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On the Front Lines: Conflict Zones and US Arms Exports

Defense Industries, Foreign Policy and Armed Conflict

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ABOUT

The World Peace Foundation, an operating foundation affiliated solely with the Fletcher School at Tufts University, aims to provide intellectual leadership on issues of peace, justice and security. We believe that innovative research and teaching are critical to the challenges of making peace around the world, and should go hand-in-hand with advocacy and practical engagement with the toughest issues. To respond to organized violence today, we not only need new instruments and tools—we need a new vision of peace. Our challenge is to reinvent peace.

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Access more information about the project, including interactive graphics, quantitative research and additional country case studies at: <https://sites.tufts.edu/wpf/defense-industries-foreign-policy-and-armed-conflict/>

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EXECUTIVE SUMMARY

The US export control system was tasked in the 1970s with restraining arms supplies to regions of conflict and instability, while also accounting for US economic interests and national security needs. Today, the United States continues to be the largest arms supplier in the world, with a global customer base. What has been less clear – and increasingly the topic of political debate – is whether its export control system meaningfully restrains arms supplies to conflict zones.

The first section of this report examines **US domestic arms export law and policy**. The centerpiece of the US arms export control system is the 1976 Arms Export Control Act (AECA), which gives the president authority over arms exports and imports. The AECA directs export decisions to take the outbreak or escalation of conflict into account. However, conflict does not trigger an obligation of license denial. The AECA also positions Congress as a check on executive decision-making. In practice, Congressional oversight has been weak to non-existent. The executive branch can therefore shape arms transfers around its current policy priorities.

The second section provides an **overview of US international obligations**. While the United States is legally bound to implement mandatory United Nations arms embargoes and to act in a manner consistent with international law, it faces relatively few arms-export specific multilateral obligations. US presidential administrations therefore have considerable legal authority over their conventional arms export decision-making, as well as considerable flexibility in their interpretation of US and international arms export rules and whether they choose to privilege arms export promotion or restraint in the face of conflict.

Finally, this report **examines US arms supply and restraint to recent and contemporary conflicts** in Libya, Nigeria, South Sudan, Syria, and Yemen. It identifies different political and economic patterns in supplies to state and non-state actors. US arms trade relationships with other governments can be long-standing and often perceived as strategically valuable. Conflict does little to alter existing intergovernmental arms trade relationships, even when recipients' policies and practices do not serve US interests. In contrast, there is unlikely to be an established pre-conflict arms trade between supplier states and armed rebel groups. Instead, the United States may initiate or facilitate arms supplies – small arms especially – as a form of political and military support during conflict. This occurs despite the risk that small arms are frequently diverted to illicit markets or to groups opposed to the United States.

Key Findings

1

Conflict is not a consistent deterrent for US arms exports. The United States tends to prioritize diplomatic and economic ties in its arms export decision-making, whatever the conflict status of the recipient. At times, conflict may deter the US from forming new supply relationships, but it is unlikely to change export patterns where supply relationships already exist.

2

US presidential administrations face few real restrictions in their ability to use arms exports to meet their policy goals. US law sets an almost unreachable threshold for Congressional action to block or modify proposed arms sales, and it is remarkably resilient to change. In practice, US arms export policy is set by presidential administrations and provides significant flexibility to use arms supplies and denials to meet a variety of their broader “strategic” policy goals.

3

Even when the United States chooses not to supply weapons to conflict zones directly, it may facilitate or back alternative sources of supplies for belligerents it seeks to support. While it is rare for the United States to cut off arms to a long-standing customer due to conflict, in cases it might be politically difficult for it to provide arms, it may permit or promote supplies to continue through common allies or other means.

4

Arms transfers come with intractable risks. There is no realistic way for the US government to guarantee that the weapons it transfers are used by the recipients it intends, in ways that serve US interests. While the US government may take precautions to ensure that its arms transfers are used for defensive not offensive purposes or do not fall into the “wrong hands,” these precautions often come up short. Weapons are highly durable goods, and recipient priorities may shift over time, in ways the US government cannot predict or control. In addition, small arms especially may easily change hands in complex conflict environments, intentionally or inadvertently diverted to illicit markets, armed groups, or governments that oppose US interests.

5

“New Cold War” dynamics may increase US reluctance to cut off arms supplies to conflict zones. Instead, national security rationale may encourage looser interpretation of restrictions for fear of losing out on perceived strategic relationships and other anticipated economic and political arms sales benefits to China. Heightened security concerns about Russia may lead to similar dynamics.

Policy Recommendation

US export rules should be revised to require substantive risk analyses and an explicit presumption of denial in cases of recipients’ engagement in genocide, war crimes, and crimes against humanity. At present, the rules merely “consider” recipient conflict and instability. However, presidential administrations and Congress will face more pressure to make careful and responsible arms export decisions with regard to conflict zones when US export rules articulate more meaningful constraints.

Introduction

US conventional arms export controls have often been upheld as “the gold standard” of domestic arms export regulations.² Since the 1970s, the US export control system has been tasked with restricting arms supplies to regions at risk of conflict and instability, while also accounting for US economic interests and national security needs. Today, the United States continues to be the largest arms supplier in the world. What has been less clear – and increasingly the topic of political debate – is whether its export control system meaningfully restrains

US arms export policies and practices can have real consequences for regions at war and, more broadly, for setting standards in the global arms market.

arms supplies to conflict zones. Indeed, reports suggest that the United States has “supplied arms to the great majority of the conflicts” in the post-Cold War period³ and that US policy rhetoric of export restraint might not be matched by US arms export decision-making in practice.⁴

This report examines the dynamics of supply and restraint in US arms exports to contemporary conflict zones in order to shed light on the changing global politics of arms transfers and inform debates about US arms export control reform. Of course, the United States is not unique in supplying arms to recipients engaged in conflict.⁵ Even so, as the

world’s largest arms exporter, US arms export policies and practices can have real consequences for regions at war and, more broadly, for setting standards in the global arms market. After providing an overview of US arms export policy, the report investigates patterns of US arms supply and restraint to conflicts in Libya, Nigeria, South Sudan, Syria, and Yemen. The cases demonstrate that conflict is not a consistent US arms export deterrent, and that export restraint, when it happens, is often driven by political calculations rather than legal and policy regulations. These political calculations are remarkably consistent across administrations. Yet the export control system is also remarkably persistent and resistant to reform. Moreover, growing competition with China seems likely to encourage more liberal arms export practices and policy flexibility. Even as arms exports have recently attracted political attention, the emerging sliver of political space for reform may be crowded out by talk of a “new Cold War” and a “return” to great-power competition.

Overview of Contemporary US Law and Policy

The US arms export control system has remained largely unchanged since the 1970s. In addition, presidential administrations often offer their own directives on US conventional arms transfer policy, articulating their goals for US arms transfers for their time in office. Typically, these goals include promoting regional stability and peace (by avoiding arms sales), while promoting economic, diplomatic, and security interests (by supplying arms). These tensions in US law and policy introduce ambiguity and flexibility into the decision-making

process. As a result, the US executive branch has few meaningful checks on its ability to carry out arms transfers as it wishes.

Domestic Law and Policy

The centerpiece of the US arms export control system is the 1976 Arms Export Control Act (AECA).⁶ The AECA simultaneously advocates both restraint and supply in US arms transfers and in practice permits considerable flexibility for arms export decision-making.

Most significantly, the AECA gives the president authority over arms exports and imports. In doing so, it directs export decisions to “take into account,” among other security-related considerations, whether the export would “increase the possibility of outbreak or escalation of conflict.”⁷ Yet the risk of conflict is merely a *consideration* in export decision-making and does not trigger any *obligation* of license denial. In their analysis of US arms exports since 2001, Thrall et al. find that “downside risks are rarely considered explicitly or appear to have ever affected the transfer of weapons.”⁸ Thus in practice, the law tends to permit the executive branch to shape arms transfers around its current policy priorities and typically in favor of more narrowly-focused US “national” economic or political priorities.

In addition, presidential administrations now commonly issue directives for US arms transfer policy.⁹ These directives tend to echo the AECA but do more to articulate presidential priorities and their rationale. The Obama administration, for example, emphasized the dual need to supply arms to meet US national and

foreign policy interests and to restrain supplies “that may be destabilizing or dangerous to international peace and security.”¹⁰ In contrast, the Trump administration’s topline focused more intently on US “national and economic security interest.”¹¹ Regardless, whether or not concerns about conflict and instability get top policy billing, many analyses find that US arms transfer practices tend to be relatively consistent over time.¹²

Congress’s role, as defined by the AECA, is meant to be a check on executive decision-making. According to the AECA, the President is required to notify Congress 30 calendar days before concluding any sale greater than \$14 million.¹³ Unless Congress passes legislation that blocks or otherwise modifies the proposed sale, the sale may proceed. If Congress were to pass such legislation, the president would presumably veto it, meaning that Congress would need a two-thirds majority in both chambers to override that veto. Out of courtesy, presidential administrations have notified Congress with more time to consider sales than legally required. This may allow members of Congress to place holds on sales and slow the process before a deal has been finalized.¹⁴ However, presidents can bypass the Congressional process entirely if they determine the sale is required to address a national security emergency.

The voting thresholds to pass legislation to block sales have made Congress’s arms transfer oversight role weak to non-existent. Congress rarely even debates proposed sales and has “never successfully blocked a proposed arms sale by use of a joint resolution of disapproval.”¹⁵ Unusually, in 2019,

Congress voted to overturn an \$8.1 billion sale to Saudi Arabia due to the Yemen conflict and – perhaps more influentially – the murder of journalist Jamal Khashoggi. Nevertheless, it lacked the votes to override President Trump’s veto.

Some members of Congress have recently begun to push back against executive power in the arms trade. In September 2021, a bipartisan coalition introduced legislation *requiring* congressional approval for certain major conventional weapons sales of \$14 million or more and sales of firearms and ammunition of \$1 million or more.¹⁶ In addition, in November 2021, three Democratic House members reintroduced the Arms Sale Oversight Act, which would allow any House member to force a floor debate on a “contested” arms sale that the House Foreign Affairs Committee does not debate, similar to Senate procedure.¹⁷ Most recently, in February 2022, Senator Patty Murray reintroduced the Values in Arms Export Act, which would amend the AECA to specify that states purchasing US weapons comply with human rights and the laws of war. It would also create an oversight committee to examine whether US arms transfers adhered with those principles and provide recommendations to Congress, the president, and executive agency heads.¹⁸ Of course, given that close partisan divides and gridlock have become defining features of contemporary Congressional politics, passing veto-proof legislation seems unlikely any time soon, even without taking into account the contentious nature of the arms export issue.

International Commitments

In international law and policy, the United

States faces few arms transfer-specific obligations.¹⁹ Historically, legally- or politically-binding obligations by which countries were expected to conduct their arms trade have been rare.²⁰ However, in the late 1980s, concerns about dual-use technologies began multilateral conversations about shared arms export controls. In the 1990s, “affected” states and non-governmental organizations also began to highlight concerns about the security and humanitarian consequences of small and major conventional arms proliferation. Three resulting agreements are particularly worth highlighting for this report.

First, the **Missile Technology Control Regime (MTCR)** is a voluntary agreement governing the export of missiles and related technologies. Formed in 1987, it seeks to “restrict the proliferation of missiles, complete rocket systems, unmanned air vehicles, and related technology for those systems capable of carrying a 500 kilogram payload at least 300 kilometres, as well as systems intended for the delivery of weapons of mass destruction.”²¹ It provides its now-35 members with export policy guidelines and a common list of controlled items. It therefore serves as a coordinating mechanism for national export controls, subject to national legislation and practice.

The United States has been a member of the MTCR since its creation. Recently, it announced its unilateral reinterpretation of MTCR export guidelines with regard to some types of unmanned aerial vehicles (drones). The MTCR subjects drones with a range of at least 300 kilometers and the ability to carry a payload of at least 500 kilograms to the strongest export

restrictions. Exports of such systems are therefore rare. The United States argued that, as a result, the rules have hurt its economic and security interests and given unfair advantages to non-MTCR countries and producers.²² It pointed in particular to China's role in drone-technology proliferation and ability to capture much of that growing market.²³ In response to pressure from American manufacturers, in July 2020, the US reclassified drones that travel under 800 kilometers per hour, in order to treat the sale of such drones like other weapons sales, on a case-by-case basis. Critics worry that the move will undermine the export control regime, fail to provide US manufacturers access to new markets, and increase drone sales to unstable regions.²⁴

Second, the **Wassenaar Arrangement (WA)**, established in 1995, is voluntary multilateral agreement that aims to prevent "destabilizing accumulations" of conventional arms and dual-use technologies.²⁵ More specifically, it promotes transparency through regular information exchange between its now 41 participating states about their arms and dual-use exports. Participants also agree to apply export controls to all items on the WA's lists of Munitions and of Dual-Use Goods and Technologies and use WA guidelines as a basis for their own national decision-making. For example, the WA first adopted guidelines for small arms and light weapons (SALW) exports in 2002, which include taking into account "the internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts and details of the recipient within that country."²⁶ Nevertheless, these are guidelines only. Participating states make their own export decisions according to

their own national legislation. Finally, the 2014 **UN Arms Trade Treaty (ATT)** is the only instrument to articulate legally-binding, global arms export criteria.²⁷ The United States signed the ATT in 2013 but the Senate has never considered ratifying it. The United States has therefore never had any legal obligation to follow ATT criteria in its arms export decision-making. President Trump announced his "withdrawal" of the US signature at the 2019 National Rifle Association (NRA) convention.²⁸ The Biden administration could choose to "re-sign" the agreement, a move supporters argue is consistent with the Democratic Party's platform,²⁹ even without Senate consideration on the table. Indeed, early on, the Biden administration did suggest that it would take a different approach to arms exports, with a renewed focus on national security and human rights.³⁰

The ATT covers international *transfers* of major conventional arms and SALW by its State Parties, with export criteria are modeled partly on US and European export criteria. The ATT contains only three prohibitions: (1) transfers that would violate UN Security Council Chapter VII obligations, like arms embargoes; (2) transfers that would violate a Party's international obligations; and (3) transfers that the Party has knowledge "would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes." The ATT's other criteria merely require that State Parties "take into account" and "assess the potential" that a transfer (among other criteria) might "contribute to or undermine peace and security." Criteria thus present room

for interpretation, and State Parties continue to make their own export decisions according to their own national legislation. Moreover, the ATT does not contain any enforcement mechanisms, leaving domestic legal processes as the means of enforcement.³¹ Indeed, State Parties are often able to justify their arms exports as “responsible,” shielding them from greater scrutiny, even as their practices continue largely unchanged.³²

To date, there has been little word from the Biden administration on whether it might “re-sign” the ATT. In September 2021, State Department deputy director for Conventional Arms Threat Reduction William Malzahn attended the Seventh Conference of ATT State Parties,

With little public attention to the issue, presidents are also extremely unlikely to face electoral backlash for arms deals that might be viewed as going against US interests or values.

where he “underscore[d] the continuing commitment of the United States to responsible international trade in conventional arms.”³³ In response, 37 Senators wrote “seeking clarification” on the administration’s position on the issue and expressing their view that the ATT is a “misguided and overbearing international treaty,” which they see, in line with the NRA, as interfering with the US constitutional right to bear arms.³⁴ To be clear, the ATT explicitly recognizes the sovereign right of states to “regulate and control conventional arms exclusively within its territory, pursuant to its own

legal or constitutional system” and does not address civilian possession or domestic sales.³⁵

Overall, the United States therefore faces no binding commitments to external arms export controls and very limited internal restrictions. Administrations can essentially choose to approve an export deal or not, based on their own political, economic, and normative commitments. With little public attention to the issue, presidents are also extremely unlikely to face electoral backlash for arms deals that might be viewed as going against US interests or values.³⁶ This means that presidential administrations have not only considerable legal authority over their arms export decision-making but also considerable flexibility in the interpretation of US arms export rules and whether they privilege arms export promotion or restraint. This report next addresses how this flexibility plays out in the context of US arms exports to conflict zones.

US Arms Supplies to Conflict Zones

US arms export law and policy is characterized by two goals: to *promote* US arms transfers in order to advance US economic and foreign policy interests and to *restrain* US arms transfers to recipients engaged in conflict or at risk of instability. These goals are often seen as at odds, with policymakers forced to sacrifice one in order to achieve the other. In reality, it is unclear whether US arms sales buy real influence with their recipients or provide substantial economic benefits, or whether arms embargoes would drive former customers to find new suppliers.³⁷

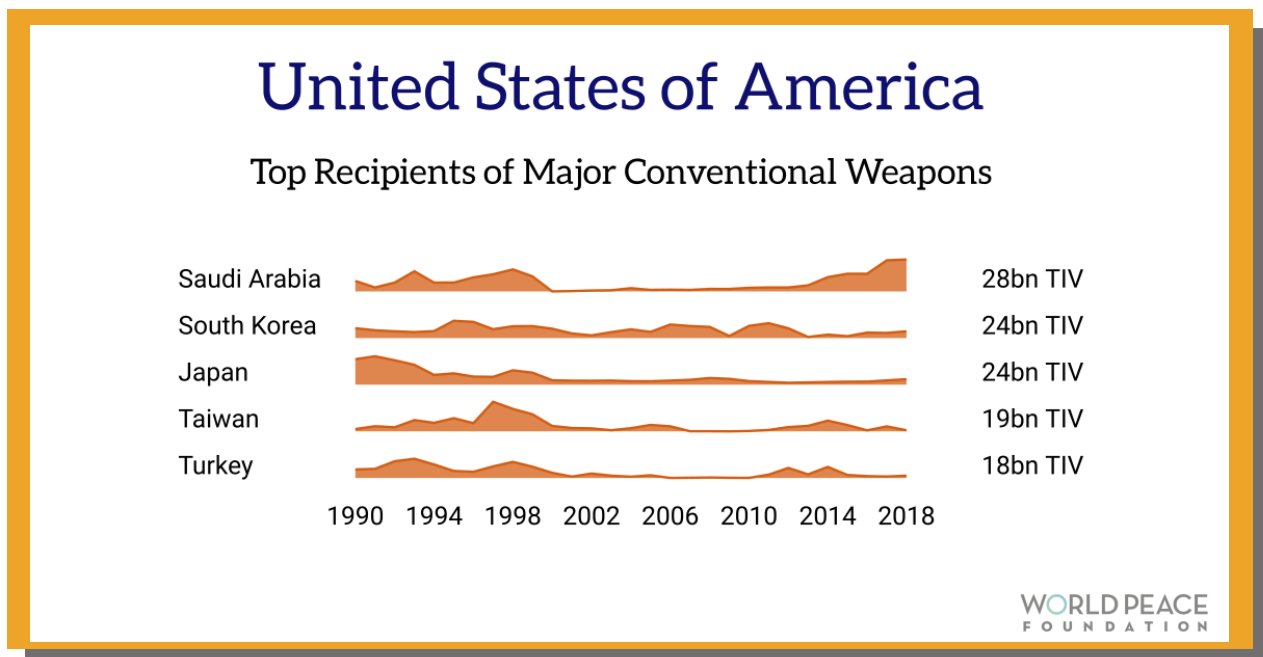
During the Cold War, the United States –

and Soviet Union – used arms sales as a tool of foreign policy influence, linked to importers’ ideological orientation and useful for maintaining regional power balances. Efforts by the Carter administration to limit conventional weapons exports to unstable regions were watered down by regular case-by-case exemptions linked to security interests and bureaucratic infighting.³⁸ By many accounts, the two sides saw conflict as an opportunity to sell, if only to ensure that the other side would not get there first.³⁹ At the same time, Stephanie Neuman finds that the US and Soviet Union often exercised selective arms export restraint *during* conflict as a matter of self-interested political calculation and used resupply programs to extract concessions from combatants.⁴⁰ Yet without superpower restraint *prior* to conflict, future combatants may be well supplied to fight, whatever decisions the superpowers might make to withhold weapons after conflict has broken out.

With the end of the Cold War, global

defense markets became significantly more competitive. It is perhaps remarkable that this is also the period in which multilateral export controls begin to develop. Facing reduced defense budgets at home, many medium and smaller exporters considered themselves in an “export or die” position, whatever the conflict status of interested buyers. While the US defense industry also had to face painful adjustments, it has retained both its market dominance and the benefits of a stronger domestic defense market.

Even so, the United States’ privileged market position has rarely translated to a post-Cold War willingness to wield arms as influence to restrain conflicts. Studies suggest that across time, recipient conflict engagement is rarely a significant determinant – either positive or negative – of US conventional arms transfers.⁴¹ Indeed, the United States sells arms to so many countries, whatever their conflict status, that conflict participation may simply not be a distinguishing feature of US arms recipients. Sam Perlo-Freeman,



for example, finds that the United States supplied at least some conventional arms to 18 of 30 conflicts between 2000 and 2018.⁴²

Instead, it seems that the United States has sought to retain its reputation as a reliable supplier of high-quality weapons and to use arms transfers as a tool of foreign security and economic policy. Domestic debates about whether to cut off arms to existing customers engaged in conflict are rare; less rare are debates about whether the United States should step in to newly arm governments or rebel groups engaged in conflict as a way to support a favored side, “do something” without sending American troops, or influence the conflict outcome. In addition, major arms exporters, including the United States, are generally unlikely to impose arms embargoes on states with which they have a pre-existing arms trade relationship.⁴³ Thus, the decision to supply over time has largely been a political one, not a legal one.

The remainder of the report focuses on five case studies to analyze US arms export decision-making in post-2000 conflict zones. It reviews two prominent cases of US arms supplies to state and non-state actors engaged in conflict: Saudi Arabia and the United Arab Emirates (UAE) in the Yemen conflict and the Syrian rebels in the Syrian civil war. It also examines cases of US arms restraint to state and non-state actors in South Sudan and Libya, and partial restraint in Nigeria. Together, the cases show the considerable flexibility afforded the US government in its arms export decisions, the political calculations that often accompany those decisions, and its ability to facilitate transfers by other suppliers

even when that calculation comes up in favor of arms supply restraint. Overall, the cases demonstrate that US presidential administrations supply and withhold arms as they deem best for their foreign policy pressures and priorities.

Supplying Governments at War: Saudi Arabia and the UAE in the Yemen Conflict

2015-Ongoing

Large arms deals with Saudi Arabia have been a long-standing feature of US foreign policy across US presidential administrations. Between 1990-2020, Saudi Arabia was the largest importer of US major conventional weapons and the second largest importer of major conventional weapons worldwide from any exporters. Neighboring UAE was the tenth top importer of US arms and the eight largest arms importer worldwide.⁴⁴

US arms transfers to Saudi Arabia and the UAE have largely passed without notice in American politics. Even revelations that 15 of the 19 September-11 hijackers came from Saudi Arabia ultimately did little to curtail arms sales. The perception of economic benefits from the arms sales themselves, as well as from “oil-for-security” deals, have been sufficient justification. Moreover, the weapons seemed more like defensive or even “prestige” sales and an expression of US political support, unlikely to be put to offensive use.⁴⁵ However, with the onset of conflict between Yemen, Saudi Arabia, and its allies in 2015 (and the murder of Jamal Khashoggi in 2018), US arms sales to Saudi Arabia, and to a lesser extent the UAE, have managed to capture perhaps the most public attention, media

coverage, and Congressional scrutiny of any US arms deals in recent memory. Yet neither the conflict directly nor public pressure stemming from the conflict appear to have any significant effect on US arms export decision-making.

Two key lessons emerge from the Saudi and UAE case. First, past sales have consequences for current conflicts. That is, past arms transfers thought to be solely defensive in their purpose may nevertheless later be put to offensive use. Second, US presidential administrations continue to dominate the US arms export decision-making process and make flexible use of US rules. Public and Congressional opposition proved insufficient to prevent new arms deals.

In short, the Saudi and UAE case shows that even a “best case” scenario of public and Congressional scrutiny, externally-motivated US arms export restraint during conflict is illusive.

Arms Deals during Conflict

The Saudi coalition entered the Yemen conflict in 2015. Operation Decisive Storm relied initially on bombing campaigns and later expanded to a naval blockade. Doing either without a well-stocked Saudi military, particularly without military aircraft and munitions supplied by the United States and the United Kingdom,⁴⁶ would have made the operation inconceivable.

Prior to 2015, however, experts did not see US arms transfers as at risk of provoking protracted conflict on the Arabian Peninsula. Instead, US weapons were seen as useful for simultaneously bolstering political relationships and Saudi Arabia’s defenses. In 2009, for

example, the Bush administration made a \$123 million deal with Saudi Arabia to sell 900 Joint Direct Attack Munitions kits, in order to improve Saudi participation in coalition operations and “enhance training opportunities,” while also assuaging Israeli concerns that the bombs could threaten Israel.⁴⁷ In 2011, the United States justified a \$29.4 billion Saudi-US deal under the Obama administration to supply and upgrade Boeing F-15s as a means to support an important partner against Iran and boost the US economy.⁴⁸ Although the stated US intention in making the sales was not to encourage conflict – in fact, it seems intended in part to deter Iranian aggression – Saudi foreign policy expanded unexpectedly in 2015 with its entry into the Yemen war.

US arms transfers to Saudi Arabia and the UAE have not stopped during the Yemen conflict. Initially, this may have in part been due to the fact that also in 2015 the United States was keen to conclude the Joint Comprehensive Plan of Action (JCPOA) with Iran and therefore wanted to reassure its Gulf allies. In late 2015, the United States approved \$1.29 billion sales of smart bombs to Saudi Arabia “to help replenish supplies used in its battle against insurgents in Yemen and air strikes against Islamic State in Syria.”⁴⁹ Yet little has changed as time has passed. The United States has continued to fill existing orders and penned new deals, as well. Most noteworthy, perhaps, is the Trump administration’s two-part deal with Saudi Arabia in 2017⁵⁰ for a wide range of military goods, including tanks, ships, Blackhawk helicopters, and radar systems.⁵¹ US officials highlighted the deal’s ability to expand the strategic relationship, counter Iranian aggression in the Middle East, and fight Houthi rebels.

They also touted domestic benefits, such as job creation and improving the US economy⁵² – benefits that some experts show are greatly overstated.⁵³

The UAE has also been a steady recipient of US arms supplies and new deals. For example, the Trump administration concluded a \$23 billion sale of F-35 fighter jets and Reaper drones in late 2020, linked to the UAE's signing of the Abraham Accords and establishing diplomatic relations with Israel. Although the Biden administration has slowed it down for review, officials report that the United States remains "fully committed" to the proposed sale.⁵⁴ Experts also observe that, in some cases, the UAE and others are purchasing commercial products for their militaries, which are more quickly and easily approved. Even before the Yemen war, the UAE military purchased commercial helicopters and "militarized" them with the addition of mission and weapons displays once the commercial product was delivered.⁵⁵ Although this strategy may not serve as a work-around for a clear defense item like the F-35, it does provide a potentially politically easier alternative for military supplies with an easily-convertible commercial twin.

The United States' stated arms trade priorities have thus shifted little over time in response to conflict. Of course, the Trump administration's emphasis on economic considerations in its arms sales policy in general meant that halting sales would have been extremely unlikely. What is perhaps more surprising for some observers is the Biden administration's choice to continue the previous administration arms deals. Given the new administration's initial freeze and review of existing deals upon entering office,

campaign pledges to stop assisting the Saudi war in Yemen, and opposition within the Democratic Party, some observers may have expected different behavior. Yet the United States recently announced two deals with Saudi Arabia: one to maintain attack helicopters and a second for medium range air-to-air missiles. In response to critics, the State Department has noted that its review of "allegations of human rights abuses or violations of international humanitarian law" found that the "'overwhelming majority' of incidents had been caused by air-to-ground munitions from fixed-wing aircraft" and that the supplies are meant to assist Saudi Arabia with its territorial self-defense.⁵⁶ At present, the United States appears to be trying to walk the fine line between supporting its long time ally and customer and responding to push-back related to specific arms sales and the conduct of the war.

Public Push-Back

Arms sales to Saudi Arabia and the UAE have attracted more public attention and Congressional push-back than any US arms deals in recent memory. Congress has exercised its powers and come closer to stopping proposed deals than it ever has in the past. **Nevertheless, the media attention, public concern, and Congressional action have managed to change little about US arms exports in practice.**

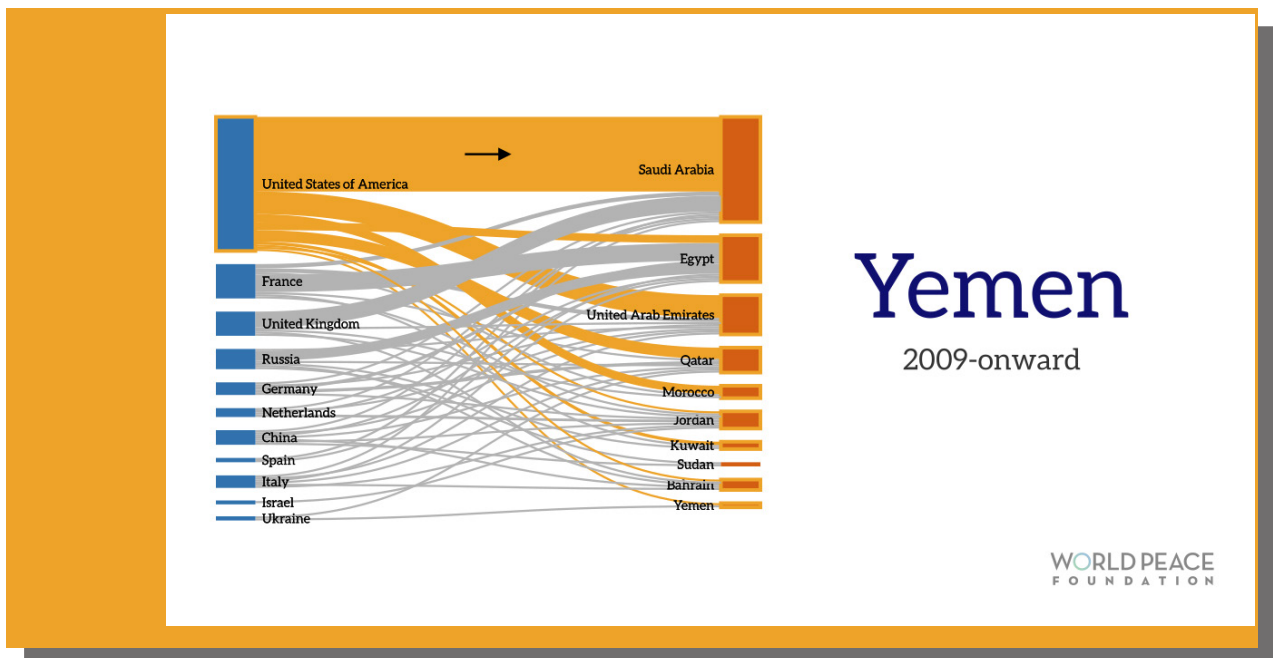
In general, the US public and media have not focused sustained attention on US arms transfers, making the government generally less accountable to external pressures in its decision-making.⁵⁷ Arms deals to Saudi Arabia and the UAE during the Yemen war have presented a rare case

of public outcry. Amidst media coverage condemning the conflict and the US role in supplying it, a 2019 Chicago Council on Global Affairs survey reported that, across party lines, a majority of Americans responded that “selling weapons to other countries” in their view made the United States “less safe.”⁵⁸ Many NGOs and think tanks have also been vocal in this period (some for much longer), explicitly seeking to sway public and Congressional opinion to stop arming Saudi Arabia and the UAE in light of how the war has unfolded and its humanitarian consequences.

In an unusual move in the United States, the New York Center For Foreign Policy Affairs (NYCFPA), a nonprofit think tank, filed a lawsuit in US District Court over the Trump administration’s still-pending deal to sell F-35s and Reaper drones to the UAE. The lawsuit asks the court to find the proposed sale invalid because it the “administration failed to provide a reasonable explanation for its decision to sell F-35 fighter jets and other weapons to the UAE, which places it in breach of the Administrative Procedure Act.”⁵⁹ Because

the Biden administration announced plans to proceed with the sale after review, the FYCFPA will continue the suit. Although few expect it to succeed, it represents a new approach by US civil society to attempt to change the US government’s approach to arms sales.

Although initial Congressional interest was limited, by late 2015, some Senators had begun to question US arms sales to Saudi Arabia. In response to an informal notification of a proposed precision-guided munitions (PGMs) sale in November 2015, the Senate Foreign Relations Committee made its first-ever formal request for a 30-day notification of sales from an administration.⁶⁰ In 2016, reports of civilian casualties, failed peace talks, and intensified Saudi bombing further heightened concerns among some members of Congress. Other members argued, however, that PGMs would help Saudi Arabia avoid civilian casualties. A September 2016 joint resolution of disapproval of a proposed M1A2S tank sale to Saudi Arabia received only mixed



support. Instead, it was reports of a Saudi air strike on a funeral hall in October 2016 – not Congressional action – that prompted the Obama administration to review security assistance to Saudi Arabia and put on hold a planned PGM sale.⁶¹ The Trump administration decided to proceed with the sale.

Congressional debates and divisions persisted into 2017 and 2018. It was only in June 2019 that Congress passed a set of joint resolutions to block a series of arms sales to Saudi Arabia and the UAE, including a coproduction agreement to manufacture Paveway PGMs in Saudi Arabia.⁶² Unsurprisingly, President Trump vetoed the resolutions, and the Senate failed to reach the two-thirds majority to override the vetoes. Nevertheless, this remains one of the rare instances of Congress even managing to pass joint resolutions to block arms sales.⁶³ Most recently, in December 2021, the Senate voted overwhelmingly 30-67 to reject a bipartisan bill to block the Biden administration from selling more than \$650 million worth of weapons to Saudi Arabia.⁶⁴

Overall, the effects of political opposition to proposed sales have been indirect at best. The Obama and Biden administrations have rejected some specific sales in response to external political pressures from Congress and the media. For example, the Obama administration temporarily stopped the export of some PGMs to Saudi Arabia, and the Biden administration has recently done the same with the sale of air-to-ground offensive weapons used by fixed-wing aircraft. Setting these select cases aside, however, the US tendency continues to be to supply long-term

friends and customers with political and economic objectives in mind. Even in this case of maximum Congressional interest and action, **decisions for restraint are *ad hoc*, easily reversed, and depend largely on the political considerations of the president in office at the time, rather than existing law or a consistent policy.**

Restraint to Governments at War: South Sudan 2013-2020

South Sudan gained independence in 2011. In 2012, the United States lifted its restrictions on defense sales to the new state but remained wary of approving any due to high numbers of small arms already in circulation, active militias, and other internal sources of instability.⁶⁵ In this case, the United States appears to have restricted arms sales due to instability, despite its political support otherwise for South Sudan. Yet when civil war broke out in 2013, it opposed a 2014 effort at the UN Security Council to impose an arms embargo, which otherwise had international support. Subsequent US-supported embargo attempts floundered. It was not until 2018 that the United States imposed its own embargo on South Sudan, followed by a UN arms embargo.

South Sudan has not been a significant formal recipient of US major conventional weapons. In the period since its independence until 2020, South Sudan ranks 101st of 191 weapons importers worldwide.⁶⁶ The Stockholm International Peace Research Institute (SIPRI) records only one instance of direct US arms deliveries to South Sudan in 2012-2013: 25 diesel engines for 25 Typhoon armored

personnel carriers from the UAE. US economic interests in arms transfers to South Sudan are therefore minimal. However, long-standing US support for South Sudanese independence and establishing a professional military suggest political reasons observers might have expected a steady flow of US arms to South Sudan, not a durable policy of restraint.

In many ways, the **absence of US arms supplies to South Sudan during its civil war therefore bucks the trend of the United States supplying friendly governments or armed groups with weapons during conflict.** It may be that, in this case, the United States initially wanted to avoid condemnation of a government it had supported, and later reports of severe abuses against civilians caught in the crossfire made arms supplies politically unsupportable – restraint, it is worth noting, that is often missing in other cases of conflicts with heavy civilian casualties. In contrast, US initial arms embargo hesitation appears to have been the product of internal government disputes over the role of permitting the supply of arms to conflict zones.⁶⁷ Once again, US political calculations appear to shape US arms sales (or embargo) decisions rather than US law and policy.

Internal US Embargo Debates

For all of the debates that sanctions are “overused” in US foreign policy, arms embargoes in response to conflict or other international norm violations are relatively rare.⁶⁸ The United States tends to be especially unlikely to support arms embargoes against governments with which it shares a close relationship. On

the one hand, the US was an important player in laying the groundwork for South Sudanese independence and is a major aid donor to the country. On the other hand, the United States has had little trade in arms or other goods with South Sudan, so an arms embargo would not entail any real disruptions of their economic relationship.

US reluctance to support a UN arms embargo on South Sudan in 2014 seems linked to internal government debates about the appropriateness and consequences of an arms embargo. Secretary of State John Kerry and US ambassador to the UN Samantha Power observed that diplomacy had come up short and so favored an embargo.⁶⁹ However, National Security Advisor Susan Rice reportedly disagreed, arguing that an embargo would “undermine a democratically elected government’s ability to defend itself against an insurgency led by Kiir’s former vice president, Riek Machar, that has also committed heinous mass atrocities.”⁷⁰ By August 2015, the United States had decided to threaten an arms embargo in an attempt to coerce Kiir to sign a peace deal.⁷¹ It appears as though the emerging record of abuses helped to create consensus within the Obama administration. The threat seemed to work – at least briefly. Kiir signed a peace deal in August 2015, averting the embargo. But the deal did not stick. Even so, the US would not see a UN embargo imposed until July 2018.

The United States’ initial embargo reluctance had consequences for the flow of arms into South Sudan, even if the arms were not coming directly from the United States. In general, arms

embargoes do tend to dampen legal arms flows and make arms more difficult and expensive to acquire, even if they are not necessarily followed religiously.⁷² Even in the absence of an embargo, China cancelled a \$38 million deal to South Sudan in June 2014 “as part of Beijing’s efforts to pressure warring parties to reach a peace deal.”⁷³ South Sudan still found alternative supplies. Most notably, it made a deal with Uganda to purchase weapons and other military equipment on its behalf, “in the interests of regional stability.”⁷⁴ As the UN Panel of Experts reported in 2016, in the absence of an arms embargo, “both sides [in the conflict] have continued to seek to arm their forces,” with “devastating impact on civilians and on the overall security situation in the country.”⁷⁵ The Panel therefore recommended that UNSC members enact an embargo, as did a confidential UN report in 2017, which found that the South Sudanese government was using oil revenue to procure arms in coordination with neighboring countries.⁷⁶

Indirect Support?

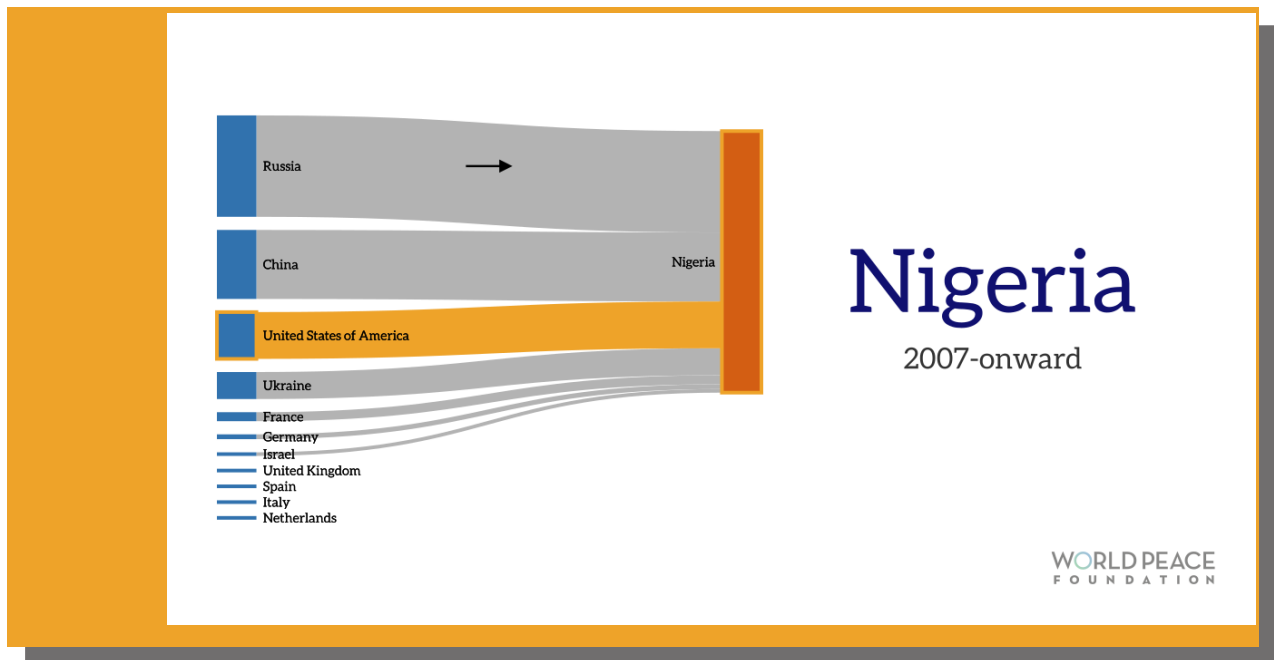
Both sides in the conflict have received a steady supply of weapons, particularly through indirect means (i.e., re-transfers) from European Union (EU) member states and China. Although suppliers did not face a UN embargo until 2018, they nevertheless did tend to “side-step restrictions,” according to a Conflict Armament Research report.⁷⁷ In the case of EU member states, this has meant potential violations of the EU arms embargo in place in 2011.⁷⁸ In addition, the Conflict Armament Research report documents one case of a network of companies involving US nationals

shipping US military aircraft in 2015 and 2016, evidently without US government knowledge and most likely in violation of US domestic export laws.⁷⁹ Since the imposition of the UN arms embargo, the Panel of Experts and others have noted likely violations of the UN embargo and a greater need for monitoring and implementation.⁸⁰

Under these conditions, a UN arms embargo is poorly positioned to succeed. Although it might have had some effect early on – South Sudan does not have a domestic arms industry – five years of conflict without one made circumstances on the ground more challenging. South Sudan was awash in arms well prior to the embargo, following decades of armed conflict and supplied by complex supply chains and willing neighbors. Ammunition shipments alone can sustain a low-technology conflict for years, long after new shipments have ceased.⁸¹ **The consequences of US internal debate meant that the UN missed an important window of opportunity to place global restrictions on arms transfers to South Sudan and in the process may have helped prolong the conflict.**

Intermittent Restraint: Nigerian Government in the Counterterrorism Campaign 2009-Ongoing

Nigeria’s counterterrorism campaign, primarily against Boko Haram, has been ongoing since 2009. Yet, despite both its conflict and its oil wealth, Nigeria remains a middling arms importer. From 1990-2020, according to SIPRI, it ranked 69th worldwide. In this same period, the United States supplied Nigeria with only about



11% of its major conventional weapons but still managed to be its third top supplier.⁸² It is therefore not a major US customer, but it nevertheless has gotten political support from the United States in its campaign against Boko Haram.

US arms supplies to the Nigerian government oscillate between supply and restraint. The United States sees an interest in having a stable and democratic Nigeria, the most populous African country. The US intelligence community has expressed concerns about Boko Haram, which has training and weapons links to al-Qaeda and al Shabaab, and its ability to launch attacks on Western targets.⁸³ Sales to the government have therefore been justified as supporting the US war on terror. Even so, human rights violations, civilian casualties, and corruption by the Nigerian government have at times made it a controversial destination for American-made weapons, and the US government has on occasion responded with restraint.

Changing patterns of US arms transfers to the Nigerian government thus demonstrate the flexibility of US policy based on evolving political concerns and its “case-by-case” approach to arms export decision-making. Recently, concerns have broadened from civilian casualties in the counterterrorism campaign to include Nigerian human rights practices in general and emerging authoritarianism. Whether or not humanitarian concerns rise to the top in US arms export decision-making to Nigeria may depend both on pressure groups’ lobbying of US government officials and on internal debates between US officials.

Blocking (Some) Sales

The United States has sought to support Nigeria in its counterterrorism operations by building capacity across its security sector. From 2014-2018, for example, the US Global Security Contingency Fund (GSCF) provided \$40 million assistance to Nigerian (among others in the Lake

Chad Basin) security forces to counter Boko Haram and ISIS-West Africa.⁸⁴ It has additional programs through the Counterterrorism Partnership Fund and bilateral assistance. In 2015, the US State Department authorized “the use of up to \$45 million in defense articles and services, including military training” to support countries participating in the fight against Boko Haram.⁸⁵ In this period, Nigeria purchased more weapons from the United States than it had in years prior, but typically second-hand, smaller-ticket items.⁸⁶

Yet even as the United States ramped up support for Nigeria’s counterterrorism campaign, it has on occasion blocked some specific sales of its own weapons and sales of American-made weapons from other states. In these cases, restraint in place of “business as usual” seems linked to moments of heightened concerns for civilian casualties and human rights abuses in the midst of conflict, rather than conflict directly. Notably, in summer 2014, amidst the search for the kidnapped Chibok schoolgirls, the United States prevented the transfer of American-made used Cobra helicopters by Israel. It justified its decision by citing “continuing worries about Nigeria’s protection of civilians when conducting military operations.”⁸⁷ Although not economically costly to the United States, stepping in to stop a deal in its advanced stages of negotiation between US security partners does have the potential to be diplomatically costly. Nigeria has contested US claims of human rights abuses by its military, and the US decision to stop the sale was not widely reported until later in the year, with public statements from the US government emphasizing its continued

assistance to Nigeria.

The story in 2016, however, looked a little different, when the Obama administration sought to supply 16 Super Tucano attack warplanes to aid Nigeria in its fight against Boko Haram.⁸⁸ In this instance, pressures for restraint came from some congressional Democrats, who felt that Nigeria might not be able to use them in compliance with the laws of war. In contrast, the White House saw newly elected President Buhari’s pledges to clean up corruption and investigate human rights abuses as an opening to offer greater material support in the counterterrorism campaign.⁸⁹ For all intents and purposes, the Obama administration did conclude the \$600 million deal but in January 2017 “reportedly halted [it] on the day it was due to be sent to Congress, after a catastrophic incident involving the Nigerian military” accidentally bombing women and children in an internally displaced persons (IDP) camp.⁹⁰ In August 2017, the Trump administration notified Congress to move forward with the deal. In response to criticisms at the time, the US State Department “touted the Super Tucano’s value for improved targeting capabilities and lessened risk of collateral damage and civilian casualties.”⁹¹ Deliveries eventually began in 2021.

The Biden administration also finds itself managing deals inherited from its predecessor. In July 2021, the top-ranked Democrat and Republican on the Senate Foreign Relations committee placed holds on the proposed \$875 million sale of 12 AH-1 Cobra attack helicopters and defense systems to the Nigerian military. The Trump administration had facilitated the sale before leaving office

and notified Congress in January.⁹² The move by Senators Menendez and Risch both highlights unresolved debates about the balance between US national security and human rights objectives, as well as their wish “to push the Biden administration to rethink U.S. relations with Africa’s most populous country amid overarching concerns that Nigerian President Muhammadu Buhari is drifting toward authoritarianism” amidst a jihadist insurgency.⁹³

In the case of Nigeria, the United States appears once again to be trying to walk a fine line between supporting the Nigerian government and responding to human rights abuses. Whether it continues to attempt this balancing act might depend on whether it retains a security interest in that counterinsurgency campaign. It is not one that tends to attract attention from the general public, leaving it instead more about administration priorities. **Yet even if the US continues the trend of turning away from its “global war on terror” commitments, arms trade restraint will not be a given.** The US government has often given arms in lieu of direct military support and could continue to do so on a case-by-case basis with Nigeria, as well.

Supplying Armed Non-State Groups at War: Syrian Rebels in the Syrian Civil War

2011-Ongoing

Weapons transfers to armed non-state actors present a very different decision-making calculus for arms exporting states. Armed non-state groups challenge governments’ domestic “monopoly on the use of physical force” and, as a category, are not viewed as legitimate

international actors with the right to self-defense. Post-Cold War, armed non-state actors are therefore more likely to receive arms through illicit channels, like looted government stockpiles and trafficking, than directly from major supplier governments. During conflict, however, supplier governments may seek to transfer weapons to favored groups in the service of their own geopolitical interests in the conflict outcome. In such cases, there is unlikely to be an established pre-conflict arms trade between supplier states and rebel groups, and suppliers use their transfers as a form of political and military support without additional expectations of lucrative economic benefits.

The United States has long restricted arms transfers to the Syrian government.⁹⁴ Internal US government debates about weapons supplies to nascent opposition groups, however, only began to heat up as the war itself heated up in 2012. At that time, after much internal debate, President Obama rejected a CIA proposal for the United States to covertly arm and train rebels.⁹⁵ However, reports suggest that the CIA was already in the summer 2012 covertly assisting *Arab governments’ efforts to funnel arms to rebel groups.*⁹⁶ It was not until 2013 that the Obama administration formally approved the CIA plan for direct lethal aid, due to pressure from foreign leaders and a perceived need to help rebels push back against Syrian government forces.⁹⁷

The impetus for arms supplies to the Syrian rebels stemmed more from US geopolitical interests than from domestic political pressure or economic interest. The prevailing public discourse pushed for *more* training and supplies, not less. Yet

the decision by the Trump administration to terminate the program in 2017 seemed more about its expense and its inability to control the final users of the weapons than about curbing conflict in an unstable region.⁹⁸ **Rules directing the US government to restrain arms supplies to unstable regions or conflict-engaged participants ultimately appear irrelevant to US government decision-making in the Syrian case.**

Facilitating Supplies

Initial US reluctance to supply weapons to Syrian rebel groups had little to do with the state of conflict itself. Instead, US officials worried both about getting drawn into another “Middle East quagmire,” and about their inability to keep weapons in the hands of preferred rebel groups and out of the hands of Nusra Front, an al-Qaeda affiliate. This worry was not without justification. For example, in 2015 rebels trained under the United States’ train and equip program gave some their equipment to the Nusra Front “in exchange for safe passage.”⁹⁹ US-trained rebels might also choose to join Nusra Front fighters,¹⁰⁰ or US equipment might be captured in Jihadist attacks or simply stolen.¹⁰¹ Millions of dollars of weapons shipped to Jordan for Syrian rebels were stolen, sold on the black market, and purchased by criminal networks, rural tribes, and likely also shipped out of the country.¹⁰² In short, controlling where weapons – especially small arms – go once they have been transferred to their intended recipients cannot be guaranteed, especially amidst the dynamic, complex, and even chaotic environment of a long-running civil war.

Early US efforts to support rebel groups

in the Syrian conflict were therefore to secretly facilitate supplies to groups from other governments, without directly providing the supplies itself. CIA agents based primarily in Turkey helped funnel arms from other Arab states, including Turkey, Saudi Arabia, and Qatar. In doing so, US officials noted that part of their role was to vet possible recipient rebel groups and ensure that weapons supplies stayed out of the hands of terrorist groups.¹⁰³ Reports also suggest that American intelligence officers helped Arab governments procure weapons for those governments to supply to rebel groups.¹⁰⁴ Supplies ramped up in late 2012 and into 2013, in response to changing conflict developments and humanitarian conditions on the ground, as well as the resolution of the November 2012 US presidential election.¹⁰⁵

CIA Supplies and Training

The Obama administration’s decision to offer direct support to groups fighting the Syrian government did not come until June 2013. In partnership with Saudi Arabia, the clandestine CIA program sought to vet, supply, and train select Syrian rebel groups. It also received support from other Arab governments and from the United Kingdom. Code-named Timber Sycamore and based in Jordan, the program would become “one of the most expensive efforts to arm and train rebels since the agency’s program arming the mujahedeen in Afghanistan during the 1980s.”¹⁰⁶ Separately, the United States also launched a short-lived covert Department of Defense program, the Syrian Train and Equip Program, in 2014, with the goal of training Syrian forces to fight against the Islamic State of the Iraq and the Levant (ISIL).

Pressures for the Obama administration to authorize direct support came from multiple fronts. By summer 2012, CIA director David Petraeus, Secretary of State Hilary Clinton, Defense Secretary Leon Panetta, and Chairman of the Joint Chiefs General Martin Dempsey advocated for arming and training the Syrian opposition.¹⁰⁷ President Obama's order, however, did not come until April 2013, partly in response to new intelligence about the dire state of the rebellion. In addition, Israeli Prime Minister Benjamin Netanyahu and Jordanian King Abdullah II urged greater US involvement to end the war.¹⁰⁸ Their meetings with President Obama seemed to tip the scales in favor of plans to train and arm the rebels as a means to favorably resolve the conflict.

By making it covert and running it out of Jordan, Timber Sycamore skirted political and legal issues for US involvement. Selected rebels attended two-week training courses in Jordan using Russian-designed weapons, in order to enable their use of captured weapons from the Syrian army.¹⁰⁹ US-supplied weapons – anti-tank weapons, machine guns, and recoilless rifles, among others – were also Soviet or Russian models from former East European arsenals. In practice, arms shipments were slow to arrive and fell short of rebel expectations in both the amount and type of weapons provided. Rebels felt they especially needed access to portable anti-aircraft missiles, but the United States worried too much about their potential diversion to Nusra Front forces to approve their supply.¹¹⁰ **In the end, a steady flow of weapons enabled the conflict to persist but was insufficient to tip the scales to assist the rebels with a decisive win.**¹¹¹ And, as described above, the United States never solved the

“wrong hands” problem, with weapons being diverted to the Nusra Front and broader black market in the region.

Semi-Restraint to Armed Non-State Groups at War: Libyan Rebels 2011, 2014-2020

In February 2011, the Libyan government used force against civilian protestors, initiating what would soon become an armed conflict. The UN Security Council quickly and unanimously adopted an open-ended arms embargo. By March, however, US calls to arm Libyan rebel groups began – more quickly than would later unfold in the Syrian case. In March, NATO also initiated its military intervention in the conflict with the US in an active role. Nevertheless, the US State Department did reportedly deny at least some requests to send small arms and light weapons to Libyan rebel groups. Yet it did not insist on the same – and maybe even encouraged – for shipments from others, such as Qatar and the UAE.¹¹²

Resurgent conflict in 2014 re-introduced some similar debates. In light of concerns about the Syrian arm and equip programs, US officials were more wary about instituting similar policies in Libya. Proposed US sales to the UAE, for example, have been questioned based on concerns that they might be sent on to armed Islamic groups in Libya and in violation of UN sanctions. Yet the sales have often gone forward anyway. Once again, the US debate may formally steer the US away from supplying Libyan groups itself but toward condoning other states to step in to provide supplies – and even to supply weapons to states that end

up intervening in the conflict directly.

Even in this case of direct restraint, the United States has been willing to permit or facilitate the flow of weapons to armed groups from other governments. Here, its concern is less about stopping arms transfers to a conflict than about promoting a public image of US restraint and “responsible” behavior. **The United States may technically endorse and comply with an embargo in its own export decisions, but without US willingness also to discourage third-party arms supplies to conflict parties, unilateral restraint and multilateral embargoes may have little meaningful effect.**

Surrogate Supplies

The 2011 UN arms embargo has been modified over the years, at times to allow recognized Libyan authorities or international personnel access to weapons and non-lethal military equipment. With the return of violence in 2014, the UN Security Council re-imposed a requirement to have the Sanctions Committee approve in advance any supplies of arms and related material.¹¹³ However, reports of internal UN documents suggest that European and Middle Eastern governments especially have been active suppliers, often in violation of the embargo.¹¹⁴ Although the United States has evidently not itself been a supplier,¹¹⁵ it may at times have tacitly or even directly supported or facilitated supplies from other governments.

Post-2011, the US decision to avoid direct weapons supplies seems due primarily to its experiences both with arming the

Syrian rebels and with its earlier military intervention in Libya. Whether US officials had “learned a lesson” or just wanted to avoid another unpopular or controversial engagement in Libya is not clear. What is

In recent years, investigations have uncovered UN arms embargo violations by US allies and friends to both sides in the reignited conflict.

clear is that they did not want to repeat the Syrian experience or get pulled back into the Libya conflict. In addition, the United States added Libya to the Child Soldiers Prevention Act (CPSA) list in 2012, which is intended to prohibit arms sales and military assistance to governments with records of using child soldiers.¹¹⁶

In recent years, investigations have uncovered UN arms embargo violations by US allies and friends to both sides in the reignited conflict. The roles of governmental actors have often been unclear. In the case of US arms sold to France but found in Libyan camps, the French government has insisted the weapons were intended to protect French troops and not transferred to Libya armed groups.¹¹⁷ In the case of planned weapons supplies via Western private military companies in 2019, governmental support has been ambiguous and may have included middlemen and criminal networks.¹¹⁸ Reports and investigations suggest that the “Opus Group” contractors hired to overthrow the UN-backed government at the time “had invested considerable effort and expense in acquiring weapons and hardware for

the strike.”¹¹⁹ The scheme only fell apart when Jordan balked at completing its portion of the sales without official US approval.

Proposed US transfers to UAE in 2020 and 2021 have been the most controversial in US politics. In the past, US weapons sold to UAE may have been transferred on to Libyan armed groups and at times used by the UAE government directly in the conflict. UAE re-exports to Libya would also violate the UN arms embargo and, without permission from the United States, US export law. In 2020, some US Senators and NGOs called on the United States to curb both embargo violations and the UAE’s role in the conflict. They were particularly concerned about pending US drones sales to the UAE, which it had previously used on behalf of the Libyan armed forces.¹²⁰ These would also be the first large drones sold under the Trump administration’s reinterpretation of the MTCR. While the United States might not have been planning to arm Libyan groups directly, the proposed sales could do so indirectly. Moreover, the sales would directly arm an occasional participant in the Libyan conflict, the UAE – to say nothing of its role in the Yemen conflict described above.

In November 2020, the US State Department formally notified Congress of a pending \$23.37 billion sale to the UAE, including armed drones, 50 F-35 fighter aircraft, missiles, and munitions.¹²¹ In response, members of Congress quickly introduced four joint resolutions against the sales linked to ongoing UAE attacks in Libya. Then, in December 2021, the UAE announced plans to suspend discussions over the pending deal. This

was not because of the parties’ concerns about regional instability, or about drone proliferation, but rather because of Emirati concerns about safeguards limiting its access to and use of sophisticated F-35 stealth technology due to its relationship with China.¹²² The United States has expressed a desire to complete the deal.

Thus, US restraint with regard to arming the Libya conflict might partly be informed by its past experiences in Libya and Syria. Yet that restraint appears limited mostly to direct sales to non-state conflict parties on the ground. The United States has shown a permissive hand in other governments’ sales to those armed groups and even to foreign governments’ own conflict participation. Whether the US government has tacitly supported or actively encouraged re-transfers is unclear. Nevertheless, as a result, **US weapons continued to find their way to the battlefield.** With a multitude of regional powers, including US partners and allies, involved on both sides, elections planned for 2021 have been postponed, and Libya has been left in a state of political limbo. Although the UN reports that “the intense pace” of embargo-busting arms transfers has slowed, armed groups are well supplied, deliveries continue, and foreign fighters have remained in the country.¹²³ This phase of conflict might have formally ended, but it is far from certain that it will not break out again.

Conclusions and Implications

US arms exports are often driven by politics rather than legal and policy regulations. US laws and policies introduce ambiguity and flexibility, allowing presidential administrations considerable latitude in their arms-export decisions. Congress rarely contests individual arms deals and is structurally challenged from doing so successfully. When it happens, restraint comes from the political and economic priorities of the executive branch, particularly when military training and equipment programs are controversial, expensive, or ineffective or when potential buyers lack valuable relationships with the US or its allies.

These patterns of US arms export practice have been largely consistent across recent presidential administrations, despite variation in their preferences for more or less restrictive policies. Looking ahead, perceptions of “a new Cold War”

and renewed great power competition suggest a more permissive environment for arms transfers. Competition with China has pushed the US to loosen restrictions on large drone sales, bolster military support to Taiwan, and engineer the 2021 AUKUS submarine deal. Concerns about Russia’s role in Eastern Europe have prompted the United States to send weapons, ammunition, and other security assistance to Ukraine, both to enable Ukraine’s defenses and to signal US support for its political and territorial integrity. Since NATO is unlikely to want to put its own boots on the ground to protect Ukraine, weapons supplies will become a particularly important form of material and symbolic support against threatened Russian aggression.

The inability of existing US export rules to restrain US arms exports to conflict zones suggests a core policy recommendation from this report.

Presidential administrations and Congress will face more pressure to make careful and responsible arms export



Money

Arms sales from United States of America are:

- More frequent as the **military expenditure** of the recipient increases
- More frequent as the **total military acquisition** of the recipient from all other suppliers increases
- More frequent as the **GDP (per-capita)** of the recipient increases



Relationships

Arms sales from United States of America are:

- More frequent if the recipient is already a **recent customer**
- More frequent if the recipient is a member of **NATO**

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decisions with regard to conflict zones when US export rules articulate more meaningful constraints. In particular, **US export rules should do more than merely “consider” recipient conflict and instability by requiring substantive risk analyses and an explicit presumption of denial in cases of recipients’ engagement in genocide, war crimes, and crimes against humanity.** US and Soviet weapons transfers during the Cold War have stayed in circulation and had long-lasting consequences, not only for local and regional stability but also, in many cases for US security interests. As the United States considers how to address an evolving contemporary security environment and renewed great power security competition, it is in US interests to make US arms export law and policy the real “gold standard” in both content and execution.

Overall, this report highlights a number of key trends.

First, and perhaps foremost for the purposes of this project, conflict is not a consistent deterrent for US arms exports. In fact, it may matter very little. The United States tends to prioritize diplomatic and economic ties in its arms export decision-making, whatever the conflict status of the recipient. If the United States has a long track record of arms deals to a buyer government, it is less likely to halt arms sales during a conflict or support an arms embargo against that government. When the United States does tend to exercise restraint during conflict, it is more often to governments with which the US history of sales is thin or to non-state armed groups involved in internal conflict. Yet when non-state groups are fighting against an adversarial government, the temptation to

arm is strong.

Second, because US presidential administrations are virtually unfettered in their ability to use arms exports to meet their policies goals, the decision to sell or not to sell can typically follow presidential priorities. US law sets an almost unreachable threshold for Congressional action to block or amend proposed arms sales. Even in less polarized Congresses, arms sales do not generate sufficient public interest or other political incentives to drive strong or consistent legislative attention to US arms deals, much less veto-proof majorities. As a result, in practice, US arms export policy is set by presidential administrations and provides significant flexibility to use arms supplies and denials to serve a variety of their broader policy goals.

Third, even when the United States chooses not to supply weapons to conflict zones itself, it may support alternative sources of supplies for friendly belligerents. While it is rare for the United States to cut off arms to a long-standing customer due to conflict, in cases it might be politically difficult for it to provide a newer (especially non-state) customer with arms, it may permit or promote supplies to continue through common allies or other means. The re-export of US-supplied weapons without US approval violates US export law. While this may in some cases occur, in other cases, the United States may unofficially turn a blind eye or clandestinely help facilitate the flow of non-US weapons purchased by other governments. This political distance and image of non-interference may benefit the United States for a time. But it may also generate blowback down the road, with weapons discovered to be falling into

“the wrong hands” or the political costs of exposed clandestine involvement in foreign conflicts.

Fourth, there is no realistic way for the US government to guarantee that the weapons it transfers are used by the recipients it intends, or in ways that serve its interests. These are intractable risks of arms transfers that the United States has never managed to solve. While the US government may take precautions to ensure that its arms transfers are used for defensive not offensive purposes or do not fall into the “wrong hands,” these precautions often come up short. Weapons are highly durable goods, the line between defense and offensive is frequently unclear, and recipient priorities may shift over time, in ways the US government cannot predict or control. In addition, small arms especially may easily change hands in complex conflict environments, intentionally or inadvertently diverted to armed groups or governments that oppose US interests. In such cases, US arms transfers become self-defeating.

Finally, “new Cold War” dynamics with China and persistent tensions with Russia may increase US reluctance to cut off arms supplies to conflict zones. Instead, national security rationale may encourage looser interpretation of restrictions for fear of insufficiently supporting allies or would-be allies or losing perceived economic and political arms sales benefits to a competitive power. As has been clear in numerous areas of recent conflicts and instability, the consequences for those conflicts and the civilians attempting to survive amidst them may be dire.

ENDNOTES

- 1 The author would like to thank Bridget Conley, Sam Perlo-Freeman, Emma Soubrier, and Anna Stavrianakis for their helpful comments, as well as Ben Hetherington and Allison Vuono for their excellent research assistance.
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