



WITH GREAT POWER: Modifying US Arms Sales to Reduce Civilian Harm

SUMMARY OF FINDINGS AND RECOMMENDATIONS

January 10, 2018

RECOGNIZE. PREVENT. PROTECT. AMEND.

T +1 202 558 6958

E info@civiliansinconflict.org

civiliansinconflict.org

Center for Civilians in Conflict (CIVIC) works to improve protection for civilians caught in conflicts around the world. We call on and advise international organizations, governments, militaries, and armed non-state actors to adopt and implement policies to prevent civilian harm. When civilians are harmed, we advocate for the provision of amends and post-harm assistance. We bring the voices of civilians themselves to those making decisions affecting their lives. CIVIC's vision is for a future where parties involved in conflict go above and beyond their legal obligations to minimize harm to civilians in conflict. To accomplish this, we assess the causes of civilian harm in particular conflicts, craft creative solutions to address that harm, and engage with civilians, governments, militaries, and international and regional institutions to implement these solutions. We measure our success in the short term by the adoption of new policies and practices that lead to the improved wellbeing of civilians caught in a conflict. In the long term, our goal is to create a new global mindset around robust civilian protection and harm response.

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COVER An F-16 Fighting Falcon aircraft releases flares
DoD/Sgt. Antony Lee, U.S. Army

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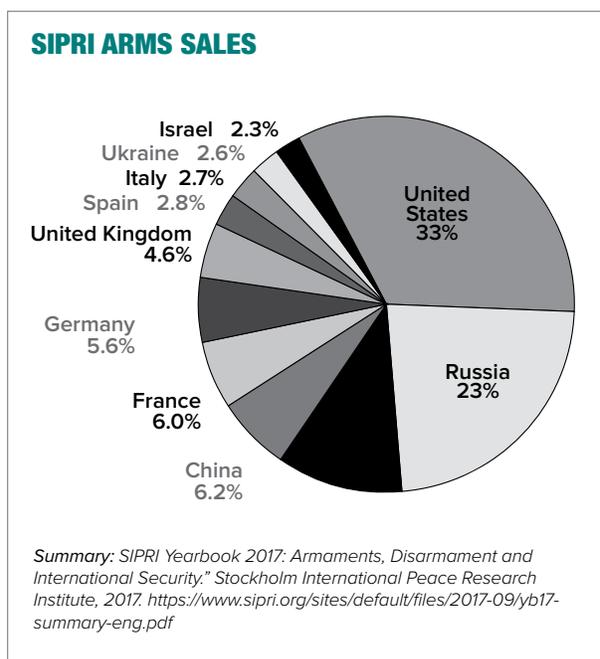
This report is the final product of a joint initiative of the Center for Civilians in Conflict and the Stimson Center. It was researched and written by Daniel Mahanty and Annie Shiel, with significant contributions from Rachel Stohl at the Stimson Center. William Hartung authored the supplemental piece on *Saudi Arms Sales and the Promise of Jobs*. Anna Khalfaoui researched and drafted the section pertaining to international law, while Zach Needell and Will Pons provided additional legal research and analysis. Kevin Shi provided significant research assistance and supported the Expert Workshop on Civilian Harm and Weapons Sales at Stimson. Benedicte Aboul-Nasr, Jordan Lesser-Roy, and RaeAnn Dietlin provided research support to supplementary country case summaries. Lyndsey Martin and Ben Rankin assisted with photo selection. The authors are also grateful to Alex Moorehead, Dafna Rand, Larry Lewis, John Ismay, Jeff Abramson, Colby Goodman, Shannon Dick, Rahma Hussein, Sarah Holewinski, and many other individuals who wish to remain anonymous for their review and advice, as well as to Laurie Blank and the Emory University School of Law for their ongoing partnership. Marla Keenan, Jay Morse, Evan Cinq-Mars, Kate Raley, and Chris Allbritton provided editorial and content review. Any errors or omissions in fact, analysis, or representation belong to the authors alone.

ABOUT THIS REPORT

This is an executive summary of findings and recommendations in the report, **With Great Power: Modifying US Arms Sales to Reduce Civilian Harm**, a joint product of the Center for Civilians in Conflict and the Stimson Center. The report examines how the US arms sales process works in practice, and how it might be amended to reduce the risk of harm to civilians in conflict. The report provides a brief overview of legal obligations and requirements, and describes existing US government processes used to sell weapons through commercial and government-to-government transactions. The report describes major gaps and risks in the US arms sales process that increase the risk of adverse or unintended consequences, especially for civilians in conflict, and provides a set of recommendations for the State and Defense Departments and the US Congress. The report is based on desk and legal research, interviews conducted with former and current US government officials and arms control experts, and a process improvement workshop conducted at the Stimson Center.

International arms sales represent an enduring and prominent feature of American foreign policy and can be used to advance security and economic interests. While the United States is not the only country that sells conventional arms through government-to-government and commercial transactions, it holds an unrivaled dominance measured in global market share.¹ According to the Stockholm International Peace Research Institute (SIPRI), the total value of international US arms exports delivered in 2016 was close to \$10 billion, or 29 percent of the total global export market. The US maintained an average of 33 percent market share in international arms exports between 2011 and 2015, followed most closely by Russia (25 percent) and China (5.9 percent).²

Meanwhile, in 2016, armed conflict in as many as 34 countries killed an estimated 102,000 people and caused an unquantified level of damage to civilian infrastructure, including homes, schools, and hospitals.³ Although no single weapon or technology caused this level of death and destruction, the global arms trade has a direct bearing on the effects of war on civilians. In the 2017 United Nations report on the Protection of Civilians in Armed Conflict, the UN Secretary-General called specific attention to the relationship between arms proliferation and human suffering in war, noting that “high levels of arms and ammunition in circulation, combined with poor controls on them, contribute to insecurity and facilitate violations of international humanitarian and human rights law.”⁴ Of mounting concern are the effects of explosive weapons used in urban areas, as seen in recent military campaigns in Iraq and Syria. According to data collected by Action on Armed Violence, civilians represent approximately 92 percent of those reported killed and injured when security forces employ explosive weapons in populated areas.⁵ Analysts estimate that explosive weapons led to the death of 32,000 civilians in 2016 alone.⁶ While improvised explosives caused much of this damage, civilians also suffered the effects of commercially available “smart” and “dumb” bombs, missiles, and mortars that were dropped, launched, or shot from the ground, air, and sea. In addition to civilian deaths and injuries, these weapons cause high levels of forced displacement and critical damage to essential civilian infrastructure, including hospitals, sanitation systems, and transportation systems essential for food security.



When US-made or sold weapons fall into the wrong hands or become associated with violations of international law and human suffering, the United States is exposed to legal, moral, reputational, and strategic risks. Despite regulations, and policies intended to prevent unintended consequences arising from US arms transfers, numerous instances of civilian harm caused by US-sold arms and munitions have been documented. The report “With Great Power: Modifying US Arms Sales to Reduce Civilian Harm” assesses existing controls and identifies ways to modify the US arms sales process to reduce the associated civilian harm.

Some of the findings and recommendations included in the report:

- **Interpreting and applying international law:** The US should ensure that it has the access and information necessary to evaluate whether the conduct of its partners is lawful when the partner becomes involved in hostilities using certain US weapons. Even when facts are inconclusive, the US government should strongly consider if the conduct is widely perceived to violate international law when making arms sales decisions. The US government should also more

1 Taken from the SIPRI Arms Transfers Database. <https://sipri.org/databases/armstransfers>.

2 “SIPRI Yearbook 2016: Armaments, Disarmament and International Security.” Stockholm International Peace Research Institute, 2016. <https://www.sipri.org/sites/default/files/YB16-Summary-ENG.pdf>.

3 Taken from Uppsala University Conflict Data Program, <http://www.pcr.uu.se/data/>, (Accessed June 17, 2017). Allansson, Marie, Erik Melander & Lotta Themnér (2017) Organized violence, 1989-2016. *Journal of Peace Research* 54(4). Gleditsch, Nils Petter, Peter Wallensteen, Mikael Eriksson, Margareta Sollenberg, and Håvard Strand (2002) Armed Conflict 1946-2001: A New Dataset. *Journal of Peace Research* 39(5).

4 United Nations, Security Council, *Report of the Secretary-General on the protection of civilians in armed conflict*, S/2016/447 (13 May 2016), available from http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_447.pdf

5 Action on Armed Violence, “Explosive Truths: Monitoring explosive violence in 2016”, May 15, 2017, <https://aoav.org.uk/2017/explosive-truths-monitoring-explosive-violence-2016/>

6 Dathan, Jennifer. “Explosive Truths: Monitoring Explosive Violence in 2016,” *Action on Armed Violence*, April 2017. <http://bit.ly/2waipCV>.

seriously consider information provided by credible third parties in its legal assessments.

- **Aligning arms sales with the real needs, capabilities, and conduct of partners:** The US government should more rigorously evaluate arms sales on the basis of aggregated risk as a function of prior conduct and its consequences, alignment of interests, and partner capacity and competence.
- **Avoiding premature commitments that compromise due diligence:** As designed, the Foreign Military Sales (FMS) process commits US policymakers to sales too early in the process, effectively “locking in” decisions before appropriate due diligence can be paid. No commitments should be made to sell high-risk arms to the purchasing country until such time as a sale has been fully vetted.
- **Accounting for fluid conflict environments:** No automatic or systematic controls exist to appropriately adapt the arms sales process as the risk of armed conflict increases or upon the breakout or escalation of armed conflict. The US government should establish conflict-related “tripwires” that require re-assessment of certain arms sales and the identification of options for preventing the use of certain weapons systems at any sign of adverse consequences. The US government should also understand how and when the major arms it sells are used in conflict.
- **Strengthening terms of sale and end-use monitoring:** Maintaining basic access, oversight, and visibility into the use of US-sold defense items should be a part of the weapons sales cycle. The US government should strengthen the terms of sale and end-use monitoring requirements for certain defense items, to include clearer standards for use.
- **Customizing technical assistance to reduce harm:** The provision of technical assistance in the appropriate deployment of weapons systems can help to mitigate the risk of misuse, especially in the case of the defense items most commonly associated with civilian harm. The US government should conduct pre-sale assessments that consider the full spectrum of variables related to appropriate use; ensure that arms sales are accompanied by customized technical assistance focused on appropriate and lawful use of the specific item; include the promotion of changes in process and policy that ensure appropriate use; and,

in some cases, require testing before delivery as a prerequisite to finalizing the sale.

- **Increasing transparency:** While the arms sales process as a whole has been well documented, the timelines and decision-making processes for specific arms sales suffer from a lack of transparency, hindering public oversight. The US government should make information on potential sales— including planned civilian harm mitigation measures —available earlier in the process, and should more regularly consult with affected stakeholders in the United States and within the purchasing country.

Recommendations for Congress:

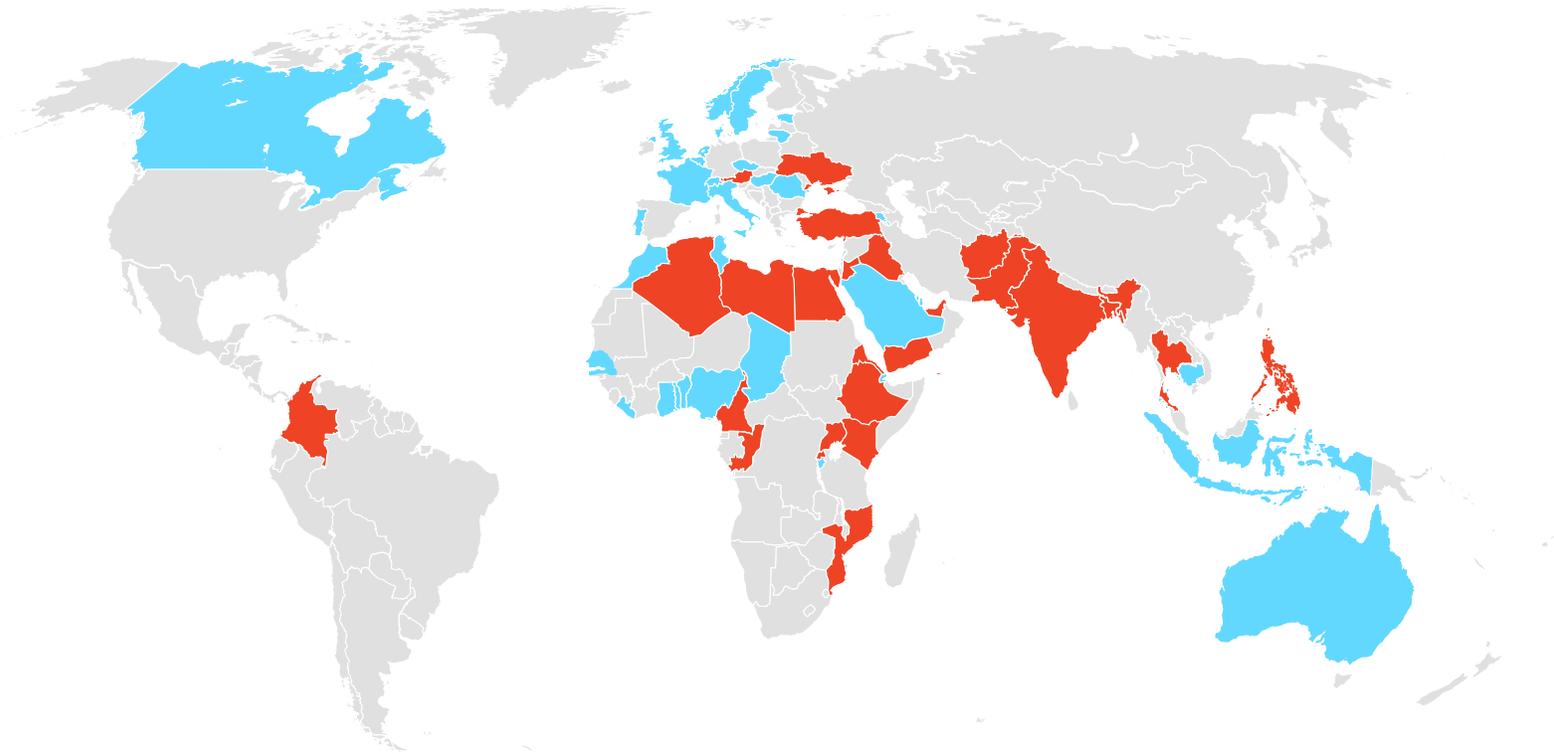
- **Require additional information on potential sales and mandate changes to terms of sale when necessary.** For higher-risk items, Congress should require additional information and planned mitigation measures regarding civilian harm, including analysis of civilian harm risks; dissenting opinions within the executive branch; accompanying technical training and planned sequencing; terms of sale; and end-use monitoring.
- **Employ, and therefore strengthen, existing legislation.** Congress should clarify that the Arms Export Control Act (AECA) is intended to include concern for international humanitarian law as a condition of export, and should ask the State and Defense Departments for reports on any alleged violations.
- **Add a requirement in authorizations or appropriations bills to require risk assessments and reporting for specific arms-importing countries.** Congress should add a reporting requirement to the annual Defense or State Authorization bill mandating more comprehensive risk assessment of countries in conflict, or at high risk of conflict, which receive US arms.
- **Inform constituents about the arms sales process, risky arms sales, and potential reforms.** Members of Congress should inform their constituents about the process, potentially concerning sales, and the ways in which members plan to strengthen or reform the process through legislation, hearings, public notices, and other means.

FOREIGN MILITARY SALES (FMS) REVISED PROCESS MAP

At any point during this process, the outbreak or escalation of conflict, political violence, or atrocities should trigger a thorough policy review of sales.



US ARMS SALES TO COUNTRIES IN CONFLICT



Locations of Conflict
+ US Arms Sales

Afghanistan	Mozambique
Algeria	Nigeria
Azerbaijan	Pakistan
Bangladesh	Philippines
Cameroon	Rwanda
Colombia	Thailand
Republic of Congo	Turkey
Egypt	Uganda
Eritrea	Ukraine
Ethiopia	Yemen
India	
Pakistan	
Iraq	
Jordan	
Kenya	
Libya	



Parties to Conflict
(Primary and Secondary)
+ US Arm Sales

Afghanistan	Republic of	Ivory Coast	Rwanda
Algeria	Congo	Jordan	Saudi Arabia
Armenia	Czech Republic	Kenya	Senegal
Australia	Denmark	Liberia	Sweden
Austria	Djibouti	Libya	Switzerland
Azerbaijan	Egypt	Lithuania	Thailand
Bahrain	Eritrea	Morocco	Togo
Bangladesh	Estonia	Mozambique	Tunisia
Belgium	Ethiopia	Netherlands	Turkey
Benin	France	Nigeria	Uganda
Burundi	Ghana	Norway	Ukraine
Cambodia	Hungary	Pakistan	United Arab
Cameroon	India	Philippines	Emirates
Canada	Indonesia	Portugal	United Kingdom
Chad	Italy	Qatar	Yemen
Colombia	Iraq	Romania	