporting from the executive. Require the executive to produce public reporting on defense offset and co-production contracts⁷¹ and mandatory disclosures of political contributions, marketing fees, or commissions in notifications of major arms transfers, including FMF, FMS, DCS, and 500 and 600 Series Commerce Department sales.⁷²
- Improve public transparency about the financial interests of defense companies by requiring manufacturers to provide summary information on offset and co-production contracts and a list of the beneficial owners of entities involved in contracts and subcontracts to the public.⁷³

- Use hearings, public notices, and other means of communication to ensure the public is better informed about the arms transfer process, sales of concern, and the ways in which members of Congress plan to strengthen or reform the process through legislation.⁷⁴
- Establish and fully staff a congressional committee, subcommittee, or cross-jurisdictional caucus that regularly meets to examine arms transfers. Devoting resources to consider transfers will raise the profile of arms transfers, as warranted by the ubiquity of transfers as a foreign policy tool.
- As a step in creating a sale-by-risk assessment process, mandate a Government Accountability Office (GAO) study of potential corruption risks in arms transfers, such as defense offset reimbursements and the ability to effectively vet contractors, subcontracts, agents, and other intermediaries with a background that could pose risks for bribery, fraud, or the diversion of weapons.⁷⁵ This study will allow Congress to bolster anti-corruption measures in arms transfers policies in the future.

1. Throughout this paper, the authors use the term arms transfers to denote a wide range of activities, including Direct Commercial Sales, Foreign Military Sales and grants of defense equipment to foreign entities.

2. Ben Cardin, "Enhancing Human Rights Protections in Arms transfers Act of 2019," Pub. L. No. S. 854, 10 (2019), <https://www.congress.gov/116/bills/s854/BILLS-116s854is.pdf>.

3. Ilhan Omar, "Stop Arming Human Rights Abusers Act," Pub. L. No. H.R. 5880 (2020), <https://www.congress.gov/116/bills/hr5880/BILLS-116hr5880ih.pdf>.

4. Murphy, Chris. To amend the Arms Export Control Act to prohibit the export of certain unmanned aircraft systems. (2020). https://www.lee.senate.gov/public/_cache/files/0042f16a-c0a7-4620-bc06-255655e11ebd/murphy-arms-control-legislation.pdf.

5. Robert Menendez, "Saudi Arabia False Emergencies Act," Pub. L. No. S. 1945 (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/1945/text>.

6. Laws include the Arms Export Control Act, Leahy laws, and the Foreign Assistance Act. For additional information on the regulations governing arms transfers and the federal actors involved in sales, see: Annie Shiel, Daniel Mahanty, and Rachel Stohl, "With Great Power: Modifying US Arms transfers to Reduce Civilian Harm" (Center for Civilians in Conflict and The Stimson Center, January 10, 2018), <https://civiliansinconflict.org/wp-content/uploads/2018/01/With-Great-Power.pdf>.

7. Arms Export Control Act, <https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter39&edition=prelim>

8. Newton, Michael A. "An Assessment of the Legality of Arms transfers to the Kingdom of Saudi Arabia in the Context of the Conflict in Yemen." Vanderbilt Law Research Paper. Nashville, TN: Vanderbilt University Law School, May 19, 2017. 6-8. <https://doi.org/10.2139/ssrn.2971208>; Benowitz, Brittany, and Anthony Ayres. "The Legal Framework Regulating Proxy Warfare." Washington, D.C.: American Bar Association Center for Human Rights Rule & of Law Initiative, December 2019, 48. https://www.americanbar.org/content/dam/aba/administrative/human_rights/chr-proxy-warfare-report-2019.pdf.

9. For a full summary of the FAA see: Rennack, Dianne E, and Susan G Chesser. "Foreign Assistance Act of 1961: Authorizations and Corresponding Appropriations." Congressional Research Service, July 29, 2011.

10. The Leahy laws (Section 620M of the Foreign Assistance Act and Section 362 of Title 10 of the U.S. Code) determine which units and foreign military actors are eligible for security assistance from the United States. They specify that foreign military and other security units who are credibility accused of committing a gross human rights violation are not eligible to receive security assistance of any kind. Most Foreign Military Sales by the United States government are not subject to Leahy vetting, meaning U.S. arms could be—and have been—transferred to units that have engaged in human rights violations. <https://fas.org/sgp/crs/row/R43361.pdf>

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53. Shiel, Mahanty, and Stohl, "With Great Power," 32.

54. Shiel, Mahanty, and Stohl, "With Great Power," 29.

55. In order to ensure Leahy vetting is taking place, a unit designation within the receiving state should be collected and provided to Congress during the notification process; Shiel, Mahanty, and Stohl, 31.

56. Shiel, Mahanty, and Stohl, 32.

57. Goodman, 6.

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as a result of deliberate or inappropriate use; Shiel, Mahanty, and Stohl, "With Great Power," 29.

60. For examples of previous legislative initiatives incorporating this requirement, see Ben Cardin, "Enhancing Human Rights Protections in Arms Sales Act of 2019," Pub. L. No. S. 854, 10 (2019), <https://www.congress.gov/116/bills/s854/BILLS-116s854is.pdf>.

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67. Shiel, Mahanty, and Stohl, "With Great Power," 32.

68. Shiel, Mahanty, and Stohl, "With Great Power," 32.

69. Sanctions should be placed on a case by case basis in accordance with the scale and scope of the violation. Examples of potential sanctions include a complete ban on future exports for several years or certification of good behavior. Representative Malinowski's 2019 NDAA amendment, which suggested a one year ban on exports to Saudi Arabia, is an example of such a sanction. See: "Representative Malinowski Passes Amendment Freezing Arms transfers to Saudi Arabia," Representative Tom Malinowski, July 12, 2019, <https://malinowski.house.gov/media/press-releases/representative-malinowski-passes-amendment-freezing-arms-sales-saudi-arabia>.

70. Shiel, Mahanty, and Stohl, "With Great Power," 32.

71. Offsets are "compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services." These arrangements include but are not limited to co-production (when portions of the items involved in the sale are manufactured in the recipient country), technology transfer, training, credit assistance.

72. Goodman, "Holes in the Net," 7.

73. Goodman, 7, 27.

74. Shiel, Mahanty, and Stohl, "With Great Power," 33.

75. Goodman, "Holes in the Net," 7.

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