



UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2000

POLICY

DEC - 9 2022

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

Thank you for your September 7, 2022 letter to Secretary of Defense Lloyd J. Austin III regarding the Government Accountability Office's (GAO) report on civilian harm in Yemen. I am responding on behalf of Secretary Austin as this matter falls under my purview.

Please know the Department of Defense shares your concerns about the harm to Yemeni civilians and infrastructure and is working closely with the Department of State to support diplomatic negotiations with regional partners to resolve the conflict and mitigate the humanitarian crisis. President Biden announced on February 4, 2021, that the Administration is "ending all American support for offensive operations in the war in Yemen, including relevant arms sales." The President's guidance came out of years-long concern about civilian casualties in Yemen, including those resulting from the Saudi-led Coalition air campaign, and a strong desire to help bring the war to an end.

The Department of Defense takes seriously any reports that its allies and partners have caused civilian casualties or engaged in unauthorized end-use of U.S.-origin arms. We continue to seek to improve upon efforts to protect civilians, as reflected in the recently released Civilian Harm Mitigation and Response Action Plan (CHMR-AP). While the Department implements the actions described in the CHMR-AP, we will continue to work closely with allies and partners around the world on a wide-range of regional security issues. This includes consistent emphasis on the necessity of upholding the law of armed conflict and on the importance of mitigating and preventing civilian harm and casualties. The Department submitted a 180-day corrective action plan to GAO regarding its report earlier this month, which is attached for your information. Responses to your questions are also enclosed.

Thank you for your continued support to the men and women of the Department of Defense. I am sending a similar response to the other signatories of your letter.

Sincerely,

Colin H. Kahl, PhD

Enclosures:

TAB A: DoD Responses to Questions.

TAB B: Department of Defense Corrective Action Plan.



**TAB A – DoD Responses to Inquiries on:
GAO Report Regarding Civilian Harm in Yemen.**

1. How does DoD define the terms “misuse” and “unauthorized use” when determining how weapons sold by the United States are deployed?

(U) Section 3 of the Arms Export Control Act (AECA), as amended, and Section 505 of the Foreign Assistance Act (FAA), as amended, require foreign partners to agree to “use” transferred defense articles for their intended authorized purposes. Consistent with Section 4 of the AECA, the U.S. Government (USG) may only authorize the transfers of defense articles under the Act for the following end uses: legitimate self-defense, internal security, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations (UN), or otherwise permit the recipient country to participate in collective measures requested by the UN for the purpose of maintaining or restoring international peace and security, or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries.

(U) DoD’s Golden Sentry end-use monitoring (EUM) program is designed to verify that foreign recipients are using defense articles transferred by the U.S. Government (USG) in accordance with the terms and conditions of the transfer agreement or other applicable agreement. As part of the agreement, the recipient country must obtain written USG consent to use U.S.-origin defense articles for purposes other than those authorized. The USG defines use of U.S.-origin defense articles other than those listed above without written consent from the USG as unauthorized end-use.

2. The GAO’s report found that numerous, credible reports have determined that it is likely U.S.-origin arms were used by coalition partners to commit war crimes. Is DoD aware of these reports? Has it taken any action to validate their findings?

(U) Department of State (DOS) is the lead agency on arms transfers, and DoD therefore defers to DOS regarding questions relating to U.S. responses to reports that U.S.-origin arms were the subject of unauthorized end-use. As lead agency on arms transfers, DOS may seek support from DoD to gather factual information to inform a DOS investigation of a partner’s unauthorized end-use.

(U) Although DoD’s EUM program is not responsible for investigating or validating alleged war crimes, DoD takes reports of war crimes very seriously, including any such reports relating to when use of an U.S.-origin defense article is implicated. The United States, including DoD through its military-to-military engagements, emphasizes to allies and partners the importance of complying with the law of war and of taking additional steps to reduce the risk of harm to civilians during armed conflict. DoD facilitates civilian harm mitigation support to members of the Saudi-led Coalition, in coordination with DOS.

(U) Each proposed transfer of U.S.-origin defense articles involves consideration of a partner’s adherence to the law of war and respect for human rights. Consideration of such issues

continues after the transfer of U.S. defense articles, including weighing seriously all reports of civilian harm from partner military operations. Concern about civilian casualties in Yemen, including those resulting of from the Saudi-led Coalition air campaign, and a strong desire to help bring the war to an end, led to President Biden's announcement on February 4, 2021 that we were "ending all American support for offensive operations in the war in Yemen, including relevant arms sales."

3. What processes does DoD have in place to investigate end use violations or instances of civilian harm?

(U) Upon receipt of credible information that defense articles provided under U.S. security assistance and security cooperation programs such as Foreign Military Sales (FMS) have been used for purposes other than those for which the USG furnished them, DoD reports that information to DOS, the department responsible for investigating potential misuse of U.S.-origin defense articles.

(U) In the context of partner nation operations, DoD's efforts are primarily focused on building a partner's capacity to reduce civilian harm. Notably, the Secretary of Defense, in his *Civilian Harm Mitigation and Response Action Plan* of August 25, 2022, directed the Department to take a number of major actions to expand upon current practices, including the following:

- The Under Secretary of Defense for Policy (USD(P)) will develop interim policy guidance identifying the roles, responsibilities, and procedures through which the Department takes action, as appropriate, in response to reports of civilian harm by ally or partner forces from USG and non-USG sources.
- The Under Secretary of Defense for Intelligence and Security (USD(I&S)) will direct the Defense Intelligence Enterprise to include analysis of partner capabilities into relevant standing product lines and mission sets (*e.g.*, DIA Military Capability Studies, Military Leadership Profiles) to inform CHMR baseline assessments of allies and partners (CBAPs) and monitoring of security cooperation programs.
- The USD(P) will issue DoD policy guidance that addresses the comprehensive integration of CHMR across security cooperation programs.

4. How does DoD determine whether or not one of these reports are credible?

(U) As a matter of practice, the Defense Security Cooperation Agency (DSCA), as the DoD lead agency for EUM, transmits to DOS any reported potential end-use violation and any relevant, available information. Specifically, DSCA's Security Assistance Management Manual (SAMM) states the importance of reporting "any indication that U.S.-origin defense articles are being used against anything other than a legitimate military target..." Although any such indications are to be reported and reviewed, an investigation might not be appropriate in all cases; for example, in the case of spurious allegations or when allegations related to a matter that had already been the subject of an investigation and new information was not provided that warranted re-opening the investigation.

5. Please provide a list of investigations into end use violations under the Arms Export Control Act that have resulted in a pause, reduction, or cancelation of arms sales to foreign countries since 2012.

(U) Actions that pause, reduce, or cancel arms sales to foreign countries fall under the purview of DOS. However, since 2012, DOS has not notified DoD to pause, reduce, or cancel any FMS cases or deliveries as a result of its investigations into reports that a foreign government used U.S.-origin defense articles for purposes other than those for which the items were furnished by the USG. The Administration did, however, pause two pending sales of precision-guided munitions to Saudi Arabia due to concerns that these munitions might be associated with civilian casualties in the Yemen conflict.

6. Please provide a list of all advisory and trainings on civilian harm reduction provided to the Saudi and Emirati governments since 2014.

(U) The U.S. Navy provided the following training to the armed forces of Saudi Arabia:

- Digital Precision Strike Suite (DPSS) provided instruction to the Royal Saudi Air Force (RSAF) regarding the correct usage of the Digital Imagery Exploitation Engine (DIEE) software suite, including Target Coordinate Mensuration, Collateral Damage Estimation (DCiDE), and Quick Weaponing modules from June 6 – 10, 2021 at RSAF HQ, Riyadh.
- DPSS personnel provided 4 weeks of Targeting/Collateral Damage Estimation/Weaponing methodology and instruction throughout 2022. These programs of instruction were broken up over the course of several months due to COVID-19 constraints and were provided in both Arlington, VA and at RSAF HQ, Riyadh.
- DPSS delivered DIEE 2.3.0, the latest version of the software—accredited by National Geospatial Agency and Joint Technical Coordinating Group for Munitions Effectiveness approved for the partner.

(U) The U.S. Air Force provided the following courses that cover civilian harm mitigation:

- Joint Firepower and International Intel Officer Course in fiscal year (FY) 2018.
- Joint Firepower, International Intel Officer Course, Combined Strategic Intel and Strategic Intel Leaders Course in FY-2019.
- RSAF Enlisted Intel Course and RSAF Officer Intel Course in FYs 2014-19.
- International Intel Officer, Joint Firepower, International Air Weapons Controller, Theater Air Operations, and Combined Strategic Intel courses in FY 2017.
- International Air Weapons Controller and TAOC in FY 2018.
- Joint Firepower, Intl Air Weapons Controller, TAOC and Strategic Intel Leaders Course in FYs 2014-16 and 2019).
- International Intel Officer Course, Joint Firepower, International Air Weapons Controller and TAOC in FY 2020.

(U) A Defense Institute of International Legal Studies team provided law of war training with a focus upon air-to-ground operations at the U.S. Naval War College in 2017, 2018, and 2019 to

representatives from Saudi Arabia. Due to COVID-19, an attorney provided training virtually in 2020.

7. Does DoD anticipate adjusting the foreign military sales process in light of the GAO's report? Are additional authorities from Congress required to strengthen end-use monitoring?

(U) Allegations of unauthorized end-use of U.S.-origin defense articles are currently reported by DoD Security Cooperation Officers in accordance with DoD's guidance published in DSCA's SAMM to both DoD and DOS. DoD has agreed to assess whether existing DoD EUM guidance in the SAMM warrants revisions in accordance with the DoD corrective action plan submitted to GAO.

(U) DoD does not assess a need to revise Section 40A of the AECA (Section 2785 of Title 22, United States Code) to strengthen EUM. Existing DoD EUM challenges are typically the result of the practical limitation of personnel lacking access to where transferred items are located, and are sometimes the result of safety concerns due to ongoing hostilities or other security risks.

8. DoD claimed "there is no mechanism to track how foreign partners use defense articles and defense services transferred through [foreign military sales]." Is this still the case? Does DoD plan to develop mechanisms to track how defensive weapons are used?

(U) The Department is not planning to expand the Golden Sentry Program to include monitoring a partner's operational use of transferred U.S. defense articles. Golden Sentry Program operational monitoring would not be feasible for a variety of reasons, including but not limited to the volume of transferred defense articles, the lack of DoD manning to support such a mission, lack of access to areas of hostilities, and the security risk to DoD personnel. U.S. personnel providing FMS support are also statutorily precluded from performing any duties of a combatant nature.

(U) The lack of Golden Sentry Program operational monitoring does not prevent the USG from considering all available information concerning a partner's operations, including both internal USG reporting as well as reports from the media and civil society organizations to assess the partnership. USG consideration of a partner's military operations includes consideration of a partner's adherence to the law of war and respect for human rights. Partners are expected to mitigate civilian harm whether it is using U.S.-origin equipment or other equipment. It would not be helpful for the USG to narrowly focus on only the aspects of a partner's military operations that relies upon U.S.-origin items. USG consideration of partner military operations has a much larger focus and broader purpose than the limited Golden Sentry Program EUM functions.

(U) Although EUM efforts do not conduct operational monitoring, DoD is taking steps to understand the civilian harm outcomes of operations conducted by ally and partner forces. The Department's broader consideration of partner operations is not narrowly focused on EUM compliance but takes into consideration other areas of potential concern and provides an opportunity to support partner's efforts to mitigate harm. To that end, in the *Civilian Harm*

UNCLASSIFIED

Mitigation and Response Action Plan of August 25, 2022, the Secretary of Defense directed DoD to take a number of major actions to expand upon current practices, including those steps previously outlined in this letter in response to Question 3.

UNCLASSIFIED

CAP for Report No. GAO-22-105073SU

“YEMEN: State and DOD Need Better Information on Civilian Impacts of U.S. Military Support to Saudi Arabia and the United Arab Emirates”

April 27, 2022 (GAO Project No. 105073)

CAP Updated: 09/29/2022

**Assistant Secretary of Defense, International Security Affairs
ASD (ISA)**

Recommendation #1: The Secretary of Defense should develop guidance, in consultation with State, on how to implement DOD policy, including clarifying DOD roles and responsibilities, for reporting any indications that U.S.-origin defense articles were used in Yemen by Saudi Arabia or UAE against anything other than legitimate military targets or for other unauthorized purposes.

DoD Position: Concur in the recommendation to assess whether new guidance is needed.

Estimated Completion Date: December 31, 2022

Status/Comments: The Defense Security Cooperation Agency will consult with the Department of State and assess for improvement its guidance concerning monitoring of U.S. origin defense articles used by partner countries for unauthorized purposes.

Recommendation Follow-up POC: Elizabeth Dent, Director for Gulf and Arabian Peninsula, 703-697-2704, elizabeth.m.dent2.civ@mail.mil, osd.pentagon.ousd-policy.list.isa-igap@mail.mil.

Budget Implication: No

Budget Implication Explanation: N/A

Potential Monetary Benefit: No

Potential Monetary Benefit Amount: N/A

Potential Monetary Benefit Methodology: N/A

Funding Limitations Hindering Implementation: No

Estimated Costs Associated with Implementation: N/A

GAO-22-105073SU Recommendation #1

Key Corrective Actions	Estimated Completion Dates	Actual Completion Date	Measure(s) Capturing Demonstrated Results	Clarifying Comments
<p>1. Department will review and assess whether any appropriate enhancements to the DSCA-issued Security Assistance Management Manual (SAMM) should be made or whether additional guidance should be issued. If the assessment concludes that guidance should be updated or issued, the Department will begin the process of developing and issuing such guidance.</p>	<p>December 1, 2022</p>			
<p>2. Department will recirculate SAMM and any other relevant guidance to all military and civilian officers assigned to work on security assistance with Saudi Arabia and UAE.</p>	<p>November 1, 2022</p>		<p>DSCA POC identified and email sent</p>	

CAP for Report No. GAO-22-105073SU

“YEMEN: State and DOD Need Better Information on Civilian Impacts of U.S. Military Support to Saudi Arabia and the United Arab Emirates”

April 27, 2022 (GAO Project No. 105073)

CAP Updated: 09/29/2022

**Assistant Secretary of Defense, International Security Affairs
ASD (ISA)**

Recommendation #2: The Secretary of Defense should fully assess the extent to which DOD’s advisory and training efforts for Saudi Arabia and UAE facilitated civilian harm reduction in Yemen.

DoD Position: Concur

Estimated Completion Date: 10/01/2023

Status/Comments: DoD will develop a mechanism for more formally assessing the effect of DoD’s advisory and training efforts for Saudi Arabia and UAE on reducing civilian harm in Yemen.

Recommendation Follow-up POC: Elizabeth Dent, Director for Gulf and Arabian Peninsula, 703-697-2704, elizabeth.m.dent2.civ@mail.mil, osd.pentagon.ousd-policy.list.isa-igap@mail.mil.

Budget Implication: TBD

Budget Implication Explanation: TBD

Potential Monetary Benefit: No

Potential Monetary Benefit Amount: N/A

Potential Monetary Benefit Methodology: N/A

Funding Limitations Hindering Implementation: TBD

Estimated Costs Associated with Implementation: TBD

GAO-22-105073SU Recommendation #2

Key Corrective Actions	Estimated Completion Dates	Actual Completion Date	Measure(s) Capturing Demonstrated Results	Clarifying Comments
<p>1. DoD components will continue to participate in State-led civilian harm mitigation (CHM) and interagency meetings to address civilian casualty concerns, such as the ongoing assessment to maintain Precision Guided Mmunition suspensions.</p>	<p>Ongoing</p>	<p>Upon conclusion of State-led CHM meetings.</p>	<p>Readouts of CHM meetings and SOCs from any NSC-led interagency meetings on this topic.</p>	
<p>2. AFCENT will continue its Key Leader engagements. Following each key leader engagement, AFCENT will draft readouts of each KLE and provide them to CENTCOM, DIA, and OSD Policy (DASD Middle East).</p>				
<p>3. DoD will continue CIVCAS mitigation/law of armed conflict training for members of the Saudi-led Coalition in Yemen. Readouts of those trainings will be provided to CENTCOM, DIA and OSD Policy (DASD Middle East), along with twice yearly assessments of the impact of those trainings.</p>				
<p>4. CENTCOM J2 and DIA will conduct yearly assessment of the extent to which DOD's advisory and training efforts for Saudi Arabia and UAE facilitated civilian harm reduction in Yemen.</p>				



United States Department of State

Washington, D.C. 20520

December 6, 2022

The Honorable
Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

Thank you for your September 7 letter to Secretary Blinken concerning the Government Accountability Office's (GAO) report on civilian harm in Yemen. The Department takes seriously all reports of civilian casualties in armed conflicts and considers such information that relates to a potential recipient of military material, including any such information relating to previous use of U.S.-origin arms, before approving new transfers under the U.S. Conventional Arms Transfer Policy. The Department provided many rounds of documents and interviews to the GAO covering the Department's investigation of the issues of civilian harm in the conflict in Yemen and potential unauthorized use or transfer of U.S.-origin arms. These documents and interviews also covered the policy changes that occurred following President Biden's February 2021 guidance to end support for offensive operations in Yemen, and the Department's implementation of that guidance, including suspending two transfers of air-to-ground munitions which were previously notified to Congress with an intent to approve, prior to the start of the Biden-Harris Administration.

The Department remains engaged in encouraging all parties to the conflict in Yemen to take steps towards a political resolution and has encouraged a further extension and expansion of the previous six-month truce. We submitted our 180-day update to GAO on October 6, which we attach for your information. We hope the following information is helpful in responding to your specific inquiries.

With respect to your question on when the Department of State plans to provide current information on the certification elements under section 1290 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), the Department has and will continue to engage with members and

committees of Congress to provide updates on the Yemen conflict and related issues. The most recent member briefing on this topic took place on September 22, 2022.

Consistent with Section 4 of the Arms Export Control Act, the Department may only authorize transfers of defense articles under the Act for certain purposes, including: legitimate self-defense; internal security; to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security; or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. Furthermore, the recipient country must agree to obtain written U.S. government consent to use their U.S.-provided defense articles for purposes other than those for which the U.S. government furnished them. Any use of U.S.-provided defense articles other than those listed above and/or without written consent from the U.S. government would be considered an unauthorized end use.

The Department continues to be concerned by the humanitarian crisis in Yemen created by nearly a decade of war; and has facilitated civilian harm mitigation support to members of the Saudi-led Coalition, in coordination with the Department of Defense. The Department does consider credible allegations of war crimes in our arms sales decisions. Despite our efforts, we are generally unable to conclusively resolve such allegations due to insufficient information received.

The Department is developing written guidance for how the Bureau of Political-Military Affairs, in coordination with the Bureau of Democracy, Human Rights, and Labor, will respond to reports that civilian harm may have resulted from the employment of U.S.-origin and U.S.-provided defense articles, or in substantial violation of relevant agreements. The Department expects the guidance to be finalized by the end of the calendar year.

Upon receipt of credible information that defense articles provided under U.S. security assistance and security cooperation programs such as Foreign Military Sales (FMS) were used for purposes other than those for which the U.S. government furnished them, the Department conducts an investigation to 1)

confirm that the reported incident was in violation of existing agreements that support the transfer of said defense articles to foreign governments; 2) determine if any identified end use violations should be considered substantial ones and should, therefore, be notified to Congress; and 3) determine how any end use violations impact the Department's decisions on future sales or deliveries of U.S.-provided defense articles. Regarding reports of civilian harm, the Department takes all credible reports of civilian harm from partner military operations seriously, including those using U.S.-origin arms, and weighs those reports before approving new transfers under the U.S. Conventional Arms Transfer Policy.

When considering reports of civilian harm as part of the arms transfer process, the Department seeks to assess reports by considering all available information, including both internal U.S. government reporting as well as reports from the media and civil society. While our approach varies across contexts, we seek to understand the causes and prevalence of civilian harm resulting from partner and ally operations globally, both in specific incidents and holistically, to assess whether U.S.-provided equipment, services, and support contributed to or reduced civilian harm, to determine if incidents of civilian harm constituted violations of the laws of armed conflict and/or were reasonably preventable, and to use diplomacy and support to seek to address factors leading to civilian harm.

Since 2012, the Department has not paused, reduced, or canceled any Foreign Military Sales cases or deliveries as a result of its investigations into reports that a foreign government used U.S.-origin or U.S.-provided defense articles for purposes other than those for which the items were furnished by the U.S. government. The Biden-Harris Administration did, however, pause two pending sales of precision guided munitions due to concerns regarding civilian casualties in the Yemen conflict resulting from airstrikes. In cases where we have concerns about potential misuse of defense articles, we engage with the partner to address such concerns, and, where warranted, report such misuse as required under Section 3 of the Arms Export Control Act. In addition, partners often make a decision not to advance requests for potential arms sales because they understand that we will be unlikely to approve them. The details of such partner decisions would be opaque to us but may include situations in which we have previously communicated concerns about misuse to those partners.

We hope this information is helpful to you. Please let us know if we may be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Naz Durakoğlu". The signature is written in a cursive style with a large, stylized initial "N".

Naz Durakoğlu
Assistant Secretary
Bureau of Legislative Affairs

Enclosure:
GAO Update Letter.



United States Department of State

Washington, D.C. 20520

October 6, 2022

CONGRESSIONAL TRANSMITTAL LETTER

The GAO report YEMEN: State and DoD Need Better Information on Civilian Impacts of U.S. Military Support to Saudi Arabia and the United Arab Emirates, (GAO 105073) contains two recommendations for the Department of State. Chapter 7, Title 31 (31 USC 720) requires that the head of an agency submit to the Committee a written statement on action taken on recommendations by the Comptroller General. This letter is intended to comply with this requirement.

Recommendation 1: The Secretary of State should ensure that the Bureau of Political-Military Affairs, in consultation with DoD, develops specific guidance for investigating any indications that U.S.-origin defense articles have been used in Yemen by Saudi Arabia or UAE in substantial violation of relevant agreements with those countries, including for unauthorized purposes.

Response: The Department is developing written guidance for how the Bureau of Political-Military Affairs, in coordination with the Bureau of Democracy, Human Rights, and Labor, will respond to reports alleging that use of U.S.-origin and U.S.-provided defense articles may have caused civilian harm or are in substantial violation of relevant agreements. The Department expects the guidance to be finalized by the end of the calendar year.

Recommendation 4: The Secretary of State should provide current information to relevant congressional committees on each of the certification elements required by Section 1290 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019.

Response: The Department has and will continue to engage with members of Congress to provide updates on the Yemen conflict and related issues. The most recent member briefing on this topic took place on September 22, 2022.

We hope that this information is useful. Please do not hesitate to contact us if we can be of further assistance.

Recipients:

House Foreign Affairs Committee
Senate Foreign Relations Committee
House Appropriations Committee
Senate Appropriations Committee
House Oversight and Reform Committee
Senate Homeland Security and Governmental Affairs Committee

Sincerely,

Naz Durakoğlu
Assistant Secretary
Bureau of Legislative Affairs