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

SUMMARY OF FINDINGS AND RECOMMENDATIONS
January 10, 2018
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.

The Stimson Center is a nonpartisan policy research center working to solve the world’s greatest threats to security and prosperity. Think of a modern global challenge: refugee flows, arms trafficking, terrorism. These threats cannot be resolved by a single government, individual, or business. Stimson’s award-winning research serves as a roadmap to address borderless threats through collective action. Our formula is simple: we gather the brightest people to think beyond soundbites, create solutions, and make those solutions reality. We follow the credo of one of history’s leading statesmen, Henry L. Stimson, in taking “pragmatic steps toward ideal objectives.” We are practical in our approach and independent in our analysis. Our innovative ideas change the world.

ACKNOWLEDGEMENTS

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 Khalifaoui 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.

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

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. 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.” 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. Analysts estimate that explosive weapons led to the death of 32,000 civilians in 2016 alone. 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
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.

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<tr>
<th>Step</th>
<th>Description</th>
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<tr>
<td>1</td>
<td><strong>PRE-DEPLOYMENT TRAINING</strong> Before the process begins, US security cooperation personnel should be thoroughly trained on the relationship between weapons systems and country capacities, risks, and the importance of defense institutions, accountability, and oversight.</td>
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<td>2</td>
<td><strong>DEFINING REQUIREMENTS</strong> US personnel should work with the partner country to define requirements based on a thorough review of the partner’s capabilities and limitations, including doctrine, operations, training, and policy.</td>
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<td>3</td>
<td><strong>SUBMITTING THE LETTER OF REQUEST (LOR)</strong></td>
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<td>4</td>
<td><strong>EVALUATING THE LOR</strong> If the LOR meets the standards for Congressional notification, a Country Team Assessment (CTA) is required. The US government should also conduct annual interagency risk assessments for FMS recipient countries to whom the US government is likely to sell major arms and who are either involved in armed conflict or have a record of irresponsible or unlawful conduct.</td>
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<td>5</td>
<td><strong>CONGRESSIONAL NOTIFICATION</strong> Congressional staff should be consulted early in the process and provided with thorough analysis of civilian harm risks, mitigation measures, and dissenting opinions within the executive branch.</td>
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<td>6</td>
<td><strong>PREPARING THE LETTER OF OFFER AND ACCEPTANCE (LOA)</strong> US personnel should ensure that the sale includes customized support and training on the technical and appropriate use of the defense article. DoD should also revise the standard terms of sale to include IHL compliance, specify appropriate conditions for use, and mandate reporting on use.</td>
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<td>7</td>
<td><strong>SIGNING AND ACCEPTING THE LOA</strong></td>
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<td>8</td>
<td><strong>IMPLEMENTATION AND EXECUTION</strong> Even after a sale is approved, there should be occasion for further review; for example, upon the outbreak of conflict or allegations of abuses.</td>
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<td>9</td>
<td><strong>END-USE MONITORING (EUM)</strong> EUM should focus as much on use of US-origin defense articles as it does on unauthorized transfer, and explicitly link EUM results with future sales.</td>
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US ARMS SALES TO COUNTRIES IN CONFLICT

Locations of Conflict + US Arms Sales
Afghanistan  Albania  Armenia  Azerbaijan  Bangladesh  Cambodia  Cameroon  China  Colombia  Congo  Eritrea  Ethiopia  India  Indonesia  Iran  Iraq  Jordan  Kenya  Libya  Mozambique  Nigeria  Pakistan  Philippines  Rwanda  Thailand  Turkey  Uganda  Ukraine  Yemen

Parties to Conflict (Primary and Secondary) + US Arm Sales
Afghanistan  Algeria  Armenia  Australia  Azerbaijan  Bahrain  Bangladesh  Belgium  Benin  Burundi  Cambodia  Cameroon  Canada  Chad  Colombia  Congo  Czech Republic  Denmark  Djibouti  Egypt  Eritrea  Estonia  Ethiopia  France  Ghana  Hungary  India  Indonesia  Italy  Iraq  Ivory Coast  Jordan  Kenya  Liberia  Libya  Lithuania  Morocco  Mozambique  Netherlands  Norway  Pakistan  Philippines  Portugal  Qatar  Romania  Rwanda  Saudi Arabia  Senegal  Sweden  Switzerland  Togo  Tunisia  Turkey  Uganda  Ukraine  United Arab Emirates  United Kingdom  Yemen