

# H-Diplo | Robert Jervis International Security Studies Forum

## Policy Roundtable II-2

### Biden’s Conventional Arms Transfer Policy

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#### Contents

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Introduction by Jennifer L. Erickson, Boston College .....	2
Essay by Jonathan D. Caverley, U.S. Naval War College .....	5
Essay by Jordan Cohen, CATO Institute .....	12
Essay by Hoshik Nam, University of Iowa .....	17
Essay by Jennifer Spindel, University of New Hampshire .....	23

## Introduction by Jennifer L. Erickson, Boston College

In February 2023, the Biden administration released its Conventional Arms Transfer (CAT) policy.<sup>1</sup> The new CAT policy was a long time coming, but whether it was worth the wait and will substantively shape US arms transfers is a matter of debate. On the campaign trail, Biden had made numerous statements about better controlling US arms sales to recipients who were engaged in conflict and human rights violations in particular.<sup>2</sup> Once in office, he placed some controversial pending sales under review,<sup>3</sup> even while promoting others and overseeing a general increase in the volume and value of approved US arms transfers.<sup>4</sup> But a coherent statement of the administration's policies and priorities for US conventional arms transfers has taken more than two years into Biden's term to arrive. Undoubtedly, Russia's invasion of Ukraine and the unprecedented uptick in demand it has placed on US conventional arms supplies has complicated matters. Even so, US presidents have long attempted to balance incentives to promote US conventional arms abroad with incentives to restrict them.<sup>5</sup> The essays in this roundtable address the innovations of Biden's CAT policy while also voicing some skepticism that it will significantly change US arms transfers in practice.

As the roundtable authors point out, most US presidential administrations, starting with the Carter administration in 1977, release a CAT policy as general guidance for their approach to making and approving deals to transfer US conventional arms abroad. While US arms export law does give a limited role to Congress to vote to block deals worth over \$14 million,<sup>6</sup> it is primarily the executive branch—through the

<sup>1</sup> Joseph R. Biden, National Security Memorandum (NSM-18), “Memorandum on United States Conventional Arms Transfer Policy,” 23 February 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/>.

<sup>2</sup> See for example, Biden for President, “Anniversary of Jamal Khashoggi's Murder, Statement by Vice President Joe Biden,” 2 October 2020, <https://joebiden.com/2020/10/02/anniversary-of-jamal-khashoggis-murder-statement-by-vice-president-joe-biden/#>. For an overview of Biden campaign positions on the arms trade, see Forum on the Arms Trade, “Joe Biden,” [https://www.forumarmstrade.org/2020\\_biden.html](https://www.forumarmstrade.org/2020_biden.html).

<sup>3</sup> Warren P. Strobel, “Biden Re-Examining U.S. Arms Sales to Saudi Arabia, U.A.E.,” *Wall Street Journal*, 27 January 2021, <https://www.wsj.com/articles/biden-freezes-u-s-arms-sales-to-saudi-arabia-uae-11611773191>.

<sup>4</sup> Kylie Atwood, “Biden administration notifies Congress of \$650 million arms sale to Saudi Arabia,” CNN, 4 November 2021, <https://www.cnn.com/2021/11/04/politics/us-saudi-arabia-arms-sale/index.html>; Jennifer Hansler, “Biden admin approves potential multibillion-dollar arms sales to Saudi Arabia and UAE,” CNN, 2 August 2022, <https://www.cnn.com/2022/08/02/politics/us-saudi-uae-proposed-arms-deal/index.html>; William D. Hartung, “Promoting Stability or Fueling Conflict? The Impact of U.S. Arms Sales on National and Global Security,” Quincy Paper No. 9, 20 October 2022, <https://quincyinst.org/report/promoting-stability-or-fueling-conflict-the-impact-of-u-s-arms-sales-on-national-and-global-security/>; Lauren Woods, “Despite Rhetoric, Biden Is Continuing Trump's Weapons Sales,” *War on the Rocks* 8 August 2022, <https://warontherocks.com/2022/08/despite-rhetoric-biden-is-continuing-trumps-weapons-sales/>.

<sup>5</sup> See for example: Jonathan Caverley, “Dispelling Myths About U.S. Arms Sales and American Job,” in Frederic Wehrey and Michele Dunne, eds., *From Hardware to Holism: Rebalancing America's Security Engagement With Arab States* (Washington, DC: Carnegie Endowment for International Peace, 2021), <https://carnegieendowment.org/2021/05/18/dispelling-myths-about-u.s.-arms-sales-and-american-jobs-pub-84521>; Jennifer L. Erickson, “Saint or Sinner? Human Rights and U.S. Support for the Arms Trade Treaty,” *Political Science Quarterly* 130:3 (2015):449-474; Andrew Philip Hunter and Melissa Dalton, “Essential Imperatives for U.S. Arms Transfer Policy,” 24 July 2018, <https://www.csis.org/analysis/essential-imperatives-us-arms-transfer-policy>; Janne E. Nolan, “United States,” in Andrew J. Pierre, ed., *Cascade of Arms: Managing Conventional Weapons Proliferation* (Washington, DC and Cambridge, MA: Brookings Institution Press and World Peace Foundation, 1997); Jennifer Spindel, “Beyond Military Power: The Symbolic Politics of Conventional Weapons Transfers,” PhD dissertation (University of Minnesota, 2018); A. Trevor Thrall, Jordan Cohen, and Caroline Dorminey, “Power, Profit, or Prudence? US Arms Sales since 9/11,” *Strategic Studies Quarterly* 14:2 (2020):100-126; Rachel Stohl, “Questionable Reward: Arms Sales and the War on Terrorism,” *Arms Control Today* (2008), <https://www.armscontrol.org/act/2008-01/features/questionable-reward-arms-sales-war-terrorism>.

<sup>6</sup> For more information, see the US Arms Export Control Act, 22 US Code Chapter 39, <https://www.law.cornell.edu/uscode/text/22/chapter-39>.

White House and the Departments of Defense, State, and Commerce—that make and shape US arms dealing-making with foreign customers. As a result, the CAT policy is an important statement about US arms transfer priorities to both domestic and international audiences, even if US export practices have historically proven resistant to major change and are in many ways designed to give policymakers considerable flexibility.<sup>7</sup>

Jonathan Caverley compares the Biden CAT policy to the Trump policy it replaces and identifies several “novel components,” including its priority placed on recipient human rights, its attention to firearms regulations, and—perhaps most importantly for Caverley—what “can be considered ‘arms’” in the first place. He argues that the structure of international politics and the global arms market shape and limit US presidential administrations’ ability to enact policy change. Nevertheless, Caverley argues that the Biden administration’s policy “will likely be more successful, ambitious, and potentially more dangerous” than its predecessor because of the realities of contemporary international politics and economics it faces.

Jordan Cohen focuses on the addition of text in the new CAT policy on not infringing on human rights and international humanitarian law (IHL) and the lowering of the threshold for the State Department to stop arms sales that are based on violations of human rights and IHL. Cohen explains the limited role of Congress for arms export restraint and argues, as a result, that real attention to “risk” in US arms transfers must come from the executive branch. Yet he is skeptical about the prospects for the implementation of the new CAT policy’s human rights provisions.

Hoshik Nam draws our attention not only to the new CAT policy’s human rights language but also to its inclusion of end-use monitoring and the risk of diversion (i.e., when weapons transfers are intercepted and redirected from their legally intended recipient). He argues that, in general, “the CAT policy simply expresses the president’s initiatives without legal responsibilities” and that “practical strategies,” including additional legal measures and expanding the role of Congress, will be necessary to “successfully execute the policy.”

Finally, Jennifer Spindel takes a step back and identifies the biggest change in the new CAT policy as the Biden administration’s overarching focus on arms transfers not just as an “economic activity” but as a tool to be used to strengthen political relationships and meet political goals. While the policy directs the administration to “pay particular attention to human rights and the potential to cause civilian harm,” Spindel argues that it will inevitably struggle to reconcile the “political tradeoffs of arms sales” with its commitment to respect for human rights. She observes that there are good reasons to think that CAT policy rhetoric might not ultimately matter. Even so, she notes, “Biden’s approach gives new levers and additional language to potential critics.” Certainly, experts, advocates, businesses, and governments will be watching closely.

## Participants:

**Jennifer L. Erickson** is an Associate Professor of Political Science and International Studies at Boston College and the RJISSF Managing Editor. Her research focuses on international security and arms control,

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<sup>7</sup> See for example: Jennifer L. Erickson, “Demystifying the ‘gold standard’ of arms export controls: US arms exports to conflict zones,” *Global Policy* 14:1 (2023):131-138; William D. Hartung, “Breaking the Arms-Sales Addiction: New Directions for U.S. Policy,” *World Policy Journal* 8:1 (1990/1991): 1-26; Michael Klare, *American Arms Supermarket* (Austin: University of Texas Press, 1984); Joanna Spear, *Carter and Arms Sales: Implementing the Carter Administration’s Arms Transfer Restraint Policy* (New York: St. Martin’s Press, 1995); Elias Youisif, “If we don’t sell it, someone else will: Dependence & Influence in US Arms Transfers,” 30 March 2023, <https://www.stimson.org/2023/if-we-dont-sell-it-someone-else-will-dependence-influence-in-us-arms-transfers/> ,

the conventional arms trade, sanctions and arms embargoes, and new weapons and the laws and norms of war.

**Jonathan D. Caverley** is Professor of Strategic and Operational Research at the United States Naval War College.

**Jordan Cohen** is a policy analyst in defense and foreign policy at the Cato Institute and holds a PhD in political science from the Schar School of Policy and Government at George Mason University.

**Hoshik Nam** is a PhD candidate in political science at the University of Iowa. His dissertation discusses international arms transfer controls by the UN and the United States. His research interests involve conflict management processes and US foreign policy regarding international arms trades.

**Jennifer Spindel** is an Assistant Professor of Political Science at the University of New Hampshire. Her research focuses on international security, alliances, the arms trade, and civil-military relations. She is working on a book manuscript about signaling in international politics and the conventional weapons trade. Her research has appeared in *Security Studies*, the *European Journal of International Security*, *Foreign Policy Analysis*, and the *Journal of Global Security Studies*, among other outlets. She has published policy-relevant work in *The Monkey Cage*, *War on the Rocks*, and *Defense One*.

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 Essay by Jonathan D. Caverley, U.S. Naval War College
 

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## “Structure Trumps Agency in the Global Arms Market”

Those of us who study politics found the remarkable success Donald Trump had in altering, eliminating, and ignoring aspects of political life that were previously considered stable disorienting.<sup>1</sup> In social scientific terms, Trump was an agent who simply did not accept the constrictions of structure, spending much of his term energetically, even gleefully, attacking institutions, agreements, norms and other aspects of the status quo.<sup>2</sup> The global arms trade and the United States’ position in it were no exception.

Trump “unsigned” the Arms Trade Treaty. He shifted the regulation of small arms exports from the US Munitions List (under State Department supervision) to the less restrictive Commerce Control List. With immense fanfare, Trump signed “letters of intent” with Saudi Arabia for arms deals purportedly totaling \$110 billion immediately, and \$350 billion over 10 years. In the wake of the Saudi assassination of journalist Jamal Kashoggi, the administration claimed “emergency use” to bypass Congressional review for the first \$8 billion tranche of Saudi weapons. Trump’s Conventional Arms Transfer Policy (CATP) highlighted the economic motivations for arms sales to an unprecedented degree.<sup>3</sup> US embassy staffs were instructed to push US weapons sales as a key part of their job, a policy described by a senior administration official as a “180-degree shift.”<sup>4</sup> And of course Trump was impeached for leveraging an arms transfer to Ukraine in pursuit of electoral gain.

Small wonder then, that many analysts, for the reasons laid out in other contributions to this roundtable, greeted with relief the Biden administration’s revised CATP. But it is worth noting that, whatever success Trump had in disrupting other elements of international and domestic political life, his administration’s highly visible efforts had almost no effect on US arms transfers or the economy. The Saudi sales were much smaller, with fewer economic benefits, than Trump let on.<sup>5</sup> Firearms exports rose by 23 percent across Trump’s tenure, but had risen by 50 percent across the second administration of President Barack Obama.<sup>6</sup> While the impeachment failed, so too did Trump’s attempt at coercing the Ukrainian president.

The global arms trade has very few norms and institutions to undermine. What remains are economic and political structures. These areas, while distinct, are of course tightly related. While it is intuitive that the international distribution of power will influence greatly the structure of the global market, it also the case that structure and indeed the definition of the global arms market will shape the practice of international

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<sup>1</sup> This essay presents my opinions and does not represent those of the United States Naval War College, Navy, and Government

<sup>2</sup> Robert Jervis, “Policy Series 2021-7: The Trump Experiment Revisited,” *H-Diplo/RJISSF*, February 11, 2021, <https://issforum.org/essays/ps2021-7>. Daniel W Drezner, “Immature Leadership: Donald Trump and the American Presidency,” *International Affairs* 96, no. 2 (March 1, 2020): 383–400, <https://doi.org/10.1093/ia/iaa009>.

<sup>3</sup> Donald J. Trump, “National Security Presidential Memorandum Regarding U.S. Conventional Arms Transfer Policy,” April 19, 2018, <https://trumpwhitehouse.archives.gov/presidential-actions/national-security-presidential-memorandum-regarding-u-s-conventional-arms-transfer-policy/>.

<sup>4</sup> Mike Stone and Matt Spetalnick, “Exclusive: Trump to Call on Pentagon, Diplomats to Play Bigger Arms Sales Role - Sources,” *Reuters*, January 8, 2018, sec. Aerospace and Defense, <https://www.reuters.com/article/us-usa-trump-weapons-idUSKBN1EX0WX>.

<sup>5</sup> Calvin Woodward and Robert Burns, “AP FACT CHECK: Trump Inflates Value of Saudi Arms Deal | AP News,” *AP*, November 21, 2018, <https://apnews.com/article/jamal-khashoggi-north-america-donald-trump-economy-politics-2b4799b3d3ca4f6781efe1e70f207392>.

<sup>6</sup> “2021 Annual Firearms Manufacturers and Export Report (AFMER) | Bureau of Alcohol, Tobacco, Firearms and Explosives,” accessed May 9, 2023, <https://www.atf.gov/resource-center/2021-annual-firearms-manufacturers-and-export-report-afmer>.

politics. These factors greatly limited Trump’s ability to shape policy. But these forces will shape the Biden Administration’s approach as well.

This essay reviews the economics of the global arms market and the resultant shifts in international political power given Biden’s foreign policy goals. While observers rightly point out the shifts in stated policy on human rights and (tacitly) firearms regulation, the Biden administration’s policy contains many other novel components (it is unprecedentedly long), the most important being the expansion of what can be considered “arms” in an effort to impede the development of China’s military and high-technology sector.<sup>7</sup> Taken collectively, and given the economic and political realities, these goals suggest that relative to its predecessor, the Biden administration’s approach will likely be more successful, ambitious, and potentially more dangerous.

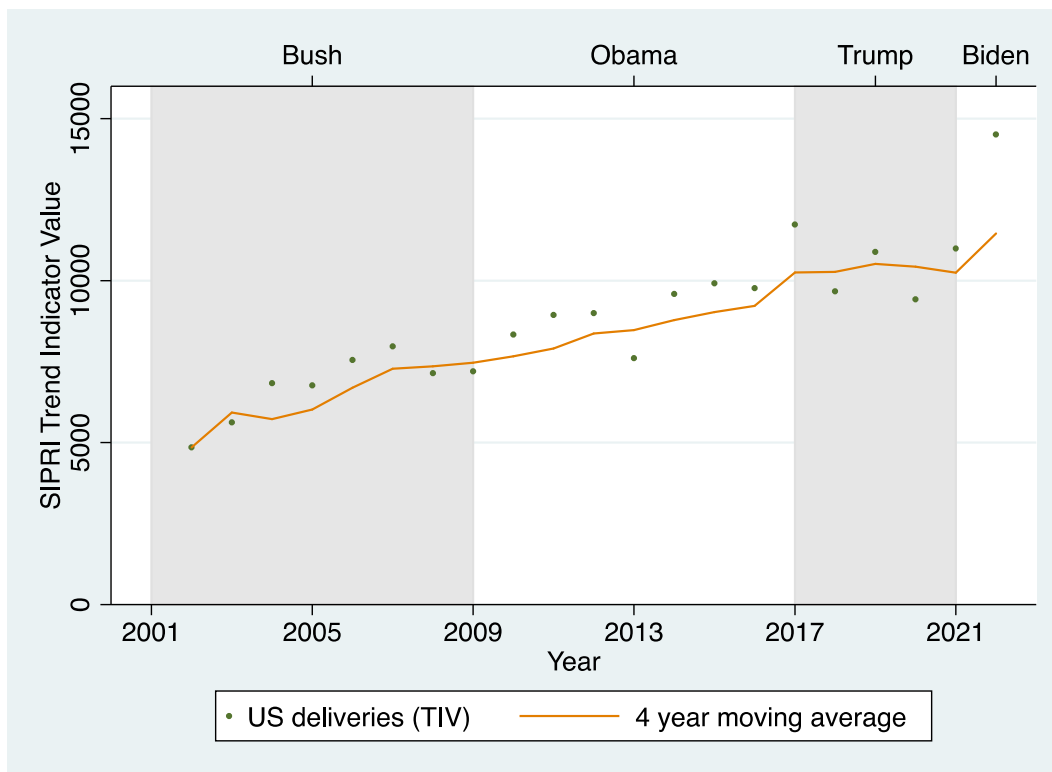
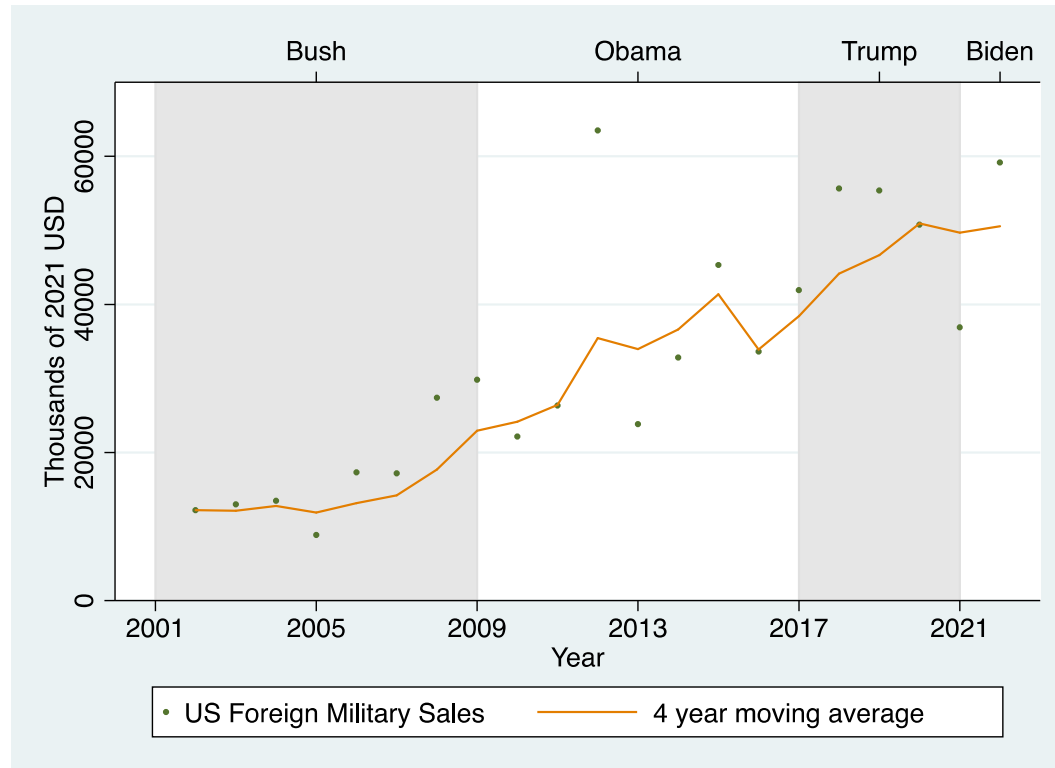


Figure 1 US Arms Deliveries 2002-2022 (Source: SIPRI)

<sup>7</sup> Josh Kirshner, “What Biden’s New Arms Transfer Policy Means - and What It Missed On,” *Breaking Defense*, March 3, 2023, <https://breakingdefense.sites.breakingmedia.com/2023/03/what-bidens-new-arms-transfer-policy-means-and-what-it-missed-on/>. John Ramming and Ari Tolany, “Unpacking Biden’s Conventional Arms Transfer Policy,” *Lawfare*, March 2, 2023, <https://www.lawfareblog.com/unpacking-bidens-conventional-arms-transfer-policy>.



**Figure 2 US Foreign Military Sales Contracts 2002-2021 (Source: DSCA)**

### *Anticipated Economic Impact*

Trump attempted to supercharge US arms exports, and to use these exports to boost US manufacturing. He failed at both for different reasons. First, it is very difficult for even the United States to radically change the structure of the arms market. Trump set himself a tall order in his attempt to enhance the already overwhelming US market power. Second, Trump did not appreciably boost employment because the structure of this market does not easily enable this political goal.

Trump's policies did little to shift a market that is increasingly dominated by the United States. Whether one looks at US arms deliveries (Figure 1) or the value of Foreign Military Sales Contracts (Figure 2), US arms exports and market share have risen fairly steadily over two decades across multiple administrations.<sup>8</sup> Indeed, despite the massive publicized amount of Saudi arms sales during the Trump administration, as a percent of US arms deliveries, those to the Middle East and North Africa actually peaked at the end of the Obama Administration (Figure 3). Rising tension in the Indo-Pacific and Russia's invasion of Ukraine have spurred Asian and European defense spending. Moreover, the resulting sanctions and poor performance of Russian arms will devastate the defense industry of the world's second largest arms exporter. These changes in supply and demand are far more powerful than any president's policy.

<sup>8</sup> Stockholm International Peace Research Institute (SIPRI), "SIPRI Arms Transfers Database," 2023, <https://www.sipri.org/databases/armstransfers>. According to the DSCA, "A Foreign Military Sale (FMS) is concluded when the US government and the authorized recipient government or international organization sign a Letter of Offer and Acceptance (LOA) that specifies the terms and conditions of the sale" Defense Security Cooperation Agency, "DSCA Historical Sales Book, Fiscal Years 1950 – 2021" (Washington, D.C.: Defense Security Cooperation Agency), G-2, accessed May 8, 2023, [https://www.dsca.mil/sites/default/files/dsca\\_historical\\_sales\\_book\\_FY21.pdf](https://www.dsca.mil/sites/default/files/dsca_historical_sales_book_FY21.pdf).

Market structure shapes the actions of firms and states; monopolies reward different behavior than do oligopolies or highly competitive markets. In a typical market, as demand rises, more firms enter, resulting in greater competition. But the global arms trade has grown less competitive even as global military procurement has risen. Global spending grew by 19 percent over the decade 2013–22.<sup>9</sup> Between 2013–17 and 2018–22, the United States’ share of global arms exports increased from 33 to 40 percent.<sup>10</sup> Simultaneous increases in market concentration and size suggest the presence of barriers to entry, economies of scale, or network effects that favor the dominant actors. The United States enjoys all three when it comes to the defense industry.<sup>11</sup>

Its tremendous competitive advantages allow the United States room to maneuver in ways unavailable to other countries, but not in any direction it chooses. The Trump Administration chose to use this advantage to increase sales further in order to create manufacturing jobs. This was not an efficient use of market power; it is hard to create jobs with arms sales under almost any circumstances, and the US defense industry was operating near full-capacity in an extremely tight labor market even before the invasion of Ukraine.<sup>12</sup> Defense industrial employment increased from 2018 to 2020 by 6 percent, roughly 64,000 jobs.<sup>13</sup>

In contrast, the Biden administration finds itself in a doubly attractive structural position. First global demand and US market power are even higher than they were in 2017. Second, given the market structure, the foreign policy goals it has set for its arms transfer policy are easier to achieve.<sup>14</sup> It is easier to reduce (or at least threaten to reduce) sales in pursuit of international political goals such as human rights from this position rather than try and increase sales further to create jobs. But, given the Biden’s quite public acknowledgement of the shifting international political structure, we should not count on human rights being a major focus. Put simply, the goals of the Biden administration mostly rely on what led to US market dominance in the first place: the superior ability of the US to meet allies’ demands for capable weapons at a reasonable price.

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<sup>9</sup> “World Military Expenditure Reaches New Record High as European Spending Surges | SIPRI,” accessed May 8, 2023, <https://www.sipri.org/media/press-release/2023/world-military-expenditure-reaches-new-record-high-european-spending-surges>.

<sup>10</sup> Stockholm International Peace Research Institute (SIPRI), “SIPRI Arms Transfers Database.”

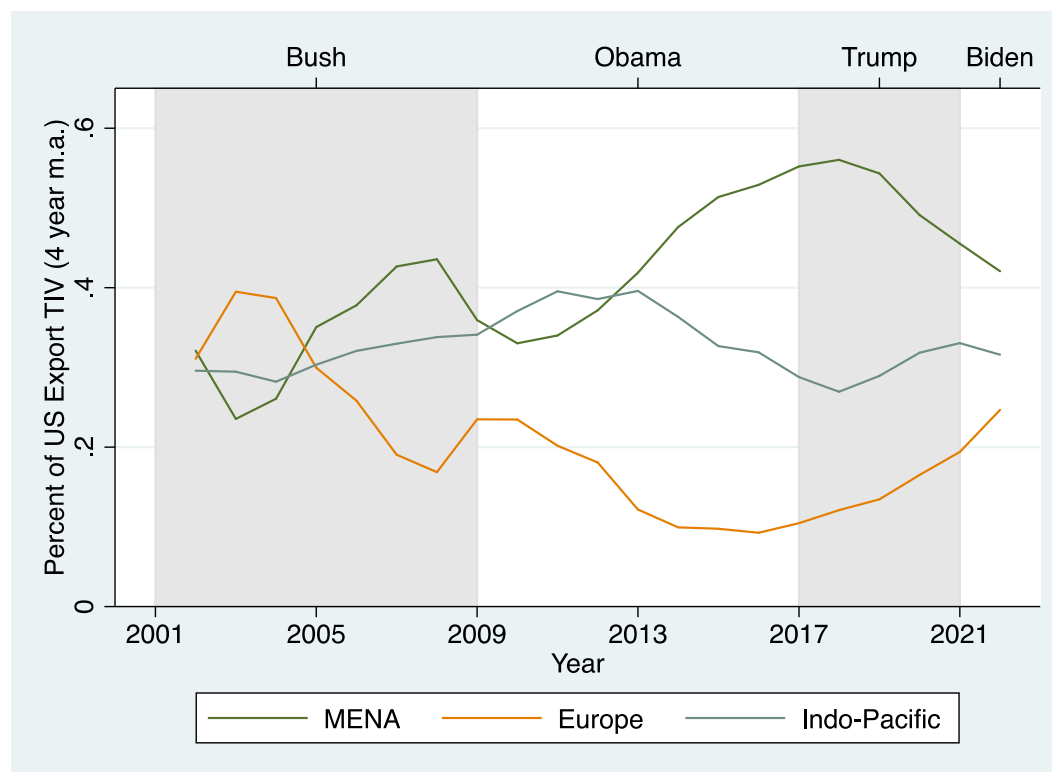
<sup>11</sup> America’s Belt and Road Jonathan D. Caverley, Ethan B. Kapstein, and Srdjan Vucetic, “F-35 Sales Are America’s Belt and Road – Foreign Policy,” *Foreign Policy*, July 12, 2019, <https://foreignpolicy.com/2019/07/12/f-35-sales-are-americas-belt-and-road/>. Andrea Gilli and Andrea Gilli, “Why China Has Not Caught Up Yet,” *International Security* 43, no. 3 (2019): 141–89. Stephanie G. Neuman, “Power, Influence, and Hierarchy: Defense Industries in a Unipolar World,” *Defence and Peace Economics* 21, no. 1 (2010): 105–34, <https://doi.org/10.1080/10242690903105398>.

<sup>12</sup> Jonathan D. Caverley, “America’s Arms Sales Policy: Security Abroad, Not Jobs at Home.,” *War on the Rocks*, April 2018, <https://warontherocks.com/2018/04/americas-arms-sales-policy-security-abroad-not-jobs-at-home/>.

<sup>13</sup> National Defense Industrial Association, “Vital Signs 2021: The Health and Readiness of the Defense Industrial Base,” 2021, [https://content.ndia.org/-/media/vital-signs/2021/vital-signs\\_2021\\_digital.pdf?download=1](https://content.ndia.org/-/media/vital-signs/2021/vital-signs_2021_digital.pdf?download=1).

<sup>14</sup> Spencer L. Willardson and Richard A I Johnson, “Arms Transfers and International Relations Theory: Situating Military Aircraft Sales in the Broader IR Context,” *Conflict Management and Peace Science* 2021 (2018). Kyle Beardsley et al., “Hierarchy and the Provision of Order in International Politics,” *Journal of Politics* 82, no. 2 (2020): 731–46, <https://doi.org/10.1086/707096>.





**Figure 3 Regional Shares of US Arms Deliveries, 2002-2022 (Source: SIPRI)**

#### *Anticipated Political Impact*

While trends in the economic structure of the defense industry favor the United States, we cannot say the same for the global distribution of political power, which is the most traditional form of structure in International Relations theory. While one can certainly question the “righteous panic” in the United States regarding China, the relative decline of the US is nonetheless real.<sup>15</sup> The Biden administration will look at its market power through the lens of this strategic competition, only part of which involves human rights. Its CATP clearly telegraphs this. In addition to its focus on human rights, Biden’s policy contains several other new sections with great power politics clearly in mind. Unlike previous versions, Biden’s CATP explicitly labels China and Russia as “strategic competitors.”

The policy calls for streamlining the US arms transfer programs to more efficiently get weapons into customers’ hands, another novel addition.<sup>16</sup> Scholars have struggled to nail down when arms transfer can coerce countries into more cooperative behavior.<sup>17</sup> But the most important and concrete foreign policy output from these sales is that other countries have better militaries. Arming European and Asian allies is

<sup>15</sup> Jon Bateman, “Opinion | The Fevered Anti-China Attitude in Washington Is Going to Backfire,” *Politico*, December 15, 2022, <https://www.politico.com/news/magazine/2022/12/15/china-tech-decoupling-sanctions-00071723>; Jessica Chen Weiss, “The China Trap,” *Foreign Affairs*, August 18, 2022, <https://www.foreignaffairs.com/china/china-trap-us-foreign-policy-zero-sum-competition>.

<sup>16</sup> Jaspreet Gill, “New Conventional Arms Transfer Focuses on Human Rights over Economics,” *Breaking Defense* (blog), February 23, 2023, <https://breakingdefense.sites.breakingmedia.com/2023/02/new-conventional-arms-transfer-focuses-on-human-rights-over-economics/>.

<sup>17</sup> Patricia L Sullivan, Brock F Tesson, and Xiaojun Li, “US Military Aid and Recipient State Cooperation,” *Foreign Policy Analysis* 7, no. 3 (2011): 275–94; Jennifer Spindel, “Arms for Influence? The Limits of Great Power Leverage,” *European Journal of International Security*, February 28, 2023, 1–18, <https://doi.org/10.1017/eis.2023.3>.

clearly a high priority of the Biden administration. In the coverage that followed the policy's publication, this process was fleshed out considerably. A senior State Department official detailed plans "focus on four areas in particular where we haven't seen much progress in ensuring our competitiveness on a global stage," including "competitive financing (making sure that our products are affordable to our partners)," "building exportability into the design phase," building weapons that its allies want but the US does not, and "risk tolerance" for sharing technology.<sup>18</sup>

But perhaps most significant is the new section on "Arms Transfers Involving Emerging Technologies," which notes that "the United States also will review and develop, as required, additional policy guidance for the review of arms transfers related to or incorporating emerging technologies implicating national security." When read in light of Biden's larger foreign-policy approach of the Biden administration, this section reflects on of his administration's most consequential innovations: a newfound prominence of the Commerce Department in national security policy.<sup>19</sup>

Observers dismayed by the Trump administration's shifting of handgun exports to the bailiwick of the Commerce Department were pleased by the Biden administration's declaration that its CATP applied to "certain items on the Commerce Control List" which an official on background said "formalizes longstanding practice that certain Commerce-regulated items, such as firearms and certain military items, including spare parts and components are subject to the CAT Policy framework." This may be the intent, but the Biden administration's comingling of national security and industrial policy via Commerce suggests that small arms will not be a focus.

While it is perhaps a regulatory backwater for firearms exports, the Commerce Department plays the central role in the Biden Administration's concerted effort to choke off China's supply of leading-edge semiconductors and the equipment needed to fabricate them. These steps were taken in the name of keeping dual-use technology out of the hands of the Chinese military rather than for domestic economic protectionism, but the latter effect is of course there as well. The Biden administration continues to emphasize it does not seek the economic containment of China, claiming to be simply building a "high fence" around a "small yard." Whatever the justification, the economic impact for both countries will be enormous. In the words of National Security Advisor Jake Sullivan, the "foundational nature" of these technologies, means that the United States "must maintain as large of a lead as possible," a strategically and economically significant change in policy.<sup>20</sup>

In a sense, the Biden administration's CATP mirror images that of Trump's. In the name of economic nationalism, Trump sought to loosen regulations by declassifying small arms as munitions and build the domestic economy through increased arms sales. The Biden administration's version of economic nationalism entails placing more items under its arms transfer policy.

Importantly, this industry is likely to be more responsive compared to the conventional arms market. The global defense industry sold roughly \$350 billion worth of arms in 2020, with US defense firms accounting

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<sup>18</sup> Bryant Harris, "Biden Arms Deal Policy Seeks to Balance Human Rights and Competition," Defense News, February 23, 2023, <https://www.defensenews.com/pentagon/2023/02/23/biden-arms-deal-policy-seeks-to-balance-human-rights-and-competition/>.

<sup>19</sup> Martijn Rasser, A Conversation with Under Secretary of Commerce Alan F. Estevez, Center for New American Security, October 27, 2022, <https://www.cnas.org/publications/transcript/a-conversation-with-under-secretary-of-commerce-alan-f-estevez>.

<sup>20</sup> The White House, "Remarks by National Security Advisor Jake Sullivan at the Special Competitive Studies Project Global Emerging Technologies Summit," The White House, September 16, 2022, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/16/remarks-by-national-security-advisor-jake-sullivan-at-the-special-competitive-studies-project-global-emerging-technologies-summit/>.

for half.<sup>21</sup> Global semiconductor sales reached \$574 billion in 2022, with 48 percent going to US semiconductor companies.<sup>22</sup> While the transfer of traditional weaponry does not have much effect on the United States economy, expanding the definition of arms transfers to include semiconductors and chip-making equipment is likely to have profound and hard-to-predict effects on the economies of China, the United States, and indeed the world.<sup>23</sup> Ultimately the most consequential change in norms from Trump's CATP to Biden's is this expansion of what is considered "arms."

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<sup>21</sup> Jane's estimates 2020 global defense spending at \$1.8 trillion dollars, with about 20% going towards procurement. SIPRI reports that the 100 largest defense firms supplied \$592 billion worth of defense sales in 2021, essentially all of global procurement. Lucie Béraud-Sudreau et al., "The SIPRI Top 100 Arms-Producing and Military Services Companies, 2021" (SIPRI, December 2022), 100, <https://www.sipri.org/publications/2022/sipri-fact-sheets/sipri-top-100-arms-producing-and-military-services-companies-2021>.

<sup>22</sup> Semiconductor Industry Association, "Semiconductor Industry Association Factbook," 2023, [https://www.semiconductors.org/wp-content/uploads/2023/05/SIA-2023-Factbook\\_1.pdf](https://www.semiconductors.org/wp-content/uploads/2023/05/SIA-2023-Factbook_1.pdf).

<sup>23</sup> Jon Bateman, "U.S.-China Technological 'Decoupling': A Strategy and Policy Framework" (Carnegie Endowment for International Peace, April 25, 2022), [https://carnegieendowment.org/files/Bateman\\_US-China\\_Decoupling\\_final.pdf](https://carnegieendowment.org/files/Bateman_US-China_Decoupling_final.pdf).

## Essay by Jordan Cohen, CATO Institute

## “Hoping Beyond Hope: The Promises and Doubts of President Biden’s CAT Policy”

US President Joe Biden recently released his Conventional Arms Transfer policy, which dictates which countries may purchase US weapons and how the arms transfer process should function.<sup>1</sup> Almost every new presidential administration releases one. Former President Donald Trump, for example, issued the previous Conventional Arms Transfer policy in 2018, and it primarily focused on the economic benefits from weapons transfers.<sup>2</sup> The Biden administration, at least in writing, is attempting to actually change US arms transfer policies.

The Biden administration’s Conventional Arms Transfer policy makes two notable changes. First, it adds text about not infringing norms and human rights. Specifically, it notes that the US should “prevent arms transfers that risk facilitating or otherwise contributing to violations of human rights or international humanitarian law.” Second, the new policy allows the State Department to stop sales that it determines will “more likely than not” be used to violate human rights, while under the previous Conventional Arms Transfer policy, only “actual knowledge” these weapons would be used to violate human rights could stop them.<sup>3</sup> This, therefore, lowers the threshold required before the State Department can intervene to stop a problematic sale.

Overall, the fact that the Biden administration is analyzing the risks of US weapons being used to violate human rights is admirable.<sup>4</sup> With that said, the administration does have a mixed record on this issue so far. It has sent billions of dollars’ worth of weapons to human rights abusers like Saudi Arabia, the United Arab Emirates, the Philippines, Egypt, and Turkey. Biden’s decision to prioritize the human rights effects of US weapons transfers comes at the perfect time. Recent trends in arms transfer policies have placed profits over risk or even strategy. Furthermore, while Congress has long struggled to exert influence over the process, in recent years it has attempted to claim more power.

*The Increasing Role of Economics in Arms Transfers*

There are two main motivations for transferring US arms—strategic and economic—and one primary reason to abstain—risk. When considering a sale, policymakers should prioritize strategic objectives, including improving interoperability, strengthening allies, offsetting domestic defense spending costs, and deterring adversaries.<sup>5</sup> The State Department, Defense Department, and Commerce Department all have multiple

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<sup>1</sup> Joseph R. Biden, “Memorandum on United States Conventional Arms Transfer Policy,” The White House, February 23, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/>.

<sup>2</sup> Donald J. Trump, “National Security Presidential Memorandum on United States Conventional Arms Transfer Policy,” The White House, April 19, 2018, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/>.

<sup>3</sup> Joseph R. Biden, “Memorandum on United States Conventional Arms Transfer Policy.”

<sup>4</sup> Previous scholarship suggests that this has not been the case. For example, see Jordan Cohen and A. Trevor Thrall, “What Is the Cost of Selling Arms?,” Inkstick Media, April 1, 2022, <https://inkstickmedia.com/what-is-the-cost-of-selling-arms/>.

<sup>5</sup> For example, see Keren Yarhi-Milo, Alexander Lanoszka, and Zack Cooper, “To Arm or to Ally? The Patron’s Dilemma and the Strategic Logic of Arms Transfers and Alliances,” *International Security* 41, no. 2 (October 1, 2016): 90–139, [https://doi.org/10.1162/ISEC\\_a\\_00250](https://doi.org/10.1162/ISEC_a_00250); Geoffrey Kemp, “The Continuing Debate over U.S. Arms Sales: Strategic Needs and the Quest for Arms Limitations,” *Annals of the American Academy of Political and Social Science* 535 (1994): 146–57, <https://doi.org/10.1177/0002716294535001011>; Jennifer Spindel, “Arms for Influence? The Limits of Great Power Leverage,” *European Journal of International Security*, February 28, 2023, 1–18, <https://doi.org/10.1017/eis.2023.3>; David Kinsella, “Nested Rivalries: Superpower Competition, Arms Transfers, and Regional Conflict, 1950–1990,” *International Interactions* 21, no. 2 (March 1, 1995): 109–25,

teams that are designed to help the president and Congress choose where to send weapons and how to most efficiently do so—and this is to say nothing of the various federally funded research and development corporations, in-house government think tanks, and research services that provide assistance.<sup>6</sup> Thus, while one can question the long-term logic of sending weapons to so many partners, it is nonetheless the reality that Washington considers what strategic benefits can be gained from selling weapons abroad.

The other main motivation for arms sales is economic. The economic incentive for arms transfers centers around the reality that US arms sales annually make up of four to five percent of all US exports; thus, the defense industry is a major employer and sustainer of the US economy. During the presidencies of Bill Clinton and Donald Trump, the value of the sale of weapons motivated the policies on them. Clinton noted in 1995 that the benefits for US industry and the defense industrial base “would be a key criterion for his administration’s decision-making.”<sup>7</sup> His Policy Decision Directive 34, which outlined Clinton’s arms sales policy, included a statement that US weapons sales should “enhance the ability of the US defense industrial base to meet US defense requirements and maintain long-term military technological superiority at lower costs.”<sup>8</sup> Defense lobbyists called this statement “the most positive statement on defense trade that has been enumerated by any administration.”<sup>9</sup>

This rationale can be seen in the Trump administration’s version of the Conventional Arms Transfer policy where it asserts that “when a proposed transfer is in the national security interest, which includes our economic security, and in our foreign policy interest, the executive branch will advocate strongly on behalf of United States companies.”<sup>10</sup> Trump’s record number of sales suggest that he stuck to this policy.<sup>11</sup>

It is becoming increasingly clear that the strategic and economic motivations have always outweighed the drawback of risk. Factors of risk from the sale of arms include levels of corruption in a recipient state, government instability and inability of the receiving state to control weapons it receives, states that abuse human rights, and states engaged in conflict. Unfortunately, policymakers have mostly ignored these factors since the start of the Cold War, and the problem is getting worse.<sup>12</sup>

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<https://doi.org/10.1080/03050629508434862>; and Richard A. I. Johnson, “Decision-Making in the Arms of a Dependent Relationship: Explaining Shifts in Importer Acquisition Patterns of Major Weapon Systems, 1955–2007,” *Defence and Peace Economics* 31, no. 7 (October 2, 2020): 851–68, <https://doi.org/10.1080/10242694.2019.1618651>.

<sup>6</sup> See Jordan Cohen and A. Trevor Thrall, “Arms Sales,” in *Cato Handbook for Policymakers*, 9th ed. (Cato Institute, 2022), 305–19, <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policymakers-9th-edition-2022/arm-sales>; Peter Tompa, “The Arms Export Control Act and Congressional Codetermination over Arms Sales,” *American University International Law Review* 1, no. 1 (January 1, 1986), <https://digitalcommons.wcl.american.edu/auilr/vol1/iss1/14>; A. Trevor Thrall and Caroline Dorminey, “Risky Business: The Role of Arms Sales in U.S. Foreign Policy,” *Cato Institute Policy Analysis* Number 836 (March 13, 2018); and Margaret M. Murphy, “All for Nothing?: Executive Authority and Congressional Evasion on Arms Sales,” *Catholic Law Review* 70, no. 1 (Winter 2021).

<sup>7</sup> William J. Clinton, “Presidential Decision Directive 34, Conventional Arms Transfer policy,” The White House, February 17, 1995, <https://fas.org/irp/offdocs/pdd34.htm>.

<sup>8</sup> Clinton, “Policy Decision Directive 34, U.S. Policy on Conventional Arms Transfer.”

<sup>9</sup> Lora Lumpe, “Bill Clinton’s America: Arms Merchant to the World,” *Resist Newsletter* 4, no. 8 (October 1995),

<sup>10</sup> Trump, “Conventional Arms Transfer Policy.”

<sup>11</sup> William D. Hartung, *Peddling Arms, Peddling Influence: Exposing the Arms Export Lobby*, World Policy Institute Report (New York: World Policy Institute, October 1996), <http://worldpolicy.org/>; and Robert Levinson, Sopen Shah, and Paige K. Conner, *Impact of Defense Spending: A State-by-State Analysis* (New York: Bloomberg, 2011).

<sup>12</sup> See Jordan Cohen and A. Trevor Thrall, “The 2022 Arms Sales Risk Index,” *Cato Institute*, *Forthcoming*; and Trevor Thrall and Jordan Cohen, “2021 Arms Sales Risk Index,” *Cato Institute*, January 18, 2022, <https://www.cato.org/study/2021-arms-sales-risk-index#salw-sales-risk-amplifying-violence-conflict>.

During the Cold War, this lack of concern led to scandals like Turkey's creation of a refugee crisis in Cyprus using US weapons, President Ronald Reagan arming of Nicaraguan Contras who then used US weapons to commit human rights atrocities, and the use of US weapons by Columbian policy in the mid-1990s to harm their own population.<sup>13</sup> Since 9/11, weapons sales have armed individuals who use US weapons to kill American soldiers, allowed authoritarian governments to arrest their own civilians, and undermined both global human rights and US foreign policy.<sup>14</sup> By placing more importance on human rights considerations, however, if implemented Biden's Conventional Arms Transfer policy could actually reduce this very risk, as recipients abusing human rights often goes hand-in-hand with the same factors that cause things like dispersion and blowback.<sup>15</sup>

Regardless of any potential benefits, it is implausible to think that policymakers will ever universally prioritize risk-avoidance in US arms sales policy to the same degree as they do with strategic and economic motivations. All sales come with risk. Therefore, if policymakers did prioritize risk-avoidance over strategic and economic motivations, the vast majority of sales simply would not happen. Nonetheless, some level of change is necessary, and such changes can only come from the White House.

### *Why Change in US Arms Sales Policy Must Come from the Executive Branch*

Ultimately, only the executive branch can make significant and overarching changes—like instituting a greater concern from human rights—to the arms-sale process for three reasons. First, the Foreign Military Sales (FMS) process begins in the executive branch, and all sales, regardless of classification, are initially and primarily vetted through executive branch departments. Moreover, regardless of whether these sales are FMS, Direct Commercial Sales (DCS), or private sales regulated through the Commerce Department, the legislative branch is not involved whatsoever until after a sale has already been agreed to in principle.<sup>16</sup> Thus, from a policy standpoint, any significant changes are most likely to come from the president.

Second, laws governing US arms transfer policies do not empower Congress enough to stop specific sales. Namely, the Foreign Assistance Act of 1961 and the Arms Export Control Act of 1976 provide Congress with authority to stop, pause, and evaluate specific sales, but all of these mechanisms also have flaws.<sup>17</sup>

The major element of the Foreign Assistance Act that empowers Congress is known as Section 502B, which allows the Senate Foreign Relations Committee or House Foreign Affairs Committee to request that the State Department issue a human rights report on a US weapons recipient. It then has two provisions that allow Congress to stop or pause sales. If, after thirty days, Congress has not received this report from the State Department, the sale is automatically suspended. The problem is that this is essentially a legislative veto, or when the legislative branch vetoes the president, which rests on shaky legal ground. The Supreme Court ruled in *Immigration and Naturalization Service v. Chadha* that the president must be given the opportunity to use his

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<sup>13</sup> See Robert David Johnson, *Congress and the Cold War* (New York: Cambridge University Press, 2006); "A Secret War for Nicaragua," *Newsweek*, November 8, 1982, pp. 42; and Winifred Tate, *Drugs, Thugs, and Diplomats: U.S. Policymaking in Colombia*, Anthropology of Policy (Stanford, California: Stanford University Press, 2015).

<sup>14</sup> See Thrall and Dorminey, "Risky Business."

<sup>15</sup> A. Trevor Thrall, Jordan Cohen, and Caroline Dorminey, "Power, Profit, or Prudence? US Arms Sales since 9/11," *Strategic Studies Quarterly* 14, no. 2 (Summer 2020): 100–126.

<sup>16</sup> Paul K. Kerr, "Arms Sales: Congressional Review Process," *Congressional Research Service*, CRS Report RL31675, June 10, 2022, <https://sgp.fas.org/crs/weapons/RL31675.pdf>.

<sup>17</sup> This is true regardless of the enforcement mechanism. In the case of arms sales, the policies are flexible, designed to serve vast U.S. interests, and when it does happen, restraint and end-use monitoring faces implementation challenges. See Jennifer L. Erickson, "Demystifying the 'Gold Standard' of Arms Export Controls: US Arms Exports to Conflict Zones," *Global Policy* 14, no. 1 (2023): 131–38, <https://doi.org/10.1111/1758-5899.13181>.

veto power on any bill before it is enacted into law, rendering any legislative veto—including 502B’s 30-day legislative veto—unconstitutional.<sup>18</sup>

The other way that Section 502B allows Congress to stop a sale has the same pitfalls as the Arms Export Control Act: it must face the presidential veto. If the information contained in the State Department’s human rights report is overly alarming, Section 502B allows Congress to issue a Joint Resolution of Disapproval in a privileged vote, which means that any Senator can discharge the resolution from committee after ten days. If a majority in each chamber agrees to stop a sale, the sale will be ended—pending no presidential veto. Similarly, the Arms Export Control Act governs much of the US arms sales congressional review process and, in theory, allows Congress to stop any Foreign Military Sale via a Joint Resolution of Disapproval if it determines that such a sale goes against US interests.<sup>19</sup> Nonetheless, because it is the executive branch that agrees to all major sales, it is unlikely that it would simply allow Congress to stop it; it would therefore veto the congressional resolution. This is a large reason why Congress has never effectively used Section 502B or the Arms Export Control Act to stop an arms sale.<sup>20</sup>

Not only has Congress never been able to stop an individual sale, but it has also historically been reluctant to even attempt to pass legislation that would protect human rights in arms transfers. Utilizing the data on Congress.gov, I identified fifty-eight times since 1961 where Congress successfully enacted legislation that restricted the president’s use of arms transfers as a tool of foreign policy. Since 9/11, there have only been eleven such instances.<sup>21</sup> Out of these eleven, only two were stand-alone pieces of legislation and not amendments to previous legislation or annual authorizations and appropriations bills. Out of these two pieces of legislation, neither placed any restrictions regarding human rights concerns. Out of the eleven pieces of legislation since 9/11, the human rights provisions are only found in appropriations and authorization acts, which, due to their very nature, are more likely to see limited policy riders instead of sweeping legislation to vastly change existing policy.<sup>22</sup> Thus, at best, there is only a limited history of Congress protecting human rights in arms sales and, since 9/11, it is largely nonexistent.

Thus, it is almost impossible for Congress to stop individual sales, even if the weapons are going to known human rights abusers. Historically, Congress has also rarely passed legislation that forces the president to include human rights considerations in his arms transfer policies. Thus, it is up to the executive branch to make such a change. Consequently, Biden’s decision to use his Conventional Arms Transfer policy to signal greater considerations for human rights in arms transfers is welcome and could lead to major policy improvements if appropriate legislation follows.

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<sup>18</sup> See E. Donald Elliott, “Ins v. Chadha: The Administrative Constitution, the Constitution, and the Legislative Veto,” *The Supreme Court Review* 1983 (1983): 125–76, <https://doi.org/10.1086/scr.1983.3109476>; and Jordan Cohen and Jonathan Ellis Allen, “Congress is Gearing up for Fight over US Arms Transfers,” *Federal Times*, April 18, 2023.

<sup>19</sup> See Kerr, “Arms Sales.”

<sup>20</sup> Colby Goodman, “Holes in the Net: US Arms Export Control Gaps In Combatting Corruption,” *Transparency International Defense & Security Program*, 2019, [https://www.transparency.org.uk/sites/default/files/pdf/publications/US\\_Arms\\_Export\\_Gaps\\_in\\_Combatting\\_Corruption\\_v2d\\_digital.pdf](https://www.transparency.org.uk/sites/default/files/pdf/publications/US_Arms_Export_Gaps_in_Combatting_Corruption_v2d_digital.pdf).

<sup>21</sup> “Congress.Gov | Library of Congress,” legislation, <http://www.congress.gov/>.

<sup>22</sup> For more information on this data collection and reasoning for these limited policy riders, see Jordan Cohen, “Deal or No Deal: Explaining Congressional Restrictions on Arms Transfers” (PhD diss, George Mason University, 2023). Also, for information on policy riders, see Shannon P. Carcelli, “Congressional Polarization and Limitation Riders in Foreign Aid Appropriations,” *International Politics* 59, no. 5 (October 1, 2022): 898–924, <https://doi.org/10.1057/s41311-021-00324-1>.

*Reasons to Remain Skeptical*

Despite the fact that Biden’s Conventional Arms Transfer Policy signals the importance of human rights in future arms sales, there are two reasons to remain skeptical. First, Biden is not the first president to declare human rights as important in US arms transfers. In his Presidential Directive 13, his review of US Conventional Arms Transfer policy, President Jimmy Carter noted that “arms transfers are an exceptional foreign policy implement, to be used only in instances where it can be clearly demonstrated that the transfers contribute to our national security interests.” He further wrote that they should only be conducted “in a manner which will promote and advance respect for human rights in recipient countries.”<sup>23</sup> Nonetheless, under Carter, Congress only enacted five pieces of legislation that dealt with arms transfers, of which only one—the 1978 update to the Foreign Assistance Act—did anything to prevent US weapons being transferred to human rights abusers.<sup>24</sup> The reasons for this are unclear. But given this historic lack of accountability for human rights abuses stemming from US arms transfers and the fact that this was not the first time that a US president used a stated policy to express their desire for change, there is reason to remain skeptical. Relatedly, Biden’s State Department released a new military sales policy in May 2023 that will actually expedite sales, taking away power from Congress by giving them less time to get involved in limiting aspects of a sale between when they are notified and the weapons transfer is complete.<sup>25</sup>

Second, despite making proclamations to uphold human rights, Biden has not been afraid to announce sales to human rights abusers since taking office. Since 2021, the United States has issued over \$6.5 billion in new notifications and authorizations of arms sales to Saudi Arabia, over \$6.1 billion to Egypt, and over \$3.8 billion to the Philippines.<sup>26</sup> All of these countries have poor human rights records.<sup>27</sup> Thus, given the double-digit billions of dollars in weapons that the Biden administration has already announced it is selling to human rights abusers, this raises doubts to whether or not actual action will follow the unveiling of his Conventional Arms Transfer policy.

Unfortunately doubts surrounding Biden’s Conventional Arms Transfer policy are warranted. Since the end of the Second World War, outside of a handful of major pieces of legislation, almost all arms sales policy has been conducted out of the executive branch in ways that consistently prioritize strategic and economic rationale over humanitarian concerns. Biden’s Conventional Arms Transfer policy says the right things regarding human rights. For the betterment of global humanity, we can only hope that this rhetoric and the related risk-avoidance will be matched by future action.

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<sup>23</sup> Jimmy Carter, “Presidential Directive/NSC-13: Conventional Arms Transfer Policy,” May 13, 1977, <https://www.jimmycarterlibrary.gov/assets/documents/directives/pd13.pdf>.

<sup>24</sup> Senator John J. Sparkman, “S.3075, An Act to Amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to Authorize International Security Assistance Programs for Fiscal Year 1979, and for Other Purposes,” September 26, 1978, <https://www.congress.gov/bill/95th-congress/senate-bill/3075?q=%7B%22search%22%3A%5B%22%5C%22foreign+assistance+Act%5C%22%22%5D%7D&s=3&r=2>.

<sup>25</sup> “FMS 2023: Retooling Foreign Military Sales for An Age of Strategic Competition,” *United States Department of State*, <https://www.state.gov/fms-2023-retooling-foreign-military-sales-for-an-age-of-strategic-competition/>.

<sup>26</sup> Arms sales data is from Security Assistance Monitor, “Arms Sales Table,” accessed May 16, 2023, <https://securityassistance.org/>.

<sup>27</sup> For example, see Elinor Buys and Andrew Garwood-Gowers, “The (Ir)Relevance of Human Suffering: Humanitarian Intervention and Saudi Arabia’s Operation Decisive Storm in Yemen,” *Journal of Conflict and Security Law* 24, no. 1 (April 1, 2019): 1–33, <https://doi.org/10.1093/jcsl/kry019>; Amr Hamzawy, “Can Egypt’s Democratic Hopes Be Revived?,” *Journal of Democracy* 30, no. 4 (2019): 158–69, <https://doi.org/10.1353/jod.2019.0059>; and Salvador Santino F Regilme, “Visions of Peace Amidst a Human Rights Crisis: War on Drugs in Colombia and the Philippines,” *Journal of Global Security Studies* 6, no. 2 (March 1, 2021): ogaa022, <https://doi.org/10.1093/jogss/ogaa022>.



Essay by Hoshik Nam, University of Iowa

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## “The Biden Administration’s CAT Policy: Strategies for Effective Implementation”

On 23 February 2023 the Biden administration released its long-awaited Conventional Arms Transfer (CAT) policy. The CAT policy is a set of executive-branch directives that apply to the US government’s policy on arms transfers and exports.<sup>1</sup> The release of the updated CAT policy is timely given that it arrived amid increased US arms exports and security assistance after the Russian invasion of Ukraine. As much as providing arms to countries that share values with the US is important, controlling and monitoring of US arms exports are important US foreign policy goals, as the exported arms significantly influence both international security and US national interests.

One of the most significant changes of President Joe Biden’s CAT policy is that it incorporates human rights considerations and the evaluations of potential risks regarding the diversion of exported US arms. This does not mean, however, that the discussion of how to control US arms exports is complete. As the CAT policy simply expresses the president’s initiatives without legal responsibilities, it requires practical strategies to successfully execute the policy.

This essay focuses on Biden’s CAT policy regarding human rights issues and end-use monitoring of US arms exports. It explores the objectives of the CAT policy and offers policy recommendations for its practical implementation. These recommendations emphasize two major points. First, the Biden administration can refer to other established legal measures that align with the objective of preventing human rights violations by arms recipients. Second, the administration can also strategize ways to improve the effectiveness of the end-use monitoring process by expanding the role of Congress, implementing advanced technologies, and fostering collaboration with international organizations.

*Biden’s CAT Policy and US Foreign Policy Interests*

US arms exports signal the strong commitment of the US government to the recipient countries. According to Keren Yarhi-Milo, Alexander Lanoszka, and Zack Cooper, arms transfers are not just a quick measure that is meant to augment recipient military capabilities, but also signal the exporter’s “interest in maintaining the security of the recipients.”<sup>2</sup> In addition, arms transfers could “cultivate influence with importing states.”<sup>3</sup> Considering the potential impact of arms exports in increasing military capability, the recent provision of arms to Ukraine and other European countries serves as a substantive reflection of US support for countries that share similar values with the US. This aligns with the importance described in section 6 of Biden’s CAT policy, which emphasizes efficient arms transfers to foreign countries as a mean to maintaining strong security cooperation with the countries.<sup>4</sup>

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<sup>1</sup> Jeff Abramson, “New U.S. Arms Policy Boosts Human Rights Focus,” Arms Control Association, 2023, <https://www.armscontrol.org/act/2023-04/news/new-us-arms-policy-boosts-human-rights-focus>.

<sup>2</sup> Keren Yarhi-Milo, Alexander Lanoszka, and Zack Cooper, “To Arm or to Ally? The Patron’s Dilemma and the Strategic Logic of Arms Transfers and Alliances,” *International Security* 41, no. 2 (October 2016): 90–139, here, 95. DOI: [https://doi.org/10.1162/ISEC\\_a\\_00250](https://doi.org/10.1162/ISEC_a_00250).

<sup>3</sup> Elias Yousif, “If We Don’t Sell It, Someone Else Will: Dependence and Influence in U.S. Arms Transfers” (Stimson Center, March 2023): 3-25, here, 9. [https://www.stimson.org/wp-content/uploads/2023/03/If-We-Dont-Sell-It-Report-March-2023\\_V3\\_Pages-1.pdf](https://www.stimson.org/wp-content/uploads/2023/03/If-We-Dont-Sell-It-Report-March-2023_V3_Pages-1.pdf).

<sup>4</sup> Joseph Biden, “Memorandum on United States Conventional Arms Transfer Policy,” The White House, February 23, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/>.

The recent spike in US arms transfers to Ukraine, however, raises concerns about the effectiveness of US arms export controls when they are influenced by political circumstances. Since the outbreak of the war, Biden has not only requested security assistance for Ukraine from Congress, but also has declared an urgent need for the US to export ammunition via Foreign Military Sales (FMS), thereby bypassing congressional review.<sup>5</sup> Similarly, in Congress, arms sales to Ukraine have gained significant bipartisan support.<sup>6</sup> With the exception of transferring fighter aircraft to Ukraine, Congress also has shown support for arms sales and military assistance to Ukraine.<sup>7</sup> In response to the situation, there has been a notable 49 percent increase in US arms exports to foreign governments in fiscal year 2022, largely driven by imports from European governments.<sup>8</sup>

Both the Trump and Biden administrations addressed the issue of human rights in their respective CAT policies. Although Trump's CAT policy represented the first time that a CAT contained a dedicated section on human rights issues,<sup>9</sup> it did not account for the possibility that recipients of US arms could change their behaviors and potentially misuse the imported weapons.<sup>10</sup> In contrast, Biden's CAT policy placed a greater emphasis on humanitarian issues regarding deciding exporting arms. It discussed the relationship between arms transfers and human rights throughout section 4, which detailed that previously authorized arms exports can be ceased based on the subsequent assessment of how the recipients intend use exported weapons.<sup>11</sup> More specifically, by introducing "more likely than not" standard, it allowed the US government to make decisions to restrict arms transfers even with the mere possibility of potential harm to the recipient countries' population.<sup>12</sup> Furthermore, Biden's CAT policy addressed the issue of end-use monitoring for the first time. Given the political situations surrounding the Russo-Ukraine War, the importance of tracking and monitoring the arms exports has become increasingly vital. Biden's CAT policy reflects the current political exigencies in a timely manner.

### *Human Rights Issues*

Biden's CAT policy integrates US national security into a more comprehensive and active framework of

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<sup>5</sup> "Ukraine—Non-Standard Ammunition" (Defense Security Cooperation Agency, April 25, 2022), <https://www.dsca.mil/sites/default/files/mas/Press%20Release%20-%20Ukraine%2022-30%20CN.pdf>; "Arms Transfers to Ukraine," Forum on the Arms Trade, accessed June 2, 2023, <https://www.forumarmstrade.org/ukrainearms.html>.

<sup>6</sup> Karoun Demirjian, "Pressure Builds to Step up Weapons Tracking in Ukraine," Washington Post, November 27, 2022, <https://www.washingtonpost.com/national-security/2022/11/27/biden-ukraine-weapons/>.

<sup>7</sup> Nathan J Lucas, Patrick Parrish, and Christina L Arabia, "Transferring Fighter Aircraft to Ukraine: Issues and Options for Congress" (Congressional Research Service, March 17, 2023), <https://crsreports.congress.gov/product/pdf/R/R47476>.

<sup>8</sup> Joe Gould, "US Arms Export Approvals Soared in 2022," *Defense News*, January 25, 2023, <https://www.defensenews.com/pentagon/2023/01/25/us-arms-export-approvals-soared-in-2022/>.

<sup>9</sup> Donald Trump, "National Security Presidential Memorandum Regarding U.S. Conventional Arms Transfer Policy," The White House, April 19, 2018, <https://trumpwhitehouse.archives.gov/presidential-actions/national-security-presidential-memorandum-regarding-u-s-conventional-arms-transfer-policy/>.

<sup>10</sup> Shannon Dick and Rachel Stohl, "Global Arms Trade: Setting an Example for Responsible Policy," Stimson Center, *Conventional Arms* (blog), November 7, 2019, <https://www.stimson.org/2019/global-arms-trade-setting-example-responsible-policy/>.

<sup>11</sup> Joseph Biden, "Memorandum on United States Conventional Arms Transfer Policy," The White House, February 23, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/>.

<sup>12</sup> Paul Mcleary, "Biden's New Weapons Sales Strategy Puts More Emphasis on Human Rights," *Politico*, February 23, 2023, <https://www.politico.com/news/2023/02/23/biden-weapons-sales-human-rights-00084166>; Jordan Cohen, "Two Years Later: Biden Has Finally Taken the First Step on Stopping Risky Arms Transfers | Cato at Liberty Blog," *Cato at Liberty Blog* (blog), February 23, 2023, <https://www.cato.org/blog/two-years-later-bidens-finally-taken-first-step-stopping-risky-arms-transfers>.

human rights considerations when it comes to arms export decision-making processes.<sup>13</sup> Nevertheless, the CAT policy has inherent limitations in arms export control, mainly due to its lack of legal obligations. Since CAT policies are not legally binding or enforceable, subsequent administrations can reverse the previous administration's policy.<sup>14</sup> For this reason, it is important to consider how to successfully cope with the potential challenges that arms export control may face in the future. I argue that the administration's CAT policy should refer to other existing legal measures that outline the US government's arms exports policy.

The "Leahy Law," which was initially passed by Congress in 1997, had Senator Patrick Leahy (D-VT) as its primary sponsor.<sup>15</sup> The law prohibits security assistance to foreign security force units when credible evidence exists about gross violations of human rights.<sup>16</sup> This could provide a guideline for a stricter application of the Biden's CAT policy into arms export processes. Although the Leahy Law is not simply limited to arms transfers policy, it has a close link with the arms export policy via the Foreign Assistant Act of 1961 (FAA), which is permanently established in Section 620M of the FAA (22 U.S.C.2378d).<sup>17</sup> Under the the Leahy Law, the executive branch has the discretion to interpret the term "security assistance," and it is mostly used to restrict the provisions of appropriated funds, including Foreign Military Financing.<sup>18</sup> Meanwhile, Section 502B of the FAA, in conjunction with the Arms Export Control Act (AECA), provides criteria and conditions for US arms exports.<sup>19</sup> Therefore, in essence, the CAT policy has a shared interest with the Leahy Law, which is to regulate the export of arms to potential recipients and prevent gross violations of human rights.<sup>20</sup> Given these close legal foundation, explicitly emphasizing the relationship with the Leahy Law could provide a stronger legal support for the Biden administration's CAT policy.

In addition, Biden's CAT policy meets the standards of the Arms Trade Treaty (ATT) that provides political reasons to recommit to the ATT. The ATT "seeks to prevent and eradicate illicit trade and diversion of conventional arms."<sup>21</sup> The treaty was signed in 2013 but not ratified and was later withdrawn by the Trump administration.<sup>22</sup> Although Biden's CAT policy does not officially mention the ATT, its emphasis on "human rights and the prevention of harm"<sup>23</sup> is in alignment with the ATT, which aims to "reduce human suffering."<sup>24</sup> In this sense, some scholars also suggest that the US government should consider reaffirming the

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<sup>13</sup> "The Biden Administration's New US Conventional Arms Transfer Policy" (Stimson Center, March 9, 2023), <https://www.stimson.org/event/the-biden-administrations-new-us-conventional-arms-transfer-policy/>.

<sup>14</sup> John Chappell and Ari Tolany, "Unpacking Biden's Conventional Arms Transfer Policy," *Lawfare*, March 2, 2023, <https://www.lawfareblog.com/unpacking-bidens-conventional-arms-transfer-policy>.

<sup>15</sup> Lora Lumpe, "What the Leahy Law Means for Human Rights," Open Society Foundations, April 24, 2014, <https://www.opensocietyfoundations.org/voices/what-leahy-law-means-human-rights>.

<sup>16</sup> "Leahy Law Fact Sheet," *United States Department of State* (blog), January 20, 2021, <https://www.state.gov/key-topics-bureau-of-democracy-human-rights-and-labor/human-rights/leahy-law-fact-sheet/>.

<sup>17</sup> "Leahy Law Fact Sheet."

<sup>18</sup> John Ramming Chappell, "Human Rights, Civilian Harm, and Arms Sales: A Primer on U.S. Law and Policy," *Center for Civilians in Conflict*, 2022, 22.

<sup>19</sup> "Legal Basis for Arms Transfers," *United States Department of State* (blog), accessed June 2, 2023, <https://www.state.gov/legal-basis-for-arms-transfers/>.

<sup>20</sup> Jordan Cohen and Jonathan Ellis Allen, "Congress Is Gearing Up for Fight over US Arms Transfers," Cato Institute, April 18, 2023, <https://www.cato.org/commentary/congress-gearing-up-for-fight-over-us-arms-transfers>.

<sup>21</sup> "The Arms Trade Treaty," 2022, <https://thearmstradetreaty.org/>.

<sup>22</sup> Rachel Stohl and Elias Yousif, "Hits & Strikes From Biden's First Two Years," *Stimson Center* (blog), January 23, 2023, <https://www.stimson.org/2023/bidens-policy-record-a-mid-term-assessment/>.

<sup>23</sup> Rachel Stohl, "The Arms Trade Treaty at Ten," *Stimson Center* (blog), April 3, 2023, <https://www.stimson.org/2023/the-arms-trade-treaty-at-ten/>.

<sup>24</sup> The Arms Trade Treaty, available from [https://thearmstradetreaty.org/hyper-images/file/ATT\\_English/ATT\\_English.pdf?templateId=137253](https://thearmstradetreaty.org/hyper-images/file/ATT_English/ATT_English.pdf?templateId=137253).

ATT to convey a clear goal of the US regarding humanitarian issues.<sup>25</sup> Reaffirming the ATT would assist the application of Biden's CAT policy, aligning it with global standards for the control of arms sales.

### *End-use Monitoring (EUM)*

As noted, Biden's new CAT policy introduced the end-use monitoring (EUM) requirements for recipient countries across multiple sections for the first time. EUM measures are "designed to mitigate the risk of illicit diversion in peacetime or low-intensity conflict environments."<sup>26</sup> EUM aims to assure that the exported arms be used as they were originally intended without being misused, diverted, or violating the terms of the export.<sup>27</sup>

The current EUM system of US arms exports, however, is ineffective. According to the State Department's reporting, only 1 percent of all license applications for the Blue Lantern program, which oversees direct commercial arms sales, were approved in FY 2020.<sup>28</sup> Furthermore, approximately 25 percent of the Blue Lantern cases were found to be involved in an unfavorable use of the exported arms.<sup>29</sup> In addition, the effectiveness of EUM has been decreasing in the context of the ongoing Russo-Ukraine War. One estimate in November 2022 revealed that US monitors conducted direct inspections only on 10 percent of high-risk weapons sent to Ukraine.<sup>30</sup> This issue highlights the need for the Biden administration to consider expanding EUM from post-export monitoring to pre-screening measuring. This could be achieved by collaboration with legislative branch and international organizations while facilitating sophisticated technologies. This essay suggests three key approaches for practical implementation.

First, Congress should take a larger role in decisionmaking processes of the initial phase of US arms export policy. Although the AECA mandates the President to report proposed arms export plans to Congress, the legislative branch has not been successfully overseeing the executive branch's decisions.<sup>31</sup> In order to address this problem, Congress should be able to intervene the early stages of arms export policy-making processes. For example, Diana Ohlbaum and Rachel Stohl suggest that Congress should be involved in drafting arms exports plans requiring affirmative congressional approval.<sup>32</sup> This approach could empower Congress to proactively shape arms export processes instead of adopting a passive oversight role. Although this requires the amending of the legal processes of arms export policy, granting Congress this role will enhance the

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<sup>25</sup> Ted R Bromund, "Key Steps for the U.S. After the Unsigning of the Arms Trade Treaty," Issue Brief (The Heritage Foundation, 2019).

<sup>26</sup> "U.S. Plan to Counter Illicit Diversion of Certain Advanced Conventional Weapons in Eastern Europe," *United States Department of State* (blog), October 27, 2022, <https://www.state.gov/u-s-plan-to-counter-illicit-diversion-of-certain-advanced-conventional-weapons-in-eastern-europe/>.

<sup>27</sup> Annie Shiel et al., "Demystifying End-Use Monitoring in U.S. Arms Exports" (Stimson Center & Center for Civilians in Conflict & Security Assistance Monitor), accessed May 4, 2023, <https://www.stimson.org/wp-content/uploads/2021/09/EUM-Brief1-1.pdf>; "End-Use Monitoring of U.S.-Origin Defense Articles," *United States Department of State* (blog), January 20, 2021, <https://www.state.gov/end-use-monitoring-of-u-s-origin-defense-articles/>.

<sup>28</sup> "Report to Congress on End-Use Monitoring of Defense Articles and Defense Services," accessed May 4, 2023, [https://www.pmdtc.state.gov/sys\\_attachment.do?sysparm\\_referring\\_url=tear\\_off&view=true&sys\\_id=1852993f1b01b8502b6ca932f54bcb66](https://www.pmdtc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=1852993f1b01b8502b6ca932f54bcb66).

<sup>29</sup> Shiel et al., "Demystifying End-Use Monitoring in U.S. Arms Exports."

<sup>30</sup> Laura Courchesne, "Digitizing the Battlefield: Using Social Media to Track U.S. Weapons in Ukraine," *Lawfare*, March 14, 2023, <https://www.lawfareblog.com/digitizing-battlefield-using-social-media-track-us-weapons-ukraine>.

<sup>31</sup> Jennifer L. Erickson, "Demystifying the 'Gold Standard' of Arms Export Controls: US Arms Exports to Conflict Zones," *Global Policy* 14, no. 1 (2023): 131–38, DOI: <https://doi.org/10.1111/1758-5899.13181>.

<sup>32</sup> Diana Ohlbaum and Rachel Stohl, "Yes, Congress, There Is Something You Can Do About Reckless Arms Sales," *Just Security* (blog), June 9, 2020, <https://www.justsecurity.org/70652/yes-congress-there-is-something-you-can-do-about-reckless-arms-sales/>.

effectiveness of EUM in preventing the occurrence of unfavorable use of exported arms by pre-screening proposed arms export plans.

Second, the executive branch should also reinforce the application of the existing EUM requirements while adopting advanced technologies to facilitate their implementation. For example, the Commerce Department could mandate that defense companies collect and report key information about the actors who are responsible for a sale.<sup>33</sup> Similarly, as suggested by Colby Goodman, the State Department could conduct more comprehensive risk assessments during pre-export checks.<sup>34</sup> In addition, the executive branch could enhance EUM by adopting more advanced technologies. One example is the application of open-source intelligence (OSINT) that utilizes publicly available information, including “civilian reporting, satellite imagery, social media posts,” to track and monitor the movement of exported arms to conflict zones.<sup>35</sup>

Last, the US government should collaborate with other countries and international actors for successful EUM. In addition to actively engaging with international organizations such as the United Nations and the European Union, the US government should also extend its support to countries that participate in managing the security of stockpiles to prevent illicit trafficking of weapons.<sup>36</sup>

### *Conclusion*

The long-awaited CAT policy has clearly demonstrated the Biden administration’s determination to control and evaluate US arms exports based on human rights issues. Considering the fact that arms exports reflect the strategic foreign policy goals and national interests of the US, the revised CAT policy is admirable. In addition, given the global political landscape and arms market since the outbreak of the Russo-Ukraine War, the US arms exports have become much more important in terms of global peace and security.

The policy’s emphasis on human rights provides guidance for US arms export policy during the Biden Administration. However, since the CAT is a statement of the president’s intentions and lacks legal enforcement powers, there is still room for improvement in the new CAT policy. To make this possible, the Biden administration should consider incorporating other existing legal measures of arms exports that are associated with human rights and that align with the administration’s new CAT policy. For example, highlighting the connection with the Leahy Law and re-assigning the ATT could enhance the CAT policy’s legal foundation and thus reflect the administration’s interests to promote human rights issues.

As noted, the updated CAT policy’s emphasis on the importance of end-use monitoring requirements reflects the Biden administration’s commitment to mitigate the risk of diversion of exported US arms. Since effective end-use monitoring has become more challenging amid the Russo-Ukraine War, the importance of pre-screening steps in the arms export processes is obvious. To facilitate this, the Biden administration should collaborate with the legislative branch to grant Congress a more proactive role in designing arms export policies. In addition, the administration should also consider using advanced technology to monitor exported arms and engage with international organizations in order to provide support for the administration’s newly released CAT policy.

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<sup>33</sup> Colby Goodman, “Holes In The Net: US Arms Export Control Gaps In Combatting Corruption,” *Transparency International Defence & Security* (blog), 2020, <https://ti-defence.org/publications/united-states-arms-export-sales-corruption-fraud-risk/>.

<sup>34</sup> Goodman, “Holes In The Net: US Arms Export Control Gaps In Combatting Corruption.”

<sup>35</sup> Courchesne, “Digitizing the Battlefield: Using Social Media to Track U.S. Weapons in Ukraine.”

<sup>36</sup> Rachel Stohl and Suzette Grillot, *The International Arms Trade* (Polity, 2009).

The Biden administration has done well in placing a significant emphasis on the human rights issues and the evaluation of risk diversion in its CAT policy,<sup>37</sup> and thus recognizing their importance in US arms export policy to promote global peace and US national security. In addition to its commitment to addressing these concerns in arms export policy, it is time for the Biden administration to explore measures that support practical implementation of the newly announced CAT policy.

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<sup>37</sup> Jordan Cohen, “Biden’s Conventional Arms Transfer Policy Review Could Be a Turning Point,” *War on the Rocks* (blog), November 29, 2021, <https://warontherocks.com/2021/11/bidens-conventional-arms-transfer-policy-review-could-be-a-turning-point/>.

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## “Biden’s CAT Policy”

United States Conventional Arms Transfer (CAT) Policy memoranda began with the Carter administration, and have been revised and updated when subsequent administrations wanted to change where and when the US sold conventional weapons. Just as President Ronald Reagan’s CAT overturned many of Carter’s policies, the 23 February 2023 CAT policy released by President Biden revokes and reverses many of the policies set forth by President Donald Trump.<sup>1</sup> In many ways, Biden’s CAT is a return to the pre-Trump norm of acknowledging the power of arms transfers as political, rather than merely economic, tools.<sup>2</sup> But what does this return to normal look like, and how will it affect US arms transfers moving forward? Despite civil society and activists’ hopes that the Biden administration would be more cautious about sending arms to places where they may enable human rights violations, the administration’s track record thus far includes arms transfers to places with substantial human rights abuses. Instead, the “return to normal” we will likely see going forward will involve the United States using arms sales to bolster its political relationships with states it hopes to court. Rather than the apolitical approach of the Trump administration, Biden’s approach is in line with prior US policy that uses arms transfers as a key tool in the foreign policy and alliance toolbox.

*Bringing Politics Back In*

The biggest change to US arms transfer policy under the Biden administration is that President Joe Biden sees the arms trade as more than an economic activity. Economic priorities were the sole motivation for arms sales under Trump: his CAT policy was competitive and focused on maintaining US advantages, including “a dynamic defense industrial base” and “economic security.”<sup>3</sup> Biden, on the other hand, has a more politically informed approach to arms sales that recognizes the many roles that arms transfers play in international politics. His CAT policy states that “arms transfers are in important mechanism to strengthen partner contributions to global security and reinforce these security relationships.”<sup>4</sup> Biden centers political relationships and broader political goals throughout his CAT policy.

Biden envisions arms sales as a way for the US to (re)engage the world and build stronger relationships with allies and partners. The first objective listed in his CAT policy is to “strengthen the collective security of the United States and its allies and partners by enhancing interoperability and supporting United States-led diplomacy in building and maintaining international coalitions.”<sup>5</sup> Trump’s CAT policy did not mention collective security, international coalitions, or diplomacy.

Their CAT policies reflect starkly different conceptualizations of national security and US priorities. Trump believed that national security was synonymous with economic security. His economic brute-force approach informed nearly all of his policies, from selling arms to trying to get a “better deal” out of international

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<sup>1</sup> Joe Biden, National Security Memorandum/NSM-18, “Memorandum on United States Conventional Arms Transfer Policy,” 23 February 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/>.

<sup>2</sup> Donald Trump, National Security Presidential Memorandum/NSPM-10, “National Security Presidential Memorandum on United States Conventional Arms Transfer Policy,” 19 April 2018, <https://www.govinfo.gov/content/pkg/DCPD-201800254/pdf/DCPD-201800254.pdf>; Jennifer Spindel, “Policy Series 2021-38: Trump’s Transactional Follies: The Consequences of Treating the Arms Trade like a Business,” *H-Diplo | ISSF*, June 10, 2021, <https://issforum.org/roundtables/policy/ps2021-38>.

<sup>3</sup> Trump, CAT policy.

<sup>4</sup> Biden, CAT policy.

<sup>5</sup> Biden, CAT policy.

covenants like the Joint Comprehensive Plan of Action (JCPOA).<sup>6</sup> Biden, on the other hand, has directly linked national security to broader normative US interests, including human rights, and democratic governance. This affects arms transfers, because, as Biden’s CAT policy states, “when not employed responsibly, defense materiel can be used to violate human rights and international humanitarian law, increase the risk of civilian harm, and otherwise damage United States interest.”<sup>7</sup> Rather than treating human rights or governance concerns as something that takes place at the margins, Biden makes them the focus of his CAT policy.

Reflecting the renewed interest in protecting human rights, Biden’s CAT policy takes a case-by-case approach to approving arms sales. The factors that affect decisions include issues like the recipient country’s democratic governance and rule of law, civilian control of the military, and protection of civil society.<sup>8</sup> Trump’s CAT mentions none of these broader issues, reflecting his—inaccurate—views that the arms trade is first and foremost an economic activity.<sup>9</sup>

Bringing politics back into the arms trade should shape how the Biden administration approves arms sales. According to the CAT policy, arms sales under this administration should pay particular attention to human rights and the potential to cause civilian harm, and should be used as a foreign policy tool, with all of the opportunities and challenges that implies.<sup>10</sup>

### *Calibrating US Arms Sales under Biden*

Despite the rhetoric about protecting human rights, as noted above the Biden administration has sold conventional arms to places that regularly commit human rights abuses. Although the CAT policy document was released in February 2023, the administration says it has been following this guidance since 2021. However, as Lauren Woods with the Security Assistance Monitor noted, the top recipients of US arms include countries with severe human rights violations.<sup>11</sup> For example, Congress was notified in 2021 of \$2.592 trillion in arms sales to the Philippines, including F-16 jets, and Sidewinder and Harpoon missiles, despite the extreme crackdown in that country related to its “war on drugs.” The human rights abuses have been so

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<sup>6</sup> “Trump Uses Veto to Unblock \$8bn Weapons Sale to Saudi Arabia,” *BBC News*, July 25, 2019, sec. US & Canada, <https://www.bbc.com/news/world-us-canada-49106989>; Dan De Luce, “Watchdog Report Says Trump Admin Ignored Risk to Civilians in Saudi Arms Deal,” *NBC News*, August 11, 2020, <https://www.nbcnews.com/politics/politics-news/trump-admin-failed-assess-risk-civilians-saudi-arms-deal-government-n1236457>; Nicholas Miller, “Analysis | Trump Is Still Pushing for a New Nuclear Deal with Iran. How Likely Is That?,” *Washington Post*, accessed March 15, 2021, <https://www.washingtonpost.com/politics/2020/01/15/trump-is-still-pushing-new-nuclear-deal-with-iran-how-likely-is-that/>; Ralph Jennings, “China Demands That U.S. Arms Deal with Taiwan Be Canceled,” *Los Angeles Times*, June 30, 2017, <http://www.latimes.com/world/la-fg-china-us-taiwan-arms-deal-20170630-story.html>.

<sup>7</sup> Biden, CAT policy.

<sup>8</sup> Biden, CAT policy.

<sup>9</sup> Jonathan D. Caverley, “Dispelling Myths About U.S. Arms Sales and American Jobs - From Hardware to Holism: Rebalancing America’s Security Engagement With Arab States,” in *From Hardware to Holism: Rebalancing America’s Security Engagement With Arab States*, ed. Frederic Wehrey and Michele Dunne (Carnegie Endowment for International Peace, 2021), <https://carnegieendowment.org/2021/05/18/dispelling-myths-about-u.s.-arms-sales-and-american-jobs-pub-84521>.

<sup>10</sup> Jonathan Caverley, Ethan B. Kapstein, and Srdjan Vucetic, “F-35 Sales Are America’s Belt and Road,” *Foreign Policy*, July 12, 2019, <https://foreignpolicy.com/2019/07/12/f-35-sales-are-americas-belt-and-road/>; Richard AI Johnson and Spencer L. Willardson, “Human Rights and Democratic Arms Transfers: Rhetoric versus Reality with Different Types of Major Weapon Systems,” *International Studies Quarterly* 62, no. 2 (2018): 453–64.

<sup>11</sup> Jennifer Woods, “Despite Rhetoric, Biden Is Continuing Trump’s Weapons Sales,” *War on the Rocks* (blog), August 8, 2022, <https://warontherocks.com/2022/08/despite-rhetoric-biden-is-continuing-trumps-weapons-sales/>.



extreme that the International Criminal Court said it would bring a crimes-against-humanity case against the Philippine government.<sup>12</sup>

Similarly, in US August 2022, the US approved the sale of \$3.1 billion in weapons to Saudi Arabia, including Patriot missiles.<sup>13</sup> A Defense Department press release said the sale “will support the foreign policy goals and national security objectives of the United States by improving the security of a partner country that is a force for political stability and economic progress in the Gulf region.”<sup>14</sup> This sale was approved despite the fact that the State Department noted “significant” human rights issues, including credible reports of torture, arbitrary arrest and detention, executions for nonviolent offenses, restrictions on freedom of movement, gender-based violence, and criminalization of same-sex activity, among others.<sup>15</sup> Reflecting on the political balance of arms sales, one US official said, “there needs to be a balance between punishing the Kingdom of Saudi Arabia and not making life more difficult or dangerous for the US.”<sup>16</sup> In other words, despite the lofty rhetoric about protecting human rights, sometimes other political concerns win out because arms transfers can be a powerful tool for maintaining friendships.

One of the struggles the Biden administration faces, and a reason it will likely be critiqued as hypocritical, is that the administration fully understands the political tradeoffs of arms sales. Not selling arms to Saudi Arabia opens the door for Saudi leaders to pursue arms from Russia. Trump might have seen such actions as simple economics, but Biden’s administration understands that arms sales are often the first step toward closer political ties.<sup>17</sup> Thus, the administration must balance its respect for human rights with its desire to maintain a close political relationship with offending countries. All too frequently, the imperative of maintaining political ties wins out.<sup>18</sup>

The continued sale of arms to Saudi Arabia comes despite repeated criticism of Saudi human rights policies is puzzling in light of Biden’s CAT policy. In November 2022, human rights organizations sent the administration a letter urging it to stop providing arms to Saudi Arabia.<sup>19</sup> In March 2023, the Senate introduced a bipartisan resolution that could invoke Section 502B of the Foreign Assistance Act to block arms sales to Saudi Arabia.<sup>20</sup> Senate resistance to arming Saudi Arabia is in part a result of the repeated

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<sup>12</sup> Julie McCarthy, “A World Court Inches Closer To A Reckoning In The Philippines’ War On Drugs,” *NPR*, July 1, 2021, sec. Asia, <https://www.npr.org/2021/06/22/1008986915/international-court-is-asked-to-probe-anti-drug-war-in-the-philippines>.

<sup>13</sup> “Biden’s Controversial Arms Sales,” *Forum on the Arms Trade* (blog), accessed April 17, 2023, <https://www.forumarmstrade.org/bidenarms.html>.

<sup>14</sup> Defense Security Cooperation Agency, Press Release Saudi Arabia 22-26 CN, “Saudi Arabia – PATRIOT MIM-104E Guidance Enhanced Missile-Tactical Ballistic Missiles (GEM-T),” 2 August 2022, <https://www.dsca.mil/press-media/major-arms-sales/saudi-arabia-patriot-mim-104e-guidance-enhanced-missile-tactical>

<sup>15</sup> US Department of State, “Saudi Arabia,” 2021 Country Report on Human Rights Practices, 2021, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/saudi-arabia/>.

<sup>16</sup> Courtney Kube, Carol E. Lee, and Dan De Luca, “Biden Admin Weighed Slow-Rolling Military Aid to Saudis as Payback for Oil Production Cut,” *NBC News*, October 29, 2022, <https://www.nbcnews.com/politics/joe-biden/biden-admin-discussed-slow-rolling-saudi-military-aid-payback-oil-prod-rcna54505>.

<sup>17</sup> Christian Catrina, *Arms Transfers and Dependence* (New York: UNIDIR, 1988); Andrew J. Pierre, *Arms Transfers and American Foreign Policy* (New York: New York University Press, 1979).

<sup>18</sup> Lawrence Freedman, “Britain and the Arms Trade,” *International Affairs*, 1978, 389–90; Jennifer Spindel, “Arms for Influence? The Limits of Great Power Leverage,” *European Journal of International Security*, 2023, 1–18.

<sup>19</sup> Letter to Pelosi and Schumer, 14 November 2022, <https://winwithoutwar.org/wp-content/uploads/2022/11/Coalition-letter-on-re-evaluating-U.S.-Saudi-relationship.pdf>.

<sup>20</sup> Trita Parsi and Annelle Sheline, “Congress Has the Power to Halt U.S. Arms Sales to Saudi Arabia,” *Foreign Policy* (blog), March 30, 2023, <https://foreignpolicy.com/2023/03/30/saudi-arabia-arms-congress-mbs-bernie-sanders-lee-murphy/>.

human rights abuses Saudi Arabia has carried out in Yemen and on its own population.<sup>21</sup> Despite this, the administration only considered pausing arms sales to Saudi Arabia when oil was at stake.<sup>22</sup> In many way, Saudi Arabi is a hard test of the administration’s commitment to its human rights rhetoric. In selling arms to Saudi Arabia, the political dilemma for the US is the desire of its leaders to shore up the US-Saudi relationship, thus preventing Saudi Arabia from accepting weapons from Russia, without enabling human rights abuses or signaling tacit approval of Saudi policies that the US disagrees with.<sup>23</sup>

Saudi Arabia is not the only questionable recipient of arms under the Biden administration: the Forum on the Arms Trade lists at least seventeen controversial arms sales since Biden took office.<sup>24</sup> For example, in May 2022, it notified Congress of \$3.2 billion in arms to Egypt, including Chinook helicopters and TOW-2 missiles<sup>25</sup> The Egyptian government has unleashed systematic attacks on civil society and on human rights advocates, and the Egyptian military has been accused of committing war crimes in North Sinai as it fights against ISIS.<sup>26</sup> This sale follows the February 2021 proposal to sell Egypt \$197 million in aircraft, just days after Egypt arrested an Egyptian-American activist.<sup>27</sup> The sometimes stark contrast between language and action raises questions about the effectiveness and feasibility of Biden’s CAT policies.

### *Does CAT Policy Rhetoric Matter?*

The actual record of US arms sales under Trump and Biden does not look all that different. Both sold arms to states that commit human rights abuses, raising questions about whether the rhetoric contained in Biden’s CAT policy actually matters. There are two potential answers, and they are not mutually exclusive.

One answer suggests that the rhetoric about supporting human rights and alliances might matter a great deal. First, it shows that Biden is at least aware of the broader political consequences of selling arms. It is better for the US to be aware of the messages it sends when it approves, or denies, arms sales. This brings arms sales back in as a tool of foreign policy. Relatedly, the rhetoric about protecting human rights provides openings for civil society actors to use the administration’s own policies to advocate for change. Because Biden recognizes that selling arms can be tacit approval of the recipient’s foreign policy, his administration might be even more vulnerable to such critiques. Pointing out the potential for human rights abuses alongside the political message that a transfer will send could be a powerful tool for human rights organizers.

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<sup>21</sup> Jonathan Guyer, “Biden Arrives in a Saudi Arabia Where Human Rights Violations Go Far beyond Khashoggi’s Murder,” *Vox*, July 15, 2022, <https://www.vox.com/23219049/biden-saudi-arabia-human-rights-mbs-khashoggi>; US Department of State, “Saudi Arabia”; “Saudi Arabia: Thousands Held Arbitrarily,” *Human Rights Watch* (blog), May 6, 2018, <https://www.hrw.org/news/2018/05/06/saudi-arabia-thousands-held-arbitrarily>.

<sup>22</sup> Kube, Lee, and De Luca, “Biden Admin Weighed Slow-Rolling Military Aid to Saudis as Payback for Oil Production Cut.”

<sup>23</sup> Patrick Schmidt, “The Saudi Air Defense Problem Is a U.S. Opportunity,” *The Washington Institute* (blog), May 17, 2021, <https://www.washingtoninstitute.org/policy-analysis/saudi-air-defense-problem-us-opportunity>; Akshaya Kumar, “US Government Watchdog Finds Flawed Weapons Monitoring in Yemen,” *Human Rights Watch* (blog), June 13, 2022, <https://www.hrw.org/news/2022/06/13/us-government-watchdog-finds-flawed-weapons-monitoring-yemen>; David J. Craig, “War Atrocities in Yemen Linked to US Weapons,” *Columbia Magazine*, 2022, <https://magazine.columbia.edu/article/war-atrocities-yemen-linked-us-weapons>; Samy Magdy, “Arms Supplied by UK, U.S. Killed Civilians in Yemen, Report Says,” *PBS NewsHour*, January 11, 2023, sec. World, <https://www.pbs.org/newshour/world/arms-supplied-by-uk-u-s-killed-civilians-in-yemen-report-says>.

<sup>24</sup> “Biden’s Controversial Arms Sales.”

<sup>25</sup> “Biden’s Controversial Arms Sales.”

<sup>26</sup> Human Rights Watch, “Egypt: Events of 2021,” in *World Report 2022* (Human Rights Watch, 2022), <https://www.hrw.org/world-report/2022/country-chapters/egypt>; Woods, “Despite Rhetoric, Biden Is Continuing Trump’s Weapons Sales.”

<sup>27</sup> Woods, “Despite Rhetoric, Biden Is Continuing Trump’s Weapons Sales.”

Rhetoric might also matter because other states will follow the US lead, which could lead to a net decrease in arms transfers to human rights abusers. The US alone was responsible for 40 percent of global arms exports from 2018–2022.<sup>28</sup> This might mean that the US could influence the behavior of other arms exporters, particularly allies, to follow similar guidelines about protecting human rights.<sup>29</sup> The CAT policy’s explicit mention of pausing or denying arms sales for human rights can give cover to other exporters who might not have the political ability to act alone. A smaller state could point to a US pause in arms sales as justification for its own pause, especially if that state depends on arms exports for profit and would take an economic hit for its decisions.

Another perspective on the CAT policy rhetoric would suggest that such language does not, at the end of the day, make much material difference. While a decision by the US government to pause arms sales could provide cover for other states that wish to the same, it is also possible that other states will sense an opportunity to jump in. The prospect that an adversary might jump in to sell arms might force the United States’ hand, and push it to keep providing arms that it otherwise would deny. In practice, Biden’s CAT policy might be a turn to the “pragmatic” approach of the Carter administration, where human rights were allowed to matter in places where the US did not have a core or vital security interest.<sup>30</sup>

This rather pessimist view of CAT policy rhetoric is not without precedent. Biden’s CAT policy has been compared to Obama’s, which also emphasized human rights violations and international law.<sup>31</sup> But despite that rhetoric, the Obama administration sold arms to countries that regularly violated human rights protections. Under his administration, the US approved record-breaking arms sales to Saudi Arabia, despite human rights abuses in that country including floggings of journalist, record-setting numbers of beheadings, and executions of regime critics.<sup>32</sup> The Obama administration also lifted the US arms embargo on Vietnam, and in 2016 agreed to provide arms, as long as Vietnam met human rights requirements.<sup>33</sup> This was despite evidence of arbitrary killings, freedom of speech and press restrictions, and questions about election procedures.<sup>34</sup> Similarly, the Obama administration only temporarily halted the delivery of arms including attack helicopters, Harpoon missiles, and F-16 jets to Egypt after Egypt’s military coup. The administration ultimately approved the transfer of these arms to Egypt, despite ample evidence about the human rights abuses committed by the regime of General Abdel Fattah el-Sisi.<sup>35</sup>

The easy answer, then, is that CAT policy rhetoric does not matter. But there are major notable differences to Trump’s approach to arms sales, and the way that Biden acknowledges arms transfers as a foreign policy tool and includes language about the respect for human rights matters. This language gives critics something to hold on to when they push back against the administration’s plans. Trump’s economic emphasis forced all

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<sup>28</sup> Pieter D. Wezeman, Justine Gadon, and Siemon T. Wezeman, “Trends in International Arms Transfers, 2022” (SIPRI, March 2023), 2, [https://www.sipri.org/sites/default/files/2023-03/2303\\_at\\_fact\\_sheet\\_2022\\_v2.pdf](https://www.sipri.org/sites/default/files/2023-03/2303_at_fact_sheet_2022_v2.pdf).

<sup>29</sup> Jennifer Erickson, *Dangerous Trade: Arms Exports, Human Rights, and International Reputation* (Columbia University Press, 2015), 29.

<sup>30</sup> Erickson, 53; Michael Brzoska and Thomas Ohlson, “Arms Transfers to the Third World, 1971-85,” OUP Catalogue (Oxford University Press, 1987), <https://ideas.repec.org/b/oxp/obooks/9780198291169.html>.

<sup>31</sup> John Chappell and Ari Tolany, “Unpacking Biden’s Conventional Arms Transfer Policy,” *Lawfare*, 2 March 2023, [lawfareblog.com/unpacking-bidens-conventional-arms-transfer-policy](https://lawfareblog.com/unpacking-bidens-conventional-arms-transfer-policy).

<sup>32</sup> Zaid Jilani and Alex Emmons, “Obama Went From Condemning Saudis for Abuses to Arming Them to the Teeth,” *The Intercept*, April 19, 2016, <https://theintercept.com/2016/04/19/obama-went-from-condemning-saudis-for-abuses-to-arming-them-to-the-teeth/>.

<sup>33</sup> “Obama Lifts US Embargo on Lethal Arms Sales to Vietnam,” *BBC News*, 23 May 2016, <https://www.bbc.com/news/world-asia-36356695>.

<sup>34</sup> US Department of State, “2021 Country Reports on Human Rights Practices: Vietnam” (Washington DC), accessed May 3, 2023, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/vietnam/>.

<sup>35</sup> Michael Crowley, “‘We Caved,’” *Politico Magazine*, May 8, 2020, <https://www.politico.com/magazine/story/2016/01/we-caved-obama-foreign-policy-legacy-213495>.

contestation to stay within that narrow box; Biden's approach gives new levers and additional language to potential critics, which may lead to pauses of transfers to countries committing human rights abuses.