The Contamination of Camp Lejeune

BY CHRISTINE ANDERSON, POGO PUBLIC POLICY FELLOW

What has been called one of the worst toxic contaminations in the country is also possibly one of the U.S. military’s most shameful acts of deception and betrayal.

As many as one million Marines, family members, and civilians at Camp Lejeune in North Carolina drank, bathed in, and cooked with water contaminated by such pollutants as gasoline, pesticides, and toxic degreasers between 1957 and 1987.

Many of those who ingested the contaminated water at Camp Lejeune have died or lost family members to illnesses linked to the contamination, especially children with extreme birth defects or leukemia. Many more are sick and dying with rare cancers and other ailments believed to be linked to the water contamination. People who live in the communities around the base are also reporting a high incidence of cancers. And yet the plight of these victims is not well known. For years, the Marine Corps kept the contamination secret, blocking many attempts to uncover the truth even after the first news of water contamination broke in 1987.

Worse, the federal government is now actively try-

Master Sgt. Jerry Ensminger (Ret.), who lost his 9-year-old daughter to cancer linked to the Camp Lejeune groundwater contamination, protests the U.S. government’s continued denial of responsibility for Camp Lejeune. (Photo credit: Pam Rutter)
ing to prevent justice for the Camp Lejeune victims.

Ever since those exposed to the contamination learned of it, they have been fighting to gain some form of remedy. The Project On Government Oversight has worked with many of them, and with concerned Members of Congress, to expose the contamination and the government’s cover-up of the issue. In 2012, some of the hard work paid off as legislation providing some health care for illnesses related to the contamination—the Janey Ensminger Act, named for one of the young victims of the contamination—became law. In signing the Act, a law strongly supported by POGO, President Obama celebrated with the Camp Lejeune victims. He emphasized that the legislation “ends a decade-long struggle for those who serve at Camp Lejeune.”

Sadly, the relief was short-lived. A case recently decided by the Supreme Court puts the health care benefits provided to the victims under the Janey Ensminger Act at risk.

The legal question before the Supreme Court in CTS Corporation v. Waldburger was whether a North Carolina law can invalidate claims made 10 or more years after the pollution last occurred—claims like those of the Camp Lejeune victims. Specifically, the question is whether the statute of repose in North Carolina (a statute that cuts off legal rights if not acted on by a certain date after the defendant’s last action) is considered a “statute of limitations.” North Carolina has both a statute of limitations (3 years) and a statute of repose (10 years), laws that limit liability but have different parameters. Statutes of limitations are addressed in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund), which was enacted in 1980 to combat the harm caused by dumping of hazardous waste. It aims to put the burden of clean-up on the polluter. It stipulates that the federal statute of limitations regarding CERCLA preempts state statutes of limitations. This gives victims of toxic dumping a longer window in which to file a legal claim against the polluter—particularly important since the damage to health done by the toxins may not manifest for decades.

According to the Department of Justice in several Camp-Lejeune related lawsuits, the last action of the defendants—the U.S. Marine Corps and U.S. Navy—was in 1985, when contaminated wells were finally decommissioned. DOJ argues that references to contaminated wells in 1984 and 1985 news articles served as public notification of potential harm to public health. In these articles, however, environmental experts specifically stated that there had been no harm to public health and that the contamination had been contained.

Instead of staying silent on the issue or taking the right side in CTS Corporation v. Waldburger—the side of those affected by the contamination—the DOJ weighed in on the case both at the district and federal levels, offering amicus briefs in support of CTS Corporation—a known polluter. It did so, according to its brief, “because of ongoing litigation against the United States... involving allegations of contaminated drinking water at the Camp Lejeune Marine Corps Base in North Carolina.” In other words, it wanted to get the government off the hook for paying for the deaths and illnesses caused by the Marine Corps’ and Navy’s decades-long poisoning of those who were serving our country.

The DOJ’s argument is absurd, of course, because even if the victims had seen the articles, the articles...
themselves would have reassured the readers and given the victims no reason to suspect injury or illness. If DOJ has its way, victims would have had to have filed suits by 1995 (to comply with the 10-year statute of repose)—eleven years before the Department of the Navy was required to notify potential victims through an amendment to the National Defense Authorization Act.

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Unwilling to let this injustice go unnoticed, POGO organized a rally outside the Supreme Court on the day the Justices were hearing the case. Like-minded supporters, including the Environmental Working Group, famed environmental activist Erin Brockovich, and Retired Master Sergeant Jerry Ensminger (for whose daughter the Janey Ensminger Act was named), expressed outrage at the U.S. government’s continued denial of responsibility for Camp Lejeune.

Unfortunately, on June 9 in a 7-2 ruling, the Court decided in favor of the polluter. The Court decided that the North Carolina law setting the 10-year “statute of repose” can bar victims of toxic pollution from suing the polluters, even if they did not become aware of surreptitious dumping until much later. As Heather White from the Environmental Working Group pointed out, the Court essentially said “that if polluters can keep their acts secret until the deadline set by the statute of repose expires, Americans have no right to sue.” This ruling could be dire for all water contamination victims. When the Supreme Court ruling came out, it looked like one major option of gaining justice for the Camp Lejeune victims was closed.

In a joint press release with those affected by the contamination at Camp Lejeune, the Environmental Working Group, and Erin Brockovich, POGO voiced its disappointment with both the Court and the Administration. “We fear that this may set the precedent that the Obama Administration sought—denying justice to those harmed by toxic pollution at Camp Lejeune and elsewhere.”

It is clear that the Administration has been talking out of both sides of its mouth on the issues related to CTS Corporation v. Waldburger. While President Obama spoke of the need for caring for our veterans in his signing of the Janey Ensminger Act, the Administration’s actions on this court case have suggested different needs. Directly following the ruling, the Department of Justice sent a letter to the U.S. Court of Appeals for the 11th Circuit requesting that Camp Lejeune cases be thrown out based on the precedent set by the case.

The power this ruling gives to polluters, and the support given for it by the Administration, is also contradictory to environmental aims. Retired Master Sergeant Ensminger put it bluntly when talking with POGO: “My major question to the Administration is what happened to the environmental plank of the Democrat’s party platform? Did it rot?”

Luckily, advocates for the Camp Lejeune victims did not give up. The North Carolina legislature quickly picked up a bi-partisan bill that clarified that it was not the legislature’s intent for the 10-year deadline to apply to exposure to groundwater pollution. After swift and unanimous passage through the North Carolina legislature, the governor signed the bill on June 20.

We commend the North Carolina legislature for its quick action and hope this change will prove enough to counter the Administration’s claims that Camp Lejeune cases should be dismissed. The victims have been waiting for justice long enough; it’s time for the Administration to stop trying to stymie such justice.

HELP REMIND PRESIDENT OBAMA to stand by Camp Lejeune victims by signing the petition on our website: http://bit.ly/1kVGsVn
Many Republicans and numerous Democrats, especially on the House and Senate Armed Services Committees, have been characterizing the U.S. defense budget as inadequate. They propose to release the Pentagon from the statutory spending caps set by the Budget Control Act of 2011 and its “sequestration,” which would keep some, but not all, Pentagon spending in the neighborhood of $500 billion annually for several years. The Joint Chiefs of Staff, the Secretary of Defense, and any other Pentagon official near a microphone have been cheering them on.

Absent from all their talking points are three salient facts:
1. President Obama’s 2015 request for all national security related programs would exceed $1 Trillion.
2. The U.S. outspends any other nation, especially presumed threat nations, by a huge amount.
3. Under the dreaded sequestration, the Pentagon portion of national security spending would remain at historically high levels.

There is a major mismatch between the actual size of the U.S. defense budget and the characterization of inadequacy given to it. The enormity of the U.S. defense budget, even under sequestration, is readily apparent in both relative and absolute terms.

Each year, the International Institute for Strategic Studies (IISS) in London and the Stockholm International Peace Research Institute (SIPRI) release independent and widely respected estimates of international defense spending. While their methodologies and, therefore, their estimates differ, their data show the same fundamental picture: the United States vastly outspends what many in the United States today characterize as the threat nations: China, Russia, Iran, Syria, and North Korea. We outspend them not just individually but collectively, by a factor of at least two.

The data for 2013, the latest available, are shown in the figure at left.

In order to support its world-wide empire at the turn of the 19th century, Great Britain adopted the “two power standard” which called for the Royal Navy to be equal to the combined strength of the next two largest navies in the world. The United States has more than doubled that standard as regards budgets, and yet our politicians and senior defense officials complain such outspending is inadequate.

There are two caveats to the argument that these data show the defense budget to be disproportionately large, not small: one puts current spending in a historic context that shows today’s over-spending to be even more inappropriate; the other calls into question whether it is the size of current spending or the

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**U.S. Military Spending Compared to Presumed Threat Countries**

($Billions, 2013 Current-Year Dollars)

<table>
<thead>
<tr>
<th>Country</th>
<th>IISS (FY 2013)</th>
<th>SIPRI (FY 2013)</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.</td>
<td>600.4</td>
<td>640.2</td>
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<tr>
<td>China</td>
<td>112.2</td>
<td>188.5</td>
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<tr>
<td>Russia</td>
<td>68.2</td>
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<td>Iran</td>
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<td>N. Korea</td>
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SIPRI data for Iran is from 2012. IISS and SIPRI data for Syria is from 2012 and 2011 respectively. IISS data for N. Korea is from 2008. The $10 billion shown for N. Korea by SIPRI is from CIA’s World Factbook from 2011. See text for explanation.

quality of America’s national security leadership that is inadequate.

First, it is fundamentally misleading to characterize China, and even Russia, as major threat nations. Today is very much unlike the 1948-1990 Cold War when the Soviet Union and the Warsaw Pact constituted an ongoing existential nuclear and conventional threat to the United States and a dogmatically communist People’s Republic of China actively fought U.S. armed forces or supported others doing so in two wars involving hundreds of thousands of U.S. ground forces. Instead, China is a major trading partner and creditor nation with the United States, and Russia, even taking into account its occupation of Crimea and potential further invasion of Ukraine (no matter what the cause), constitutes a regional power, even if major, very unlike the international superpower the Soviet Union comprised and that exercised itself with active hostility throughout Europe, the Caribbean, Africa, and Asia.

When we faced these truly existential threats, the Pentagon’s budget was significantly smaller than today, even after we adjust for inflation. See the graph below displaying the Pentagon’s annual post-World War Two budgets in dollars adjusted for inflation using the Office of Management and Budget’s economy-wide deflator. Note especially how today’s so-called “inadequate” spending compares to average annual spending during the Cold War (the dashed, horizontal line, which occurs at the $355 billion level).

That we today declare ourselves inadequately funded at a far higher level of spending than we budgeted against a much larger, much more hostile threat is remarkable. More money in the face of lesser threats is not quite the penury so many claim.

Second, we should listen closely when today’s political and military leaders assert they cannot manage at the spending levels they face under the Budget Control Act. They are quite correct to say they are unable to do so. Recent history proves that.

- Our military hardware is outrageously expensive, but much of it is a step backwards in performance.
- Since the mid-1990s Congress has increased money for DOD pay and benefits but huge portions of it has been for indiscriminate, across-the-board military pay raises, double pensions for many armed service retirees, bigger benefits for the survivors of World War Two veterans, and much else that is intended to buy off political constituencies rather than address real security problems, let alone the wars in Iraq and Afghanistan.
- Under the full-on spigot of the post-9/11 era, the Pentagon’s civilian and military leadership intended to require the Pentagon to understand and report what it does with its money.

The relationship of U.S. defense spending to that of presumed threat nations and the girth of contemporary defense spending compared to a time of greater threat does not call into question the adequacy of the size of today’s U.S. defense budget; it calls into question the competency of current U.S. political and military leadership.
NEW F-35 CLAIM

Lower O&S Estimate More than Offsets Higher Acquisition Cost

By Winslow Wheeler, Director,
Straus Military Reform Project

Last April the Defense Department released its new Selected Acquisition Report (SAR) on the F-35. This annual report is the Pentagon’s effort at a definitive cost analysis. As in recent years, the release of new cost data on the F-35 provoked press coverage, some of it quite thorough. However, there are some important points that did not get the attention they perhaps deserve, and one key point that seems to have been generally missed.

As the SAR made clear, the cost to acquire the F-35 has gone up compared to last year’s estimate. Page 6 of DOD’s summary of the SAR states that F-35 airframe “costs increased $3.1 billion (+1.0%) from $326.9 billion to $330.0 billion” and costs for the separately accounted engine “increased $4.3 billion (+6.7%) from $64.3 billion to $68.6 billion.”

The $7.4 billion cost increase flies in the face of promises made by F-35 program manager Lt. Gen. Christopher Bogdan and DOD acquisition czar Frank Kendall in June 19, 2013, testimony to Congress that costs are coming down, not going up. And yet now Bogdan re-assures the press that new cost reductions will surely occur as soon as new buyers commit to the program—assuming they all do and that existing F-35 buyers do not balk even more than some have already.

In truth, the future of the F-35 program remains clouded, and most cloudy of all is the ultimate unit cost of the aircraft and the impact of that cost, as its reality unfolds, on existing and future buyers. There is good reason to think the real-world unit cost of F-35s, on average, will stay much closer to the $200 million level than it does to the dubious predictions of Lockheed and Lt. Gen. Bogdan, such as $75 million each.

Second, the F-35 acquisition cost increases revealed by the new SAR comes as a major embarrassment to the Government Accountability Office, which pronounced in its March report titled, Defense Acquisitions: Assessments of Selected Weapon Programs, that DOD SAR data showed F-35 acquisition costs coming down, not going up. GAO’s report used two-year-old data, thanks to the agency’s ponderous report writing process; also the analysts and manager assigned to the report used a stunningly superficial analytical methodology.

Beyond the higher estimate to buy the F-35, some news articles on the new F-35 SAR pushed the fact that DOD is now estimating the cost to operate and support the F-35 (O&S costs, which are quite separate from acquisition—buying—costs) to be going down: DOD announced that F-35 “operating and support costs decreased $96.8 billion (-8.7%) from $1,113.3 billion to $1,016.5 billion.”

Thus, there was a net “life cycle” (acquisition plus O&S) reduction in F-35 costs of $89.4 billion. The net figure gave Bogdan and Lockheed the pretext to say that, overall, F-35 costs were indeed coming down. However, that is not the acquisition price promise they have been making, and closer inspection of the reasons for the lower O&S cost estimate show that it, too, is a concocted estimate.

DOD explained in an April 17, 2014, press release that the lower O&S estimate is “due primarily to cost data updates including the application of historical cost escalation and an update to the Spare Parts Unit Database, revised labor rates, and updated technical inputs to include increased fuel efficiency.” But if you read the material buried at the end of DOD’s

97-page SAR on the F-35, some better insight creeps in. Page 95 explains that “for the first time” the DOD cost estimators have “actual information on component reliabilities obtained from ongoing F-35 flight operations” including “actual reliability information on many F-35 components based on data collected during approximately 8,500 hours of flight operations.” Based on that real data, the DOD cost estimators at the Cost Assessment and Performance Evaluation (CAPE) office are saying the costs to maintain and repair the F-35 are going up, not down, by $15 billion. This is “because component reliability information obtained from actual flight operations data is not consistent with expectations.” The empirical—real world—cost increase that CAPE found to mean a small increase in F-35 O&$ was declared to be offset by four factors cited in the SAR by CAPE:

1. The military services will achieve savings by flying the F-35 less, which on page 96 and elsewhere is declared to be “fuel efficiency.”
2. An update to the “Spare Parts Unit Database” predicts fewer, not more, future spare parts and/or lower, not higher, costs for them but without any explanation.
3. Inflation during the projected 30-year service life of F-35s—out to the year 2065—is declared to be lower.
4. The cost for labor by military, civilian, and contractor personnel—also out to the year 2065—is “updated” to lesser numbers.

Thus, the cost increases from empirically demonstrated maintenance and support data from recent history are more than offset by future prognostications out to 2065. It is precisely matters like fuel costs, inflation, and labor rates that can be unpredictable just months ahead, let alone years—to say nothing of decades. Estimating them with such precision out to 2065 is an easy plaything for manipulation. It stretches credulity past the breaking point to assert that the cost of a weapon program will be some precise lesser amount 30 years from now because someone has readjusted inflation and labor cost predictions.

In fact, in past inflation predictions for specific on-coming fiscal years (those just months ahead) DOD has proven inaccurate not just in the amount inflation has grown or declined but whether it has grown or declined. If they cannot even get the vector right a few months ahead, what business do they have asserting they can know it precisely 30 years from now? It is quite preposterous.

And yet, here we are, asked to believe that the cost of F-35 O&$ will have, as DOD tells us, “decreased $96.8 billion (-8.7%) from $1,113.3 billion to $1,016.5 billion” by the time the program is done in 2065.

How do you write “bridge for sale” in a Brooklyn accent?
The Fight to Save the A-10 Warthog

The commentary below is excerpted and updated from an article that Winslow Wheeler and Pierre Sprey published in Medium.com’s War Is Boring blog; find the original at https://medium.com/war-is-boring/congressional-committee-just-voted-to-kill-the-a-10-and-endanger-troops-lives-4f8dce540a0

BY WINSLOW WHEELER, DIRECTOR, STRATUS MILITARY REFORM PROJECT, AND PIERRE SPREY

There has been a raging battle on Capitol Hill over the Air Force’s A-10 “Warthog” ground attack aircraft. The A-10 was specifically designed to, among other things, help U.S. soldiers and Marines engaged in close combat with enemies—whether they be on irregular battlefields such as in Afghanistan or more modern ones. The Air Force, which is dedicated to the long range, strategic strike mission, has long been trying (this is the third time) to get rid of the A-10, professing it can save money by doing so. The ongoing fight will not be resolved until this fall, when the final version of Congress’s 2015 defense legislation is written. So far, the A-10 has won every major political fight—pretty much as it does on the real battlefield. Not only are its extraordinary effectiveness and low cost the reasons, it has been backed by an extraordinary group of pilots and other supporters in and out of the military who have swarmed Capitol Hill, making the A-10 a valid test of whether a politician cares about real defense issues or just more spending.

The substantive reasons are simple, if not apparent to all on Capitol Hill. That the A-10’s support of our soldiers and Marines in combat has been extraordinarily effective is beyond debate. No one claims it is ineffective or too expensive to operate. No one disagrees with Army Chief of Staff Ray Odierno, who testified to Congress on May 6 that the A-10 is the best we have for this vital mission.

The opponents say the A-10 has to go to save money. But in their various defense authorization and appropriation bills, the big spenders in Congress are finding plenty of money to add for big hardware items and the corporations that make them. The aircraft carrier George Washington got almost $800 million more than the Navy formally sought for its nuclear refueling and overhaul from the House and Senate Armed Services Committees and the House Appropriations Committee.
EA-18G electronic warfare aircraft—of which the Navy formally requested zero—got $975 million. Patriot missiles got an extra $200 million, unsought by the Army in its budget request.

Perhaps most offensive of all, the House Appropriations Committee added $479 million for four unrequested F-35 Joint Strike Fighters in order to rush them even faster into unjustified production. This is an aircraft that even many supporters concede has doubled in price and has under-flown its all-too-modest performance requirements.

The vital need to retain the A-10 in the U.S. inventory was vividly demonstrated in June when five American soldiers were killed in a friendly-fire incident in Afghanistan. In the worst such incident in 12 years of war there, a B-1B bomber dropped weapons on our own troops. A horrible mistake, devastating also to the aircrew involved, the event made painfully evident the Air Force’s paper-thin rationale for dropping the A-10.

Air Force Chief of Staff Mark Welsh and Secretary of the Air Force Deborah James argued that other aircraft, such as the B-1B, could perform the mission well enough. Everyone abhors what happened with the B-1B and our forces in Afghanistan—and certainly the A-10 has been involved in past friendly fire tragedies. But what appeared to particularly outrage informed observers about the Air Force’s pleading for the B-1B was that the A-10 was specifically designed to be extraordinarily effective against close-in enemies, to be better at distinguishing them from friendlies, and to hit them—not our troops—even when the fighting is as close as 20 yards.

Meanwhile high-altitude, high-speed, un-maneuverable, planes like the B-1B are incapable of reliably and safely distinguishing friend from foe and making other all-essential distinctions on chaotic, mobile battlefields as the A-10 is specifically designed to do. Nor can the B-1B pilot infrastructure provide the intensive air-ground training and ground combat orientation necessary for the split-second combat decisions that can prevent fratricide disasters.

There have been all too many myths disseminated by the Air Force, readily accepted by many in Congress who regurgitate its talking points; their refutation is simple.

The Air Force claims it must get rid of the A-10 to save money. In fact, the A-10 is less expensive to operate than any other combat aircraft in the Air Force inventory. The B-1B is three times more expensive to operate per hour.

The Air Force claims the A-10 can only do one mission: close air support. In fact, in the four wars since 1990, the A-10 has been effective in combat search and rescue, interdiction, air-defense suppression, armed reconnaissance, forward air control, and air-to-air combat against helicopters—a larger spread of combat operations in these wars than several of the so-called multi-role platforms, such as the F-18.

The Air Force claims the A-10 only does 20 percent of close air support in Afghanistan. To contrive such a number, the Air Force had to count missions flown by other aircraft that attacked nothing—and it counted up to 15 strikes on separate targets on one A-10 sortie as no different from one-strike missions by other aircraft.

The Air Force claims the A-10 is too old, but the service just spent $2.85 billion to extend airframe life by 15 more years and to modernize it with the most advanced close support avionics and countermeasures in the force.

The Air Force claims the A-10 cannot survive over modern battlefields, but the A-10 is built to survive gun-and missile-hits far better than any previous or current aircraft in the Air Force. For instance, the Government Accountability Office found it to be at least as survivable as the F-117 stealth fighter in the first Iraq War in 1991. In the Kosovo Air War of 1999, the A-10 suffered fewer casualties than the F-117.

Both the House and Senate Armed Services Committee have voted to retain the A-10; the full House of Representatives voted by an overwhelming 300 to 114 to overturn a House Appropriations Committee recommendation to retire the A-10, and the Senate Appropriations Committee followed suit, reserving money in 2015 to retain the A-10. However, each committee took a slightly different tack and the differences must be resolved in conferences between the House and Senate later this fall.

The Air Force and its mouthpieces on Capitol Hill have not given up, however, and they continue to voice their complaints against these actions. The final record will be available by the first Tuesday after the first Monday in November. The voters will have an opportunity to see who is for defense and who is simply for Pentagon spending; there is an important difference.

Pierre M. Sprey is one of the original military reformers, helped to initiate the Project on Military Procurement and POGO, and played a key role in the design of both the A-10 and the F-16.
More than F-16 Bolts
A Problematic Ruse on Export Reform

BY COLBY GOODMAN

Since the launch of its Export Control Reform Initiative in 2010, the Obama Administration has often highlighted the need to reduce export controls on military parts such as M1A1 tank brake pads, F-16 fighter bolts, or urine bags in military aircraft.1 According to an August 30, 2010, White House press release, the U.S. arms export control system was trying to control too many war materials, which was hurting U.S. efforts to properly protect arms critical to the U.S. military and limiting the U.S. defense industry’s competitiveness abroad. While the Administration has provided only anecdotal evidence to support these findings, many lawmakers have been open to reducing more U.S. government scrutiny on exports of the above types of military items.

Six months into the implementation of the Initiative, however, it is clear that the Administration is loosening export controls on a much broader range of arms and war materials, including many military items that provide clear military capabilities to America’s adversaries and our allies’ adversaries. Yet, the Administration continues to focus on examples such as brake pads, bolts, and urine bags.2 This ruse is preventing Congress and the media from fully assessing the related national and global security risks of what is a major arms export control overhaul.

Based on the first seven final regulatory changes, many types of war materials formerly classified as “significant military equipment”—items that provide substantial military utility or capability—have moved from the State Department’s more strictly controlled U.S. Munitions List (USML) to the Commerce Department’s more loosely controlled Commerce Control List (CCL). For instance, under the new military aircraft category published in the Federal Register in April 2013, several types of unarmed military cargo, utility fixed wing, observation aircraft, and military helicopters are now under Commerce Department control. These military assets include unarmed versions of the Chinook and Black Hawk helicopters, which are popular among many foreign militaries and regularly used by the Pentagon in military operations, including in Afghanistan and Iraq. And according to the July 8, 2013, Federal Register, several types of unarmed amphibious warships and military vehicles, also formerly categorized as “significant military equipment,” are now on the Commerce Department’s list as well.

According to the Obama Administration’s new paradigm, those military items that provide the U.S. military and intelligence with a distinct advantage will continue to be strictly controlled under the State Department. Since the U.S. military is the most technologically advanced in the world, this means the bulk of U.S. annual arms exports have essentially been relegated to a list designed more to control civilian items.

In May 2011, one of the main architects of the overhaul, Assistant Secretary of Commerce for Export Administration Kevin Wolf, said at the U.S.-Sweden Defense Industry Conference that “as many as 30,000 or more generic parts and components subject to a license requirement in 2010 may no longer require control on the [State Department’s] USML.” The White House said in July 2011 that approximately ninety percent of the military vehicle-related items the State Department approved for export in 2009 would be moved to Commerce Department control.3 And in a November 2013 presentation for the South Koreans, the Commerce Department provided a helpful graphic on the numerous F-16 fighter jets parts it would now control.4

Attempting to support this mass move of war materials and military technology to Commerce Department controls, Administration representatives have also frequently said that many of these military items are essentially dual-use items or are widely or predominantly used in civilian systems.5 Although it is true that some military items formerly controlled by the State Department have been used in civilian applications or systems, absolutely none of them have been used predominately in civilian applications. If they had been, they could have already been moved to Commerce Department controls as stipulated in the Export Administration Act.

Numerous Justice Department press releases also show that Chinese, Iranian, Russian, and other foreign military procurement networks often
focus on acquiring the same parts and components the Administration has regrouped onto the Commerce Department control list. In recent years, for instance, it has become clear that the Chinese government is aggressively seeking U.S. made radiation-hardened microchips, which are critical components in the operation of missiles and satellite systems and now on the CCL. The Iranians also continue to attempt to acquire many military aircraft parts recently moved to the CCL that are key to maintaining their aging fighter jets and military helicopters. For such reasons, the State Department has previously said exports of helicopter spare parts can be just as dangerous as attack aircraft or missiles.9

Many of the military items moving to Commerce Department control such as military body armor, military detonators and explosives, smoke grenades, certain control electronics for UAVs and drones, and diesel engines for tanks and armored vehicles also clearly contribute to military capabilities. In 2006, for instance, Amnesty International published a report showing that less advanced dual-use U.S. designed diesel engines controlled by Commerce ended up in Chinese military trucks delivered to the Sudanese government for likely use by the Sudanese military and Janjawid in Darfur. Although the Administration has yet to finalize its regulations on many other types of military categories, it has also indicated it would transfer most types of firearms and some night vision devices to the Commerce Control list in the past, which can significantly improve a terrorist or insurgent group’s military capabilities.

Given the many types of significant military equipment and key war materials moving to the Commerce Department’s control, the Obama Administration needs to urgently provide a much fuller and more accurate picture to Congress and the media of the type and utility of these military items. Weather by design or not, the predominant use of examples such as brake pads or bolts seriously prevents the American public from evaluating and discussing the loss of important arms export controls, and risks to U.S. national and global security.

Colby Goodman is a consultant with the Open Society Policy Center and a former Political Affairs Officer with the United Nations Office of Disarmament Affairs

ENDNOTES


5. Inside the Pentagon, “New Round Of Export Control Reform Rules Goes Into Effect Jan. 6,” InsideDefense.com, December 31, 2013 (behind paywall); Author’s conversation with a dozen individuals working for Members of Congress or the news media from July 2013 to June 2014.

6. See, for instance, U.S. Department of Justice, “Justice Department and Partner Agencies Launch National Counter-Proliferation Initia-


7. March 2014 Department of Justice Fact Sheet


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