

THE ROLE OF ETHICS IN INTERNATIONAL ARMS TRANSFERS

BY

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A THESIS PRESENTED TO THE FACULTY OF  
THE SCHOOL OF ADVANCED AIR AND SPACE STUDIES  
FOR COMPLETION OF THE GRADUATION REQUIREMENTS

SCHOOL OF ADVANCED AIR AND SPACE STUDIES

AIR UNIVERSITY

MAXWELL AIR FORCE BASE, ALABAMA

JUNE 2016

## APPROVAL

The undersigned certify that this thesis meets master's-level standards of research, argumentation and expression.

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## DISCLAIMER

The conclusions and opinions expressed in this document are those of the author. They do not reflect the official position of the US Government, Department of Defense, the United States Air Force, or Air University.



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## ACKNOWLEDGMENTS

I would like to acknowledge several people whose support in this study proved instrumental to its completion. I want to thank Dr. James Murphy, SJ, whose book “War’s Ends” provided the intellectual spark to explore the topic of ethics in international arms sales. Additionally, Dr. Murphy was kind enough to correspond with me to help guide my thinking and crystallize my argument as the project unfolded. His support and thoughtful recommendations were critical to the completion of this thesis.

I especially want to thank Stephen Schwartz, the former Director of West African Affairs at the Department of State for granting me an interview, which was crucial for completing the paper. I also want to thank various diplomats in the Bureau of Political-Military Affairs at the State Department for providing me with the information required to complete the study. Without their support, this would have been an impossible undertaking.

I am very grateful for the advice and guidance Dr. Jim Tucci provided as my thesis advisor. His experience and insight have been invaluable in helping to eliminate inconsistencies in my study. I would also like to thank Lt Col Shawn Cochran for his support in reviewing the draft and providing comments.

Most importantly, I want to express my sincere appreciation to my family for their love, patience, and understanding during those times when I was absent in spirit, off struggling with this paper. Their presence was very important to me and made all the difference in ensuring my success in completing this work.

## ABSTRACT

This study explores the role of ethics in American arms transfer policy to determine whether the Just War tradition's *jus ad bellum* framework can help policymakers through a complex decision-making process. The author analyzes three significant arms transfer cases involving combat aviation assets since 9/11, and identifies the rationale for the approval or denial of each proposed transfer. Next, the author uses the *jus ad bellum* criteria of competent authority, just cause, right intention, reasonable chance of success, last resort, and proportionality to analyze each case from an ethics-based perspective. The author determines the *jus ad bellum* criteria add structure to the decision-making process and can help policymakers identify the legitimate and morally defensible security needs of foreign governments. However, the author notes that when major national security interests are at stake, strategic interests have potential to trump ethical concerns when considering a sale. The author recommends that policymakers should attempt to limit these occurrences whenever possible as transferring arms under these circumstances can diminish American credibility abroad. The author concludes that ethics should play a prominent role in the arms transfer decision-making process as they can better inform American strategic analysis.



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## INTRODUCTION

### **The Conventional Arms Transfer Policy**

This thesis will explore the role of ethics in international arms transfer policy to determine whether the Just War tradition notion of *jus ad bellum* can help policymakers through a complex decision-making process. Presidential Policy Directive 27, known as the US Conventional Arms Transfer Policy ([CAT Policy](#)), lists 13 criteria for policymakers to consider when deciding whether or not to transfer (sell or gift) arms to a foreign government. The criteria address security interests, economic interests, political/diplomatic interests, and normative concerns (upholding international norms of behavior). The policy does not rank the criteria but suggests that policymakers should take them into account as part of the decision-making process.

The CAT Policy is flexible but the policy lacks a structured method of analysis, which can yield inconsistent outcomes. The policy's flexibility gives statesmen the freedom to weigh the historical and political context surrounding each case and theoretically make the best choice. However, the flexibility of the policy fails to provide a structured framework for assessing each arms transfer case. For example, security interests may overshadow normative concerns when the recipient state is strategically important to the United States; but normative concerns may overshadow security interests when the recipient state has limited strategic value to the United States. As a result, the policy can yield inconsistent outcomes based on inconsistent analysis, which in turn can damage the US government's credibility.

### **The Value of an Ethics-Based Approach**

The Just War tradition notion of *jus ad bellum* can supplement the CAT Policy to add structure to the decision-making process for international arms transfer cases. The *jus ad bellum* criteria of competent authority, just cause, right intention, reasonable chance of success, last resort, and proportionality provide a systematic framework for policymakers to consistently evaluate the same variables across arms transfer cases. Supplementing the CAT Policy with the *jus ad bellum* framework would yield consistent decision outcomes due to the structured nature of the analysis.



Using the *jus ad bellum* criteria to supplement the CAT Policy would also add new ideas to the arms transfer decision-making process. A qualitative benefit to using the *jus ad bellum* framework is that it would force policymakers to think about the use of force – via arms transfers – in ways that are absent in the CAT Policy. The CAT Policy places significant focus on US national security interests, while the Just War tradition explores whether the use of force will justify the potential suffering that accompanies war. This is a subtle, but significant difference. By focusing on the implications of the use of force, the criteria would restrain policymakers from authorizing arms transfers irresponsibly. The *jus ad bellum* framework can help policymakers identify the legitimate security needs of foreign governments while simultaneously promoting the preservation or establishment of peace and regional stability.

Finally, the *jus ad bellum* framework can help US policymakers manage the tension between national security interests and foreign policy aspirations by taking the long view. At times, short-term national security interests can clash with long-term foreign policy goals. For example, transferring arms to an authoritarian government may increase stability in a restive region in the short-term, but damage prospects for broader long-term American policy goals like advancing democracy and the rule of law. The *jus ad bellum* framework forces statesmen to make a judgment about the quality of the recipient state's government and consider the long-term implications of selling the recipient weapons. By focusing on governance and how the implications of the use of force will affect the long-term prospects for peace, the *jus ad bellum* framework can better inform American strategic analysis by taking the long view.

### **The Strategic Relevance of the Just War Tradition**

The Just War tradition does not condemn war or the use of force.<sup>1</sup> On the contrary, the Just War Tradition provides a framework for identifying when the decision to resort to the use of armed force is morally justifiable.<sup>2</sup> Classical interpretations of the Just War Tradition consider aggression – the disruption of peace – as a belligerent act

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<sup>1</sup> James G. Murphy, *War's Ends* (Washington DC: Georgetown University Press, 2014), 22.

<sup>2</sup> Michael Walzer, *Just and Unjust Wars* (New York, NY: Basic Books, 1977), 59.

that justifies a martial response.<sup>3</sup> Contemporary interpretations of the Just War tradition depict peace as an international “good” that must be maintained.<sup>4</sup> Consequently, under the Just War tradition, the ultimate aim of war is to promote, establish, or preserve peace.

The establishment of peace and maintenance of regional stability are foundational goals of the United States National Security Strategy.<sup>5</sup> As a result, the Just War tradition meshes with broader national security interests. Since arms transfers are tools for the United States to influence the international security environment, the logic underpinning the Just War tradition can help statesmen make decisions about arms transfers in a manner consistent with American values and strategic interests.

The Just War tradition’s notion of *jus ad bellum* can supplement the CAT Policy to add analytical rigor and an alternative strategic perspective to the arms transfer decision-making process. The United States uses arms transfers as an *indirect use of force* to shape the international security environment.<sup>6</sup> In the context of international arms transfers, the United States is not a combatant, but the US government sanctions the use of force on behalf of another state by providing the recipient state’s government with weaponry. This thesis argues that since American policymakers are making a judgment about the *indirect* use of force, US arms transfer policy should meet the *jus ad bellum* criteria whenever possible.

### ***Methodology***

This thesis will analyze three significant international arms transfer cases involving combat aviation assets since September 11, 2001. The cases all fall under the legal umbrella of the Arms Export Control Act, Title 22 of US Code, which excludes arms transfers completed under covert or other legal authorities. The cases include: the sale of F-16’s to Pakistan in 2006, the sale of F-15’s to Saudi Arabia in 2011, and the decision to deny the transfer of Cobra attack helicopters to Nigeria in 2014.

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<sup>3</sup> Walzer, *Just and Unjust Wars*, 59.

<sup>4</sup> Murphy, *War’s Ends*, 17.

<sup>5</sup> The White House, *National Security Strategy* (Washington DC: National Security Council, February 2015), 26.

<sup>6</sup> Richard N. Haass, *Intervention* (Washington DC: Carnegie Endowment for International Peace, 1994), 64.

For each case I will provide a brief history of the bilateral security relationship between the recipient state and the United States. I will also discuss the state of the international security environment at the time of the decision and outline the political context surrounding each case. Then I will present the rationale for why policymakers chose to approve or deny the transfer of the arms in question. Once I have presented the rationale, I will evaluate the policymakers' decision from an ethical perspective using the *jus ad bellum* criteria (described in Chapter 1). Finally, I will compare the findings to determine whether the *jus ad bellum* framework confirms or discounts the rationale policymakers used to make their decision.

### ***Scope and Limitations***

The United States government conducts arms transfers with foreign governments around the world. Thus, the unit of analysis for this thesis will be foreign states and their respective governments. Though significant, the provision of arms to rebel groups or non-state actors falls outside the scope of this thesis.

Researching and determining the rationale for why policymakers decided to transfer, or deny the transfer of arms in certain cases, is inherently difficult. Approved arms transfers are part of the public record, and the Defense Security Cooperation Agency (DSCA) notifies Congress for all transfers of major defense equipment in excess of \$14 million.<sup>7</sup> However, DSCA only publishes basic information about what arms will be transferred, how much they cost, and a brief description of the capabilities the recipient state will receive. Determining *why* and *how* policymakers reached their decision is significantly more difficult, as their rationale is usually not part of the public record. Thus, the decision-making process in arms transfer cases is relatively opaque. I have conducted interviews with arms transfer specialists in the Defense Department and diplomats at the State Department to deduce the rationale for why policymakers decided as they did in the cases I analyze. As a result, the research is limited by the scope of available data. However, these research limitations do not weaken the overall argument

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<sup>7</sup> Defense Security Cooperation Agency, "Arms Sales: Congressional Review Process," Defense Security Cooperation Agency, accessed 13 April 2016, <http://www.dscamilitary.com/resources/arms-sales-congressional-review-process>.

that the *jus ad bellum* criteria should play a prominent role in the decision-making process for US arms transfer policy.



## CHAPTER 1

### ARMS TRANSFERS AND THE JUS AD BELLUM FRAMEWORK

#### *The Strategic Nature of International Arms Transfers*

Arms transfers constitute a major facet of international politics and shape the international security environment.<sup>1</sup> Simply put, weapons are the hard currency of diplomacy. Armaments lend teeth and credibility to a state's foreign policy and deter aggression. The United States has become a coveted international arms supplier due to its vast defense industry. This reality is a major source of American diplomatic power but also creates challenges for establishing consistent policy about the customers, states, and circumstances of arms sales.

International arms sales are a source of diplomatic power for the United States. As Andrew Pierre notes, arms sales can symbolize support to a recipient state and thereby create influence over sensitive foreign policy issues.<sup>2</sup> Thus, policymakers can use arms sales to gain leverage over foreign governments to implement their regional strategies.<sup>3</sup> Additionally, policymakers can use arms sales to gain access to infrastructure in strategic nations, usually in the form of military basing rights or intelligence-gathering activities.<sup>4</sup>

International arms sales also have a major economic impact. In 2011, a record year for arms sales, the US government secured \$66.3 billion in arms transfer agreements, accounting for 77% of the global arms transfer market.<sup>5</sup> In 2015, arms sales agreements exceeded \$46 billion.<sup>6</sup> The United States defense industry employs thousands of Americans across the world. Defense industry employees build weapons systems for foreign customers and also fulfill maintenance and sustainment contracts long after the sale has been completed. Furthermore, international arms sales help reduce

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<sup>1</sup> Andrew J. Pierre, *The Global Politics of Arms Sales* (Princeton, NJ: Princeton University Press, 1982), 3.

<sup>2</sup> Pierre, *Global Politics of Arms Sales*, 14-15.

<sup>3</sup> Pierre, *Global Politics of Arms Sales*, 18.

<sup>4</sup> Pierre, *Global Politics of Arms Sales*, 21.

<sup>5</sup> Richard F. Grimmett and Paul K. Kerr, *Conventional Arms Transfers to Developing Nations, 2004-2011*, Congressional Research Service (Washington DC: CRS, 24 August 2012), 2.

<sup>6</sup> Marcus Weisberger, "ISIS, Global Threats Boost US Arms Exports," *Defense One*, 26 January 2016, [http://www.defenseone.com/threats/2016/01/isis-global-threats-boost-us-arms-exports/125444/?oref=search\\_Marcus%20weisberger,%20arms%20sales](http://www.defenseone.com/threats/2016/01/isis-global-threats-boost-us-arms-exports/125444/?oref=search_Marcus%20weisberger,%20arms%20sales).

per unit cost of weapons systems used by the US armed forces and help to recoup expenses from research and development.<sup>7</sup>

Arms transfers can affect the international security environment by influencing a regional balance of power. Arms transfers help the United States to ensure its allies maintain technological superiority over potential adversaries.<sup>8</sup> Technological superiority helps allies and partners deter or defend themselves against aggression. Additionally, arms transfers facilitate training and exercising with allies and increase interoperability. Increased interoperability leads to better integration in combined or coalition operations with US armed forces. Better integration yields increased combat effectiveness, which in turn deters aggression and promotes regional stability.

### ***General Overview of the Arms Sales Process***

The Arms Export Control Act, Title 22 US Code, is the law that governs arms transfers. The President has the authority to set American policy for arms transfers in accordance with the law. The CAT Policy outlines the goals for international arms transfers and establishes the criteria policymakers consider when deciding whether or not to transfer arms to a foreign government. The President has delegated decision-making authority for arms transfer cases to the State Department, as arms transfers are considered a foreign policy issue.

The State Department, in conjunction with the Department of Defense (DoD), decides whether or not to sell arms to a foreign government. The State Department considers each arms sale request on a case-by-case basis, which allows policymakers to consider the historical and political context of each case in isolation. The State Department takes a holistic look at each request and considers the broader regional implications of approving or denying the request. In general, the State Department seeks to enhance regional stability and meet the legitimate security requirements of allies and partners while also exercising restraint in cases where approving arms sales may exacerbate regional tensions.<sup>9</sup> The DoD plays an important role in the arms sales process

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<sup>7</sup> Pierre, *Global Politics of Arms Sales*, 24.

<sup>8</sup> The White House, *Presidential Policy Directive—United States Conventional Arms Transfer Policy* (Washington DC: Office of the Press Secretary, 15 January 2015), 2.

<sup>9</sup> The White House, *Presidential Policy Directive*, 2.

by providing the State Department with legal and technical assistance pertaining to the protection of sensitive technologies associated with advanced weapons systems. The DoD also conducts risk analysis to assess how arms transfers could potentially affect the regional military balance of power.

Congress has oversight responsibility for international arms transfers and must approve transfers in excess of \$14 million of Major Defense Equipment, and all transfers of equipment or defense services in excess of \$50 million.<sup>10</sup>

***What Factors Influence the Decision to Sell Arms to Foreign Governments?***

Furthering US national security interests is the primary decision-making factor governing the international arms sales process. As Gregory Kausner, the Deputy Assistant Secretary of State for the Bureau of Political-Military Affairs noted in 2014, “While the Conventional Arms Transfer policy is complex, its objective is clear: when the United States provides defense articles and military training to our partners and allies, it does so for one main reason – to further US national security interests.”<sup>11</sup> The CAT policy outlines ten national security goals the United States seeks to achieve through arms transfers:

1. Ensuring US military forces, and those of allies and partners, continue to enjoy technological superiority over adversaries
2. Promoting the acquisition of US systems to increase interoperability with allies and partners, lower the unit costs for all, and strengthen the industrial base
3. Enhance the ability of allies and partners to deter or defend themselves against aggression
4. Maintain and expand US security partnerships with those who share our interests, and ensure regional access in areas critical to US interests
5. Promoting regional stability, peaceful conflict resolution, and arms control

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<sup>10</sup> Defense Security Cooperation Agency, “Arms Sales: Congressional Review Process,” Defense Security Cooperation Agency, accessed 13 April 2016, <http://www.dsca.mil/resources/arms-sales-congressional-review-process>.

<sup>11</sup> Deputy Assistant Secretary of State Gregory M. Kausner, “Conventional Arms Transfer Policy: Advancing American National Security Through Security Cooperation” (address, International Institute for Strategic Studies, Washington DC, 23 April 2016).



6. Preventing the proliferation of conventional weapons that could be used as delivery systems for weapons of mass destruction
7. Promoting cooperative counterterrorism
8. Combating transnational organized crime
9. Supporting democratic governance
10. Ensuring arms transfers do not contribute to human rights violations

The above list provides a prudent, though diverse, set of goals for policymakers to pursue when deciding whether or not to transfer arms to a foreign government.

Generally, the goals fall into four broad categories: security interests (1,3,4,5,6,7,8), economic interests (2), political interests (9), and normative concerns (10). Security interests dominate the list, but economic, political, and moral interests can also influence arms sales decisions.

Another major factor affecting the decision to sell arms is the nature and character of the recipient state's government (including the military). Obviously, the US government will not sell weapons to adversaries as arming a potential enemy violates national security interests. On the other hand, the United States sells arms to its allies to deter aggression, increase burden sharing, and bolster regional security. Nonetheless, being an ally does not guarantee a sale. The recipient state needs to have a "legitimate security need," regardless of whether it is an ally or partner. However, there is a gray area between allies and adversaries that complicates US arms transfer policy. States that have a legitimate security requirement but do not fall neatly into the ally or adversary category require policymakers to consider a diverse array of security, political, and moral factors prior to deciding whether or not to approve the transfer.

In general, the CAT Policy seeks to determine whether a recipient state has a legitimate security need for the arms it's government seeks to procure, whether the sale could cause or inflame regional tensions, and whether the United States can trust the government of the recipient state to use the weapons responsibly in accordance with their intended end use. Assuming the recipient state meets the above criteria, the US government then has to decide whether the transfer aligns with its broader foreign policy interests. While the process seems relatively straightforward, it is difficult to implement on a consistent basis. In the realm of international arms sales, reality often confounds



policy. Historical and political context permeate each potential sale and influence the decision. Policymakers have to balance security, diplomatic, and economic interests against foreign policy and moral interests, and rely on sound judgment to make effective decisions.

### ***Why Ethics?***

Ethics and values are cornerstones of American culture and foreign policy. The notions of justice, equality, and freedom permeate the Constitution and symbolize the essence of what it means to be American. The current National Security Strategy seeks to export American values abroad and advance democracy in hopes of creating a more peaceful, prosperous, and just world. Since arms transfers are a significant component of American foreign policy, the policy guiding arms transfers should align with broader American foreign policy goals.

However, arms transfer policy should not be so tethered to morality that the policy constrains statesmen from making prudent decisions based on political realities. Arms transfer policy has to be flexible enough to permit the government to help allies and partners address their legitimate security needs. A policy that ignored present-day political and security realities in hopes of achieving future foreign policy aspirations may cause more harm than good. The challenge for the United States is to develop a policy that strikes the right balance between managing the complexities of the present in a way that does not obviate broader American strategic interests. Contemporary secular interpretations of the Just War tradition notion of *jus ad bellum* can help policymakers strike the appropriate balance between politics and ethics for difficult arms transfer cases.

### ***The Just War Tradition***

The Just War Tradition is based on the writings of Augustine in the fifth century A.D., but contemporary interpretations of the Just War Tradition provide a secular foundation for using war as legitimate policy tool when war is morally justified.<sup>12</sup> James Murphy states, “The Just War tradition is based on the idea that war ought to – and can – be used to establish a proper peace.”<sup>13</sup> As it evolved, the Just War tradition developed into two distinct categories: the morality of going to war (*jus ad bellum*), which concerns

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<sup>12</sup> Murphy, *War's Ends*, 1, 18, 22.

<sup>13</sup> Murphy, *War's Ends*, 22.

the state, and the morality of conducting war (*jus in bello*), which concerns military members engaged in combat.<sup>14</sup> *Jus ad bellum* focuses on the decision of *whether* to go to war, while *jus in bello* focuses on *how* to wage war. Though *jus in bello* is an important concept in the Just War tradition, it is outside the scope of this thesis since I am only concerned with the *decision-making process* regarding international arms sales.

*Jus ad bellum* provides a logical ethical framework for statesmen to consider when deciding whether to go to war. The Just War Tradition acknowledges that war will lead to death and destruction, so it seeks to provide a set of criteria that help statesmen determine whether the ends of war justify the suffering that will accompany it. Since *jus ad bellum* focuses on the state, and examines whether the use of force is warranted, the *jus ad bellum* criteria serve as a useful tool to evaluate the morality of a state's defense policy.

The decisions statesmen make in international arms sales cases lend themselves to evaluation by the *jus ad bellum* criteria. The United States uses arms sales as an *indirect use of force* to help allies and partners confront security challenges.<sup>15</sup> Richard Haass notes, "An indirect use of force involves providing military assistance in the form of training, arms, intelligence, etc., to another party so that it may employ force directly for its own purposes."<sup>16</sup> In the context of international arms sales, the United States is not a combatant, but the US government sanctions the use of force on behalf of another state by providing the recipient state's government with weaponry. Since American policymakers are making a judgment about the *indirect* use of force, US arms transfer policy should meet the *jus ad bellum* criteria whenever possible.

### ***The Utility of Jus ad Bellum in International Arms Sales***

The decision to transfer arms to another state is a foreign policy choice that should be evaluated from an ethical perspective using the *jus ad bellum* criteria. The criteria include:

1. Competent Authority

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<sup>14</sup> Murphy, *War's Ends*, 1.

<sup>15</sup> Richard N. Haass, *Intervention* (Washington DC: Carnegie Endowment for International Peace, 1994), 64.

<sup>16</sup> Haass, *Intervention*, 64.

2. Just Cause
3. Right Intention
4. Reasonable Chance of Success
5. Last Resort
6. Proportionality

This thesis adopts James Murphy's framework for applying the *jus ad bellum* criteria in the order listed above. In short, Murphy argues for a sequential application of the criteria starting with "competent authority" as the first and most important criterion, since the other criteria lack credibility in the absence of competent authority.<sup>17</sup>

### ***Methodology and Rationale for Applying the Jus ad Bellum Framework to Arms Sales***

How can the United States use the *jus ad bellum* criteria to aid the decision-making process for international arms transfers? To reach a decision for difficult arms transfer cases, the United States should apply the *jus ad bellum* criteria *from the perspective of the recipient country, but based on an American interpretation of the situation*. For example, does Country X have a competent authority? Does Country X have a just cause? And so on... While not all foreign countries share a universal code of ethics, the decision to sell weapons to a foreign nation rests solely with the supplier, which for the purpose of this thesis is the US government. Thus, the US government should apply an ethical framework to the decision-making process consistent with American morals, values and national security strategy. The application of the *jus ad bellum* criteria based on an American interpretation of the Just War tradition should yield consistent decision outcomes based on a structured, methodical analysis.

### ***Competent Authority***

Competent authority assesses the character and quality of a state's government. In *jus ad bellum*, competent authority implies the government has a substantial degree of support from the population, has control of its national territory, and maintains a commitment to the wellbeing of its citizens through the provision of good governance.<sup>18</sup> Thus, competent authority is a subjective judgment based on the assessor's perspective.

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<sup>17</sup> Murphy, *War's Ends*, 2-3.

<sup>18</sup> Murphy, *War's Ends*, 45-46.

As a result, competent authority is more a matter of degree than an all-or-nothing classification.<sup>19</sup> As the criteria are open to interpretation, judgment becomes a necessary prerequisite for making policy decisions.

In the context of international arms sales, the United States should evaluate whether the government of the recipient country meets the competent authority criterion. (It is important to note that the United States will not transfer weapons to potential adversaries for obvious security reasons, but the competent authority criteria would apply in all other cases). US policymakers should determine whether the intended recipient:

1. Has a substantial degree of support from the population (a sign of legitimacy)
2. Exercises control of its sovereign territory
3. Has a minimal commitment to the wellbeing of its citizens

Popular support and control of sovereign territory are the easiest to assess, but a government's commitment to the wellbeing of its citizens is far more subjective and open for debate. For example, an authoritarian government may have substantial popular support and control of its sovereign territory, but regularly uses government security services to stifle dissent. In this case, the government does not meet the 'commitment to the wellbeing of its citizens' criterion according to an American interpretation of the competent authority criteria. However, making hard judgments is a difficult task. In difficult cases, where the recipient state is neither an ally nor potential adversary, 'clear-cut' answers are the exception as opposed to the norm.

US policymakers should assess the competent authority criteria from an American perspective. Making the final judgment will require debate and discussion. If the recipient state meets the competent authority criterion from an American perspective, the recipient state likely has similar long-term interests aligned with the United States based on a similar conceptual understanding of good governance. In the context of international arms sale, the competent authority criterion seeks to establish whether the recipient state's government is trustworthy and governs with legitimacy. After determining the recipient state to possess competent authority, the policymaker's next

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<sup>19</sup> Murphy, *War's Ends*, 44.

step is to assess whether the recipient state has a just cause for procuring the arms it seeks.

### ***Just Cause***

Just cause indicates the government that plans to use force to accomplish its desired ends has a morally justifiable reason for doing so. War leads to death and destruction, so the *casus belli* must justify the potential suffering. Just cause indicates the government seeks to use force to:

1. Preserve or promote peace at home or abroad
2. Respond to aggression
3. Address a legitimate security threat.

Thus, the opportunistic use of force to seize power or significantly alter regional stability does not merit just cause. While shifting the regional balance of power in one's favor by acquiring advanced weaponry is politically and strategically desirable, it could also warrant just cause for rival states to arm themselves in kind. Hence, destabilizing arms races can occur, which could jeopardize the prospects of long-term peace.<sup>20</sup>

Assessing just cause requires disciplined political judgment in order to deliver consistent results. Policymakers can interpret the preservation or promotion of peace broadly, which allows flexibility but can also diminish the credibility of the policy if not implemented consistently. The key task for policymakers is to identify the reason the recipient state seeks to acquire the arms in question and make a moral and political judgment about the acceptability of the recipient state's rationale. If policymakers determine the recipient state seeks to acquire arms in order to preserve peace, respond to aggression, or address a legitimate security threat, the recipient state has a strong case for just cause. After assessing just cause, policymakers proceed to consider whether the recipient state has the right intention for acquiring the arms it seeks.

### ***Right Intention***

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<sup>20</sup> Robert Jervis, *Perception and Misperception in International Politics* (Princeton, NJ: Princeton University Press, 1976), 64-67.

Right intention in *jus ad bellum* analyzes *what* security objectives a state wants to achieve, and *how* it proposes to achieve them. Simply put, right intention evaluates the defense policy of a state. In general, right intention indicates that a state will attempt to minimize the probability of having to resort to armed force. However, right intention does not denote a policy of neutrality or pacifism. Right intention implies a state uses military force for an ethical purpose or end, namely to preserve or restore peace.<sup>21</sup> For example, a state that experiences an unprovoked attack from a foreign invader has the just cause to respond to the aggression, and right intention provides a morally defensible method of doing so. In order to determine right intention, the state develops a specific defense policy, and then develops a strategy to implement it. If the policy and implementation strategy serve to accomplish a sustainable and peaceful end, the state has met the right intention criterion.

In the example above, the state that experiences an attack on its sovereign territory has the just cause to employ its military forces in response. Thus, the state identifies *what* it wants to do - repel the belligerent forces, and identifies *how* it plans to do so - through a coordinated air/ground offensive. In this case, the state seeks to establish peace and security within its borders. The state has demonstrated right intention by devising a plan to accomplish the end goal of peace.

In the context of international arms sales, policymakers should assess the recipient state's intention for acquiring the arms in question. They should determine:

1. What security goal does the recipient state want to achieve?
2. How do the arms in question help the state to achieve its goal?
3. Does the state's security goal align with broader US foreign policy goals?

The first two questions are easier to answer than the third. However, answering the third question helps policymakers balance short-term security interests against long-term policy goals. A policy that does not consider the long-term implications of major arms transfer decisions can inadvertently create regional instability. Thus, policymakers need to consider how the provision of arms to a recipient state could potentially destabilize the regional military balance of power.

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<sup>21</sup> Murphy, *War's Ends*, 112.

### ***Reasonable Chance of Success***

Reasonable chance of success logically follows the right intention criterion of *jus ad bellum*. Right intention analyzes a state's defense policy and how the state plans to accomplish the policy, while reasonable chance of success assesses the feasibility of accomplishing the policy goal. As Clausewitz identified, war takes place in the realm of uncertainty, so assessing the probability of accomplishing the policy goal requires sound judgment, an open mind, and honesty.<sup>22</sup>

Reasonable chance of success is a practical criterion that ensures a state uses military force pragmatically for morally defensible purposes. However, assessing reasonable chance of success is based upon one's perspective and dependent upon the political context. For example, a state that is about to be invaded may assess the threshold for reasonable chance of success differently than the invading state. In this case, the state that is about to be invaded may assess a 30% chance of success as sufficiently reasonable to employ its military forces against the invader. However, the threshold for the invading state would presumably be much higher in order to commence the invasion. Hence, reasonable chance of success cannot be divorced from the political context.

When deciding whether to transfer arms, American policymakers should assess whether the recipient state has a reasonable chance of achieving its security goals. Determining reasonable chance of success is more of an art than a science since war and uncertainty go hand-in-hand. However, the intelligence community can provide historical and analytical data to policymakers to help inform their decision. Questions policymakers should consider include:

1. Does the recipient state's military have the technical capacity to operate the arms in question?
2. Does the recipient state have the logistical capacity to maintain the arms in question?
3. Will the effective employment of the arms in question give the recipient state a reasonable chance of accomplishing its security goals?

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<sup>22</sup> Carl von Clausewitz, *On War* ed. and trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1976), 86.



Answering the above questions requires information from the intelligence community, military advisors, and attaches. However, failing to consider the technical and logistical capacity of the recipient state can lead to transfers of arms that ultimately serve no purpose if they exceed the capacity of the recipient state to operate and sustain them.

### *Last Resort*

The last resort criterion occurs when the government assesses that its chance of accomplishing security goals diminishes to an unacceptable level without military force.<sup>23</sup> Last resort does not necessarily imply the state has exhausted all non-violent policy options prior to resorting to the use of military force. Assuming all previous *jus ad bellum* criteria have been met, the last resort arises when the state assesses that delaying the use of force is counterproductive for achieving its policy goals or desired ends.<sup>24</sup> The Just War Tradition “sees the use of armed force under appropriate conditions as an exercise in governance.”<sup>25</sup> Hence, states have reached the last resort when they determine the use of force is necessary to preserve the peace, and they have the greatest probability for success. However, if states can reasonably expect to achieve their security goals without resorting to the use of force, the last resort criterion has not arrived. Murphy states, “It is only where, all else being equal, a nonviolent option would be just as effective as using force that the last resort criterion requires choosing the nonviolent option.”<sup>26</sup>

In the context of international arms sales, the last resort criterion presents challenges. Many states seek to acquire arms during times of peace; so assessing last resort in the method described above does not apply in many cases. However, I argue that the intention of the last resort criterion can play a useful role in the arms transfer decision-making process.

Last resort implies that a state seeks non-violent alternatives to accomplish its security goals prior to committing to the use of force. As a result, US policymakers can

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<sup>23</sup> Murphy, *War's Ends*, 160.

<sup>24</sup> Murphy, *War's Ends*, 160.

<sup>25</sup> Murphy, *War's Ends*, 163.

<sup>26</sup> Murphy, *War's Ends*, 166, 175.



evaluate a recipient state's foreign policy and defense policy to determine whether the recipient state seeks realistic policy alternatives, aside from the use of force, to resolve disputes with potential adversaries. Policymakers should determine:

1. Does the recipient state's foreign policy, or defense policy, seek reasonable non-violent alternatives to resolve disputes with potential adversaries?
2. Does the recipient state have a legitimate need for the arms in question?

The first question, assessing a recipient state's foreign policy or security policy, is a subjective task that requires deliberation and judgment. The recipient state's foreign policy should pursue reasonable non-violent alternatives to resolving disputes with potential adversaries. The second question, identifying whether the recipient state has a legitimate need for the arms in question is easier to answer. A gap in security capabilities indicates a potential vulnerability an adversary could exploit, which hastens the last resort.

### ***Proportionality***

Proportionality considers the projected consequences of going to war and weighs them against the projected consequences of avoiding war. Proportionality is logically dependent upon the fulfillment of the previous criteria, specifically just cause and right intention.<sup>27</sup> Without just cause or right intention, resorting to the use of armed force is morally wrong, regardless of proportionality.<sup>28</sup> Murphy describes proportionality as a residual criterion in the *jus ad bellum* tradition, which means that when the first five criteria are met, the state has a strong case for going to war.<sup>29</sup> Additionally, the proportionality criterion also serves as a "catch-all" for other moral considerations not directly addressed by the previous criteria.<sup>30</sup>

Proportionality serves an important function by limiting war to the accomplishment of the political goal and prevents war from spiraling out of control into absolute war.<sup>31</sup> Proportionality calibrates the means to the desired end and weighs the cost of achieving the desired end against the cost of inaction. War entails death,

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<sup>27</sup> Murphy, *War's Ends*, 181.

<sup>28</sup> Murphy, *War's Ends*, 181.

<sup>29</sup> Murphy, *War's Ends*, 201.

<sup>30</sup> Murphy, *War's Ends*, 180.

<sup>31</sup> Clausewitz, *On War*, 87-88.

destruction, and human suffering. In colloquial jargon, proportionality seeks to determine “whether the juice is worth the squeeze.” However, there are two sides to the proportionality coin. Policymakers must consider whether the suffering that accompanies war is worth achieving the political goal, but also must consider the negative consequences of refusing to offer armed resistance. For example, war may lead to suffering and vast economic expenditure, but avoiding war could potentially lead to the erosion of political credibility and an unacceptable shift in the balance of power. Thus policymakers must make a judgment to determine which course of action better suits the state’s interests.

In the context of international arms sales, US policymakers should assess whether the benefits of transferring arms to the recipient state outweighs the perceived costs of not transferring the arms. Arms transfers are inherently risky. Once the arms are transferred, the supplier has little control over how the recipient ultimately chooses to use them.<sup>32</sup> Assuming the recipient state has met the previous five *jus ad bellum* criteria, policymakers should assess the risk of providing the arms against the recipient state’s potential vulnerability incurred by not providing them. Policymakers should answer the following questions in order to determine proportionality:

1. Do the arms in question serve as a proportionate means to the security ends the recipient state seeks to achieve? Namely, are the arms in question the right tool for the job?
2. Does failing to provide the arms in question make the recipient state unacceptably vulnerable to aggression from potential adversaries?
3. Are there any other factors that warrant consideration?

The first question can help policymakers determine the acceptability of the arms transfer as a means to accomplish a desired end. For example, a state that seeks to improve its aerial reconnaissance capability may have a need for an aircraft equipped with a camera, but the aircraft need not be capable of also carrying missiles. The second question drives policymakers to consider the consequences of deciding not to transfer the arms. If failing to provide the arms in question makes the recipient state unacceptably vulnerable, then

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<sup>32</sup> Pierre, *Global Politics of Arms Sales*, 22.

the consequences of failing to transfer the arms outweigh the risks of transferring them. In this sense, weapons that deter adversaries would meet the proportionality criteria as failing to provide the weapons leaves the recipient state unacceptably vulnerable to aggression. The third question serves as a “catch-all” to ensure policymakers do not overlook potentially significant considerations.

### ***Applying the Jus Ad Bellum Framework to Case Studies***

The following chapters will evaluate the decision-making process for three difficult arms transfer cases in Pakistan, Saudi Arabia, and Nigeria using the *jus ad bellum* criteria. For each case I will present the rationale for why policymakers chose to approve or deny the transfer of the arms in question. Then I will use the *jus ad bellum* framework to evaluate each case from an ethical perspective. Finally, I will compare the findings to determine whether the *jus ad bellum* framework confirms or discounts the rationale policymakers used to make their decision.

The purpose of conducting a case studies analysis is to determine whether using the systematic approach of the *jus ad bellum* framework would alter the decision outcome. The case studies will demonstrate how the structured analysis of the *jus ad bellum* framework can infuse new ideas into the arms transfer decision-making process and provide an alternative perspective for policymakers to better inform American strategic analysis by taking the long view.

**CHAPTER 2**  
**THE PAKISTAN F-16C/D CASE**  
**The Decision to Sell F-16C/D's to Pakistan**

In 2006 the United States signed arms transfer agreements (sales) with Pakistan in excess of \$3.5 billion.<sup>1</sup> The centerpiece of the transfer agreements was the sale of 36 F-16C/D Block 50/52 advanced fighter aircraft and a variety of armaments for use on the aircraft.<sup>2</sup> The proposed sale marked a major shift in US arms transfer policy with Pakistan. Arms transfers with Pakistan were virtually non-existent during the 1990's after the United States sanctioned Pakistan for developing and proliferating nuclear weapons technology.<sup>3</sup> The total value of Pakistan's 2006 arms purchases nearly matched the value of all arms sales to Pakistan from the United States from 1950-2001.<sup>4</sup> To understand the rationale behind the agreement to provide Pakistan with F-16C/D aircraft, it is important to appreciate the historical and political context surrounding the United States – Pakistan arms transfer relationship.

***History of United States-Pakistan Arms Transfer Relationship***

The United States – Pakistan arms transfer relationship is historically tumultuous, characterized by periods of “feast or famine.” After gaining independence in 1947, Pakistan was an American ally in South Asia during the height of the Cold War in the 1950's and 1960's. Pakistan saw the alliance with the United States as a useful counterweight to India's military power in the region.<sup>5</sup> However, after India developed nuclear weapons technology in 1974, Pakistan began its own nuclear weapons program. Fearful that the Pakistani acquisition of nuclear weapons technology would destabilize South Asia, the United States suspended military assistance, including arms transfers, to Pakistan in 1979.<sup>6</sup>

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<sup>1</sup> Grimmatt, Richard F. *U.S. Arms Sales to Pakistan*. Congressional Research Service Report for Congress; Washington, DC: Congressional Research Service, August 2009.

<sup>2</sup> Grimmatt, *U.S. Arms Sales to Pakistan*, 1

<sup>3</sup> Grimmatt, *U.S. Arms Sales to Pakistan*, 1

<sup>4</sup> Grimmatt, *U.S. Arms Sales to Pakistan*, 1

<sup>5</sup> Grimmatt, *U.S. Arms Sales to Pakistan*, 1

<sup>6</sup> Grimmatt, *U.S. Arms Sales to Pakistan*, 1

However, after the Soviet invasion of Afghanistan, the United States lifted sanctions against Pakistan in an effort to bolster regional support to force the Soviets to withdraw.<sup>7</sup> During the Reagan presidency, the US government sold Pakistan 40 F-16A/B aircraft from 1982 – 1985 (these F-16's were early model fighter aircraft and have inferior capability compared to the F-16 C/D model aircraft Pakistan purchased in 2006).<sup>8</sup> Yet Congress remained skeptical about Pakistan's desire to develop nuclear weapons. During the 1970's, a Pakistani metallurgist, A.Q. Khan, stole the design for uranium enrichment centrifuge tubes from the Dutch government.<sup>9</sup> Khan subsequently provided the plans to the Pakistani government, which jumpstarted Pakistan's nuclear program.<sup>10</sup> In 1985, Congress passed the Pressler Amendment, which required the President to certify to Congress that Pakistan did not possess a nuclear weapon prior to the provision of military assistance.<sup>11</sup> Congress enacted the Pressler Amendment in response to finding out that A.Q. Khan had sold the centrifuge tube designs to Iran, North Korea, and Libya on the black market.<sup>12</sup> Though the Pressler Amendment did not prohibit arms transfers to Pakistan, it effectively suspended military assistance to Pakistan. After the Soviet withdrawal from Afghanistan in 1990, President George H. W. Bush officially suspended military assistance to Pakistan due to mounting suspicion about Pakistan's nuclear program.<sup>13</sup>

After the 9/11 attacks in 2001, the United States overturned its military assistance prohibition with Pakistan.<sup>14</sup> President George W. Bush secured authority from Congress to waive restrictions on military assistance to Pakistan in order to gain Pakistani support for US counterterrorism operations in the region.<sup>15</sup> Al Qaeda and the Taliban used the Federally Administered Tribal Areas (FATA) in Pakistan as a safe haven to evade US counterterrorism operations in Afghanistan. Thus, the United States used military

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<sup>7</sup> Grimmett, *U.S. Arms Sales to Pakistan*, 1

<sup>8</sup> Grimmett, *U.S. Arms Sales to Pakistan*, 1.

<sup>9</sup> Jason Healey, ed., *A Fierce Domain* (Cyber Conflict Studies Association, 2013), 226.

<sup>10</sup> Healey, ed., *A Fierce Domain*, 226.

<sup>11</sup> Grimmett, *U.S. Arms Sales to Pakistan*. 1.

<sup>12</sup> Healey, ed., *A Fierce Domain*, 226.

<sup>13</sup> Grimmett, *U.S. Arms Sales to Pakistan*, 2.

<sup>14</sup> Williams, Bryan Glyn. *Predators*. (Washington DC: Potomac Books, 2013), 11.

<sup>15</sup> Grimmett, *U.S. Arms Sales to Pakistan*, 2.

assistance as an incentive to persuade Pakistan to allow the United States to strike terrorists in Pakistan's sovereign territory.<sup>16</sup>

### ***Political Context Behind United States - Pakistan F-16C/D Case***

In 2006, Pakistan was the United States' primary regional ally in the war against Al Qaeda and the Taliban. As a partner in the Global War on Terrorism (GWOT), Pakistan requested to buy 36 F-16 C/D aircraft to bolster its counterinsurgency and counterterrorism capabilities and modernize its air force. Operationally and strategically, Pakistan sought to acquire the aircraft to improve its precision strike capability, which would aid in efforts to target terrorists in the FATA, but would also help to counter India's military predominance in the region. The United States also sought to strengthen Pakistan's military capability in hopes that Pakistan would do a better job policing the FATA and eliminating terrorist safe havens. Due to Pakistan's proximity to Afghanistan and newfound status as a strategic partner in the GWOT, the United States agreed to the sale.

### **POLICY CONSIDERATIONS AND RATIONALE FOR APPROVING THE SALE**

How the United States reached the decision to sell Pakistan F-16 C/D aircraft requires deeper analysis. The agreement to sell Pakistan the aircraft had to comply with the CAT Policy (Note – the CAT Policy governing the Pakistan sale was [Presidential Decision Directive 34](#)). In general, the CAT Policy supports arms transfers that enable allies to deter aggression, promoted regional security, and increased interoperability with US forces. The Pakistan case met each of these criteria. However, the policy also required statesmen to consider Pakistan's human rights, terrorism, and proliferation record. Pakistan has a checkered past relative to these criteria. How did the United States government arrive at the decision to sell Pakistan F-16 C/D's? Did regional security interests outweigh other significant concerns?

US policymakers devised a framework specifically for Pakistan to assess which arms transfers would best meet US national security interests in the region.<sup>17</sup> Under the

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<sup>16</sup> Mazetti, Mark. *The Way of the Knife*. (New York, NY: Penguin Books, 2013), 29.

<sup>17</sup> Sita Sontay. Senior Advisor, Bureau of Political-Military Affairs, US Department of State, Interview on 5 February 2016.

framework, the United States prioritized improving Pakistan's counterinsurgency and counterterrorism capacity as the most significant mission areas that supported American national security interests. The United States regarded precision strike aircraft as a top acquisition priority for Pakistan. Furthermore, the United States perceived the need to equip its regional ally. Thus, policymakers decided the F-16's met US security priorities in the region and furthered American national security interests. Regional security concerns outweighed Pakistan's poor human rights, terrorism, and proliferation record.

As the principal regional ally in the Afghanistan Theater of the GWOT, the United States needed Pakistan's permission to conduct strikes on terrorists in the FATA. The provision of F-16 C/D's and millions of dollars of military assistance funds were used as diplomatic incentives to entice Pakistan to permit the United States to conduct counterterrorist strikes in the FATA.<sup>18</sup>

#### **ASSESSING THE PAKISTAN F-16 C/D SALE USING THE *JUS AD BELLUM* CRITERIA**

The Pakistan F-16 C/D sale is an intriguing case for ethical analysis because it represents a major shift in US arms transfer policy with a nation the US government previously considered problematic and unreliable. After the 9/11 attacks, Pakistan became a strategic geopolitical actor for the United States due to its proximity to Afghanistan. Securing Pakistani support for strikes in the FATA was key to the American counterterrorism strategy in the GWOT. By prioritizing regional security and bolstering Pakistan's military capacity, did the United States overlook ethical concerns that should have affected the decision?

The following sections will analyze whether the Pakistan F-16 C/D case met the *jus ad bellum* criteria outlined in Chapter 1. Upon completion of the analysis I will compare the findings against the regional security rationale for approving the sale to see if the *jus ad bellum* criteria would have added analytical rigor to the decision-making process. The analysis in the following sections will only consider information available to policymakers in 2006 when they had to make their decision.

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<sup>18</sup> Williams, *Predators*, 29.



## COMPETENT AUTHORITY

In order to qualify as a competent authority, the Pakistani government must have had a substantial degree of popular support, exercised control over of its territory, and demonstrated a commitment to the wellbeing of its citizens.

### ***Did the Pakistani government have a substantial degree of support from the population?***

The Pakistani government, led by President Pervez Musharraf, had substantial popular support. Though President Musharraf came to power in a military coup in 1999, he was democratically elected President in 2002, while still serving as the chief of the Pakistani Army (Note – international observers found the election results deeply flawed). Nonetheless, the Musharraf government garnered strong public support. According to polling data conducted by the International Republican Institute, Musharraf's approval rating was 60% in June 2006, with only 14% of respondents disapproving how he handled the job.<sup>19</sup>

### ***Did the Pakistani government have control of its sovereign territory?***

The Pakistani government effectively controlled its sovereign territory, with the exception of the FATA. Historically, the FATA was a semi-autonomous tribal region during the British colonial period and was never fully integrated into the British-Indian empire.<sup>20</sup> When Pakistan achieved independence in 1947, the newly formed government inherited the British system and has kept it in place to this day.<sup>21</sup> Thus, the FATA remains a semi-autonomous enclave within Pakistan's borders where the central government has limited influence. However, since the Pakistani government has never exercised tight political control over the FATA as a result of inheriting a colonial legacy, it is unfair to count this as a detractor against the government. Taking historical context into account, Pakistan effectively controlled its territory.

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<sup>19</sup> International Republican Institute, <http://www.iri.org/sites/default/files/2007-04-26-pakistan1.pdf>, accessed 24 February 2016.

<sup>20</sup> Williams, *Predators*, 12.

<sup>21</sup> Williams, *Predators*, 12.



***Did the Pakistani government show a minimal commitment to the wellbeing of its citizens?***

Despite a poor human rights record according to the State Department's annual human rights report, the Pakistani government demonstrated an adequate commitment to the wellbeing of its citizens.<sup>22</sup> This is a subjective claim, but nonetheless, civilian authorities maintained effective control of the security forces and provided basic administrative, education, and legal services to the bulk of the population.<sup>23</sup> The Pakistani government established the Anti-Trafficking Unit to combat human traffickers, and also enacted laws to provide women with increased legal protection from domestic violence.<sup>24</sup> However, arbitrary arrests, extrajudicial killings, and torture remained persistent problems.<sup>25</sup> Despite these challenges, the Pakistani government made meaningful legal and structural changes to demonstrate its commitment to the wellbeing of its citizens, and was trending towards becoming a more responsible actor on the human rights front.

In sum, the Pakistani government met the competent authority criterion outlined by the *jus ad bellum* framework. The analysis will now assess whether Pakistan had a just cause for acquiring F-16 C/D aircraft.

**JUST CAUSE**

In order to establish just cause, the Pakistani government must demonstrate that it seeks to use force to preserve or promote peace, respond to aggression, or address a legitimate security threat. The key task for policymakers is to identify the reason the Pakistani government wants to acquire F-16 C/D aircraft and make a moral and political judgment about the acceptability of the government's rationale.

***Why did Pakistan want to buy F-16 C/D aircraft?***

The Pakistani government sought to acquire F-16 C/D aircraft to strike terrorist groups operating in the FATA, eliminate terrorist safe havens, and modernize its air

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<sup>22</sup> Department of State, *2006 Human Rights Report for Pakistan*, (Washington DC: Department of State, March 2007), 1.

<sup>23</sup> Department of State, *2006 Human Rights Report for Pakistan*, 1.

<sup>24</sup> Department of State, *2006 Human Rights Report for Pakistan*, 1.

<sup>25</sup> Department of State, *2006 Human Rights Report for Pakistan*, 1.

force. Thus, the Pakistani government wanted to employ the aircraft in order to establish peace in a restive area of the country. Furthermore, terrorist groups operating within the FATA regularly targeted the Pakistani Army and government with terrorist attacks. The Pakistani government wanted to strike terrorist networks to avenge aggression and address a legitimate security threat. Thus, the Pakistani government had a just cause for seeking to acquire the aircraft.

### **RIGHT INTENTION**

Right intention analyzes the security objectives a state wants to achieve, and how it proposes to achieve them. Regarding Pakistan, US policymakers had to determine: what security goals Pakistan wanted to achieve, how F-16 C/D aircraft would help Pakistan achieve its goals, and whether Pakistan's security goals fit within the context of broader US foreign policy interests in the region.

#### ***What security goals did Pakistan want to achieve?***

The Pakistani government wanted to modernize its air force and to improve its capacity to degrade terrorist networks in the FATA and areas bordering southern Afghanistan.<sup>26</sup> The Pakistani government sought to acquire F-16 C/D aircraft to bolster its air-to-ground strike capacity and provide improved close air support to ground troops fighting in the FATA.

#### ***How could F-16 C/D aircraft help Pakistan achieve its security goals?***

The F-16 C/D is a multirole fighter aircraft capable of air-to-air combat and conducting air-to-ground strikes. The F-16 C/D incorporates advanced radar technology to enable all-weather precision targeting and air-to-air combat at extended ranges.<sup>27</sup> Defensive electronic countermeasures limit the aircraft's vulnerability to enemy aircraft and air defenses.

The F-16 C/D would undoubtedly bolster the Pakistani Air Force's precision strike and close air support capability, thus improving the Pakistani military's

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<sup>26</sup> Leach, James A., Congressional Representative from Iowa on the House of Representatives International Relations Committee, *Proposed Sale of F-16 Aircraft and Weapons Systems to Pakistan*, 109<sup>th</sup> Congress, 2<sup>nd</sup> Session, July 2006, 6.

<sup>27</sup> Bolkcom, Christopher, Grimmett, Richard F., and Kronstadt, Alan K. *Combat Aircraft Sales to South Asia: Potential Implications*. Congressional Research Service Report for Congress; Washington, DC: Congressional Research Service, July 2006.

counterterrorism capacity. Furthermore, the Pakistani Air Force already had a fleet of earlier model F-16 A/B's and could build upon its existing capabilities while modernizing the fleet.

***Did Pakistan's security goals serve to further US foreign policy interests in the region?***

Pakistan's desire to modernize its air force and degrade terrorist networks in the FATA and regions bordering Afghanistan meshed well with broader US foreign policy interests. As a regional partner, Pakistan played a major role in the United States' military strategy for prosecuting the GWOT. Providing F-16 C/D aircraft would also improve interoperability with American forces.<sup>28</sup> Pakistani counterterrorism operations helped to degrade terrorist networks and worked to eliminate safe havens, which furthered US national security interests and promoted regional stability. In short, Pakistan met the right intention criteria of the *jus ad bellum* framework.

**REASONABLE CHANCE OF SUCCESS**

When deciding whether to transfer F-16 C/D aircraft to Pakistan, the United States should assess whether Pakistan had a reasonable chance of achieving its security goals. Policymakers should answer the following: did Pakistan have the technical capacity to operate the arms in question, did Pakistan have the logistical capacity to maintain F-16 C/D aircraft, would the effective employment of F-16 C/D aircraft give Pakistan a reasonable chance of accomplishing its security objectives?

***Did Pakistan have the technical capacity to operate F-16 C/D aircraft?***

Pakistan arguably demonstrated the capacity to operate F-16 C/D aircraft based on the fact that the Pakistani Air Force already operated a fleet of older model F-16 A/B aircraft. Thus, the Pakistani Air Force had pilots who could transition to flying the newer model aircraft.

***Did Pakistan have the logistical capacity to maintain F-16 C/D aircraft?***

Building upon the argument that the Pakistani Air Force had demonstrated the capacity to operate older F-16 A/B aircraft, it is logically reasonable to assume the

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<sup>28</sup> Hillen, John, Assistant Secretary of State for Politico-Military Affairs, *Proposed Sale of F-16 Aircraft and Weapons Systems to Pakistan*, 109<sup>th</sup> Congress, 2<sup>nd</sup> Session, July 2006, 6.

Pakistanis possessed the logistical capacity to maintain F-16 C/D aircraft. Furthermore, in cases when the Pakistani maintainers were prohibited from fixing technologically sensitive equipment, American contractors would fill the gap based on the legal agreements of the sales contract.<sup>29</sup>

***Would F-16 C/D aircraft give Pakistan a reasonable chance of modernizing its air force and degrading terrorist networks?***

The sale of F-16 C/D aircraft would suffice to modernize the Pakistani Air Force and also bolster its capacity to conduct effective counterterrorism operations. Improving the Pakistani Air Force's precision strike and close air support capabilities would likely have a positive impact on the GWOT. Pakistan had met the reasonable chance of success criteria.

**LAST RESORT**

Last resort implies that Pakistan explored non-violent alternatives to resolve its security problems prior to committing to the use of force. Furthermore, last resort assesses Pakistani security gaps that potential adversaries could exploit. If Pakistan had a legitimate security gap, and had demonstrated a willingness to settle disputes without resorting to the use of force, Pakistan had reached the last resort. In order to assess the last resort criterion, US policymakers should determine: Did Pakistan's security policy seek non-violent alternatives to resolve disputes with potential adversaries, and did Pakistan have a legitimate security need for F-16 C/D aircraft?

***Did Pakistan's security policy seek non-violent alternatives to resolve disputes with potential adversaries?***

Pakistan pursued non-violent policy options to defuse tensions and stop terrorist attacks in the FATA. In April 2004, after a series of bloody battles between the Pakistani Army and the Pakistani Taliban, the government reached a settlement with the Pakistani Taliban to stop the violence in South Waziristan and the surrounding areas.<sup>30</sup> Government officials and the Pakistani Taliban signed the Shakai Peace Accords to commemorate the occasion.<sup>31</sup> Despite the peace agreement, the Pakistani Taliban

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<sup>29</sup> Hillen, *Proposed Sale of F-16 Aircraft*, 16.

<sup>30</sup> Williams, *Predators*, 46.

<sup>31</sup> Williams, *Predators*, 46.

continued its terrorist campaign in the FATA in order to punish the government for entering South Waziristan in the first place.<sup>32</sup>

***Did Pakistan have a legitimate security need for F-16 C/D aircraft?***

The Pakistani Air Force operated a fleet of early model F-16 A/B aircraft, which provided modest air-to-ground strike and close air support capability. Adding the F-16 C/D to the Pakistani Air Force's inventory would bolster these modest capabilities and also help Pakistan to modernize its fighter fleet. However, alternatives such as attack helicopters could have seemingly filled Pakistani capability gaps just as easily as F-16 C/D aircraft. I will critique this observation in the following section on proportionality.

**PROPORTIONALITY**

Proportionality assesses whether the transfer of F-16 C/D aircraft to Pakistan outweighs the perceived costs of not transferring them. Policymakers should answer the following questions in order to determine proportionality: Did F-16 C/D aircraft serve as a proportionate means to the security ends the recipient state seeks to achieve, does failing to provide F-16 C/D aircraft make Pakistan unacceptably vulnerable to aggression from potential adversaries, are there any other factors that warrant consideration?

***Did F-16 C/D aircraft serve as a proportionate means to the security ends the recipient state seeks to achieve?***

The Pakistani government sought to modernize its fighter fleet and improve its counterterrorism capacity. The transfer of F-16 C/D aircraft met both of these goals. However, as mentioned in the previous section, attack helicopters could have also plugged Pakistan's security gaps. Thus, policymakers had to determine whether Pakistan's desire to modernize its air force was a legitimate security need. I contend this was the case due to the situation in the FATA.

***Did failing to provide F-16 C/D aircraft make Pakistan unacceptably vulnerable to aggression from potential adversaries?***

Opting not to sell the Pakistani Air Force F-16 C/D aircraft could potentially endanger Pakistani ground forces due to limited precision-strike and close air support

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<sup>32</sup> Williams, *Predators*, 46.

capabilities. Furthermore, choosing not to provide the F-16 C/D would likely make Pakistan more vulnerable to surprise attacks from adversary air forces.

***What other factors warrant consideration?***

In June 2004 President Bush declared Pakistan a major non-NATO ally.<sup>33</sup> President Musharraf had facilitated US counterterrorism operations in the FATA and border regions with Afghanistan and President Bush acknowledged Pakistan's role in prosecuting the American military strategy in the GWOT. Despite a historically tumultuous security relationship characterized by American mistrust due to nuclear proliferation concerns, Pakistan was now an American security ally. Based on its new diplomatic status, modernizing the Pakistani Air Force became an important symbol of the American commitment to Pakistan's security and also provided political influence with Musharraf.<sup>34</sup>

The United States also had to consider what effects selling the Pakistani government F-16 C/D's would have on the regional balance of power vis-à-vis India. Pakistan and India have a tense security rivalry, and policymakers had to assess how the sale of F-16's would affect the Pakistan – India relationship. US analysts assessed that the F-16's were roughly equivalent in capability to India's most advanced fighter, the Russian-made Su-30.<sup>35</sup> However, India supports its fighter fleet with aerial refueling, electronic countermeasures, and airborne warning and control aircraft.<sup>36</sup> Though the sale would increase the number of Pakistan's fighter aircraft, analysts assessed the sale would not bring Pakistan close to parity with the Indian Air Force.<sup>37</sup> In order to counter the Indian government's resistance to the sale, the United States opened a dialogue for the proposed sale of F/A-18 Super Hornets to the Indians to preserve the existing regional military balance of power (the Indian government ultimately rejected the offer).<sup>38</sup>

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<sup>33</sup> Hillen, *Proposed Sale of F-16 Aircraft*, 13.

<sup>34</sup> Hillen, *Proposed Sale of F-16 Aircraft*, 13.

<sup>35</sup> Bolkcom, Grimmett, and Kronstadt. *Combat Aircraft Sales to South Asia*, 6.

<sup>36</sup> Bolkcom, Grimmett, and Kronstadt. *Combat Aircraft Sales to South Asia*, 6.

<sup>37</sup> Bolkcom, Grimmett, and Kronstadt. *Combat Aircraft Sales to South Asia*, 6.

<sup>38</sup> India Strategic, "F-18 Super Hornet Staying Out in Front," September 2008, <http://www.indiastrategic.in/topstories171.htm> ; and Michael Mazza, "Fighter Jet Deal Stunts India – US Partnership," *American Enterprise Institute*, 29 April 2011, <http://www.aei.org/publication/fighter-jet-deal-stunts-u-s-india-partnership/>



Finally, the sale of 36 F-16's would provide \$3.5 billion to US industry, extend the production life of the F-16, and employ up to 5,000 Americans for up to a year.<sup>39</sup> However, some analysts argue that although the sale would preserve assembly line jobs, it would not advance innovation or make the US defense industry more competitive.<sup>40</sup> These analysts conclude that only noteworthy design and engineering changes to the aircraft would benefit the industrial base.<sup>41</sup>

### FINAL ANALYSIS

The Pakistan F-16 case forced American policymakers to make a difficult decision. Due to nuclear proliferation concerns, the United States - Pakistan bilateral security relationship was historically characterized by mutual distrust. Based on the analysis of the case using the *jus ad bellum* criteria, the approval to sell Pakistan F-16's was an ethical decision. The area open to the most controversy was the competent authority criterion – specifically whether the Pakistani government demonstrated a minimal commitment to the wellbeing of its citizens. Pakistan had (and continues to have) a poor human rights record, which is difficult to reconcile. However, the Pakistani government attempted to uphold its duty to its citizens by passing meaningful legislation to better protect its most vulnerable citizens. Additionally, the Pakistani government's effort to defeat the insurgents in the FATA further demonstrated its commitment to the wellbeing of its citizens, and merits the designation as a competent authority. Had policymakers applied the *jus ad bellum* framework, it could have better informed American strategic analysis and would have confirmed US policymakers' rationale for approving the sale.

The analysis also demonstrated how the structured application of the *jus ad bellum* criteria added analytical rigor to the decision-making process. The sequential application of the *jus ad bellum* criteria provided a logical and systematic approach for analysis that is absent in the CAT Policy. Adopting the *jus ad bellum* approach would ensure policymakers consider the same variables across arms transfer cases regardless of the recipient state.

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<sup>39</sup> Bolkcom, Grimmett, and Kronstadt. *Combat Aircraft Sales to South Asia*, 8.

<sup>40</sup> Bolkcom, Grimmett, and Kronstadt. *Combat Aircraft Sales to South Asia*, 8.

<sup>41</sup> Bolkcom, Grimmett, and Kronstadt. *Combat Aircraft Sales to South Asia*, 8.





**CHAPTER 3**  
**THE SAUDI ARABIA F-15 SA CASE**  
**The Decision to Sell F-15 SA's to Saudi Arabia**

In December 2011, the United States agreed to sell Saudi Arabia 84 F-15 SA advanced fighter aircraft in a sale worth \$29.4 billion.<sup>1</sup> The decision to sell the Saudis one of the most technologically advanced F-15's available for export was significant because it sent a clear and strong signal - to allies and adversaries alike - that the United States envisioned Saudi defense capabilities as a key component to regional stability.<sup>2</sup> The Saudis already operated a fleet of earlier model F-15 S aircraft, but the improved air-to-air and air-to-ground strike capabilities of the F-15 SA made it an extremely sophisticated and capable aircraft. The introduction of such a capable power projection asset had the potential to bolster Saudi deterrence and alter the regional military balance of power.

***Historical Overview of United States - Saudi Arabia Security Relationship***

Saudi Arabia has been one of the most important US security partners in the Middle East since the dawn of the Cold War.<sup>3</sup> Saudi Arabia's unique role in the Arab and Islamic worlds, coupled with world's largest oil reserves made diplomatic relations with Saudi Arabia a strategic priority for the United States.<sup>4</sup> The United States recognized Saudi Arabia as a key influencer in the Middle East and relied upon the Saudis for political support to counteract Communist expansionist ideology during the Cold War.<sup>5</sup> On the other hand, the Saudis sought US support, as they feared the ideological threat posed by the atheistic Soviet Union. Saudi Arabia and the United

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<sup>1</sup> Andrew J. Shapiro, Assistant Secretary of State for Political-Military Affairs, "Special Joint Press Briefing on U.S. Arms Sales to Saudi Arabia" (Press Briefing, U.S. State Department, Washington DC, 29 December 2011).

<sup>2</sup> Shapiro, Press Briefing.

<sup>3</sup> Rachel Bronson, *Thicker Than Oil: America's Uneasy Partnership with Saudi Arabia* (New York, NY: Oxford University Press, 2006), 3.

<sup>4</sup> Bronson, *Thicker Than Oil*, 3.

<sup>5</sup> Parker T. Hart, *Saudi Arabia and the United States: Birth of a Security Partnership* (Bloomington, IN: Indiana University Press, 1998), 54.

States' mutual fears of Soviet expansion helped to bring both nations together.<sup>6</sup> Based on the shared interest of counteracting communism in the Middle East, the United States and Saudi Arabia formed a durable, though at time tenuous, security partnership throughout the Cold War.

The Persian Gulf War was another crucial moment for the United States - Saudi Arabia security relationship. After the Iraqi invasion of Kuwait in 1990, the United States deployed troops to Saudi Arabia as part of Operation Desert Shield to deter further Iraqi aggressions and defend Saudi oil reserves.<sup>7</sup> Saudi Arabia was desperate for American military support and was genuinely threatened by Saddam Hussein's power grab in the region. The Saudis feared an unpredictable Hussein, and voiced concerns that if Iraq was allowed to retain possession of Kuwait that it would alter the region's geopolitics, as Iraq would command 19% of the world's oil reserves.<sup>8</sup> The United States depended upon Middle Eastern oil, and Iraqi *de facto* control of the region's oil reserves was a threat to American economic interests. Once again, mutual security interests brought both nations together. In an unflinching demonstration of political support, the United States deployed more than a half million American troops to the region to defend Saudi oil reserves and eject Iraq's army from Kuwait.<sup>9</sup>

Arguably the greatest challenge in the history of the United States - Saudi Arabia bilateral security relationship occurred in the aftermath of the 9/11 attacks. Fifteen of the nineteen hijackers were Saudi citizens, and Americans began to question whether Saudi Arabia was truly an ally.<sup>10</sup> For the United States, terrorism became the most high-profile national security threat after 9/11, and Saudi Arabia was a primary source. Furthermore, Saudi Arabia's strict interpretation of the Quran and practice of Sharia law were perceived as government-sanctioned structural enablers of Islamic radicalism. There was a sense that the United States and Saudi Arabia were drifting apart.

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<sup>6</sup> Bronson, *Thicker Than Oil*, 3.

<sup>7</sup> Bronson, *Thicker Than Oil*, 194.

<sup>8</sup> Bronson, *Thicker Than Oil*, 192.

<sup>9</sup> Bronson, *Thicker Than Oil*, 195.

<sup>10</sup> Bronson, *Thicker Than Oil*, 8.

The United States and Saudi Arabia began to rebuild the fractured relationship in 2003 after a string of domestic terror attacks in Riyadh.<sup>11</sup> In August 2003, the United States and Saudi Arabia formed a Joint Task Force to monitor terrorist financing.<sup>12</sup> The attacks energized the Saudis to address the dangers of terrorism and they reached out to the United States for support. Saudi intelligence and the FBI worked together to foil potential attacks and detain suspects.<sup>13</sup> The Saudis implemented security and political reforms and targeted terrorist network finances.<sup>14</sup> The new Saudi policies to address terrorism helped to dispel the distrust in Washington. Eventually, the George W. Bush administration began to see Saudi Arabia as a valuable partner in combating Islamic radicalism in the Middle East. Since 2004, the United States and Saudi Arabia have maintained a close security relationship and the United States has sold billions of dollars of armaments to Saudi Arabia. Furthermore, the United States sees Saudi Arabia as an indispensable counterbalance to another regional threat – Iran.

#### ***Political Context Behind United States - Saudi Arabia F-15SA Case***

In 2011, Iran's growing influence throughout the Middle East and nuclear aspirations were significant threats to American national security interests in the region. Specifically, Iran's influence over the newly formed government in Iraq was troublesome considering the United States had recently helped to install the Maliki administration during Operation Iraqi Freedom. Iraq was embroiled in sectarian violence and Iran provided assistance to Shia militias, which further destabilized the country.<sup>15</sup> As early as 2003, the Director of National Intelligence, Michael McConnell, noted there was "overwhelming evidence" that Iran was supporting insurgents in Iraq.<sup>16</sup> Furthermore, Iran's nuclear ambitions threatened American security interests, as Iranian leadership was outwardly hostile towards the United States and Israel. In 2007, Nicholas Burns, the American Under Secretary of State said, "the policy of the United States is that we cannot

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<sup>11</sup> Bronson, *Thicker Than Oil*, 243.

<sup>12</sup> Nino P. Tollitz, ed., *Saudi Arabia: Terrorism, U.S. Relations and Oil*, (New York, NY: Nova Science Publishers Inc., 2005), 45.

<sup>13</sup> Bronson, *Thicker Than Oil*, 243.

<sup>14</sup> Tollitz ed., *Saudi Arabia*, 45.

<sup>15</sup> Jason Healey, ed., *A Fierce Domain* (Cyber Conflict Studies Association, 2013), 226.

<sup>16</sup> Healey, *A Fierce Domain*, 215.

allow Iran to become a nuclear state.”<sup>17</sup> Preventing Iran from developing nuclear weapons technology was (and still is) a major US policy priority.

The decision to sell Saudi Arabia F-15 SA model aircraft was made during a time of considerable tension surrounding Iran’s nuclear program and an unraveling security situation in Iraq. The Middle East was an unstable region with little prospect of improving. Saudi Arabia requested to purchase the F-15 SA aircraft in order to modernize and bolster its aerial strike capabilities. As one of America’s enduring security partners in the region, and Iran’s chief Arab rival in the regional power struggle, the United States agreed to the sale.

### **US POLICY CONSIDERATIONS AND RATIONALE FOR APPROVING THE SALE**

The United States approved the Saudi Arabian F-15 SA sale in order to modernize the Saudi Royal Air Force, demonstrate the strength of the bilateral security relationship, and increase regional burden sharing through interoperability. Like Pakistan in the previous chapter, Saudi Arabia already operated a fleet of older model F-15 fighter aircraft. Thus, the sale would augment and improve existing Saudi fighter aircraft capability. Due to regional instability caused by Iraq and Iran, the United States assessed that modernizing the Saudi Royal Air Force was a legitimate security need.

The United States also agreed to the sale to demonstrate its commitment to Saudi Arabia as a security partner in the Middle East. Assistant Secretary of State Andrew Shapiro stated, “This sale will send a strong message to countries in the region that the United States is committed to stability in the Gulf and broader Middle East.”<sup>18</sup> Reading between the lines, the sale was an overt signal to let Iranian political leadership know the United States supported Saudi Arabia in the regional power struggle. The decision to approve the sale reassured other Arab states in the Gulf and opened the door for wider defense cooperation opportunities with the United States.

Finally, the United States approved the sale in hopes of improving interoperability with the Saudi Royal Air Force to enable regional burden sharing. Simply put, the USAF

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<sup>17</sup> Healey, *A Fierce Domain*, 225.

<sup>18</sup> CNN, “U.S., Saudi Arabia Agree to \$30 Billion Deal for F-15’s,” 29 December 2011, <http://www.cnn.com/2011/12/29/world/meast/u-s--saudi-fighter-sale/>.

was overextended in the Middle East and in need of capable partners to help secure the region. Improving the Saudi air force was a way for America to reduce the strain on the USAF and share the burden of maintaining regional security.

### **ASSESSING THE SAUDI ARABIA F-15 SA SALE USING THE *JUS AD BELLUM* CRITERIA**

The Saudi Arabia case is unique because it was a massive sale of technologically advanced equipment and accounted for over half of the value of US Foreign Military Sales for 2011. Saudi Arabia was a stalwart security partner in the Middle East, despite a rough couple of years in the wake of 9/11. However, the fact remains that Saudi Arabia is a non-democratic state and “a country where women can’t drive, the Quran is the constitution, and beheadings are commonplace.”<sup>19</sup> Though the United States and Saudi share common security interests in the Middle East, both countries diverge when it comes to political ideology, and fundamental social and cultural beliefs. Did the United States overlook ethical concerns that should have affected the decision?

The following sections will analyze whether the Saudi Arabia F-15 SA case met the *jus ad bellum* criteria outlined in Chapter 1. Upon completion of the analysis I will compare the findings against the official rationale for approving the sale to see if the systematic approach of the *jus ad bellum* framework add analytical rigor to the decision-making process. The analysis in the following sections will only consider information available to policymakers in 2011 when they had to make the decision.

#### **COMPETENT AUTHORITY**

In order to qualify as a competent authority, the Saudi Arabian government must have a substantial degree of popular support, exercise control of its territory, and demonstrate a commitment to the wellbeing of its citizens.

***Did the Saudi Arabian government have a substantial degree of support from the population?***

It is virtually impossible to answer this question as the Saudi Arabian Ministry of Culture and Information tightly controls information that could be construed as critical of

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<sup>19</sup> Bronson, *Thicker Than Oil*, 8.

the government and heavily censors print and broadcast information.<sup>20</sup> As a result, reliable data is in short supply. Saudi Arabia is a monarchy ruled by the al Saud dynasty, which bases its legitimacy on a strict interpretation of the Quran.<sup>21</sup> Political dissent in Saudi Arabia is prohibited and perpetrators are regularly arrested and punished in accordance with Sharia law. The opacity of the Saudi government precludes adequate analysis of this subset of the competent authority criterion.

***Did the Saudi Arabian government maintain control of its sovereign territory?***

The Saudi government maintained control over its national boundaries and provided effective security throughout the country. According to the State Department's Country Reports for Human Rights Practices in 2011, Saudi Arabian security forces generally maintained law and order. The Ministry of the Interior exercised control over all internal security and police forces, and all security forces reported to civilian authorities.<sup>22</sup> Though the Saudi government vigorously stifles dissent and does not tolerate criticism of the royal family, it met the criteria for maintaining control of its sovereign territory.

***Did the Saudi Arabian government demonstrate a commitment to wellbeing of its citizens?***

From an American perspective, the Saudi government failed to adequately demonstrate a commitment to the wellbeing of its citizens. In general, Saudi women faced significant discrimination under the law. Saudi Arabian women were not allowed to vote in local elections, required male guardians to authorize travel, and were legally prohibited from marrying non-Muslims.<sup>23</sup> Furthermore, Saudi citizens, male or female, do not have the freedom to practice religions other than Islam.<sup>24</sup> Even within Islam, the Saudi government reportedly discriminated against the Shi'ite Muslim community (Sunni

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<sup>20</sup> Human Rights Watch, "World Report 2011: Saudi Arabia," accessed 11 March 2016, <https://www.hrw.org/world-report/2011/country-chapters/saudi-arabia>

<sup>21</sup> Department of State, *Country Reports on Human Rights Practices for 2011*, (Washington DC, [2012]), 1.

<sup>22</sup> Department of State, *Country Reports on Human Rights Practices for 2011*, 1.

<sup>23</sup> Department of State, *Country Reports on Human Rights Practices for 2011*, 25.

<sup>24</sup> Tollitz ed., *Saudi Arabia*, 20.

is the dominant form of Islam in the Kingdom). Saudi religious police enforce strict Sharia law and have the authority to arrest non-compliant citizens.<sup>25</sup>

Additionally, Saudi Arabia is home to an estimated 8.4 million foreign (non-citizen) workers.<sup>26</sup> These workers come to Saudi Arabia to fill labor contracts, and depend upon Saudi employers for sponsorship. Working conditions for these migrants are often poor, and they are frequently subjected to exploitation as they have limited rights as non-citizens. Most of the non-citizen workers come from Asia, and their representative embassies report that employers often abuse migrant workers for poor performance and force them to work longer hours than their contracts specify.<sup>27</sup> Migrants can contact the Saudi Ministry of Labor's Migrant Workers' Welfare Department for legal assistance, but widespread exploitation exists with limited government oversight. Poor labor conditions drove Indonesia and the Philippines to ban prospective workers from their countries from working in Saudi Arabia.<sup>28</sup> Though migrant workers are not citizens, they legally reside in Saudi Arabia and their lack of government protections is a cause for concern.

In sum, the Saudi government did not demonstrate a sufficient commitment to the well being of its citizens when assessed from an American perspective. This observation indicates that Saudi Arabia and the United States have fundamentally different views about the roles and responsibilities of government. Furthermore, it exposes the rifts between the U.S and Saudi Arabia on the subject of human rights. Simply put, Saudi Arabia does not recognize universal human rights; namely the right to freedom of religion, freedom of assembly, freedom of expression, and equal rights for women and workers. The Saudi government's failure to recognize and promote basic human rights precludes it from meeting the competent authority criteria in the *jus ad bellum* framework.

## JUST CAUSE

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<sup>25</sup> Department of State, *Country Reports on Human Rights Practices for 2011*, 5.

<sup>26</sup> Department of State, *Country Reports on Human Rights Practices for 2011*, 33.

<sup>27</sup> Department of State, *Country Reports on Human Rights Practices for 2011*, 33.

<sup>28</sup> Department of State, *Country Reports on Human Rights Practices for 2011*, 33.



In order to establish just cause, the Saudi government must demonstrate that it seeks to use the F-15 SA aircraft to preserve or promote peace, respond to aggression, or address a legitimate security threat. Policymakers must identify the reason the Saudi government sought to acquire the F-15 SA and assess the acceptability of its rationale.

***Why did Saudi Arabia want to buy F-15 SA aircraft?***

Like Pakistan in the previous case, Saudi Arabia wanted to acquire F-15 SA aircraft to modernize its air force. Thus, one can reasonably conclude that Saudi Arabia sought to address a legitimate security threat by updating its air force inventory in order to maintain a semblance of regional stability. Saudi Arabia's chief regional rival and threat – Iran – had aggressively pursued the development of nuclear weapons, which was a strong cause for concern in the Saudi government. Iran's nuclear program posed a legitimate security threat, and the acquisition of F-15 SA aircraft with impressive air-to-ground strike capabilities served as a way to counter the emerging threat. In sum, Saudi Arabia had just cause for acquiring the F-15 SA.

**RIGHT INTENTION**

Right intention analyzes what security objectives Saudi Arabia wanted to achieve, and how it planned to achieve them. American policymakers had to determine: Saudi Arabia's security goals, how F-15 SA aircraft would help Saudi Arabia achieve the goals, and whether Saudi Arabia's security goals fit within the context of broader US foreign policy interests in the region.

***What security goals did Saudi Arabia want to achieve?***

Saudi Arabia wanted to modernize its air force in order to defend itself against emerging threats and deter conflict with potential adversaries. The Middle East was (and remains) an unstable region and sectarian conflict was ongoing in Iraq and Yemen, both of which border Saudi Arabia. Modernizing the Royal Saudi Air Force to position it to best respond to threats emerging from regional volatility was thus a prudent initiative to address legitimate security concerns.

Furthermore, Saudi Arabia possesses a quarter of the world's known oil reserves and maintains a vast petroleum infrastructure, which accounts for approximately 40% of



the kingdom's gross domestic product.<sup>29</sup> Since the Saudi economy depends on the export of petroleum, the government prioritizes defending its oil industry. In a press briefing to publicize the sale, Assistant Secretary of State for Political-Military Affairs, Andrew Shapiro, highlighted how the F-15 SA aircraft would provide Saudi Arabia with advanced capabilities for protecting its oil infrastructure.<sup>30</sup>

***How could F-15 SA aircraft help Saudi Arabia achieve its security goals?***

Acquiring F-15 SA aircraft would clearly modernize the Saudi air force, but would also serve as a powerful deterrent to potential adversaries due to the enhanced strike capabilities of the aircraft. The F-15's deterrence value could conceivably contribute to the maintenance of regional stability. In the event of hostilities, F-15 SA aircraft would provide Saudi Arabia with an asymmetric airpower advantage over its adversaries, which would bolster Saudi capacity to defend its petroleum infrastructure and other national security interests.

***Did Saudi Arabia's security goals serve to further American foreign policy interests in the region?***

Despite major ideological differences about governance, mutual security interests have historically brought the United States and Saudi Arabia together, and selling F-15 SA aircraft to the Saudis helped to further American foreign policy interests in the Middle East. Saudi Arabia was (and remains) Iran's primary rival in the Middle East competition for power and influence. US policy in the Middle East seeks to limit Iranian influence, which makes Saudi Arabia an attractive security partner. Mutual fears of Iran and the destabilizing effects of terrorism - as opposed to a belief in democratic governance - forms the core of the partnership. Selling the Saudis F-15 SA aircraft promoted US interests in the region by providing Saudi Arabia with an asymmetric airpower advantage over Iran, and increased interoperability with American forces, potentially offsetting some of the future workload for US forces.<sup>31</sup> In the end, Saudi Arabia met the right intention criterion in the *jus ad bellum* framework.

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<sup>29</sup> Tollitz ed., *Saudi Arabia*, 61.

<sup>30</sup> CNN, "U.S., Saudi Arabia Agree to \$30 Billion Deal for F-15's," 29 December 2011, <http://www.cnn.com/2011/12/29/world/meast/u-s--saudi-fighter-sale/>.

<sup>31</sup> "Weighing the United States – Saudi Arms Deal," *Jane's Intelligence Weekly*, 9 September 2010, 1.

## REASONABLE CHANCE OF SUCCESS

To assess reasonable chance of success, policymakers should answer the following: did Saudi Arabia have the technical capacity to operate F-15 SA aircraft, did Saudi Arabia have the logistical capacity to maintain the aircraft, would the effective employment of the aircraft give the Saudis a reasonable chance of accomplishing its security objectives?

### *Did Saudi Arabia have the technical capacity to operate F-15 SA aircraft?*

Simply put, Saudi Arabia had demonstrated the technical capacity to operate F-15 SA aircraft. Saudi Arabia already operated a fleet of earlier model F-15 S aircraft, so the acquisition of newer model aircraft based on the same airframe was not a major concern. Saudi pilots designated to fly the new aircraft would require training, and both countries had factored the training requirements into the sales contract.<sup>32</sup>

### *Did Saudi Arabia have the logistical capacity to maintain the aircraft?*

Building on the rationale presented in the previous section, the Royal Saudi Air Force had proven capable of maintaining the F-15 SA aircraft. As mentioned earlier, Saudi Arabia already operated a fleet of legacy F-15 aircraft, and modernizing the Saudi inventory with an updated model of the F-15 was not a significant concern for either country. Furthermore, the United States would provide the maintenance for sensitive technologies on the aircraft and built the service into the contract.<sup>33</sup>

### *Would the effective employment of the aircraft give the Saudis a reasonable chance of accomplishing its security objectives?*

The Saudi objective for acquiring the aircraft was to modernize its air force in hopes of deterring future conflict, and in the event deterrence failed, to provide an asymmetric airpower advantage over potential adversaries. The sale of F-15 SA aircraft met the modernization requirement, and one could reasonably argue it met the deterrence and airpower advantage over potential adversaries goals as well. Saudi Arabia met the reasonable chance of success criterion.

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<sup>32</sup> Interview with Middle East arms transfer specialist from the Bureau of Political-Military Affairs at the U.S. Department of State, 29 January 2016. [unattributed interview]

<sup>33</sup> Interview with Middle East arms transfer specialist [unattributed interview].

## LAST RESORT

Last resort indicates that Saudi Arabia explored non-violent alternatives to resolve its security problems prior to considering and resorting to the use of force. Last resort also assesses Saudi security gaps that potential adversaries could exploit. If Saudi Arabia had a legitimate security need, and had demonstrated a willingness to settle disputes without resorting to the use of force, Saudi Arabia had met the last resort criteria. Hence, US policymakers should determine: Did Saudi Arabia's security policy seek non-violent alternatives to resolve disputes with potential adversaries? Did Saudi Arabia have a legitimate security need for F-15 SA aircraft?

### *Did Saudi Arabia's security policy seek non-violent alternatives to resolve disputes with potential adversaries?*

Official Saudi government policies in the 2000's aimed to prevent sectarian conflict in Iraq (Operation Iraqi Freedom) from spilling over Saudi Arabia's borders. In response to the American invasion of Iraq in 2003, King Fahd issued a communiqué stating Saudi Arabia "will not participate in any way" in the war.<sup>34</sup> In addition, the Saudi government implemented reforms on Islamic charitable organizations that supported terrorism and urged sectarian violence throughout the region.<sup>35</sup>

Overall, Saudi Arabia's security policy had successfully averted state-on-state conflict with potential adversaries, and demonstrated Saudi Arabia's preference to seek non-violent solutions to security disputes (this analysis does not cover events that occurred after 2011, so it does not factor in Saudi Arabia's military operations in Yemen). Though Iran is widely regarded as Saudi Arabia's biggest security threat, Saudi policy vis-à-vis Iran has managed to keep tensions below the kinetic threshold, indicating Saudi Arabia would prefer to avoid hostilities.

### *Did Saudi Arabia have a legitimate security need for F-15 SA aircraft?*

Saudi Arabia wanted to modernize its air force in order to deter adversaries, and in the event deterrence failed, the Saudis wanted to defeat their adversaries. F-15 SA aircraft would help the Saudis meet these goals. Sectarian conflict in Yemen and Iraq threatened Saudi security, and modernizing the Saudi air force was a legitimate security

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<sup>34</sup> Tollitz, ed., *Saudi Arabia*, 12.

<sup>35</sup> Tollitz, ed., *Saudi Arabia*, 27.

concern. As mentioned earlier, the Iranian nuclear program also fueled Saudi fears and highlighted the need for advanced strike aircraft. Though the Royal Saudi Air Force already operated a fleet of F-15 S aircraft, the upgraded version would allow the Saudis to strike targets day or night, in all weather, with a variety of precision-guided munitions.<sup>36</sup> The upgraded communications of the F-15 SA would also allow the Saudis to operate with American aircraft in the same airspace, enabling effective combined operations in the future.<sup>37</sup> In the end, Saudi Arabia met the last resort criteria.

### **PROPORTIONALITY**

Proportionality assesses whether the sale of F-15 SA aircraft to Saudi Arabia outweighs the opportunity cost of denying the sale. Policymakers should answer the following questions in order to determine proportionality: Did F-15 SA aircraft serve as a proportionate means to the security ends Saudi Arabia wanted to achieve? Does failing to provide F-15 SA aircraft make Saudi Arabia unacceptably vulnerable to aggression from potential adversaries? Are there any other factors that warrant consideration?

***Did F-15 SA aircraft serve as a proportionate means to the security ends Saudi Arabia wanted to achieve?***

The F-15 SA aircraft was an appropriate weapons system to meet the Saudi security objectives of modernizing its air force, deterring adversaries, and defending Saudi oil infrastructure and national security interests. Furthermore, the sale would tilt the military balance of power between Saudi Arabia and Iran in the Saudi's favor, which fit within the broader American foreign policy interests in the Middle East.

***Did failing to provide F-15 SA aircraft make Saudi Arabia unacceptably vulnerable to aggression from potential adversaries?***

While denying the sale of F-15 SA aircraft may not have made Saudi Arabia unacceptably vulnerable to aggression, it certainly would not have bolstered Saudi deterrence or defense capabilities. Approving the sale of the aircraft would provide Saudi Arabia with a lasting qualitative and quantitative edge over Iranian conventional forces.<sup>38</sup>

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<sup>36</sup> Dr. James N. Miller, Principal Deputy Under Secretary of Defense for Policy, "Special Joint Press Briefing on U.S. Arms Sales to Saudi Arabia" (Press Briefing, U.S. State Department, Washington DC, 29 December 2011).

<sup>37</sup> Miller, (Press Briefing).

<sup>38</sup> "Weighing the United States – Saudi Arms Deal," 1.

Failure to provide the aircraft would potentially undermine Saudi deterrence vis-à-vis Iran. In addition, a capable Saudi air force would reduce Saudi dependence on the United States for security.

### ***What other factors warrant consideration?***

Though not directly assessed by the *jus ad bellum* framework, the sale of F-15 SA aircraft to Saudi Arabia would have a significant economic impact for the United States. According to Assistant Secretary of State Shapiro, “this agreement will support more than 50,000 American jobs. It will engage 600 suppliers in 44 states and provide \$3.5 billion in annual economic impact to the US economy.”<sup>39</sup> Perhaps coincidentally, the sale was approved during a time of particularly high unemployment in America.<sup>40</sup>

Maintaining Israel’s Qualitative Military Edge (QME) in the Middle East was another consideration US policymakers had to consider. Since Israel was recognized as a state in 1948, the United States has pledged to uphold Israel’s QME over potential adversaries in the region.<sup>41</sup> The QME is Israel’s ability to counter and defeat credible military threats from any individual state, coalition of states, or non-state actor, while sustaining minimal damages or casualties.<sup>42</sup> Congress passed a law in 2008 to maintain Israel’s QME, and every major arms transfer case destined for the Middle East must take into account how it will affect Israel’s QME. Thus, the sale of F-15 SA aircraft to Saudi Arabia had to be weighed against how it would affect Israel’s QME.

### **FINAL ANALYSIS**

The Saudi Arabia F-15 SA case does not meet the ethical criteria outlined in the *jus ad bellum* framework. When viewed from an American perspective, the Saudi government did not show a minimal concern for the well being of its citizens. By instituting repressive measures to limit its citizens’ freedoms and through

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<sup>39</sup> Andrew J. Shapiro, Assistant Secretary of State for Political-Military Affairs, “Special Joint Press Briefing on U.S. Arms Sales to Saudi Arabia,” 1.

<sup>40</sup> “Weighing the United States – Saudi Arms Deal,” 1.

<sup>41</sup> Assistant Secretary of State for Political-Military Affairs Andrew J. Shapiro, “Ensuring Israel’s Qualitative Military Edge” (speech, The Washington Institute for Near East Policy, Washington DC, 4 November 2011).

<sup>42</sup> Shapiro, “Ensuring Israel’s Qualitative Military Edge.”

institutionalized discrimination against women and religious minorities, the Saudi government failed to meet the competent authority criterion. Though Saudi Arabia met the remaining *jus ad bellum* criteria, the case does not warrant an approval from an ethical standpoint.

However, Saudi Arabia has been an American ally in the Middle East for over 60 years.<sup>43</sup> The United States and Saudi Arabia have strong economic ties and similar security interests. During Operation Desert Shield, Saudi Arabia provided the United States with access to its ports and airfields, and allowed the USAF to launch missions from its sovereign territory during Operations Desert Storm and Southern Watch.<sup>44</sup> History generates inertia, and the United States has been willing to look past the Saudi government's authoritarian tendencies in pursuit of American security interests in the Middle East.

The Saudi Arabia F-15 sale is an exceptional case where US strategic interests and ethical concerns diverged. The ethical analysis concluded the case did not meet the criteria of the *jus ad bellum* framework, yet US policymakers ultimately approved the sale due to political and strategic interests in the Middle East. The Saudi Arabia case exemplifies a unique occasion when political and strategic interests outweighed ethical concerns. From a policymaker's perspective, denying the sale of F-15's would have contradicted over 60 years of US policy in the Middle East vis-à-vis Saudi Arabia. In addition, Saudi Arabia is Iran's chief regional competitor in the Arab world, and US policy seeks to limit Iran's regional influence. Due to official American policy in the Middle East, strategic interests trumped ethical considerations.

Supplementing the CAT Policy with the *jus ad bellum* framework in the decision-making process would have provided policymakers with a different perspective and potentially altered the decision outcome. The *jus ad bellum* framework would have forced policymakers to make a judgment about the quality of the Saudi government, and determine whether providing F-15's to the Saudis would help to further broader long-term US foreign policy interests in the region. The value of the *jus ad bellum* framework is that it forces policymakers to grapple with the implications of their decision in ways

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<sup>43</sup> Bronson, *Thicker Than Oil*, 5.

<sup>44</sup> Bronson, *Thicker Than Oil*, 195.



that are absent the CAT Policy before approving or denying an arms sale. In the Saudi Arabia case, the *jus ad bellum* framework could have added analytical rigor to the decision-making process.

As the Saudi Arabia case demonstrated, when major national security objectives are at stake, strategic security interests may outweigh ethical considerations. The primary challenge for US policymakers is to identify these situations and to understand the implications of approving arms transfers to questionable states under these conditions. The danger of this line of thinking is that ethics would only apply when it is convenient for the United States. However, in circumstances where significant American national security interests are at stake, the decision to transfer arms to a questionable regime may be a better option than denying the transfer. Policymakers should understand these decisions come with a price, and should attempt to limit their occurrence whenever possible. The major implication for approving arms sales under these circumstances is that the sales can diminish American credibility abroad. Other states may perceive the transfers as a ‘double standard,’ which weakens American moral arguments for denying transfers based on human rights or ethical concerns in other cases.

Stepping back, the Saudi Arabia case provides an excellent example of the tension policymakers must balance between adequately addressing pressing national security challenges and achieving long-term foreign policy aspirations like advancing democracy, the rule of law, and human rights. In the short-term, selling the Saudis F-15’s met the American policy goal of tilting the regional military balance of power against Iran. However, the *jus ad bellum* framework exposed a weakness in the Saudi government that policymakers should consider when assessing the long-term consequences of their decision. Specifically, the Saudi government’s authoritarian tendencies and unwillingness to observe international human rights norms should give pause to American policymakers before granting blanket approval to Saudi Arabia for major arms purchases.

## CHAPTER 4

### THE NIGERIA COBRA HELICOPTER CASE

#### **The Decision to Deny the Transfer of Cobra Helicopters to Nigeria**

In June 2014 the United States denied the request from Israel to transfer 21 US-origin Bell AH-1 Cobra attack helicopters to Nigeria. The United States had previously transferred the helicopters to the Israeli military, and Nigeria had requested to purchase them from Israel. In accordance with US Export Control Law, the United States must approve the transfer of any American-made military equipment to a foreign government.<sup>1</sup> Even though the Israeli government owned the helicopters, US law prohibited the further sale of the helicopters without American approval. The United States denied the sale of the attack helicopters based on the assessment that they would not provide any meaningful combat capability to the Nigerian military since the Nigerians did not have any pilots or maintainers trained to operate or maintain the helicopters. Additionally, the Nigerian military's poor human rights record influenced the decision to deny the sale.<sup>2</sup>

#### ***Historical Overview of United States - Nigeria Security Relationship***

On the surface, Nigeria is an attractive potential security partner for the United States due to its size, economic power, and regional influence in West Africa. Nigeria boasts one of the largest militaries in Africa, and Nigerian peacekeeping efforts on the continent have helped to provide stability in Sierra Leone, Liberia, Sudan, Congo, and Mali. Nigeria is Africa's most populous democratic country, and has modeled its federal government to mirror the United States.<sup>3</sup>

Yet despite Nigeria's inherent strengths, the United States has shown reticence towards expanding the bilateral security partnership.<sup>4</sup> The Nigerian government –

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<sup>1</sup> Department of State, "Third Party Transfers and Foreign Military Sales Teams and Functions," Department of State, accessed 30 March 2016, <http://www.state.gov/t/pm/rsat/c14021.htm>.

<sup>2</sup> Stephen M. Schwartz (Director of West African Affairs at United States Department of State), interview by author, 28 January 2016.

<sup>3</sup> Nigerian Foreign Minister Geoffrey Onyeama, "Remarks at the U.S.-Nigeria Bi-National Commission," (address, U.S. Department of State, Washington DC, 30 March 2016).

<sup>4</sup> Ambassador John Campbell, *Nigeria* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2011) 123-125.



historically fragile and notoriously prone to military coups - has experienced a turbulent democratic history since it gained independence from Britain in 1960.<sup>5</sup> Nigeria's darkest hour occurred during a bloody civil war from 1967-1970, when the southeastern part of the country known as Biafra embarked on a failed effort to secede.<sup>6</sup> Though Nigeria has maintained its national unity, the government has frequently had to tamp down internal unrest. Nigeria's historic political instability has made Nigerian politicians and the United States wary of expanding the bilateral security relationship, out of fear that an empowered military could overthrow the fragile government.

The United States – Nigeria security relationship focuses on maintaining stability in Nigeria, battling piracy in Nigeria's coastal region, and systematically building partner capacity.<sup>7</sup> United States Africa Command (AFRICOM) targets these mission areas as a prerequisite to maintaining regional security in West Africa, which is one of AFRICOM's strategic priorities.<sup>8</sup> AFRICOM's mission hinges on deterring and defeating violent extremist organizations and building partner nation defense capabilities in order to advance US national interests and promote regional security, stability, and prosperity.<sup>9</sup>

The United States has an uneasy partnership with the Nigerian military. Depending on the branch of service, the security relationship can be fraught with tension or serve as an exemplar for other partner nations. US relations with the Nigerian Navy are excellent, and the United States has provided training and materiel support for the Nigerian Navy's Special Boat Service since 2010. Additionally, naval forces from AFRICOM participate in annual anti-piracy exercises with the Nigerian Navy and other partner nations from the region.

On the other hand, the United States' relationship with the Nigerian Army has suffered from mutual frustration and a lack of trust. The Nigerian government has

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<sup>5</sup> Campbell, *Nigeria*, xiv-xxii.

<sup>6</sup> Campbell, *Nigeria*, 6.

<sup>7</sup> General David Rodriguez, "AFRICOM: Strategic Opportunities and Challenges," (Speech at the Center for Strategic and International Studies, Washington DC, 27 January 2015).

<sup>8</sup> Rodriguez, "AFRICOM: Strategic Opportunities and Challenges."

<sup>9</sup> United States Africa Command, <http://www.africom.mil/what-we-do>, 14 March 2015.

criticized the United States for not providing the Nigerian Army with the weapons it claims necessary to defeat the Boko Haram insurgency.<sup>10</sup> The Nigerian Army further exacerbated tensions with the United States by allegedly committing human rights violations in the campaign against Boko Haram. Multiple reports allege the Nigerian Army failed to discriminate between civilians and combatants, and also claim the Nigerian military has committed extrajudicial killings of suspected Boko Haram militants.<sup>11</sup>

Ironically, the strong relationship with the Nigerian Navy and the strained relationship with the Nigerian Army both developed under President Goodluck Jonathan's administration. While the political and national security atmosphere changed dramatically from 2010 to 2014, largely due to the Boko Haram crisis, the United States cannot attribute the difference in relationships with the Nigerian Army and Nigerian Navy upon Nigerian political leadership.

#### ***Political Context Behind the Cobra Helicopter Case***

The Cobra helicopter case was politically charged due to the Nigerian military's inability to stem the Boko Haram insurgency. The Boko Haram insurgency in northeast Nigeria dominated the Nigerian political landscape by 2014. The Nigerian government sought help to improve its military capacity – in the form of training and equipment – from the United States and other nations. Boko Haram's sustained terrorist campaign badly damaged the Nigerian military's credibility and threatened regional stability with spillover attacks in Cameroon, Chad and Niger. The Nigerian government and military struggled to defeat the insurgency and curb the violence, but achieved little success.

The widespread violence caused by the Boko Haram insurgency prompted the United States to expand its security relationship with Nigeria. Boko Haram existed in various forms since 2002, but gained notoriety in the United States in April 2014 after the group kidnapped over 250 schoolgirls from a boarding school in Chibok in northeastern

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<sup>10</sup> Ade Adefuye, Nigerian Ambassador to the United States' Speech to the Council on Foreign Relations, 10 November 2014.

<sup>11</sup> Marc-Antoine Perouse de Montclos, *Nigeria's Interminable Insurgency?* (London, UK: Chatham House, September 2014), 30.

Nigeria.<sup>12</sup> The kidnapping prompted an international outcry and First Lady Michele Obama championed the US response with the #BringBackOurGirls campaign on Twitter. In response to the kidnapping, the United States deployed an Inter-Disciplinary Assistance Team (IDAT) to Nigeria to provide a range of support to the Nigerian government to assist in its efforts to recover the girls.<sup>13</sup> The IDAT was an interagency team that provided ISR support, victim advocacy, and civilian law enforcement support to the Nigerian government.<sup>14</sup>

The Nigerian government appreciated the services the IDAT provided, but requested additional training and materiel support from the United States that would help them defeat Boko Haram on the battlefield. In 2014 - the same year the United States denied the Cobra helicopter transfer - Boko Haram killed over 6,000 civilians using a combination of raids and terrorist tactics to attack population centers including villages, churches, mosques, schools, markets, and transportation hubs.<sup>15</sup> Amidst the unraveling security situation in northeast Nigeria, the US decision to deny the transfer of the helicopters infuriated the Nigerian government.

### **POLICY CONSIDERATIONS AND RATIONALE FOR DENYING THE SALE**

The United States denied the transfer of Cobra helicopters to Nigeria for three primary reasons: the Nigerian military did not have the technical and logistical capacity to operate and maintain the system, the Nigerian military had allegedly committed gross human rights violations during its counterinsurgency campaign, and the United States lacked trust in the Nigerian military leadership.<sup>16</sup>

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<sup>12</sup> John Campbell. "U.S. Policy to Counter Nigeria's Boko Haram," Council on Foreign Relations, 2014

<sup>13</sup> Robert P. Jackson, Testimony of Acting Assistant Secretary of State for African Affairs before the House Foreign Affairs Committee, "Nigeria on the Brink", 27 January 2015

<sup>14</sup> Jackson, "Nigeria on the Brink."

<sup>15</sup> Dionne Searcey and Marc Santora, "Boko Haram Ranked Ahead of ISIS as Deadliest Terrorist Group," *New York Times*, 18 November 2015, [http://www.nytimes.com/2015/11/19/world/africa/boko-haram-ranked-ahead-of-isis-for-deadliest-terror-group.html?\\_r=0](http://www.nytimes.com/2015/11/19/world/africa/boko-haram-ranked-ahead-of-isis-for-deadliest-terror-group.html?_r=0),

<sup>16</sup> Stephen M. Schwartz (Director of West African Affairs at United States Department of State), interview by author, 28 January 2016.

US officials declined to authorize the transfer of the helicopters to Nigeria because the Nigerian military did not have any qualified pilots or mechanics to operate and maintain the helicopters. American assessments projected that the Nigerian pilots and maintainers would require at least a year of training before the Nigerian military would be able to employ the helicopters in theater.<sup>17</sup> The Nigerian military's lack of technical and logistical capacity, coupled with extensive training requirements, were causal factors behind the decision to deny the transfer.

Credible allegations that the Nigerian military had committed gross human rights violations in its counterinsurgency campaign against Boko Haram eroded American policymakers' will to authorize the transfer of the helicopters.<sup>18</sup> The Nigerian government's response to Boko Haram hinged on the use of force and was largely ineffective. In many respects, the Nigerian military helped to strengthen Boko Haram by alienating local communities through the use of excessively brutal tactics, including extrajudicial killings and arrests without trials.<sup>19</sup> The alleged slaughter of up to 600 suspected Boko Haram militants after a prison break at Giwa Barracks in March 2014 spawned a wave of retaliatory attacks against Nigerian security forces and civilians.<sup>20</sup> Based on the consistency and credibility of the allegations, the United States chose not to authorize the transfer of attack helicopters out of fear that the military would use them indiscriminately. Furthermore, allegations against the military jeopardized the ability of the United States to provide security assistance to Nigeria. The Leahy Law precluded the United States from training or equipping foreign military units that have committed gross human rights violations.<sup>21</sup>

Finally, senior US officials lacked trust in the Nigerian military leadership, which influenced the decision to deny the transfer of the helicopters. Consistent reports that the Nigerian Army failed to adequately supply its soldiers to fight Boko Haram, due to

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<sup>17</sup> Schwartz, interview by author.

<sup>18</sup> Schwartz, interview by author.

<sup>19</sup> Perouse de Montclos, *Nigeria's Interminable Insurgency?*, 30.

<sup>20</sup> BBC, "Boko Haram Giwa Barracks Attack: Nigerian Army Killed Hundreds," *BBC News*, 31 March 2014, <http://www.bbc.com/news/world-africa-26819965>.

<sup>21</sup> Senator Patrick Leahy, <https://www.leahy.senate.gov/issues/human-rights>, accessed 14 March 2015.

corruption in the senior ranks, deterred American security assistance efforts. Nigerian Army units which had deployed to fight Boko Haram suffered from low morale, desertions, and mutinies.<sup>22</sup> Reports from the field indicated that Nigerian soldiers were not consistently paid on time, sent into battle with insufficient ammunition, had to buy their own uniforms, and pay for their medical care if injured in combat.<sup>23</sup> These alleged incidents occurred despite the Nigerian military's annual budget of over \$2 billion, which is one of the largest on the continent. The reports suggested that money allocated to the Nigerian Army was siphoned off by senior officials and never trickled down to the frontline troops engaged in combat. As a result, the United States was hesitant to broaden its engagement with the Nigerian Army.

### **ASSESSING THE NIGERIA COBRA HELICOPTER CASE USING THE *JUS AD BELLUM* CRITERIA**

The Cobra helicopter case is significant because it outraged the Nigerian government and damaged diplomatic relations. Speaking to the Council on Foreign Relations, the Nigerian Ambassador to the United States, Professor Ade Adefuye, stated, "Our people are not very happy with the content of America's support in the struggle against Boko Haram. The terrorists threaten our corporate existence and territorial integrity. There is no use giving us the type of support that enables us to deliver light jabs to the terrorists when what we need to give them is the killer punch."<sup>24</sup> The "killer punch" Ambassador Adefuye referred to was a veiled reference to the Cobra helicopters.<sup>25</sup> In addition to the diplomatic fallout, the decision to deny the transfer of the helicopters further deteriorated the security relationship and increased skepticism between military leadership from both countries. Did the US government make a morally defensible decision?

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<sup>22</sup> Perouse de Montclos, *Nigeria's Interminable Insurgency?*, 17.

<sup>23</sup> Nic Robertson, "Nigerian Military Disorganized, Under-equipped in Battle Against Boko Haram," *CNN*, 15 January 2015, <http://edition.cnn.com/2015/01/15/africa/nigeria-military-families-boko-haram/>.

<sup>24</sup> Adefuye, Ade, Nigerian Ambassador to the United States' Speech to the Council on Foreign Relations, 10 November 2014.

<sup>25</sup> Note – I worked on the Nigeria Desk at the State Department from August 2014 – June 2015.

The following sections will analyze whether the Nigeria Cobra helicopter case met the *jus ad bellum* criteria. Upon completion of the analysis I will assess the rationale for denying the sale to see if the *jus ad bellum* criteria corroborate the decision and add analytical rigor to the decision-making process. The following analysis will only consider information available to policymakers in 2014 when they made the decision.

### **COMPETENT AUTHORITY**

In order to qualify as a competent authority, the Nigerian government must have a substantial degree of popular support, exercise control of its territory, and demonstrate a commitment to the wellbeing of its citizens.

#### ***Did the Nigerian government have a substantial degree of support from the population?***

Goodluck Jonathan was democratically elected as the President of Nigeria in 2011, and maintained substantial popular support for the majority of his presidency. In 2014, President Jonathan maintained an average approval rating of over 50% based on monthly polls.<sup>26</sup> The Nigeria-based NOI Polls, which has a technical partnership with the American company Gallup Organization, conducted the surveys and compiled the data from around the country. Though President Jonathan's approval rating remained relatively high, he received low marks in national security, largely due to the Boko Haram insurgency. Nonetheless, the Nigerian government met the popular support requirement in the competent authority criterion.

#### ***Did the Nigerian government maintain control of its sovereign territory?***

In general, the Nigerian government maintained control of its sovereign territory, though Boko Haram seriously contested control in the northeastern states of Borno, Yobe, and Adamawa. Boko Haram seized and held territory in the aforementioned states, but the state governments remained in place to govern their citizens and reported to the federal government in the capital Abuja. Though the government maintained tenuous

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<sup>26</sup> NOI Polls, "Final Approval Rating Marks Lowest Rating For President Goodluck Jonathan In 2015," NOI Polls, 4 June 2015, <http://www.noi-polls.com/root/index.php?pid=329&ptid=1&parentid=12>.



control of its territory in the northeast, the methods the Nigerian security services used to maintain control warrant greater examination in the following section.

***Did the Nigerian government demonstrate an adequate commitment to the well being of its citizens?***

When assessed from an American perspective, the Nigerian government did not demonstrate a sufficient commitment to the well being of its citizens. The State Department's 2014 Human Rights Report for Nigeria states, "In its response to Boko Haram, and at times to crime in general, security services perpetrated extrajudicial killings and engaged in torture, arbitrary detention, mistreatment of detainees, and destruction of property... Security services generally operated with impunity."<sup>27</sup> The report also claims that Nigerian authorities failed to investigate the majority of cases of police or military abuse or punish perpetrators. The government's omission to reign in the Nigerian security services indicates a troubling lack of concern for its citizens' safety and legal rights. By failing to protect its citizens from predatory actions of the security services, the Nigerian government failed to meet the competent authority criterion.

**JUST CAUSE**

In order to establish just cause, Nigeria must demonstrate that the government seeks to use the Cobra helicopters to establish or preserve peace, respond to aggression, or address a legitimate security threat. Hence, policymakers must assess the acceptability of Nigeria's rationale for acquiring the helicopters.

***Why did Nigeria want to buy Cobra helicopters?***

The Nigerian government wanted to acquire Cobra helicopters to have a reliable air-to-ground strike capability and provide its soldiers with reliable close air support (CAS). Nigerian soldiers were susceptible to ambushes and frequently outgunned in firefights. Cobra helicopters would help to mitigate the soldiers' vulnerability by providing CAS. The Nigerian government saw the Cobra helicopters as an integral tool for defeating Boko Haram, and establishing peace in northeast Nigeria. Boko Haram had

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<sup>27</sup> United States Department of State, *Nigeria 2014 Human Rights Report*, (Washington DC, [2015]), 1-2.

destroyed the peace in northeastern Nigeria, committed numerous acts of aggression, and presented a legitimate security threat to Nigerians and the government. In short, the Nigerian government had a just cause for wanting to acquire the helicopters.

### **RIGHT INTENTION**

Right intention assesses the security objectives Nigeria wanted to achieve, and how it planned to achieve them. Hence, policymakers had to determine: Nigeria's security goals, how Cobra helicopters would help Nigeria achieve the goals, and whether Nigeria's security goals fit within the context of broader US foreign policy interests in the region.

#### ***What security goals did Nigeria want to achieve?***

The Nigerian government's ultimate security goal was to defeat and destroy the Boko Haram terrorist network. The Nigerian counterinsurgency campaign depended on ground forces to seize and hold territory in the northeast. However, Nigerian ground forces were vulnerable to ambushes and raids, and lacked reliable CAS. Furthermore, the Nigerian military lacked an airborne platform to provide accurate tactical firepower. As a result, Boko Haram routinely attacked Nigerian forces on patrol, and prevented the Nigerian military from reclaiming territory. Without a persistent and reliable air-to-ground strike capability, the Nigerian military was unable to retake territory or defeat Boko Haram.

#### ***How would Cobra helicopters help Nigeria achieve its security goals?***

Cobra helicopters would provide Nigerian soldiers with CAS, and provide an airborne attack platform to target Boko Haram militants. The Nigerian Air Force depended on its fighter fleet to strike targets, but the air force's lack of precision-guided munitions did not suit the CAS mission, where accuracy is a necessity. Cobra helicopters would have filled the security gap by protecting Nigerian soldiers and providing tactical firepower to strike Boko Haram militants.

#### ***Did Nigeria's security goals serve to further American foreign policy interests in the region?***



US foreign policy and security policy interests in West Africa are to promote regional security, stability, and prosperity.<sup>28</sup> The Boko Haram insurgency threatened to undermine each of these goals. Boko Haram attacks extended beyond Nigeria's borders. The terrorist group launched attacks in Cameroon, Chad, and Niger, which threatened regional security and stability. Furthermore, Boko Haram had blocked key trading routes from Nigeria into northern Cameroon and Chad, threatening economic interests in an economically stagnant and underdeveloped region of Africa. Nigeria's desire to defeat Boko Haram served broader US foreign policy interests in the region. Overall, Nigeria met the right intention criterion of the *jus ad bellum* framework.

### **REASONABLE CHANCE OF SUCCESS**

To determine reasonable chance of success, policymakers should answer the following: did Nigeria have the technical capacity to operate Cobra helicopters, did Nigeria have the logistical capacity to maintain the helicopters, would the effective employment of the helicopters give the Nigerians a reasonable chance of accomplishing its security objectives?

#### ***Did Nigeria have the technical capacity to operate Cobra helicopters?***

The Nigerian military did not have any personnel trained to fly Cobra helicopters. As mentioned earlier in the chapter, the US analysts assessed it would take approximately one year of training before the Nigerian military would be able to effectively employ the helicopters in theater.<sup>29</sup> The lengthy training timeline and typical operational complications that accompany the introduction of a new weapons system led policymakers to conclude that the Nigerians did not have the technical capacity to operate the helicopters. The Nigeria case is distinct in this respect compared to the Pakistan and Saudi Arabia cases. Pakistan acquired F-16 C/D aircraft, but already operated a fleet of F-16 A aircraft. Saudi Arabia operated a fleet of F-15 S aircraft before they acquired the F-15 SA. Nigeria did not have experience operating similar attack helicopter platforms prior to attempting to purchase the Cobra helicopters.

#### ***Did Nigeria have the logistical capacity to maintain the helicopters?***

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<sup>28</sup> The White House, *U.S. Strategy Towards Sub-Saharan Africa* (Washington, DC: National Security Council, June 2012), 3-5.

<sup>29</sup> Schwartz, interview by author.

The Nigerian military did not have mechanics trained to maintain the helicopters, nor did they have the supply chain in place to sustain them. Additionally, the Nigerian Air Force did not have a good track record of maintaining American-made aircraft. The Nigerian Air Force has a fleet of eight C-130 tactical airlifters, but historically had trouble keeping them flying.<sup>30</sup> In 2000, USAID paid for an audit of the Nigerian Air Force and found that only two of the eight C-130's were airworthy.<sup>31</sup> Based on the Nigerian Air Force's poor maintenance record, US policymakers assessed that Nigeria did not have the logistical capacity to maintain the helicopters. Furthermore, the Nigerian government sought to purchase the helicopters through Israel, as opposed to directly from the United States. This meant the United States did not have an opportunity to develop a sustainment contract with the Nigerian government to provide logistical support to the Nigerian military (this is another difference between the Pakistan and Saudi Arabia cases).

The counterargument to the American assessment that Nigeria did not have the technical or logistical capacity to operate and maintain Cobra helicopters is that the Nigerians would never gain the capacity unless the United States agreed to the transfer of the aircraft. While there is some truth to this argument, the fact remains that the extensive training requirements for fielding a new system and the Nigerian Air Force's troubled history of adequately maintaining US-origin aircraft influenced the American assessment.

***Would the effective employment of the helicopters give the Nigerians a reasonable chance of accomplishing its security objectives?***

Effectively employing Cobra helicopters would have made the Nigerian military more effective combating Boko Haram. The Nigerian military lacked a reliable CAS capability, and Cobra helicopters would have filled the security gap. However, the Cobra helicopters were not a panacea. As mentioned earlier, the Nigerian military's

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<sup>30</sup> Global Security, "Nigerian Air Force," Global Security, <http://www.globalsecurity.org/military/world/nigeria/air-force.htm>, accessed 15 February 2016.

<sup>31</sup> Douglas Farah, "U.S. To Help Nigeria Revamp Its Armed Forces," *Washington Post*, 29 April 2000, <https://www.washingtonpost.com/archive/politics/2000/04/29/us-to-help-nigeria-revamp-its-armed-forces/eab2413a-3264-4812-8375-ca1c54fa6d29/>

counterinsurgency campaign against Boko Haram suffered from low morale, desertions, mutinies, and supply problems. While the helicopters would have likely provided a tactical advantage, they would not have addressed other major underlying leadership and logistical issues that hampered Nigerian operations. In sum, the Nigerians' lack of technical and logistical capacity prevented them from meeting the reasonable chance of success criteria.

### **LAST RESORT**

Last resort indicates that Nigeria explored non-violent alternatives to resolve its security problems prior to resorting to the use of force. If Nigeria had a legitimate security need, and had demonstrated a willingness to settle disputes without resorting to the use of force, Nigeria had met the last resort criteria.

*Did the Nigerian government seek non-violent alternatives to resolve disputes with potential adversaries?*

Boko Haram's attacks on civilians and the Nigerian security services did not provide the government the opportunity to seek non-violent alternatives to resolve underlying disputes. Boko Haram waged an insurgency against the Nigerian state, and the Nigerian government and civilians were the targets of terrorist attacks. Boko Haram was the aggressor, and the Nigerian government had the inherent right to protect its citizens with the use of force. Describing his Theory of Aggression, Michael Walzer notes that aggression is a crime, and the victim has the moral justification to mount a violent response and punish the aggressor.<sup>32</sup> Boko Haram's aggression absolved the Nigerian government from seeking non-violent alternatives to resolve the conflict. The last resort had already come to pass.

*Did Nigeria have a legitimate security need for Cobra helicopters?*

The Nigerian military had a legitimate security need for the helicopters. To avoid redundancy, see the *Just Cause*, and *Right Intention* sections.

### **PROPORTIONALITY**

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<sup>32</sup> Michael Walzer, *Just and Unjust Wars*, (New York, NY: Basic Books, 1977), 62.

Proportionality assesses whether the transfer of Cobra helicopters to Nigeria outweighs the opportunity cost of denying the sale. Policymakers should answer the following questions: Did Cobra helicopters serve as a proportionate means to the security ends Nigeria wanted to achieve, did failing to provide the helicopters make Nigeria unacceptably vulnerable to aggression, are there any other factors that warrant consideration?

***Did Cobra helicopters serve as a proportionate means to the security ends the Nigerian government wanted to achieve?***

Cobra helicopters were appropriate weapons systems to meet the Nigerian government's legitimate security needs. The government fought to defeat the Boko Haram insurgency, and assessed that attack helicopters were necessary in order to do so. Without CAS, the Nigerian military had a tactical vulnerability, and Cobra helicopters would have filled the security void. Nigerian soldiers needed aerial fire support, and Cobra helicopters were designed to provide it. In the context of international arms transfers, proportionality indicates that the weapon in question is the appropriate tool for the job. Cobra helicopters met the requirement.

***Did failing to provide the helicopters make Nigeria unacceptably vulnerable to aggression?***

Denying the transfer of helicopters maintained the status quo in northeastern Nigeria – which meant the Nigerian military continued to fight without effective CAS and air-to-ground strike capability. The Nigerian military had already proven vulnerable to Boko Haram ambushes, and denying the transfer of Cobra helicopters prolonged the vulnerability. Boko Haram had exposed a weakness in the Nigerian military, which was a national security concern. Thus, one can reasonably argue that denying the transfer of helicopters made the Nigerian state unacceptably vulnerable to aggression.

***What other factors warrant consideration?***

US policymakers had to consider two logical consequences of the decision to deny the sale. First, the decision could damage the bilateral security relationship. The Nigerian military was at war with Boko Haram and defeating the insurgency was a

political priority for President Jonathan. American policymakers had to consider the political ramifications of denying the transfer request. In general, Nigeria had good diplomatic relations with the United States, and looked to the United States to provide assistance in the fight against Boko Haram. The United States provided intelligence support and agreed to train Nigerian troops, but American policymakers probably underestimated the diplomatic backlash resulting from the decision to deny the transfer of Cobra helicopters. In the end, policymakers concluded that the perceived risk of transferring the helicopters outweighed the potential diplomatic blowback from the decision.

Second, the decision to deny the transfer could lead the Nigerian government to look elsewhere to acquire attack helicopters. The Nigerian military had a legitimate security need, and in order to meet the need, the Nigerian government would presumably shop the international arms market until it could acquire attack helicopters. While this would not have surprised American policymakers, they had to consider the opportunity costs of denying the transfer.<sup>33</sup> Such opportunity costs could include losing political influence with the Nigerian government and providing an opening for other states to forge a military partnership with Nigeria.<sup>34</sup> Thus, arms transfers can serve as a vehicle to form long-term military partnerships, which can strengthen diplomatic relations and provide political leverage.

From an economic perspective, the United States did not have a strong financial incentive to authorize the transfer of the helicopters from Israel to Nigeria. US industry had little potential profits from the transfer as the helicopters had already been produced. The only significant potential source of profit for the American defense industry would have stemmed from providing the Nigerian military with the parts required to sustain the helicopters. In sum, the Nigeria case met the proportionality requirements of the *jus ad bellum* framework, and provided some intriguing considerations for policymakers.

### **FINAL ANALYSIS**

The Nigeria Cobra helicopter case did not meet the requirements of the *jus ad bellum* framework. The Nigerian government failed to meet the competent authority and

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<sup>33</sup> Interview with Middle East arms transfer specialist [unattributed interview].

<sup>34</sup> Interview with Middle East arms transfer specialist [unattributed interview].

reasonable chance of success criteria. The failure of the Nigerian government to show adequate support for its citizens' well being precluded it from meeting the competent authority criterion, while the Nigerian military's lack of technical and logistical capacity led to the failure to meet the reasonable chance of success criterion.

The Nigerian government's poor human rights record diminished American trust in the Nigerian security services. The military allegedly committed human rights abuses in the campaign against Boko Haram and the Nigerian government opted not to intervene. The government's tacit acquiescence of the military's conduct deterred the United States from approving the transfer of the Cobra helicopters. The United States was hesitant to provide the Nigerian military with attack helicopters because policymakers were unsure if the military would use them responsibly. American policymakers worried about whether the Nigerians would adequately take measures to safeguard civilians and distinguish them from Boko Haram militants. Nigeria's checkered human rights record made policymakers nervous.

The Nigerian military's technical and logistical limitations also influenced the decision to deny the transfer of the helicopters. Without trained pilots and a historically poor record of maintaining US-origin aircraft, American policymakers had little confidence that the Nigerian military would be able to operate and maintain the helicopters. Furthermore, the projected timeline for training the pilots and maintainers dissuaded policymakers from approving the transfer. Policymakers determined that the transfer of the helicopters was unlikely to alter the trajectory of the Nigerian counterinsurgency campaign. Though Nigeria had a legitimate security need, the military's technical and logistical weaknesses drove the United States to deny the transfer.<sup>35</sup> Hence, the Nigerian military did not meet the reasonable chance of criteria.

Overall, the application of the *jus ad bellum* framework confirmed US policymakers' rationale for denying the transfer of the helicopters. The *jus ad bellum* criteria highlighted the same areas of concern that policymakers identified when they opted to deny the sale (see *US Rationale for Denying the Transfer* section). The correlation between the outcomes of *jus ad bellum* framework and the CAT Policy

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<sup>35</sup> Schwartz, interview by author.

indicates that the *jus ad bellum* criteria can play a prominent role in the arms transfer decision-making process. The key questions for policymakers to consider in the future are whether the *jus ad bellum* framework works better in certain circumstances, and whether or not the framework is flexible enough to accommodate prudent decisions when national security interests clash with ethical concerns. I will explore these questions in the conclusion.





## CHAPTER 5

### CONCLUSION

#### *Do the jus ad bellum criteria add analytical rigor to the arms transfer decision-making process?*

The previous analysis concludes that the *jus ad bellum* criteria add analytical rigor to the decision making process for international arms transfers. The structured application of the *jus ad bellum* framework would ensure that policymakers consistently evaluate the same variables across arms transfer cases. Supplementing the CAT Policy with the *jus ad bellum* framework would yield consistent decision outcomes due to the structured nature of the analysis. The framework would drive policymakers to make a judgment about the character and quality of the recipient state's government, identify whether the recipient state has a legitimate need for the arms in question, and assess the recipient's rationale for acquiring the arms in question. Adopting the *jus ad bellum* framework would also provide a different perspective to the decision-making process by focusing on the long-term implications of approving or denying the transfer.

As shown in each of the preceding cases, the competent authority criterion in the *jus ad bellum* framework is often the most contentious. Analyzing the recipient state's government from an American perspective identifies whether the United States and the recipient state share similar outlooks on governance. Concentrating on governance shifts the focus from zeroing-in on immediate security challenges and reframes the debate to consider the long-term viability of the recipient state as a dependable security partner. States that share American values such as civil liberties, justice, and equality will have an easier time forming lasting arms transfer relationships with the United States.

The remaining *jus ad bellum* criteria – just cause, right intention, reasonable chance of success, last resort, and proportionality – identify whether the recipient state has a legitimate security need and assess the recipient's intentions for using the arms in question. When analyzed sequentially, the criteria add structure and logical consistency to the decision-making process that is absent in the CAT Policy. The CAT Policy identifies moral considerations as factors that can influence the decision-making process, but the *jus ad bellum* framework is qualitatively superior as it provides a methodology for ethical assessment.



The Nigeria case demonstrated the utility of the *jus ad bellum* framework. The analysis identified ethical concerns about the Nigerian government as it failed to meet the competent authority criteria when analyzed from an American perspective. Furthermore, the Nigerian military had a poor track record of operating and maintaining US-origin aircraft, which led to the assessment that the Nigerian military did not have a reasonable chance of success in achieving its security goals. The evaluation of the Nigeria case confirmed the decision by policymakers to deny the transfer of the Cobra helicopters. The sequential analysis outlined in the *jus ad bellum* framework provided logical consistency to conduct an ethical assessment. In sum, the *jus ad bellum* framework adds analytical rigor to the arms transfer decision-making process by compelling policymakers to grapple with tough ethical questions before making their decision.

#### ***How do ethical concerns compare to strategic interests?***

When important national security interests are at stake, strategic security interests may trump ethical considerations. The primary challenge for US policymakers is to understand the implications of approving arms transfers to questionable states. However, in certain circumstances, the decision to transfer arms to a questionable regime may be a better option than denying the transfer. Policymakers should recognize these decisions come with a price, and attempt to limit these occurrences whenever possible. The major implication for approving arms transfers under these circumstances is that they can diminish American credibility abroad. Other states may perceive the transfers as a ‘double standard,’ which weakens American moral arguments for denying transfers based on human rights or ethical concerns in other cases.

In this respect, the Saudi Arabia case provides an excellent example. The *jus ad bellum* analysis identified ethical concerns about the Saudi Arabian government as it failed to meet the competent authority criterion. However, Saudi Arabia has been a stalwart American security partner in the Middle East for over 60 years.<sup>1</sup> The United States and Saudi Arabia have strong economic ties and similar security interests. Saudi Arabia provided the United States military with access to its ports and airfields during Operation Desert Shield, and allowed the USAF to launch combat missions from its

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<sup>1</sup> Rachel Bronson, *Thicker Than Oil* (New York, NY: Oxford University Press, 2006), 5.

sovereign territory during Operation Desert Storm.<sup>2</sup> History generates inertia, and policymakers opted to look past the Saudi government's authoritarian tendencies in pursuit of American security interests in the Middle East.

Though the ethical analysis concluded the Saudi government did not meet the competent authority criterion of the *jus ad bellum* framework, policymakers chose to approve the sale of the F-15's due to American national security interests in the Middle East. The Saudi Arabia case identified a circumstance when strategic interests diverged from ethical concerns. In the end, policymakers concluded that strategic interests outweighed ethical concerns due to American national security interests in the Middle East. Had policymakers adopted the *jus ad bellum* framework, it may have altered the decision outcome by providing a different analytical perspective that highlighted deficiencies in the Saudi government.

The Pakistan F-16 case presented another challenge for policymakers. American military strategy during OEF hinged on the ability to strike Taliban safe havens in eastern Afghanistan and Pakistan's FATA. However, strikes in the FATA required President Musharraf's permission.<sup>3</sup> The proposed sale of F-16's provided the Pakistani Air Force with the prospect of better aerial strike capabilities, but also served as a bargaining tool to secure Musharraf's acquiescence to conduct strikes in Pakistan.<sup>4</sup> As one of the main theaters in the GWOT, Pakistan clearly represented a case where strategic interests may have overshadowed ethical concerns. Based on the analysis, Pakistan met the *jus ad bellum* criteria, but had it not; political interests may have eclipsed ethical concerns. By using the *jus ad bellum* framework to supplement the CAT Policy, statesmen can broaden the time horizon to take the long view and align ethics with strategic interests.

#### ***What role should ethics play in international arms sales?***

International arms transfers are a form of military assistance to a foreign government. The provision of *lethal* arms to another state provides the recipient state's government with a new way to kill its adversaries. With each transfer of lethal arms, policymakers indirectly sanction the use of force on behalf of the recipient state's

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<sup>2</sup> Bronson, *Thicker Than Oil*, 195.

<sup>3</sup> Mark Mazzetti, *The Way of the Knife* (New York, NY: Penguin Books, 2014) 30.

<sup>4</sup> Mazzetti, *The Way of the Knife*, 29.

government. As a result, policymakers have a strong incentive to ensure the recipient state uses the arms responsibly, even though policymakers cannot control how the weapons are ultimately employed.<sup>5</sup> Since the transfer of lethal weapons can lead to suffering, death, and destruction, the ethical concerns surrounding international arms transfers should meet the criteria outlined in the *jus ad bellum* framework *whenever politically possible*. Though not a panacea, arms transfers that meet the *jus ad bellum* criteria would provide policymakers with some assurance that the recipient state's government will use the arms in question responsibly, and in a manner that aligns with US foreign policy interests. There is inherent risk with each arms transfer, but using the *jus ad bellum* framework can help to reduce some of the uncertainty.

The Just War Tradition prizes peace, yet recognizes that war is a legitimate and necessary instrument of policy under certain conditions.<sup>6</sup> The *jus ad bellum* criteria help to guide statesmen to use war in a morally responsible way as a tool to bring about a better peace. By focusing on ethics and the long-term prospects for peace, the *jus ad bellum* framework restrains policymakers from resorting to the use of force – via the transfer of weapons – irresponsibly. Hence, statesmen should aspire to ensure their arms transfer decisions honor the intention of the Just War tradition. But what role should ethics play when the United States has strategic security interests that overshadow ethical concerns?

Simply put, ethics should play a prominent role in arms transfer decision-making process until they become counterproductive to accomplishing major national security goals. How the US government defines major national security goals is a subjective exercise based on the state of world affairs. As Murphy notes, “The application of the *jus ad bellum* criteria is impossible without giving due weight to the contextual politics.”<sup>7</sup> Each of the cases analyzed in this thesis demonstrates the complexity of the decision-making process associated with arms transfers and underscores the importance of historical and political context. The *jus ad bellum* criteria provide policymakers with a

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<sup>5</sup> Andrew J. Pierre, *The Global Politics of Arms Sales* (Princeton, NJ: Princeton University Press, 1982), 22.

<sup>6</sup> James G. Murphy, *War's Ends* (Washington, DC: Georgetown University Press, 2014), 22.

<sup>7</sup> Murphy, *War's Ends*, 205.

logical framework to assess the moral acceptability of their decisions, and do so in a way that is sensitive to contextual realities. In the end, ethics should not be divorced from politics, nor should ethics function as a straitjacket to inhibit reasoned political decision-making.<sup>8</sup>



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<sup>8</sup> Murphy, *War's Ends*, 205.

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