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Biden's Conventional Arms Transfer Policy Review Could Be A Turning Point

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Under former President Donald Trump, Congress tried and failed five separate times to block weapons sales to Saudi Arabia. In 2016 and 2017, these attempts were blocked from within Congress itself. During 2019, these attempts were vetoed by Trump. During his four years in office, the United States notified Congress of weapon sales worth over \$26 billion to Saudi Arabia.

This congressional effort against a series of major arms sales was unusual. Congress has never successfully blocked an arms sale and, as a result, attempts are infrequent. With that said, members of Congress can slow a sale's delivery speed via measures such as reporting requirements and floor debates. During the Trump administration, Capitol Hill opposed the arms sales because of the increasingly destructive Saudi war in Yemen, the murder of Jamal Khashoggi, Riyadh's alleged role in the 9/11 terrorist attacks, and Saudi Arabia's long record of human rights abuses. In the face of this opposition, Trump and his secretary of state, Mike Pompeo, were able to argue that the sales were needed for "emergency use." This allowed them to bypass congressional review of 22 arms sales packages, 15 of which were frozen in the congressional review process. Regardless of congressional interest, the Trump administration was able to use the presidential veto and other bureaucratic means to override the legislature.

Congressional focus on restricting arms sales has continued after the Trump presidency. In the House of Representatives' version of the 2021 National Defense Authorization Act there are 21 separate amendments that restrict weapons sales. As a result, this National Defense Authorization Act, if Congress' final version includes the same legislation, will have more amendments restricting arms sales than any previously.

The Biden administration is currently revising its conventional arms transfer policy. This policy provides guidance on how the United States approaches weapons sales. The administration is reportedly considering placing a greater emphasis on human rights in the policy's text, shifting the regulation of firearms and munition sales back to the State Department, and joining and ratifying the Arms Trade Treaty. These revisions, if implemented, would give greater emphasis to human rights considerations when making arms sales, reduce sales of small weapons to governments that may use them on domestic populations, and affirm U.S. support for the Arms Trade Treaty. Strategically, this will allow President Joe Biden to capitalize on the American public's opposition to the Saudi war in Yemen, while also reducing sales to human rights abusers and countries where weapons are dispersed to unsavory actors.

Many of the biggest purchasers of U.S. weapons (e.g., Saudi Arabia, the United Arab Emirates, Turkey, and the Philippines) also tend to be willing to violate human rights and disperse weapons to groups not friendly to the United States. As a result, Biden's attempt to revise his conventional arms transfer policy will face the same type of opposition as those of his predecessors. To make sure that these policy revisions are successful, the administration and its supporters in Congress will need to do several additional things. Most importantly, the administration should empower the State Department by joining international agreements like the Arms Trade Treaty and reinstating its control over the export of firearms and similar technologies that was removed by the Trump administration. Additionally, Congress should continue to assert its control over the regulation of weapons sales to provide another check against U.S. weapons being used to commit human rights abuses or ending up in the hands of risky partners.

Arms Sales, Foreign Policy, and Human Rights

Over the last two presidential administrations, the conventional arms transfer policy has not, to any significant degree, reduced the risks of weapons transfers. President Barack Obama's version acknowledged the danger of U.S. weapons being used for human rights violations and the proliferation of weapons to non-state actors. Trump, on the other hand, discounted these risks, and instead focused on promoting U.S. economic concerns.

The Obama administration attempted to incorporate human rights into its arms transfer policy by issuing 10 goals in its 2014 presidential policy directive on U.S. conventional arms transfer policy. Four of these goals dealt with avoiding some sort of risk to human rights or national security including enhancing the ability of partners to defend themselves, preventing proliferation of conventional weapons that can be used to deliver weapons of mass destruction, supporting democratic governance, and ensuring that arms transfers do not contribute to human rights violations or violations of international humanitarian law. It also noted that U.S. arms policy should show "restraint against the transfer of arms that would enhance the military capabilities of hostile states, serve to facilitate human rights abuses or violations of international humanitarian law, or otherwise undermine international security." Despite this policy language, the Obama administration increased the amount of weapons it sold every year, including to human-rights-abusing nations like Saudi Arabia and Egypt.

The Trump administration released an update to the U.S. conventional arms transfer policy in 2018. This update, which currently governs U.S. conventional arms transfers, discounts the risks from selling weapons to human rights abusers or governments where weapons dispersion is possible. Trump prioritized economic interests over the recipient's security benefit and human rights concerns. In its policy, the Trump administration asserted that "the national security interest" includes "economic security" and that "the executive branch will advocate strongly on behalf of United States companies." As a result, the Trump administration agreed to more sales per year than the Obama and Bush administrations. In 2020, this jumped to a 75 percent increase on the average annual figures during the Obama administration.

The United States has historically discounted the risk that arms will end up in the hands of human rights abusers and be dispersed to actors that undermine American interests. Instead, it

has prioritized the economic returns and transactional benefits with allies and partners. In a recent research project that examined what determines how many weapons the United States sells to a particular country, my co-authors and I found that, holding all other variables at their means, the United States sells over twice as many weapons (in terms of dollar value) to allies than non-allies. For the purposes of the project, we examined Saudi Arabia as both an ally and as a non-ally, and found similar results. Further, we examined the predicted differences in future sales for a state that spent nothing on its military to one that spent more than any other state. Our model predicts that the highest-spending state would receive a \$372 million increase in sales (i.e., being an ally and being willing to spend a lot on one's military predicted which states received the most U.S. weapons since 2001).

Trump took this prioritization of economic interests over human rights considerations in arms sales to new levels. In the Cato Institute's 2020 Arms Sales Risk Index, we examined four risk factors: government corruption, government instability, domestic human rights and freedoms, and if the country is in a conflict. The Trump administration sold more weapons to a riskier portfolio of clients than either the Bush or Obama administrations. When looking at the average risks of a recipient, weighted by dollar value, the Trump administration's average client was over 10 percent riskier on our risk index than that of the Bush administration and over five percent riskier than that of the Obama administration.

The Biden Administration's Review and the Future of Conventional Arms Transfer Policy

The Biden administration's review could have the effect of counteracting Trump's focus on economic gains from weapons sales and short-sighted political benefits. This is because the current administration is reportedly considering bringing back Obama's focus on human rights, strengthening the State Department's ability to evaluate risks in weapons transfers, and potentially ratifying the Arms Trade Treaty.

If implemented, these revisions would make a meaningful difference. The Trump administration's policies made existing risks from U.S. arms sales worse. Broadly, it continued things like U.S. support for Saudi Arabia using American weapons in Yemen and the Filipino

government's crackdown on political opposition. From a security standpoint, it contributed to more loose U.S. weapons in Afghanistan that ended up in the hands of the Taliban and the Islamic State. While supporters of arms sales argue that they advance American strategic interests, U.S. weapons sales have at times led America to support humanitarian catastrophes, authoritarianism, and arming terrorists — all things that make the United States less safe.

The potential changes that Biden is reportedly considering could offset these risks. For example, the Biden administration has committed to reversing a decision by the Trump administration to shift control of certain firearm and munitions sales from the Department of State to the Department of Commerce. The Trump administration's change meant that the State Department's regulations governing the export of certain items on the U.S. Munitions List became irrelevant. Now the Commerce Department regulates the sale of semi-automatic firearms, small-arms ammunition, shotguns, non-lethal grenades and projectiles, optical-sighting devices, firearm production equipment, and other small arms and light weapons.

This change of regulation from the State Department to the Commerce Department meant that these weapons were subject to a less strict review process. A report from the Government Accountability Office notes that this change meant that “critical information needed to effectively screen applicants and target licenses for end-use monitoring may be unavailable to Commerce unless State shares its watch list data.” The result was an increase in potential gun violence in Latin America, less rigorous end-use monitoring of U.S. weapons in Afghanistan, and rewarding governments that have dispersed weapons to U.S. adversaries — like the United Arab Emirates and Saudi Arabia.

The other potential change in the U.S. conventional arms transfer policy would commit the United States to ratifying the Arms Trade Treaty. This is an agreement between 110 states that attempts to regulate weapons sales. In doing so, the treaty intends to prevent arms transfers to human rights abusers. It also tries to stop sales to actors who could disperse these weapons.

The Arms Trade Treaty is being enforced globally and has been since 2014. At the time, the United States signed but did not ratify the treaty. Nonetheless, Trump announced that he would

“unsign” it and then communicated to the United Nations a statement to this effect. Despite international enforcement amongst ratified signatories, the United States still has not ratified the treaty and Washington does not abide by its rules.

The Arms Trade Treaty attempts to stop weapons from ending up in the wrong hands by preventing the sale of weapons in circumstances where they could be used in a war crime and creating risk assessment measures so member states can avoid sales that may end up being illegally dispersed. In theory, ratifying the Arms Trade Treaty reduces the risks of U.S. weapons being dispersed or used in war.

In practice, the Arms Trade Treaty has been a success. The Stimson Center found that compliance with the treaty has averaged around 69 percent over the last six years and that 2020 saw a 6 percentage-point increase in reporting states parties since 2019. While imperfect, the Arms Trade Treaty has historically provided states with information to reduce dispersion and is followed by its signatories.

Challenges Facing Any New Conventional Arms Transfer Policy

The Biden administration faces similar challenges to its predecessors in implementing new arms transfer guidelines. These challenges include overstated — but not insignificant — geopolitical and domestic consequences from reducing sales, as well as the intentional ambiguity in the proposed changes to the conventional arms transfer policy.

There are three main geopolitical and domestic consequences from reducing sales. First, implementing more restrictive weapons transfer regulations will reduce U.S. strategic options. A recent report argues that the Biden administration should not incorporate new human rights regulations nor the Arms Trade Treaty into its conventional arms transfer policy. Its argument is that proponents of new regulations want to restrict weapons sales and create a “decision-making system that guarantees the policy outcomes they prefer” in an attempt to “straitjacket” the United States.

Second, in an era of strategic competition, slowing down arms transfers will see reduced influence relative to Russia and China, two countries that will attempt to fill the gap left by fewer U.S. weapons sales. Arms exports can be a tool that provides the United States with political power to increase global communication, strengthen relationships, and keep mutual adversaries at bay. Indeed, recent work finds that embargoing sales to risky clients pushes them to “diversify sourcing rather than to change behavior.”

Third and finally, reducing weapons sales could disadvantage the U.S. defense industry. Former Acting Assistant Secretary of the State Department’s Bureau of Political-Military Affairs Tina Kaidanow testified that Trump’s arms transfer initiative ultimately benefitted “U.S. industry by driving new innovation and creating high-quality American jobs.” Further, Lockheed Martin noted that one of Trump’s arms deals to Saudi Arabia would “support more than 18,000 highly skilled jobs in the U.S.”

The extent of these geopolitical and domestic costs is overstated. First, while it is true that a more restrictive weapons transfer policy does reduce strategic options, this is not inherently a bad thing. More restrictions on arms sales will not prevent weapons transfers to partners that are stable and respect human rights. These restrictions will signal that Washington does not support humanitarian catastrophes like what is happening in Yemen and, potentially, increase cooperation between the United States and other states through mechanisms like participation in the Arms Trade Treaty. Therefore, restricting arms transfers positions the United States to strengthen its resolve against human rights abusers and reinforce existing international partnerships. A more restrictive weapons transfer policy does reduce some strategic options, but simultaneously adds new ones.

While restricting certain arms transfers will provide Russia and China with an opportunity to fill the vacuum, the reality of the situation is more nuanced. Many potential recipients will struggle with transitioning because of their pre-existing alliance on the United States, and switching suppliers is easier said than done. For example, while Turkey continues to threaten to transition to a Russian arsenal, this is complicated by Ankara’s reliance on U.S. military technology to support its air force. Despite the Philippines’ threat to buy Russian and Chinese weapons, this

was not entirely possible because of Manila's reliance on systems that are interoperable with U.S. weapons. As a result, any major recipient of U.S. weapons will likely face a years-long process before being able to transition away from American weapons. The United States, not just arms recipients, holds leverage.

Finally, while weapons sales are connected to U.S. jobs, the defense industry employs less than one-tenth of one percent of the American labor force. Furthermore, most countries require "offsets" in weapons purchases, which means a significant percentage of any arms deal must be re-invested in the importing state's economy. Lastly, economic research suggests that the opportunity cost of investment in weapons sales is a lack of investment in things like education, healthcare, infrastructure, clean energy, and other programs that create even more jobs than military spending. Thus, while there certainly is some component of economic gain from weapons sales, it is smaller than initially perceived.

The above risks are overstated. Instead, the more difficult challenge facing this policy is a lack of enforcement authority on behalf of the State Department and Congress. This is for two reasons. First, there is a historical unwillingness and lack of legislative authority to consider stopping a sale for human rights considerations. While the Leahy Law does evaluate human rights abuses for security assistance, no current law establishes that authority for arms sales. This, combined with the strength of the arms export lobby, means that Congress is likely to continue its historical trend of not pausing sales for human rights reasons.

Second, there is also vagueness surrounding language concerning which states are and are not responsible for a "human rights violation" or contain a "risk of diversion." There is additional ambiguity about when that risk leads to a suspension of an arms transfer. Currently, there is no threshold for withholding arms when it is likely and foreseeable that they will facilitate human rights violations or other forms of civilian harm. Absent this, guidelines in a new conventional arms transfer policy are cheap talk without any tools for action.

While Congress is supposed to legislate against what they perceive as risky sales, this does not hold in practice. Currently, Congress is limited by weaknesses in the Arms Export Control Act

that restrict their capability to evaluate humanitarian and strategic risks, while also giving the president an ability to veto any attempt to stop a sale.

Moving Forward with Biden's New Conventional Arms Transfer Policy

Biden's decision to revise the conventional arms transfer policy could serve to reduce the humanitarian and strategic risks associated with weapons sales. Unlike Obama's vague attempts at addressing these challenges and Trump's disregard of them, Biden's review of the current policy could offset these risks while acknowledging the benefits of arms transfers. Still, his administration faces bureaucratic and political challenges surrounding U.S. arms sales policy that could reduce the review's intended impact.

Despite these challenges, a new conventional arms transfer policy could still be effective. Deputy Assistant Secretary of State Timothy Alan Betts noted recently that the Biden administration "will not approve arms transfers where we believe such transfers are not in our national interest because of the risk of diversion, civilian harm, misuse" as well as contributing to "human rights violations or abuses or violations of international humanitarian law." This statement sounds like progress towards incorporating human rights and evaluating the risks of diversion. Still, to be effective, it requires backbone on top of rhetoric.

Some changes to provide this backbone are in motion. The signing and ratifying of the Arms Trade Treaty and a stronger conventional arms transfer policy would provide the State Department with the tools to further evaluate the dangers to U.S. security and global human rights from arms sales. Another way to empower the U.S. bureaucracy to reduce risk in sales would be to undo Trump's decision to transfer control over the export of firearms and related technology away from the State Department to the Commerce Department. This would give the State Department more power to regulate the security and humanitarian risks of sales, something the Commerce Department does not spend as much time focusing on.

Beyond empowering the State Department, the Biden administration should also support congressional efforts to re-enter the weapons sales process. Currently, multiple pieces of legislation exist that would give Congress more power to stop and evaluate dangerous sales. In

the National Defense Authorization Act, this legislation is focused on increasing human rights vetting for units receiving security assistance, terminating logistical support to Saudi Arabia, and increasing support for evaluating risks of government corruption in states receiving U.S. weapons. Beyond that, both the Senate and House are soon to debate legislation that would remove the presidential veto on congressional disapproval of arms sales. If this passes, efforts like those designed to stop the Saudi arms sales in 2019 could not be vetoed by the president.

A serious review of Washington's conventional arms transfer policy is long overdue. The Trump administration's decision to focus on economic gain over risks of dispersion and human rights violations may seem beneficial in the short term but opens the United States up to serious risks in the future. These sales to human rights abusers have made the United States more enemies than allies in places like Yemen and Afghanistan, which imposes reputational costs on the United States and undermines the legitimacy of its claims to global leadership. A weapons sales policy based on human rights ensures that U.S. arms do not end up fueling extremism. It also ensures that the United States is not complicit in human rights abuses, which signals that Washington will only tolerate behavior aligned with U.S. norms. Changing the conventional arms transfer policy to avoid America's current contributions to human rights abuses and hostile actors will make the United States more secure and the world safer.

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