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United States Department of State

Washington, D.C. 20520

10 July 2020

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

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

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

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

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

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

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

(U) OIG Finding 2: OIG found the Department [REDACTED] with the transfer of PGMs included in the Secretary’s May 2019 emergency certification. This matter is described in detail in the classified annex to this report. In the classified annex, OIG recommended that the Department update its analysis of legal and policy risks associated with transfers of PGMs to Saudi Arabia and the United Arab Emirates in support of Coalition operations in Yemen.

(U) Management Response: The Department has significant concerns with this finding, which misunderstands and mischaracterizes the decision made by Acting Secretary Sullivan in March 2018, and requires significant revision in order to be factually accurate. [REDACTED]

[REDACTED] These concerns are explained more fully in our technical comments, together with specific suggestions to more accurately capture facts associated with these concerns and more accurately frame the Report’s recommendation. Further, the matters discussed in the Report and its Annex – including the Acting Secretary’s decision (recorded in an Action Memo package), related interagency and NSC staff-led discussions, and internal Department of State deliberations – reflect ongoing sensitive Executive branch deliberations. They should be redacted in the unclassified report that will be made public, consistent with FOIA Exemption B-5, and redacted from the version of this Report and classified Annex that is made available to the Congress in order to address potential Executive Privilege concerns. As an alternative, because the Department believes that the issues raised by this finding – in particular the need to resolve significant factual errors in the Annex – may take time, we recommend that the OIG consider removing this element from the unclassified Report in order to allow that Report to be finalized, briefed to Congress, and released to the public.

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

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

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

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