

SUBCOMMITTEE HEARING
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Proposed Small Arms Transfers: Big Implications for U.S. Foreign Policy
March 26, 2019

Comments by
Susan Waltz, Ph.D.
Professor
Gerald R. Ford School of Public Policy
University of Michigan

Chairman Bera, Ranking Member Zeldin and Members of the House Foreign Affairs Subcommittee on Oversight and Investigation:

Thank you for holding this hearing on Small Arms Transfers and for the opportunity to share my views about the proposal to remove certain weapons from the US Munitions List. In a nutshell, I am concerned that we are on the verge of unraveling a sophisticated policy architecture intended to prevent exported US weapons from falling into unintended hands – where they can be used for human rights abuse and criminal activity.

I have long been associated with Amnesty International, and my remarks are informed by its published human rights research. In an internal review about 10 years ago, Amnesty International found that some 60% of the grave human rights abuses it had investigated involved firearms. If that inventory were to be updated today, it would include, for example, the recent cold-blooded execution of civilians by uniformed Cameroon soldiers – which prompted the US to withdraw millions of dollars of military aid earlier this year and rescind an invitation for Cameroon to join a partnership program with the US National Guard.

It would also include Philippines, where since 2016 the government of Rodrigo Duterte has encouraged targeted political killings that have claimed more than 4000 lives in operations led by the police. My concerns about the proposal under consideration were only heightened last month when the State Department released its audit report about a 2017 sale of FDR-15 semi-automatic rifles to Philippines, a sale that never should have been licensed and for which the license was ultimately revoked.

In my remarks today, I want to make three general points.

- First, the proposed regulatory changes seek to draw a bright line between fully automatic weapons on one hand, and semi- or non-automatic weapons on the other. In human rights situations where it matters, this is a false dichotomy. In practical reality, there may be little difference between the semi- and fully-automatic types of firearms. A semi-automatic weapon can fire 45 rounds per minute, and non-automatic sniper rifles can shoot with great accuracy over long distances. These are powerful, lethal weapons. The soldiers in Cameroon last summer used semi-automatic rifles in their executions of several men, two women, and two small children – in two separate incidents captured on video. In Mexico, the local police in Guerrero State responsible for the enforced disappearance of 43 students in 2014 were armed with semi-automatic rifles.

In many perilous human rights situations, the weapons slated for transfer to the Commerce Control List are every bit as threatening as fully automatic weapons. The bright line proposed by the Administration makes a distinction without true difference.

- Secondly, with regards to human rights oversight, there is more to the proposed regulatory changes than first meets the eye. What is ultimately at stake here is which rules – which *laws*-- will apply to exports of these small but lethal weapons. Over the years, Congress has embedded important human rights provisions in two central statutes, the Arms Export Control Act (AECA) and the Foreign Assistance Act (FAA). The provisions of these laws, generally speaking, apply to *defense articles*, defined as such by their presence on the US Munitions List. Removing weapons from this list—*ipso facto*--exempts them from the related statutory constraints. And therein lies the rub. These various statutory controls are tied together in an elaborate legislative architecture that American officials have touted as the gold standard of arms export laws and regulations. The “cradle to grave” control system that we have promoted internationally includes multiple statutory requirements, including:
 - an explicit scrutiny of human rights implications mandated by the Foreign Assistance Act,
 - a multi-step registration and licensing procedure for commercial exporters that provides several opportunities to detect irregular aspects of an application,
 - Congressional notification of firearms sales exceeding \$1 million,
 - tough controls on brokering,
 - requirements for end use certification,
 - prohibition against unauthorized re-transfers, and
 - the possibility of pre- or post-shipment review through the Blue Lantern program.

Together these provisions constitute a robust oversight mechanism. Without mitigating action from Congress now, the straightforward and seemingly innocuous act of transferring items from one regulatory regime to the other would essentially nullify the arms export laws as they apply to non-automatic and semi-automatic weapons. In one fell swoop.

- My final point relates to a specific concern about the regulation of firearms brokering and human rights implications. Brokering activities—including financing, transportation, and freight forwarding¹--are understood to be the weakest link in the chain of regulatory controls. As human rights research has shown, legitimate transactions entrusted to unscrupulous middlemen, or illicit transactions confided to unsuspecting transporters, are among the main ways that weapons are diverted to the gray and black markets. (And I might note, it was the disappearance of middlemen in Florida that alerted Embassy personnel in Manila to the irregularities of the 2017 license for the sale of semi-automatic rifles to Philippines.) With the proposed changes I am particularly concerned about potential new opportunities for illicit trade involving unscrupulous brokers.² The proposals circulated last June included an exemption from the standard brokering controls for licensed transactions subject to the Export Administration Regulations (which houses the Commerce Control List). Such a change risks creating a substantial loophole that could open new conduits for weapons

¹ 22 USC 2778 (b)(1)(A)(ii)(IV)

² The State Department has proposed an amendment to Federal Regulations that would allow it to maintain regulatory control over brokers of items remaining on the USML but also on the US Munitions *Import* List (a separate list which will continue to include the items that—for export purpose—are deemed no longer to warrant control under the USML). The intended effect is that brokers wanting to *export* items that are included on the list of items controlled as defense articles for *import* (but not for export) will be subject to the rules pertaining to the export of such items. The logic is convoluted at best, and it raises questions about the statutory grounding for requiring brokers who are exporting items “no longer warranting control under USML” to register with the State Department and comply with related requirements of the International Traffic in Arms Regulations (ITAR). It is also hard to imagine the bureaucratic mechanisms by which the licensing of a transaction will be handled by Commerce and any brokering aspects (including completion of information required by 22 CFR 129.6) will be handled by State. The carve out anticipated for 22 CFR 129.2 further complicates the application of brokering rules.

to be diverted to the gray and black markets where they could be acquired by otherwise prohibited parties.

In closing: I am not opposed in principle to export control reform, but these particular regulatory changes are irresponsible. In 2000 the US pledged to the world that we would observe the highest standards of restraint in our small arms export policies, and these proposed changes betray that pledge. The best course of action, in my view, would be to retain the current range of firearms on the US Munitions List, by supporting HR 1134. Failing that, I urge you to amend relevant statutes³ to ensure that weapons transferred to the Commerce Control List (as 500-series items) are included within the statutory definitions of defense articles and security assistance.

Thank you very much for your attention, and for the opportunity to share these concerns.

³ Notably 22 USC 2304(d)(2)(C) should be amended to include the "500 Series" and section 2778 should likewise be amended to ensure that relevant provisions apply to the 500 series. Further, to prevent the diversion to unauthorized users or those engaged in atrocities, Congress should ensure that such security assistance is subject to relevant oversight provisions, including Sections 2314 (diversion), 2378d (vetting) and 2776 (Congressional notification of proposed sales). To ensure that Congress continues to receive a comprehensive annual report on US arms sales, the Arms Export Control Act (22 USC 2778) should be amended to clarify that "defense articles" includes any 500-series items on the CCL.