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Review of the Department of State's Role in Arms Transfers to the Kingdom of Saudi Arabia and the United Arab Emirates

DOMESTIC OPERATIONS AND SPECIAL REPORTS




Office of Inspector General United States Department of State

UNCLASSIFIED

August 10, 2020

TO: Bureau of Political-Military Affairs – R. Clarke Cooper, Assistant Secretary

FROM: OIG – Diana R. Shaw, Acting Inspector General 

SUBJECT: OIG's Review of the Department of State's Role in Arms Transfers to the Kingdom of Saudi Arabia and the United Arab Emirates

Prior to completion of OIG's review of the Department's Role in Arms Transfers to the Kingdom of Saudi Arabia and the United Arab Emirates, Inspector General Steve Linick was removed from office and, on May 15, 2020, the President appointed Stephen Akard as Acting Inspector General.¹ Acting Inspector General Akard subsequently recused himself from this matter, delegated full authority to me to make final decisions pertaining to this review, and played no role in any aspect of the review.

It is for this reason that I write to inform you that OIG has completed its review of the subject matter. The final unclassified report is attached. You will receive under separate cover OIG's classified annex to this report, as well as instructions on OIG's compliance process for the recommendation contained in the annex. Consistent with OIG's statutory obligations,² OIG will distribute a copy of this report to Congress and post a redacted version of this report on OIG's public website within 2 business days.

The Department indicated during its review of OIG's draft report that certain information contained in the report and classified annex should be withheld from release to the public and/or Congress on three bases: (1) Sensitive But Unclassified information, (2) a deliberative process exemption under the Freedom of Information Act,³ and (3) potential executive privilege concerns. Consistent with OIG's commitment to transparency and accountability, OIG worked with the Department in an attempt to maximize the information to be released. Specifically, prior to finalizing the report, OIG engaged the Department to understand the nature of the potential claims of executive privilege and to minimize the number of Department-requested redactions. In a memorandum dated July 27, 2020, the Department asserted that its requested redactions were necessary to protect executive branch confidentiality interests and, further, stated its position that the Secretary "has the authority to direct the OIG not to disclose privileged information, and the Department may do so without any final assertion of executive privilege."

On August 5, 2020, the Department provided its redactions to OIG's report. Although the Department withheld relatively little information in the unclassified portion of the report,⁴ it withheld significant information in the classified annex necessary to understand OIG's finding and recommendation. The

¹ Acting Inspector General Stephen Akard resigned from his position effective August 7, 2020.

² Consistent with the Inspector General Act of 1978 (5 U.S.C.S. app. 3 § 2(3)), OIG is required to keep Congress fully and currently informed about our work. OIG is also required to publish our reports on our website within 3 days of completion, as outlined in 5 U.S.C.S. app. 3 § 8M(b)(1)(a).

³ The Department cites the exemption contained in 5 U.S.C. § 552(b)(5).

⁴ Congress will be provided with an unredacted version of the unclassified portion of the report.

Department asserted that the redactions made to the classified annex should be withheld from Congress because the underlying information implicates “executive branch confidentiality interests, including executive privilege.” While OIG continues to favor release to the greatest extent possible, the privilege belongs to the Department and OIG is not in a position to overrule the assertion but must instead rely on the good faith of the Department. Accordingly, OIG will make available to Congress a version of its classified annex with the Department’s redactions applied. OIG notes that when the Department initially explained its position with regard to the assertion of privilege, it stated its willingness to engage in discussions with Congress to accommodate interest in the underlying information.

cc:

Office of the Legal Adviser

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Summary of Review¹

In response to congressional requests, OIG reviewed the Department of State's (Department) role in arms transfers to the Kingdom of Saudi Arabia and the United Arab Emirates following the Secretary's May 2019 certification that an emergency existed under Section 36 of the Arms Export Control Act (AECA).² The Secretary's emergency certification³ waived congressional review requirements for 22 arms transfer cases to the Kingdom of Saudi Arabia, the United Arab Emirates, and the Hashemite Kingdom of Jordan,⁴ with a total value of approximately \$8.1 billion. Congress had previously placed holds⁵ on 15 of the 22 arms transfer cases included in the May 2019 emergency certification. At the time the Secretary certified the emergency, 6 of the 15 cases had been held by Congress for more than a year. The held cases included at least \$3.8 billion in precision-guided munitions (PGMs)⁶ and related transfers. In explaining the decision to place the holds, members of Congress cited concerns about the actions of the Saudi-led Coalition (Coalition)⁷ in Yemen since 2015, including high rates of civilian casualties caused by Coalition airstrikes employing U.S.-supplied PGMs.

For this review, OIG examined the process and timeline associated with the Secretary's May 2019 use of emergency authorities contained in the AECA. OIG also evaluated the Department's implementation of measures designed to reduce the risk of civilian harm caused by Saudi-led Coalition military operations in Yemen and analyzed Department processes for reviewing arms transfers that do not require notification to Congress.⁸ The AECA affords the President or Secretary considerable discretion in determining what

¹ The Department has applied redactions to certain text in the version of OIG's report that will be made available to the public. Each redaction is annotated to specify the basis on which the Department requested the information be withheld.

² Arms Export Control Act, 22 U.S.C. § 2776 (2018).

³ Federal Register, Vol. 84, No. 142, Arms Sales Notification, July 24, 2019.

⁴ The emergency certification included a single arms re-transfer case involving Jordan and the United Arab Emirates. Jordan was not included in the scope of OIG's review because Congress did not consistently place holds on arms transfers to the country prior to the May 2019 emergency certification.

⁵ The Department generally will not formally notify an arms transfer if a member of Congress raises significant concern by placing a hold during the informal notification stage. The Department is not, however, precluded from approving a transfer if the Department has provided formal notification to Congress and the period of advance notification specified in the Arms Export Control Act (22 U.S.C. § 2776) has elapsed.

⁶ The Department of Defense's *DOD Dictionary of Military and Associated Terms* defines a precision-guided munition as a guided weapon intended to destroy a point target and minimize collateral damage. This includes air- and ship-launched missiles, multiple launched rockets, and guided bombs. Precision-guided munitions typically use the global positioning system, laser guidance, or inertial navigation systems to improve the weapon's accuracy.

⁷ The Saudi-led Coalition is composed of 11 member states supporting Yemen's internationally recognized government. Saudi Arabia and the United Arab Emirates are the most active participants. Other members include Bahrain, Egypt, Jordan, Kuwait, Morocco, Pakistan, Qatar, Somalia, and Sudan.

⁸ The Department is required by sections 36(b)(1), 36(c)(1), and 36(d)(1) of the Arms Export Control Act (22 U.S.C. § 2776) to notify congressional committees of jurisdiction of its intent to proceed with certain, notifiable transfers.

constitutes an emergency. Moreover, the AECA does not define the term “emergency.” Accordingly, OIG did not evaluate whether the Iranian malign threats cited in the Secretary’s May 2019 certification and associated memorandum of justification constituted an emergency, nor did OIG make any assessment of the policy decisions underlying the arms transfers and the associated emergency.

OIG determined that the Secretary’s emergency certification was executed in accordance with the requirements of the AECA. However, OIG also found that the Department did not fully assess risks and implement mitigation measures to reduce civilian casualties and legal concerns associated with the transfer of PGMs included in the May 2019 emergency certification.⁹ In addition, OIG found the Department regularly approved arms transfers to Saudi Arabia and the United Arab Emirates that fell below AECA thresholds that trigger notification to Congress. These approvals included items such as PGM components on which Congress had placed holds in cases where the transfers reached the thresholds requiring congressional notification. However, the AECA does not require the Department to notify Congress if it approves transactions below those thresholds specified in the law.

OIG issued one recommendation to the Department in a classified annex¹⁰ that accompanies this report.

BACKGROUND

Conflict in Yemen Created Spillover Effects in Gulf Region

Despite a cease fire agreement brokered by the United Nations in December 2018,¹¹ Yemen’s civil war is in its fifth year and shows few signs of abating. In September 2014, Houthi¹² militant groups based in northern Yemen defeated government forces and entered Yemen’s capital, Sana’a. Responding to an appeal for international intervention by exiled Yemeni President Abdo Rabo Mansour Hadi, Saudi Arabia, with the support of other Coalition members, launched a military offensive in 2015 that was aimed at restoring President Hadi’s rule and evicting Houthi fighters from the capital and other major cities. Figure 1, below, shows Yemen’s location relative to other countries in the Gulf region.

⁹ The Department indicated during its review of this report that it disagreed that such actions were required. The Department’s response and OIG’s reply appear in appendices B and C of this report, as well as in the classified annex to this report.

¹⁰ OIG, *Classified Annex to Review of the Department of State’s Role in Arms Transfer to the Kingdom of Saudi Arabia and the United Arab Emirates* (ISP-S-20-19A).

¹¹ Although the conflict persists, the United Nations brokered a cease fire agreement between Yemen’s internationally recognized government and the Houthis in December 2018 known as the Stockholm Agreement.

¹² The Houthi movement, also known as Ansar Allah or Partisans of God, is a predominantly Zaydi Shiite revivalist political and insurgent movement based in the northern Yemeni governorate of Sa’dah.

Figure 1: Map of Yemen and Gulf Region



Source: CIA World Factbook. OIG modified the map to label select countries referenced in this report.

Humanitarian Crisis and Coalition Airstrikes Result in Civilian Casualties

The United Nations has characterized the conflict in Yemen as the world's worst humanitarian crisis, with more than 24 million people—75 percent of the country's total population—requiring humanitarian assistance. Economic collapse in 2018 pushed Yemen to the brink of widespread famine. According to an estimate produced for the United Nations,¹³ the conflict had resulted in 233,000 deaths by the end of 2019. Although the majority of these deaths resulted from a lack of food, health services, and infrastructure, air strikes by the Coalition have also produced high rates of civilian casualties, as described below. The United States is the largest donor of humanitarian assistance to Yemen, providing \$764 million in 2019.

The Saudi-led Coalition's air campaign against the Houthis has attracted international criticism because of continued high rates of civilian casualties. The United Nations estimates that from March 2015 to November 2018 there were 17,640 combat-related civilian casualties in Yemen, including 10,852 caused by Coalition airstrikes. High-profile incidents include a March 2016 strike on a market that killed 97 civilians, an October 2016 attack on a funeral hall that killed 140, and an August 2018 strike on a school bus that killed 51, including 40 children. Open source reporting stated that the PGMs used in each of these airstrikes may have been manufactured by U.S. defense firms and would therefore be subject to the Department's arms

¹³ Jonathan D. Moyer, et al, *Assessing the Impact of War on Development in Yemen*, 7 (2019).

transfer review process, described below. At the time of OIG's review, Coalition air strikes in Yemen continued to result in high rates of civilian casualties and damage to civilian sites.¹⁴

Iranian Involvement in Yemen Adds to Regional Tensions

Yemen's civil war is complicated by the involvement of foreign actors, including Iran, which provides financial, technical, and materiel support to the Houthis. U.S. officials have stated that Iranian support has exacerbated Yemen's humanitarian crisis and contributed to broader instability in the Gulf region. The widespread use of landmines by the Houthis along the country's western coast severely limits the international community's ability to provide humanitarian assistance inside Yemen. Outside of Yemen, the Houthis have attacked civilian areas in Saudi Arabia and the United Arab Emirates with ballistic missiles and unmanned aerial vehicles, resulting in the deaths of more than 500 Saudi civilians. The Houthis have also attacked international shipping in the Bab-el-Mandeb strait, through which about 5 percent of global oil shipments pass. On September 14, 2019, an attack on the world's largest oil processing facility in Saudi Arabia reduced global oil output by 5 percent. Although the Houthis claimed responsibility for the attack, the United States and Saudi Arabia publicly blamed Iran.¹⁵

United States Seeks to Support Gulf Allies, Counter Terrorist Threats

Although not a member of the Saudi-led Coalition, the United States provides logistical and intelligence support to the Coalition. The United States is also a major supplier of defense articles and services¹⁶ used by members of the Coalition to execute their military campaign in Yemen, including PGMs used in airstrikes. Separately, the United States conducts counterterrorism operations against Al Qaeda and Islamic State affiliates in Yemen.¹⁷ The United States has sought to bolster the ability of Saudi Arabia, the United Arab Emirates, and other Gulf states to defend themselves against Iranian aggression. Sales of U.S. defense articles and services are a key aspect of such efforts.

¹⁴ For example, on September 23 and 24, 2019, the United Nations reported that Coalition air strikes on a mosque and a family home killed 22 civilians. In October 2019, Coalition air strikes damaged a United Nations-supported water system that serves 12,000 people—the fourth time the facility had been hit since 2016.

¹⁵ The United Nations Secretariat assessed in June 2020 that the cruise missiles and uncrewed aerial vehicles and/or parts thereof used in the attack were of Iranian origin. See United Nations, *Implementation of Security Council Resolution 2231 (2015): Ninth Report of the Secretary-General (S/2020/531*, June 11, 2020).

¹⁶ The Arms Export Control Act requires the President to designate articles and services deemed to be defense articles and defense services for the purpose of import or export controls. This responsibility has been delegated to the Secretary of State. Items designated as defense articles and services constitute the U.S. Munitions List and are specified in 27 C.F.R. § 121.

¹⁷ U.S. counterterrorism operations in Yemen are directed against Al Qaeda in the Arabian Peninsula and various affiliates of the Islamic State. In conducting such operations, the Department of Defense relies on a 2001 authorization to use military force. See Pub. L. No. 107-40.

ARMS TRANSFER PROCESS AND MAY 2019 EMERGENCY CERTIFICATION

Department Leads U.S. Government Review of Proposed Arms Transfers

The U.S. Government regulates the sale, export, and re-transfer of defense articles and services to safeguard U.S. national security and advance U.S. foreign policy objectives. Transfers of defense articles and services are governed by U.S. law, principally the AECA. Decisions to approve or deny proposed arms transfers are based on criteria outlined in the Conventional Arms Transfer Policy.¹⁸ The Department's Bureau of Political-Military Affairs leads the U.S. Government's review and approval of defense exports, which totaled \$192.3 billion in 2018. The bureau consults with other Department and U.S. Government stakeholders when evaluating proposed arms transfers.¹⁹ Additional information on the review process for proposed arms transfers is in Appendix D.

The AECA specifies the types and monetary values of arms transfers that require formal advance notification to Congress and outlines how much advance notice Congress requires.²⁰ In addition to the formal notification process required by the AECA, the Department has by longstanding practice submitted a preliminary or informal notification of prospective major arms transfers in advance of their formal notification to the congressional committees of jurisdiction. This practice—known as the tiered review process—allows Congress to ask questions or raise concerns before the Department initiates the formal notification. Under the tiered review process, the Department generally will not formally notify an arms transfer if a member of Congress raises significant concerns by placing a hold during the informal review stage. Although the Department is not precluded from proceeding with an arms transfer subject to a congressional hold, the Department must still formally notify Congress of the proposed transfer, consistent with the requirements outlined in the AECA.²¹

¹⁸ White House, *National Security Presidential Memorandum Regarding U.S. Conventional Arms Transfer Policy*, April 19, 2018. Beginning with the Carter Administration in 1977, five presidents have issued a conventional arms transfer policy that provides a framework for reviewing proposed arms transfers within the Executive Branch.

¹⁹ Arms transfers include foreign military sales, in which the Department of Defense manages the transfer of defense equipment purchased by foreign allies and partners, and direct commercial sales, in which the Department of State provides regulatory approval for commercial sales of defense equipment, services, and related manufacturing technologies controlled under the U.S. Munitions List.

²⁰ See Sections 36(b), 36(c), and 36(d) of the Arms Export Control Act (22 U.S.C. § 2776). In addition to specifying thresholds based on the value and type of proposed transfer, the law specifies that the notification occur at least 15 calendar days in advance for proposed transfers to the North Atlantic Treaty Organization (NATO), any member country of NATO, Japan, Australia, the Republic of Korea, Israel, or New Zealand. For proposed transfers to all other countries, notification must occur 30 calendar days in advance.

²¹ As described in more detail in Appendix D, Congress may attempt to block a proposed arms transfer through a Joint Resolution of Disapproval. In the cases at issue here, the Secretary's emergency certification waived the duration of the advance notification requirements contained in the Arms Export Control Act (22 U.S.C. § 2776) and allowed for the transfers to be immediately licensed or offered to the partner.

United States Seeks to Minimize Civilian Casualties

As described in the Conventional Arms Transfer Policy, the United States seeks to reduce the risk that supplying U.S. defense articles and services to foreign allies and partners will harm civilians. Consistent with the Law of Armed Conflict,²² the current Conventional Arms Transfer Policy expressly prohibits the Department from approving arms transfers in cases where the United States has knowledge that the transferred arms will be used to commit attacks intentionally directed against civilians.²³ Current and past Executive orders²⁴ also direct U.S. officials to engage foreign partners on best practices for reducing the likelihood of and responding to civilian casualties. The Bureau of Political-Military Affairs leads an interagency effort to develop a global implementation plan for reducing harm to civilians.

Partly in response to concerns about the high rates of civilian casualties caused by Coalition airstrikes in Yemen, the U.S. Government provides training to Saudi Arabia on the Law of Armed Conflict and on best practices for preventing civilian casualties. The United States also supports Saudi efforts to improve its targeting²⁵ processes and mechanisms for investigating alleged incidents of civilian casualties. Despite these efforts, the United Nations and non-governmental organizations continue to express concern about the Coalition's air campaign, and they also continue to identify Coalition airstrikes that may be in violation of the Law of Armed Conflict.

Additional information on U.S. efforts to minimize civilian casualties in Yemen is contained in the classified annex to this report.

²² The Law of Armed Conflict, also known as the Law of War or International Humanitarian Law, is a collection of international treaties and customary international law which govern the conduct of hostilities and protection of victims of war (i.e., civilians). It includes the Geneva Convention Treaty, Common Article 3, which prohibits violence to people taking no active part in the hostilities. Under the Law of Armed Conflict, intentional attacks on protected objects, such as hospitals or cultural property, are considered war crimes unless those objects have been converted to a legitimate military target through their use by combatants for the conduct of hostilities.

²³ The current administration's Conventional Arms Transfer Policy, dated April 19, 2018, uses language similar to that of the former administration's regarding the prohibition of arms transfers in cases where the United States has actual knowledge at the time of authorization that the transferred arms will be used to commit attacks directed against civilians. However, the current administration added the word "intentionally" (i.e., attacks "intentionally" directed against civilians).

²⁴ Executive Order 13732, United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force, dated July 1, 2016, was reissued in March 2019 as Executive Order 13862. The new Executive Order is identical to the previous one, with the exception of revoking a reporting requirement in section 3.

²⁵ Targeting is the process of selecting and prioritizing military targets. The emphasis of targeting is on identifying enemy targets that, if destroyed or degraded, will contribute to mission success.

Emergency Certification Used to Proceed With Arms Transfers Subject to Congressional Holds

On May 23, 2019,²⁶ the Secretary certified that an emergency existed, allowing the delivery of approximately \$8.1 billion in defense articles and services to the Kingdom of Saudi Arabia, the United Arab Emirates, and the Hashemite Kingdom of Jordan.²⁷ The certification waived congressional review requirements for 22 arms transfer cases that otherwise met thresholds under the AECA requiring such review. Appendix E contains a summary of the 22 arms transfer cases.

Of the 22 arms transfer cases included in the emergency declaration, Congress had previously placed holds on 15 of the cases during the informal tiered review process, described above. At the time the Secretary certified the emergency, 6 of the 15 cases had been held by Congress for more than a year. The held cases included at least \$3.8 billion in PGMs and related transfers to Saudi Arabia and the United Arab Emirates, as described in Appendix E. In justifying the holds, members of Congress primarily cited concerns about the actions of the Saudi-led Coalition in Yemen, including high rates of civilian casualties caused by Coalition airstrikes and the deteriorating humanitarian situation. Although most holds predated the October 2018 killing of Saudi journalist Jamal Khashoggi by agents of the Saudi Government, members of Congress cited Khashoggi's murder as an additional factor in their opposition to the arms transfers.

In making his emergency certification, the Secretary described the threat posed by Iranian malign activity to the stability of the Middle East and to U.S. national security. The justification stated that Iran had directed repeated attacks on civilian and military infrastructure in Saudi Arabia and the United Arab Emirates using Iranian-designed drones and missiles fired by the Houthis in Yemen.²⁸ Following the Secretary's certification of the emergency, Congress attempted to block the transfers by passing three bills, all of which were vetoed by the President on July 24, 2019. A July 29, 2019, Senate vote failed to override the vetoes.

EMERGENCY CERTIFICATION PROCESS AND TIMELINE

In response to congressional requests, OIG reviewed the process followed by the Department and the timeline associated with the Secretary's May 2019 use of emergency authorities contained in Section 36 of the AECA.²⁹ OIG determined that the emergency certification was

²⁶ The Secretary made a formal determination after close of business on May 23, 2019. The decision was notified to Congress and announced publicly the following day, on May 24.

²⁷ See 22 U.S.C. § 2776(b)(1), (c)(2), and (d)(2).

²⁸ Although Department personnel first cited Iranian threats as the basis for the proposed emergency certification in April 2019, Department officials told OIG the Secretary's formal decision to certify the emergency on May 23, 2019, coincided with increased threat activity related to Iran.

²⁹ 22 U.S.C. § 2776.

executed in accordance with the requirements of the AECA. OIG did not evaluate whether the Iranian malign threats cited in the Secretary's May 2019 certification and associated memorandum of justification constituted an "emergency," which is not defined in the AECA, nor did OIG make any assessment of the policy decisions underlying the arms transfers and the associated emergency. Figure 2, below, contains a timeline of events related to the May 2019 emergency certification.

Figure 2: Timeline of Events Related to the May 2019 Emergency Certification



Source: OIG-generated from information obtained from the Department.

Consideration of Emergency Evolved From Early April to Late May 2019

Secretary Requested Options for Proceeding With Arms Transfers

A priority of the President's National Security Strategy³⁰ is to facilitate exports of U.S. military equipment. Department officials told OIG they believed the congressional review process was hindering exports of military equipment. As noted above, Congress placed holds on arms transfers to Saudi Arabia and the United Arab Emirates in response to concerns about the Coalition's military operations in Yemen. Department employees told OIG that, although Congress had permitted some transfers of defensive arms³¹ to proceed, the October 2018 murder of Jamal Khashoggi resulted in further efforts to restrict arms transfers to Saudi Arabia.³² As of late March 2019, 16 arms transfer cases involving Saudi Arabia and the United Arab Emirates were subject to congressional holds and had not proceeded.³³ OIG found that Department staff (b) (5)

³⁰ White House, *National Security Strategy of the United States of America*, December 2017.

³¹ Such transfers included defense articles and services unlikely to be used in the conflict in Yemen. For example, Congress allowed sales of air and missile defense systems to proceed.

³² For example, members of Congress proposed the Saudi Arabia Accountability and Yemen War Act in February 2019. If passed, the act would sanction those involved in Jamal Khashoggi's murder and prohibit the sales of certain arms to Saudi Arabia.

³³ Not all cases subject to congressional holds as of late March 2019 were included in the May 2019 emergency.

(b) (5) the Department could proceed with the proposed arms transfers.

Secretary Instructed Department Staff (b) (5)

OIG found that on May 4, 2019, the Secretary asked (b) (5)

Records reviewed by OIG showed that the Secretary's guidance (b) (5)

. Although the potential use of the emergency authorities was closely held within the Department, (b) (5)

in advance of the Secretary's formal decision.

Emergency Certification Was Properly Executed

OIG determined that the Secretary's May 2019 use of emergency authorities was executed in accordance with the requirements of Section 36 of the AECA. Prior to May 2019, three previous Presidents had used the emergency authorities to facilitate arms transfers.³⁴ In this case, the Secretary made the certification pursuant to a delegation of authority from the President.³⁵ Additional information on past uses of the AECA emergency authorities is contained in Appendix F.

In making a determination that an emergency requires the immediate provision of defense articles and services, the AECA stipulates that the President³⁶ must notify Congress and provide a certification that includes a detailed justification with a description of the emergency and a discussion of the national security interests. OIG reviewed documentation pertaining to the Secretary's decision, which included a certification, memorandum of justification, and associated congressional notifications. OIG found that the documentation complied with the requirements outlined in the AECA.

³⁴ In addition to the three previous uses of the authorities in Section 36 of the Arms Export Control Act, President George W. Bush exercised a similar authority contained in Section 514 of the Foreign Assistance Act (22 U.S.C. § 2321h) in 2006 to expedite delivery of munitions to Israel during a conflict with Hezbollah.

³⁵ The delegation of authority used by the Secretary to make the May 2019 emergency certification is contained in Executive Order 13637.

³⁶ The Arms Export Control Act grants the President the authority to exercise the emergency authorities contained in Section 36. As previously discussed, the Secretary made the May 2019 certification pursuant to a delegation of authority from the President.

Most Arms Included in Emergency Certification Not Delivered at the Time of OIG's Review

Consistent with OIG's objective to review the process and timeline associated with the May 2019 emergency and related arms transfers, OIG analyzed information on the status of each arms transfer case included in the emergency to determine when foreign partners would take delivery of the associated defense articles and services. At the time of OIG's review, foreign partners had taken full delivery of (b) (4) arms transfer cases included in the May 2019 emergency.³⁷ The Department reported issuing all 13 export licenses and approving one arms re-transfer request by June 2019, accounting for all direct commercial sales cases included in the emergency. Additionally, as of November 2019, the Department of Defense had issued six of eight letters of offer and acceptance for foreign military sales included in the emergency. Of the six letters of offer and acceptance, only three had been signed by the foreign government, and one had been rejected by the receiving government. The remaining two letters of offer and acceptance had not yet been issued.

Department staff estimated that U.S. companies would begin delivery of equipment and materials contained in (b) (4) arms transfer cases prior to the end of 2019. Furthermore, at the time of OIG's review, only (b) (4) in foreign military sales included in the emergency had been implemented.³⁸ Although not all cases had established delivery schedules, the Department estimated that (b) (4) cases included in the emergency would not begin delivery until 2020 or later.³⁹ A summary of the status for each of the cases included in the emergency is contained in Appendix B of the classified annex to this report.

OTHER MATTERS

During OIG's review of the circumstances leading to the May 2019 emergency certification, OIG identified additional information related to the Department's handling of arms transfers to Saudi Arabia and the United Arab Emirates. In response to this information, OIG also evaluated the Department's implementation of procedures to reduce the risk of civilian harm caused by Saudi-led Coalition military operations in Yemen and analyzed Department processes for reviewing and approving arms transfers that fall below thresholds in the AECA requiring congressional notification to determine whether the Department followed applicable laws,

³⁷ (b) (4) were among the first items delivered following the May 2019 emergency certification.

³⁸ Once a foreign military sales case is approved, the Department of Defense issues the foreign government a letter of offer and acceptance. The foreign government can either accept or reject the letter of offer and acceptance. The case is not considered implemented until the foreign government accepts the letter of offer and acceptance and transfers the agreed funds to the U.S. Government.

³⁹ At least one of the cases included in the emergency involved the provision of defense services through 2025. However, delivery of those services will begin in 2020.

regulations, and policies. To accomplish these objectives, OIG interviewed Department staff involved in the review and approval of proposed arms transfers, reviewed documents outlining Department procedures for reviewing and approving proposed arms transfers,⁴⁰ and analyzed data on arms transfer cases involving Saudi Arabia and the United Arab Emirates that fell below the AECA congressional notification thresholds.

As described below, OIG found that the Department did not fully assess risks and implement mitigation measures to reduce civilian casualties and legal concerns associated with the transfer of PGMs included in the Secretary's May 2019 emergency certification. OIG also found that, consistent with the AECA, which does not require the Department to notify Congress when approving transactions below the thresholds specified in the law, the Department approved arms transfers to Saudi Arabia and the United Arab Emirates under the AECA thresholds, some of which were similar to those that had been held by Congress.

Department Did Not Fully Assess Risks and Implement Mitigation Measures to Reduce Civilian Casualties and Legal Concerns

OIG found the Department did not fully assess risks and implement mitigation measures to reduce civilian casualties and legal concerns associated with the transfer of PGMs included in the Secretary's May 2019 emergency certification. OIG describes this matter in detail and issued an associated recommendation in the classified annex to this report.

Department Approved Below-Threshold Arms Transfers That Included Components of Precision-Guided Munitions

OIG reviewed Department records on approved arms transfer cases involving Saudi Arabia and the United Arab Emirates that fell below the AECA thresholds that trigger notification to Congress.⁴¹ The records show the Department approved a total of 4,221 below-threshold arms transfers involving Saudi Arabia and the United Arab Emirates, with an estimated total value of \$11.2 billion since January 2017. Components of PGMs were among the below-threshold transfers to Saudi Arabia and the United Arab Emirates approved during this period. Although the Department approved below-threshold transfers of PGM components as early as January 2017, the Under Secretary for Arms Control and International Security notified the Secretary in 2018 and 2019 that the Department intended to proceed with additional below-threshold

⁴⁰ These documents included standard operating procedures for arms transfers maintained by the Bureau of Political-Military Affairs and Democracy, Human Rights, and Labor. The Bureau of Near Eastern Affairs is also consulted in the review of arms transfer cases involving countries within its geographic region.

⁴¹ Sections 36(b)(1), 36(c)(1), and 36(d)(1) of the Arms Export Control Act (22 U.S.C. § 2776) specify the types of arms transfers that must be notified to Congress. For example, transfers to countries other than NATO members, Japan, Australia, the Republic of Korea, Israel, or New Zealand of major defense equipment in excess of \$14 million and non-major defense equipment in excess of \$50 million must be notified to Congress.

approvals notwithstanding congressional holds on larger, above-threshold transfers of similar items.

APPENDIX A: OBJECTIVES, SCOPE, AND METHODOLOGY

This review was conducted from October 22 to December 16, 2019, in accordance with the Quality Standards for Inspection and Evaluation, as issued in 2012 by the Council of the Inspectors General on Integrity and Efficiency, and the Inspector's Handbook, as issued by OIG for the Department of State (Department) and the U.S. Agency for Global Media (USAGM). Prior to completion of this report, Inspector General Steve Linick was removed from office. On May 15, 2020, the President appointed Stephen Akard as Acting Inspector General.⁴² The Acting Inspector General recused himself from this matter and delegated responsibility for it to Deputy Inspector General Diana Shaw. Acting Inspector General Akard played no role in any aspect of this review.

The Office of Inspections provides the Secretary of State, the Chief Executive Officer of USAGM, and Congress with systematic and independent evaluations of the operations of the Department and USAGM. Consistent with Section 209 of the Foreign Service Act of 1980, OIG's specific objectives for this review were to:

1. Determine the process and timeline related to the Secretary's May 2019 exercise of emergency authorities under the Arms Export Control Act.
2. Evaluate the Department's implementation of established procedures to reduce the risk of civilian harm caused by Saudi-led Coalition military operations in Yemen.
3. Analyze Department processes for reviewing and approving arms transfers that fall below thresholds in the Arms Export Control Act requiring congressional notification.

For this review, OIG conducted 46 interviews with Department stakeholders. Beginning in late 2019, OIG also requested to interview the Secretary of State. While efforts to schedule the interview continued, the Secretary instead submitted a written statement to OIG in February 2020, which cited his travel schedule as his reason for providing a written document. In addition to delays resulting from efforts to schedule an interview with the Secretary, finalization of this report was delayed because of COVID-19-related restrictions on OIG staff's in-office presence.

OIG also analyzed Department data on arms transfers to Saudi Arabia and the United Arab Emirates, and reviewed classified and unclassified memoranda, files, and records. Finally, OIG used professional judgment, along with documentary, testimonial, and analytical evidence collected or generated, to develop its findings and the recommendation contained in the classified annex to this report.

⁴² Acting Inspector General Stephen Akard resigned from his position effective August 7, 2020.

Jonathon Walz (Team Leader), Arne Baker, Eleanor Nagy, Pauline Nguyen, and Linette Romer conducted this review. Other report contributors include Veronica Green, Timothy McQuay, and Rebecca Sawyer.

APPENDIX B: MANAGEMENT RESPONSE

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United States Department of State

Washington, D.C. 20520

5 August 2020

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TO: OIG – Sandra Lewis, Assistant Inspector General for Inspections (U)

FROM: Political Military Affairs – R. Clarke Cooper (U)

SUBJECT: Response to Draft OIG Report – Review of the Department of State’s Role in Arms Transfers to the Kingdom of Saudi Arabia and the United Arab Emirates (U)

(U) The Department has reviewed the draft OIG inspection report and is grateful for this opportunity to respond. We agree with the report’s principal finding, that the Secretary’s May 23, 2019 certification that an emergency which required the immediate sale of certain arms and services to Saudi Arabia, the United Arab Emirates, and Jordan, was “executed in accordance with the requirements of the AECA [Arms Export Control Act].” We would note that the Certification, which was made at a time of sharply increased tensions in the Middle East resulting from Iranian aggression and other malign activities, served to deliver key capabilities to our partners in the region and, even more importantly, sent a message of American resolve that was heard by partners and adversaries alike, from Riyadh, Abu Dhabi and Jerusalem to Tehran, Beijing, and Moscow, and created opportunities that would not otherwise exist.

(U) In the report, OIG notes that “the United States seeks to reduce the risk that supplying U.S. defense articles and services to foreign allies and partners will harm civilians,” and notes the requirements under the President’s Conventional Arms Transfer (CAT) Policy to do so. The current CAT Policy, approved by President Trump in April 2018, specifically requires us to work with all recipients of U.S. arms to increase their capability to minimize civilian harm resulting from the use of such weapons, which we do. As part of these efforts, several bureaus of the Department of State participate in reviewing requests for the Foreign Military Sales, Direct Commercial Sales, and Co-Production arrangements under the Arms Export Control Act, together with partners in the Department of Defense. In addition, the Department is currently implementing the Advanced Targeting Development Initiative, a global program to assist partners and allies in this objective. Of note, Saudi Arabia and the United Arab Emirates were the very first partners to avail themselves of this initiative.

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(U) The report also suggests that the majority of materiel authorized for sale in May 2019 had not been delivered as of January 2020. It is unfortunate that this data has not been updated prior to provision of this report to the Department in July 2020, but it is worth underscoring that the most critical deliveries under Direct Commercial Sales cases occurred in the near-immediate aftermath of the Certification of an Emergency, deliveries of Foreign Military Sales cases under the Certification continue (including for those cases under which LOAs have been more recently offered and accepted), and, as described above, the Certification itself was perhaps the most major ‘deliverable.’

(U) In addition to these points, we would like to provide the following comments in response to the other recommendations and findings provided by the OIG:

(U) OIG Finding 2: OIG found the Department did not fully assess risks and implement mitigation measures to reduce civilian casualties and legal concerns. This matter is described in detail in the classified annex to the report.

(U) Management Response: The Department notes assessing risks and implementing mitigation measures to reduce civilian casualties and legal concerns related to arms sales is part of an ongoing interagency process. Moreover, the Department carried out, and continues to carry out, due diligence on all sales to the standards required by law and by the President’s Conventional Arms Transfer (CAT) Policy. We would note over the past year the Department, working with the Department of Defense, established and implemented the Advanced Target Development Initiative (ATDI), a program with the sole purpose to work with partners who employ U.S.-origin precision guided munitions to assist them in reducing the risk of civilian casualties. This program was a direct outgrowth of the CAT Policy directive to the interagency to work with partners to reduce the risk of civilian casualties, and its origins predate the May 2019 Emergency Certification. The Department takes the risk of civilian casualties extremely seriously, and we will continue to work with partners to mitigate the risk.

(U) OIG finding 3: In addition, OIG found the Department regularly approved arms transfers to Saudi Arabia and the United Arab Emirates that fell below AECA thresholds that trigger notification to Congress. These approvals included items such as PGM components on which Congress had placed holds in cases where the transfers reached the thresholds requiring congressional notification. However, the AECA does not require the Department to notify Congress in advance if it approves transactions below those thresholds specified in the law.

(U) Management Response: The Department agrees with this finding. There is no practice nor precedent of the Department aligning its export licensing and Foreign Military Sales authorizations to coincide with any informal, non-binding, Congressional ‘holds’ that may be emplaced during the Tiered Review process. The Department is authorized under the Arms Export Control Act to approve licenses and authorize sales according to the terms of the law, and we do so.

(U) The point of contact for this memorandum is Josh Paul.

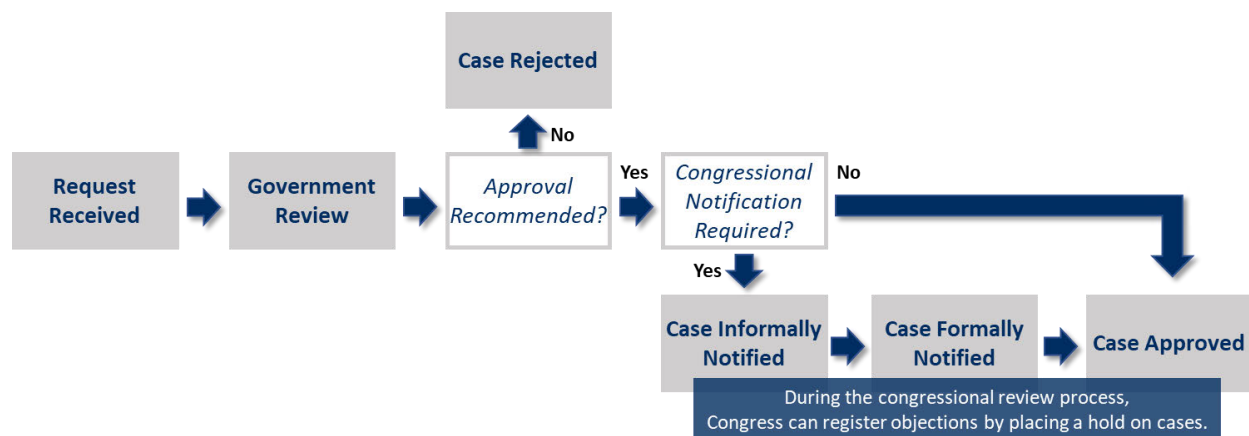
APPENDIX C: OIG REPLY TO MANAGEMENT RESPONSE

In response to the Department's comments, OIG clarified the finding contained in this report and the recommendation contained in the classified annex to reflect the specific language used in Department records. OIG also provided additional information in the classified annex to support the basis of OIG's finding.

APPENDIX D: REVIEW PROCESS FOR ARMS TRANSFERS

There are two primary mechanisms used to transfer U.S. arms to a foreign government: foreign military sales (FMS) and direct commercial sales (DCS). An FMS case is a government-to-government purchase agreement, in which the Department of Defense procures defense articles or services on behalf of a foreign government. In a DCS case, a foreign government and a U.S. company negotiate directly on the sale of defense equipment, services, or related manufacturing technologies. Prior to delivering the items to the foreign government, the company must obtain an export license from the Department. A summary of the review process for proposed arms transfers is shown in Figure 3, below.

Figure 3: Review Process for Proposed Arms Transfers



Source: OIG-generated from information obtained from the Department.

Prior to approval, the U.S. Government reviews FMS and DCS cases to ensure compliance with applicable legal and policy requirements.¹ The Department shares responsibility for reviewing FMS and DCS cases with the Department of Defense. Although the Bureau of Political-Military Affairs has primary responsibility for leading foreign policy reviews of FMS and DCS cases, the Department's regional bureaus as well as the Bureau of Democracy, Human Rights, and Labor and the Bureau of International Security and Nonproliferation participate in policy reviews.

¹ For example, the Arms Export Control Act, 22 U.S.C. § 2776, requires the Department to assess the implications of arms transfers to Middle Eastern countries on Israel's capacity to address the improved capabilities provided by such sale or export. In addition, all arms transfers are assessed using the criteria outlined in each administration's conventional arms transfer policy.

The Department must notify Congress in advance of approving FMS or DCS cases that meet criteria outlined in the Arms Export Control Act (AECA).² By longstanding practice, the Department sends preliminary or informal notifications to relevant congressional committees in advance of the formal notification required by the AECA. This practice—known as the tiered review process—provides Congress with an opportunity to raise concerns with the Department in a setting that does not affect the bilateral relationship with the country in question. Again, by longstanding practice, the Department generally will not proceed with a case that is subject to a congressional hold. If a proposed FMS or DCS case falls below the thresholds contained in the AECA, there is no notification requirement.

Once formally notified, Congress can block a proposed arms transfer by passing a Joint Resolution of Disapproval. If this Joint Resolution of Disapproval is vetoed by the President and that veto is not overridden, or if Congress does not pass a Joint Resolution of Disapproval in the first instance, the Executive Branch can proceed with the transfer once the number of days specified in the AECA has elapsed.³ For FMS cases, the Department of Defense then negotiates and concludes a letter of offer and acceptance with the foreign government. For DCS cases, the Department will issue an export license to the U.S. company supplying the defense articles or services to the foreign government.

² Sections 36(b)(1), 36(c)(1), and 36(d)(1) of the Arms Export Control Act specify the types and value of arms transfers that must be notified to Congress in advance.

³ The Secretary's May 2019 emergency certification waived the statutory congressional notification period contained in the Arms Export Control Act (22 U.S.C. § 2776) and allowed for the immediate transfer of the defense articles and services included in the emergency.

APPENDIX E: ARMS TRANSFERS INCLUDED IN MAY 2019 EMERGENCY

Table: Cases Included in Emergency Certification

Recipient Country	Description	Estimated Value (\$ millions)
Direct Commercial Sales:		
Saudi Arabia	Paveway and Enhanced Paveway System	(b) (4)
United Arab Emirates	Maverick AGM-65 Weapons System and the Paveway II, Paveway III, Enhanced Paveway II, and Enhanced Paveway III System	
Saudi Arabia	Maintenance and Training for F-15s	
United Arab Emirates	Integration of the FMU-152A/B Joint Programmable Bomb Fuze System	
Jordan	Retransfer of Paveway II Laser Guided Bombs from the United Arab Emirates to Jordan	
Saudi Arabia	Aurora Fuzing System for the Paveway IV Precision Guided Bomb Program	
United Arab Emirates	M107A1, .50 Caliber Semi-Automatic Rifles and Sound Silencers	
United Arab Emirates	ScanEagle and Integrator Unmanned Aerial Systems and Support for Future Intelligence, Surveillance, and Reconnaissance Requirements	
Saudi Arabia	F 110 Engine Maintenance and Repair	
Saudi Arabia	120mm M933A1 120mm Mortar Bombs	
Saudi Arabia	Ministry of Defense Transformation Project	
Saudi Arabia	F/A 18E/F and Derivative Series Aircraft Panels	
United Arab Emirates	F100-GE-132 Gas Turbine Engines for F-16s	
United Arab Emirates	Guidance Enhanced Missiles for the Patriot Air Defense System	
Foreign Military Sales:		
United Arab Emirates	One Additional AH-64E Apache Helicopter and AH-64E Equipment Upgrade	
United Arab Emirates	RQ-21A Blackjack UAVs	
United Arab Emirates	Javelin Anti-Tank Guided Missiles	
United Arab Emirates	Advanced Precision Kills Weapons System	
Saudi Arabia	Aircraft Follow On and Support Systems	
Saudi Arabia	Tactical Air Surveillance System Support	
Saudi Arabia	Aircraft Follow on and Support Services	
United Arab Emirates	Training for Presidential Guard	
Grand Total		

Source: OIG-generated from information obtained from the Department.

APPENDIX F: PAST USES OF EMERGENCY AUTHORITIES

Table: Summary of Past Uses of Arms Export Control Act Emergency Authorities

Year	Recipient Nation	Summary
1979	North Yemen	President Jimmy Carter certified an emergency based on an escalation in the conflict between North and South Yemen.
1984	Saudi Arabia	President Ronald Reagan certified an emergency to protect global oil supplies and deter hostile action against Saudi Arabia during the Iran-Iraq War.
1990	Saudi Arabia	President George H.W. Bush certified an emergency to protect Saudi Arabia from advancing Iraqi forces following Iraq's invasion of Kuwait.

Source: OIG-generated from information obtained from the Department.

ABBREVIATIONS

AECA	Arms Export Control Act
DCS	Direct Commercial Sales
FMS	Foreign Military Sales
NATO	North Atlantic Treaty Organization
PGMs	Precision-Guided Munition



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