

116TH CONGRESS
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S. 4712

To enhance the consideration of human rights in arms exports.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 2020

Mr. MENENDEZ (for himself, Mr. LEAHY, and Mr. Kaine) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To enhance the consideration of human rights in arms exports.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safeguarding Human
5 Rights in Arms Exports Act of 2020” or the “SAFE-
6 GUARD Act”.

1 **SEC. 2. STATEMENT OF POLICY ON CONTROL OF DEFENSE**
2 **EXPORTS AND PROTECTION OF HUMAN**
3 **RIGHTS.**

4 It is the policy of the United States that one of the
5 purposes for controlling the export of defense articles and
6 defense services to foreign countries is to prevent such ex-
7 ports from being used in violation of international humani-
8 tarian law or internationally recognized human rights, to
9 require accountability for any such violations, and to en-
10 sure that the sale, export, or transfer of such articles and
11 services serves to encourage governments of foreign coun-
12 tries to fully comply with international humanitarian law
13 and observe internationally recognized human rights.

14 **SEC. 3. PROHIBITION OF ARMS SALES TO COUNTRIES COM-**
15 **MITTING GENOCIDE OR WAR CRIMES.**

16 (a) IN GENERAL.—No sale, export, or transfer of de-
17 fense articles or defense services may occur to any country
18 if the Secretary of State has credible information that the
19 government of such country has committed or is commit-
20 ting genocide or violations of international humanitarian
21 law after the date of the enactment of this Act.

22 (b) EXCEPTION.—The restriction under subsection
23 (a) shall not apply if the Secretary of State certifies to
24 the appropriate congressional committees that—

25 (1) the government has adequately punished the
26 persons directly or indirectly responsible for such

1 acts through a credible, transparent, and effective
2 judicial process;

3 (2) appropriate measures have been instituted
4 to ensure that such acts will not recur; and

5 (3) other appropriate compensation or appro-
6 priate compensatory measures have been or are
7 being provided to the persons harmed by such acts.

8 **SEC. 4. MISUSE OF ARMS SALES FOR HUMAN RIGHTS**
9 **ABUSES.**

10 (a) IN GENERAL.—The President shall ensure that—

11 (1) the sale, export, or transfer of any defense
12 article or defense service to a foreign country or
13 international organization shall be pursuant to an
14 agreement that the government of such country or
15 such international organization will not use such ar-
16 ticle or service in the commission, or to enable the
17 commission, of a violation of international humani-
18 tarian law or internationally recognized human
19 rights;

20 (2) the United States Government has the legal
21 right to require the return of any defense articles
22 sold, exported, or transferred to a foreign country or
23 international organization if the government of such
24 country or such organization has used United
25 States-origin defense articles in the commission, or

1 has enabled the commission, of a violation of inter-
2 national humanitarian law or internationally recog-
3 nized human rights; and

4 (3) if defense articles are sold, exported, or
5 transferred to a foreign country in a manner in
6 which the intended end user has not been identified
7 at the unit level for human rights vetting, the agree-
8 ment for such sale, export, or transfer includes a list
9 of units ineligible to receive such articles, consistent
10 with applicable provisions of United States law.

11 (b) ELIGIBILITY FOR DEFENSE SERVICES OR ARTI-
12 CLES.—Section 3(a) of the Arms Export Control Act (22
13 U.S.C. 2753(a)) is amended—

14 (1) in paragraph (1), by striking “and promote
15 world peace” and inserting “, promote world peace,
16 and is unlikely to contribute to human rights
17 abuses”;

18 (2) in paragraph (3), by striking “; and” and
19 inserting a semicolon;

20 (3) by redesignating paragraph (4) as para-
21 graph (5); and

22 (4) by inserting after paragraph (3) the fol-
23 lowing new paragraph:

24 “(4) the country or international organization
25 has agreed not to use such article or service in the

1 commission, or to enable the commission, of a viola-
2 tion of international humanitarian law or inter-
3 nationally recognized human rights; and”.

4 (c) AUTHORIZED PURPOSE FOR MILITARY SALES.—
5 Section 4 of the Arms Export Control Act (22 U.S.C.
6 2754) is amended—

7 (1) by inserting “legitimate” before “internal
8 security”; and

9 (2) by inserting “, provided that such defense
10 articles and defense services will not present a sig-
11 nificant risk of being used to violate international
12 humanitarian law or internationally recognized
13 human rights” after “such friendly countries”.

14 **SEC. 5. CONSIDERATION OF HUMAN RIGHTS AND DEMOC-**
15 **RATIZATION IN ARMS EXPORTS.**

16 (a) IN GENERAL.—In considering the sale, export, or
17 transfer of defense articles and defense services to foreign
18 countries, the Secretary of State shall—

19 (1) also consider the extent to which the gov-
20 ernment of the foreign country protects human
21 rights and supports democratic institutions, includ-
22 ing an independent judiciary; and

23 (2) ensure that the views and expertise of the
24 Bureau of Democracy, Human Rights, and Labor of

1 the Department of State in connection with any sale,
2 export, or transfer are fully taken into account.

3 (b) INSPECTOR GENERAL OVERSIGHT.—Not later
4 than one year after the date of the enactment of this Act,
5 and annually thereafter for four years, the Inspector Gen-
6 eral of the Department of State shall submit to the appro-
7 priate congressional committees a report on the implemen-
8 tation of the requirement under subsection (a) during the
9 preceding year.

10 **SEC. 6. ENHANCEMENT OF CONGRESSIONAL OVERSIGHT**
11 **OF HUMAN RIGHTS IN ARMS EXPORTS.**

12 (a) IN GENERAL.—Any letter of offer to sell, or any
13 application for a license to export or transfer, defense arti-
14 cles or defense services controlled for export shall be sub-
15 ject to the congressional review and disapproval require-
16 ments, regardless of monetary value, of section 36 of the
17 Arms Export Control Act (22 U.S.C. 2776) if the Sec-
18 retary of State has credible information, with respect to
19 a country to which the defense articles or defense services
20 are proposed to be sold, exported, or transferred, that—

21 (1) the government of such country on or after
22 the date of enactment of this Act has been deposed
23 by a coup d'etat or decree in which the military
24 played a decisive role, and a democratically elected

1 government has not taken office subsequent to the
2 coup or decree; or

3 (2) a unit of the security forces of the govern-
4 ment of such country—

5 (A) has violated international humani-
6 tarian law and has not been credibly inves-
7 tigated and subjected to a credible and trans-
8 parent judicial process addressing such allega-
9 tion; or

10 (B) has committed a gross violation of
11 human rights, and has not been credibly inves-
12 tigated and subjected to a credible and trans-
13 parent judicial process addressing such allega-
14 tion, including, inter alia—

15 (i) torture or rape;

16 (ii) ethnic cleansing of civilians;

17 (iii) recruitment or use of child sol-
18 diers;

19 (iv) unjust or wrongful detention;

20 (v) the operation of, or effective con-
21 trol or direction over, secret detention fa-
22 cilities; or

23 (vi) extrajudicial killings, whether by
24 military, police, or other security forces.

1 (b) INCLUSION OF INFORMATION IN HUMAN RIGHTS
2 REPORT.—The Secretary of State shall also provide to the
3 appropriate congressional committees the report described
4 in section 502B(c) of the Foreign Assistance Act (22
5 U.S.C. 2304(c)) biannually for the period of time specified
6 in subsection (c) of this section regarding any country cov-
7 ered under subsection (a).

8 (c) DURATION.—

9 (1) IN GENERAL.—With respect to a letter of
10 offer to sell or an application for a license to sell,
11 export, or transfer described in subsection (a), the
12 letter or application shall be subject to the require-
13 ments and procedures for congressional review and
14 disapproval under section 36 of the Arms Export
15 Control Act (22 U.S.C. 2776) for 2 years after the
16 date on which the Secretary of State receives the in-
17 formation described in subsection (a).

18 (2) TERMINATION.—

19 (A) IN GENERAL.—With respect to such a
20 letter or application, the enhanced congressional
21 oversight under subsection (a) and paragraph
22 (1) of this subsection shall terminate on the
23 date on which the Secretary of State determines
24 and so informs the appropriate congressional
25 committees that—

1 (i) the credible information described
2 in subsection (a)(2) is inaccurate; or

3 (ii) the activity has ceased, and the
4 government of the applicable country has
5 taken appropriate steps to ensure that
6 such activity does not recur, including ap-
7 propriate punishment for the person or
8 persons involved in such activity.

9 (B) INFORMATION SUPPORTING DETER-
10 MINATION.—The Secretary of State shall sub-
11 mit to the appropriate congressional committees
12 all information forming the basis for a deter-
13 mination under subparagraph (A). The deter-
14 mination shall, to the fullest extent possible, be
15 unclassified, but may include a classified annex.

16 **SEC. 7. LIMITATION ON SALES TO SECURITY FORCES IN-**
17 **INVOLVED IN GROSS VIOLATION OF HUMAN**
18 **RIGHTS.**

19 Section 620M(a) of the Foreign Assistance Act of
20 1961 (23 U.S.C. 2378d(a)) is amended by striking “No
21 assistance” and all that follows through “Arms Export
22 Control Act” and inserting “No assistance, including the
23 sale of defense articles or defense services, shall be fur-
24 nished under this Act, the Arms Export Control Act, or

1 any other provision of law controlling the export or trans-
2 fer of such articles and services”.

3 **SEC. 8. END USE MONITORING OF MISUSE OF ARMS IN**
4 **HUMAN RIGHTS ABUSES.**

5 (a) **END USE MONITORING.**—Section 40A(a)(2)(B)
6 of the Arms Export Control Act (22 U.S.C. 2785) is
7 amended—

8 (1) in clause (i), by striking “; and” and insert-
9 ing a semicolon;

10 (2) in clause (ii), by striking the period at the
11 end and inserting “and;”; and

12 (3) by adding at the end the following new
13 clause:

14 “(iii) such articles and services are
15 not being used to violate international hu-
16 manitarian law or internationally recog-
17 nized human rights.”.

18 (b) **REPORT.**—The Secretary shall report to the ap-
19 propriate congressional committees on the measures that
20 will be taken, including any additional resources needed,
21 to conduct an effective end-use monitoring program to ful-
22 fill the requirement of clause (iii) of section 40A(a)(2)(B)
23 of the Arms Export Control Act, as added by subsection
24 (a)(3).

1 **SEC. 9. HUMAN RIGHTS ELEMENTS IN AUXILIARY RE-**
2 **PORTS.**

3 Section 36(b)(1) of the Arms Export Control Act (22
4 U.S.C. 2776(b)(1)) is amended—

5 (1) in subparagraph (O), by striking “; and”
6 and inserting a semicolon;

7 (2) in subparagraph (P), by striking the period
8 at the end and inserting “; and”; and

9 (3) by adding at the end the following new sub-
10 paragraph:

11 “(Q) an assessment of the risk that such
12 defense articles or defense services will be used
13 in the commission of violations of international
14 humanitarian law or internationally recognized
15 human rights, and a description of any meas-
16 ures to be taken by the recipient government or
17 by the United States to prevent and monitor
18 any such use.”.

19 **SEC. 10. REQUIREMENT FOR CERTAIN WEAPONS TO BE**
20 **SUBJECT TO CONDITIONS AND END USE**
21 **MONITORING AS FOREIGN MILITARY SALES.**

22 Beginning on the date that is 180 days after the date
23 of the enactment of this Act, the following defense articles
24 may be sold, exported, or transferred only pursuant to sec-
25 tion 36(b) of the Arms Export Control Act (22 U.S.C.
26 2776(b)):

1 (1) Rockets, space launch vehicles, missiles,
2 bombs (including equipment to enable precision
3 guidance), torpedoes, depth charges, mines, and gre-
4 nades.

5 (2) Armored combat ground vehicles, including
6 ground vehicles and trailers that are armed or are
7 specially designed to be used as a firing or launch
8 platform to deliver munitions or otherwise destroy or
9 incapacitate targets, excluding any unarmed ground
10 vehicles, regardless of origin or designation, manu-
11 factured prior to 1956 and unmodified since 1955.

12 (3) Aircraft, whether manned, unmanned, re-
13 motely piloted, or optionally piloted, as follows:

14 (A) Bombers.

15 (B) Fighters, fighter/bombers, and fixed-
16 wing attack aircraft.

17 (C) Turbofan- or turbojet-powered trainers
18 used to train pilots for fighter, attack, or bomb-
19 er aircraft.

20 (D) Attack helicopters.

21 (E) Unmanned aerial vehicles (UAVs) spe-
22 cially designed to incorporate a defense article.

23 (F) Aircraft specially designed to incor-
24 porate a defense article for the purpose of per-

1 forming an intelligence, surveillance, and recon-
2 naissance function.

3 (G) Aircraft specially designed to incor-
4 porate a defense article for the purpose of per-
5 forming an electronic warfare function, airborne
6 warning and control aircraft, or aircraft spe-
7 cially designed to incorporate a defense article
8 for the purpose of performing a command, con-
9 trol, and communications function.

10 **SEC. 11. OVERSIGHT OF EXPORT OF SILENCERS TO FOR-**
11 **EIGN NON-GOVERNMENTAL PERSONS.**

12 (a) IN GENERAL.—Any proposed license to export
13 firearms silencers, mufflers, or sound suppressors to any
14 foreign nongovernmental person, group, or organization
15 may not be issued until after the proposed license is sub-
16 mitted in accordance with section 36(c) of the Arms Ex-
17 port Control Act (22 U.S.C. 2776(c)), regardless of the
18 dollar value of the proposed export or whether other de-
19 fense articles or services are included in such proposed li-
20 cense.

21 (b) SECRETARY OF STATE DETERMINATION.—

22 (1) IN GENERAL.—The license referred to in
23 subsection (a) may not be issued unless the Sec-
24 retary of State—

1 (A) determines that the proposed export
2 does not pose a risk for the retransfer of the
3 items referred to in such subsection to foreign
4 persons, including terrorists, terrorist groups,
5 insurgent groups, criminals or criminal organi-
6 zations; and

7 (B) submits a report to the Committee on
8 Foreign Relations of the Senate and the Com-
9 mittee on Foreign Affairs of the House of Rep-
10 resentatives that sets forth the reasons for, and
11 the information supporting, such determination.

12 (2) FORM OF REPORT.—The report required
13 under paragraph (1)(B) shall be unclassified and
14 shall be made available to the public to the max-
15 imum extent possible, but may include a classified
16 annex.

17 **SEC. 12. DEFINITIONS.**

18 In this Act:

19 (1) The term “appropriate congressional com-
20 mittees” means—

21 (A) the Committee on Foreign Relations
22 and the Committee on Appropriations of the
23 Senate; and

1 (B) the Committee on Foreign Affairs and
2 the Committee on Appropriations of the House
3 of Representatives.

4 (2) The terms “defense article” and “defense
5 service” have the same meanings given the terms in
6 section 47 of the Arms Export Control Act (22
7 U.S.C. 2794).

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