

FEBRUARY 23, 2023

## **Memorandum on United States Conventional Arms Transfer Policy**

NATIONAL SECURITY MEMORANDUM/NSM-18

MEMORANDUM FOR THE SECRETARY OF STATE

THE SECRETARY OF THE TREASURY

THE SECRETARY OF DEFENSE

THE SECRETARY OF COMMERCE

THE SECRETARY OF ENERGY

THE DIRECTOR OF NATIONAL INTELLIGENCE

THE ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS

SUBJECT: United States Conventional Arms Transfer Policy

Section 1. Purpose. The United States Conventional Arms Transfer (CAT) Policy establishes the executive branch's priorities and rationale for adjudicating the export of conventional arms. The transfer of defense articles and services is an important tool for achieving United States foreign policy and national security objectives by helping allies and partners increase their contributions to global security, as well as by promoting shared interests with allies and partners. Acquisitions of United States defense articles and services by trusted allies and partners reinforce diplomatic relations and deepen military interoperability, in turn shaping the international security environment in a manner that furthers United States foreign policy and national security interests.

The United States is stronger and safer when it works in concert with allies and partners, and arms transfers are an important mechanism to strengthen partner contributions to global security and reinforce these security relationships. Mutually beneficial alliances and partnerships are an enduring strength of the United States, and are critical to achieving our objectives. As the United States faces complex international challenges, this policy will facilitate the United States' ability to work with its allies and partners to secure and promote United States interests, including protecting human rights, bolstering international security and stability, maintaining technological advantages, strengthening interoperability, and preventing proliferation and arms diversion. The transfer of United States defense articles and services is a tangible symbol of United States commitment and partnership to recipient countries, their neighbors, and United States competitors.

The United States CAT Policy will bolster the security of allies and partners and contribute to shared security objectives; enhance global deterrence; promote respect for international humanitarian law and human rights; adhere to international nonproliferation norms; strengthen partnerships that preserve and extend our global influence; spur research and development efforts; and enhance interoperability with our allies and partners. By aligning United States conventional arms transfer policy with United States foreign policy and national security objectives, the United States can continue to be the primary security cooperation partner of choice for its allies and partners, as well as a global leader in advancing the protection of human rights, supporting nonproliferation, and strengthening stability.

The United States will promote norms and controls for the responsible international transfer of conventional arms and exercise restraint in transfers of weapons systems that may be destabilizing or dangerous to international peace and security. The United States will consider arms transfers on a case-by-case basis, taking into account the diversity of United States foreign policy and national security interests. In cases where the United States denies arms transfers for any of the reasons described in the considerations of this policy, it will encourage other arms exporting countries to exercise commensurate restraint when facing similar decisions. To this end, the United States aims to serve as a model for other countries' national policies and practices related to the responsible international transfer of conventional arms. Out of a desire to promote both norms and controls, and consistent with statutory requirements, the United States will continue to require adherence to end-use monitoring requirements. Further, when needed, the United States will conduct defense institution building to promote compliance with international humanitarian law and the law of armed conflict.

United States foreign policy and national security objectives are best advanced by facilitating arms transfers to trusted actors who will use them responsibly and who share United States interests. This policy recognizes that, 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 interests.

Sec. 2. United States Conventional Arms Transfer Policy Scope and Objectives. This policy applies to decisions on whether to authorize the transfer of United States arms to a foreign user, including certain items on the Commerce Control List, the transfer of defense articles, related technical data, and defense services, regardless of the authority or United States Government department or agency under which the transfer would occur.

The United States CAT Policy supports the following United States foreign policy and national security objectives:

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;

Help allies and partners contribute to global security and deter and defend themselves against aggression and foreign malign influence;

Promote international peace and stability and the settlement of international disputes through diplomacy and deterrence;

Strengthen United States national security by reinforcing respect for human rights, international humanitarian law, democratic governance, and rule of law;

Prevent arms transfers that risk facilitating or otherwise contributing to violations of human rights or international humanitarian law;

Strengthen ally and partner capacity to respect their obligations under international law and reduce the risk of civilian harm, including through arms transfers, as well as appropriate tools, training, advising, and institutional capacity-building efforts;

Ensure the United States military maintains technological advantages over current and potential adversaries and promote the United States' comparative advantage over our strategic competitors, including Russia and China;

Strengthen the United States manufacturing and defense industrial base and ensure resiliency in global supply chains;

Ensure that arms transfers do not fuel corruption or undermine good governance, while incentivizing effective, transparent, and accountable security sector governance; and

Prevent proliferation of equipment and technology that is destabilizing, would advance the ability to develop or deliver weapons of mass destruction (WMD), or would otherwise provide capabilities inconsistent with international nonproliferation agreements, arrangements, and norms.

Sec. 3. Arms Transfer Decisions. Arms transfer decisions will continue to meet the requirements of all applicable statutes, including:

The Arms Export Control Act of 1976, as amended;

The Export Control Reform Act of 2018; and

The Foreign Assistance Act, the International Emergency Economic Powers Act, and annual National Defense Authorization Acts.

Arms transfer decisions will be consistent with the requirements of all applicable export control regulations and United States international obligations and commitments. These laws and regulations will apply, as appropriate, regardless of whether transfers are accomplished through direct commercial sales, government-to-government transfers, export or re-export approvals of certain items on the

Commerce Control List, United States assistance programs, approvals for the re-transfer of arms, changes of end use, or upgrades.

As decisions regarding arms transfers are important tools for achieving United States foreign policy and national security objectives, the Secretary of State shall coordinate decisions regarding arms transfers with other relevant executive departments and agencies. The executive branch will, in consultation with the Congress as appropriate, review transfers of conventional arms to ensure alignment with United States foreign policy and national security objectives and will integrate arms transfer policy into broader diplomatic strategies that promote United States foreign policy and national security objectives.

All decisions on potential arms transfers will be made on a case-by-case basis, taking into account the following considerations:

The degree to which the transfer supports United States strategic and foreign policy interests and bolsters the capabilities of our allies and partners to counter international and transnational threats;

The risk that the recipient may use the arms transfer to contribute to a violation of human rights or international humanitarian law, based on an assessment of the available information and relevant circumstances, including the capacity and intention of the recipient to respect international obligations and commitments;

The overall stability of the recipient country's political system, and the degree to which a receiving government possesses well-governed security institutions that are subject to the rule of law, with effective accountability mechanisms for its security sector, effective civilian control of security forces, and a demonstrated commitment to improving transparency and countering corruption in its defense acquisition system;

The risk that the transfer will have adverse political, social, or economic effects within the recipient country, including by negatively impacting the protection of human rights, fundamental freedoms, or the activity of civil society; encourage or contribute to corruption; contribute to instability, authoritarianism, or transnational repression; contribute to impunity of security forces; or undermine democratic governance or the rule of law;

The degree to which the transfer contributes to ally and partner interoperability with United States forces and increases the partner's ability to operate alongside or in lieu of United States forces;

The degree to which the transfer reduces an ally's or partner's dependence on United States competitors and/or helps displace long-term reliance on those competitors;

The degree to which the transfer increases United States access and influence in the support of strategic, foreign policy, and defense interests; contributes to countering terrorism, narcotics trafficking, transnational organized crime, or similar threats to national security; and advances the United States' interests in regional stability;

The degree to which the introduction of a capability could destabilize a country, increase regional tensions, or contribute to an arms race;

The degree to which (a) the recipient is confronting, has confronted, or is likely to confront armed aggression from United States adversaries or strategic competitors, and (b) the transfer is related to improving the recipient's self-defense capabilities against such aggression;

Whether the transfer is consistent with United States international arms control, disarmament, and nonproliferation commitments and obligations;

The recipient's ability to field, maintain and support, employ, secure, and fund the requested system effectively and appropriately in accordance with its intended end use;

The risk of diversion and the recipient's ability and willingness to protect sensitive equipment and technology, including its history of compliance with end-use requirements and whether the end-use country maintains strong export controls and nonproliferation practices, which can be demonstrated, among other things, by its membership and/or alignment with multilateral nonproliferation regimes;

An assessment of whether the transfer might contribute to a recipient's pursuit of WMD and their means of delivery;

The transfer's contribution to United States innovation and technological advancement that helps improve United States and partner responses to security threats, as well as its effect on the United States defense industrial base;

The transfer's effect on the technological advantage of the United States, and the risk of compromise to United States systems and operational capabilities; and

The risk that the transfer of a competitor's system would undermine United States national security considerations outlined above.

If the United States determines at any time that a transfer is no longer in accordance with United States foreign policy objectives, national security goals, or legal obligations, the United States may cease the transfer of or future support for a transferred defense article or service.

Sec. 4. Arms Transfers and Human Rights. United States national security is strengthened by greater respect worldwide for human rights and international law, including international humanitarian law. The legitimacy of and public support for arms transfers among the populations of both the United States and recipient nations depends on the protection of civilians from harm, and the United States distinguishes itself from other potential sources of arms transfers by elevating the importance of protecting civilians. Strong United States human rights and security sector governance standards for arms transfers — in addition to ensuring compliance with end-use requirements and providing human rights and international humanitarian law training, as appropriate — encourage recipient governments to respect international law, human rights, and good governance, and help prevent violations of human rights or international humanitarian law. These United States standards can serve as a model for other countries' policies on the responsible international transfer of conventional arms. The United States will work bilaterally and multilaterally to assist other suppliers in developing responsible arms transfer policies.

In light of these considerations, and consistent with applicable law, no arms transfer will be authorized where the United States assesses that it is more likely than not that the arms to be transferred will be used by the recipient to commit, facilitate the recipients' commission of, or to aggravate risks that the recipient will commit: genocide; crimes against humanity; grave breaches of the Geneva Conventions of 1949, including attacks intentionally directed against civilian objects or civilians protected as such; or other serious violations of international humanitarian or human rights law, including serious acts of gender-based violence or serious acts of violence against children. This assessment shall include consideration of the available information and relevant circumstances, including the proposed recipient's current and past actions, credible reports that the recipient committed any of the above violations, and other information related to the overall capacity or intention of the recipient to respect international law. If a transfer had previously been authorized and circumstances have changed in ways that would materially increase the risk of any of the negative consequences listed above, the United States will reassess and, as appropriate, review options for ceasing the transfer of or support for a previous authorization.

The recipient government of an arms transfer is responsible for complying with conditions of arms transfers and its obligations under international law, including those relating to human rights. The United States will engage in appropriate monitoring as part of its effort aimed at ensuring transferred arms are used responsibly and in accordance with these conditions and obligations.

Sec. 5. Arms Transfer Restraint and Promotion of Responsible Defense Trade. The United States will continue to promote control, restraint, and transparency of arms transfers, including leading the development of norms and controls on the responsible international transfer of arms that contain sensitive technologies. The United States will exercise restraint in international arms transfers that may be destabilizing or threaten international peace and security and will also exercise restraint in transfers involving materials that might be used as delivery systems for WMD or result in adversaries obtaining capabilities that could threaten the security of the United States or of our allies and partners.

The United States recognizes that good security sector governance, including the transparent, accountable, and legitimate management and oversight of security policy and practice, is integral to the responsible possession and use of United States-origin defense materiel. The United States will therefore encourage recipients of United States arms transfers to demonstrate effective security sector governance and seek to ensure their ability to protect United States-origin defense materiel from misuse or illicit transfer, properly deploy and sustain that materiel, and conduct military operations in a manner that addresses, rather than exacerbates, the underlying drivers of conflict.

The United States will continue participation in and support for multilateral, regional, and sub-regional arrangements that contribute to the objectives and interests outlined in this policy, such as the United

Nations Register of Conventional Arms; the United Nations Standardized Instrument for Reporting Military Expenditures; the United Nations Principles for Transactions Linked to Foreign Government End-Users for Products or Services with Surveillance Capabilities; regional initiatives that enhance transparency in conventional arms transactions; the Missile Technology Control Regime; the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies; the Inter-American Convention on Transparency in Conventional Weapons Acquisitions; and any other relevant or successor arrangements. Such multilateral arrangements promote common national policies of restraint against the transfer of armaments and sensitive dual-use goods and technologies to states whose conduct is cause for serious concern. The United States will work bilaterally and multilaterally to assist other countries transferring conventional arms in developing effective export control mechanisms in support of responsible export policies that align with those of the United States and the highest possible common international standards for regulating the international trade in conventional arms.

Sec. 6. Supporting Arms Transfer Decisions. Arms transfer decisions are foreign policy and national security decisions that support broader United States policy objectives. The United States will pursue policies, processes, and regulatory changes to create efficiencies in the security cooperation field to provide conventional capabilities that support United States national interests. Although the general policy principle of restraint shall govern decision making on arms transfers, in an increasingly competitive market, the United States Government will promote transfers when they are in the United States national interest, in line with the considerations of this policy, and consistent with defense trade advocacy procedures. Arms transfers consistent with security cooperation objectives enable the United States to enhance partner interoperability and enable partners to export security.

The United States will seek to address impediments to bilateral defense trade relations with potential recipient countries that may preclude prudent arms transfers from proceeding, limit United States Government and United States defense contractors' market access, or prevent United States entities from competing on a level playing field.

Sec. 7. Arms Transfers Involving Emerging Technologies. This policy applies to all United States arms transfers, including those that involve emerging technologies. Consistent with the Export Control Reform Act of 2018 and other existing law, 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.

Sec. 8. Earlier Presidential Actions. This memorandum supersedes National Security Presidential Memorandum 10 of April 19, 2018 (United States Conventional Arms Transfer Policy).

Sec. 9. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

i. the authority granted by law to an executive department or agency, or the head thereof; or

ii. the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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