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1ST SESSION

S. 1025

To enhance the consideration of human rights in arms exports.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2023

Mr. MENENDEZ (for himself, Mrs. FEINSTEIN, Mr. KAINE, Mrs. MURRAY, and Mr. SCHATZ) 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 2023” or the “SAFE-
6 GUARD Act of 2023”.

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 human rights, to require accountability for
9 any such violations, and to ensure that the sale, export,
10 or transfer of such articles and services serves to encour-
11 age governments of foreign countries to fully comply with
12 international humanitarian law and observe human rights.

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

15 (a) IN GENERAL.—No sale, export, or transfer of de-
16 fense articles or defense services may occur to any country
17 the government of which the Secretary of State determines
18 has committed, or is committing, genocide or war crimes
19 after the date of the enactment of this Act.

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

23 (1) the government has taken steps to bring to
24 justice the persons directly or indirectly responsible
25 for such acts through a credible, transparent, and
26 effective judicial process;

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

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

6 **SEC. 4. MISUSE OF ARMS SALES FOR HUMAN RIGHTS**

7 **ABUSES.**

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

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

17 (2) the United States Government has the legal
18 right to require the return of any defense articles
19 sold, exported, or transferred to a foreign country or
20 international organization if the government of such
21 country or such organization has used United
22 States-origin defense articles in the commission, or
23 has enabled the commission, of a violation of inter-
24 national humanitarian law or international human
25 rights law; and

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

8 (b) ELIGIBILITY FOR DEFENSE SERVICES OR ARTI-
9 CLES.—

10 (1) ARMS EXPORT CONTROL ACT.—Section 3(a)
11 of the Arms Export Control Act (22 U.S.C.
12 2753(a)) is amended—

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

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

19 (C) by redesignating paragraph (4) as
20 paragraph (5); and

21 (D) by inserting after paragraph (3) the
22 following new paragraph:

23 “(4) the country or international organization
24 has agreed not to use such article or service in the
25 commission, or to enable the commission, of a viola-

1 tion of international humanitarian law or inter-
2 national human rights law; and”.

3 (2) FOREIGN ASSISTANCE ACT OF 1961.—Sec-
4 tion 505of the Foreign Assistance Act of 1961 (22
5 U.S.C. 2314(a)) is amended—

6 (A) in subsection (a)—

7 (i) in paragraph (3), by striking “;
8 and” and inserting a semicolon;

9 (ii) by redesignating paragraph (4) as
10 paragraph (5); and

11 (iii) by inserting after paragraph (3)
12 the following new paragraph:

13 “(4) the country or international organization
14 has agreed not to use such articles or service in the
15 commission, or to enable the commission, of a viola-
16 tion of international humanitarian law or inter-
17 national human rights law; and”; and

18 (B) in subsection (e), by striking “sub-
19 section (a)(1) or (a)(4)” both places it appears
20 and inserting “subsection (a)(1) or (a)(5)”.

21 (c) AUTHORIZED PURPOSE FOR MILITARY SALES.—
22 Section 4 of the Arms Export Control Act (22 U.S.C.
23 2754) is amended—

24 (1) by inserting “legitimate” before “internal
25 security”; and

1 (2) by inserting “, provided that such defense
2 articles and defense services will not present a sig-
3 nificant risk of being used to violate international
4 humanitarian law or international human rights
5 law” after “such friendly countries”.

6 **SEC. 5. CONSIDERATION OF HUMAN RIGHTS AND DEMOC-**
7 **RATIZATION IN ARMS EXPORTS.**

8 (a) **IN GENERAL.**—In considering the sale, export, or
9 transfer of defense articles and defense services to foreign
10 countries, the Secretary of State shall—

11 (1) also consider the extent to which the gov-
12 ernment of the foreign country protects human
13 rights and supports democratic institutions, includ-
14 ing an independent judiciary; and

15 (2) ensure that the views and expertise of the
16 Bureau of Democracy, Human Rights, and Labor of
17 the Department of State in connection with any sale,
18 export, or transfer are fully taken into account.

19 (b) **INSPECTOR GENERAL OVERSIGHT.**—Not later
20 than one year after the date of the enactment of this Act,
21 and annually thereafter for four years, the Inspector Gen-
22 eral of the Department of State shall submit to the appro-
23 priate congressional committees a report on the implemen-
24 tation of the requirement under subsection (a) during the
25 preceding year.

1 **SEC. 6. ENHANCEMENT OF CONGRESSIONAL OVERSIGHT**
2 **OF HUMAN RIGHTS IN ARMS EXPORTS.**

3 (a) IN GENERAL.—Any letter of offer to sell, or any
4 application for a license to export or transfer, defense arti-
5 cles or defense services controlled for export shall be sub-
6 ject to the congressional review and disapproval require-
7 ments, regardless of monetary value, of section 36 of the
8 Arms Export Control Act (22 U.S.C. 2776) if the Sec-
9 retary of State has credible information, with respect to
10 a country to which the defense articles or defense services
11 are proposed to be sold, exported, or transferred, that—

12 (1) the government of such country on or after
13 the date of enactment of this Act has been deposed
14 by a coup d'etat or decree in which the military
15 played a decisive role, and a democratically elected
16 government has not taken office subsequent to the
17 coup or decree; or

18 (2) a unit of the security forces of the govern-
19 ment of such country—

20 (A) has violated international humani-
21 tarian law and has not been credibly inves-
22 tigated and subjected to a credible and trans-
23 parent judicial process addressing such allega-
24 tion; or

25 (B) has committed a gross violation of
26 human rights, and has not been credibly inves-

1 tigated and subjected to a credible and trans-
2 parent judicial process addressing such allega-
3 tion, including, inter alia—

4 (i) torture or rape;

5 (ii) ethnic cleansing of civilians;

6 (iii) recruitment or use of child sol-
7 diers;

8 (iv) unjust or wrongful detention;

9 (v) the operation of, or effective con-
10 trol or direction over, secret detention fa-
11 cilities; or

12 (vi) extrajudicial killings, whether by
13 military, police, or other security forces.

14 (b) INCLUSION OF INFORMATION IN HUMAN RIGHTS

15 REPORT.—The Secretary of State shall also provide to the
16 appropriate congressional committees the report described
17 in section 502B(c) of the Foreign Assistance Act (22
18 U.S.C. 2304(c)) biannually for the period of time specified
19 in subsection (c) of this section regarding any country cov-
20 ered under subsection (a).

21 (c) DURATION.—

22 (1) IN GENERAL.—With respect to a letter of
23 offer to sell or an application for a license to sell,
24 export, or transfer described in subsection (a), the
25 letter or application shall be subject to the require-

1 ments and procedures for congressional review and
2 disapproval under section 36 of the Arms Export
3 Control Act (22 U.S.C. 2776) for 2 years after the
4 date on which the Secretary of State receives the in-
5 formation described in subsection (a).

6 (2) TERMINATION.—

7 (A) IN GENERAL.—With respect to such a
8 letter or application, the enhanced congressional
9 oversight under subsections (a) and paragraph
10 (1) of this subsection shall terminate on the
11 date on which the Secretary of State determines
12 and so informs the appropriate congressional
13 committees that—

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

16 (ii) the activity has ceased, and the
17 government of the applicable country has
18 taken appropriate steps to ensure that
19 such activity does not recur, including ap-
20 propriate punishment for the person or
21 persons involved in such activity.

22 (B) INFORMATION SUPPORTING DETER-
23 MINATION.—The Secretary of State shall sub-
24 mit to the appropriate congressional committees
25 all information forming the basis for a deter-

1 mination under subparagraph (A). The deter-
2 mination shall, to the fullest extent possible, be
3 unclassified, but may include a classified annex.

4 (d) MODIFICATION OF PRIOR NOTIFICATION OF
5 SHIPMENT OF ARMS.—Section 36(i) of the Arms Export
6 Control Act (22 U.S.C. 2776(i)) is amended by striking
7 “subject to the requirements of subsection (b) at the joint
8 request of the Chairman and Ranking Member” and in-
9 serting “subject to the requirements of this section at the
10 request of the Chairman or Ranking Member”.

11 **SEC. 7. LIMITATION ON SALES TO SECURITY FORCES IN-**
12 **VOLVED IN GROSS VIOLATION OF HUMAN**
13 **RIGHTS.**

14 Section 620M(a) of the Foreign Assistance Act of
15 1961 (23 U.S.C. 2378d(a)) is amended by striking “No
16 assistance” and all that follows through “Arms Export
17 Control Act” and inserting “No assistance, including the
18 sale of defense articles or defense services, shall be fur-
19 nished under this Act, the Arms Export Control Act, or
20 any other provision of law controlling the export or trans-
21 fer of such articles and services”.

1 **SEC. 8. END-USE MONITORING OF MISUSE OF ARMS IN**
2 **HUMAN RIGHTS ABUSES.**

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

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

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

10 (3) by adding at the end the following new
11 clause:

12 “(iii) such articles and services are
13 not being used to violate international hu-
14 manitarian law or international human
15 rights law.”.

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

23 **SEC. 9. HUMAN RIGHTS ELEMENTS IN AUXILIARY RE-**
24 **PORTS.**

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

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

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

5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(Q) an assessment of the risk that such
8 defense articles or defense services will be used
9 in the commission of violations of international
10 humanitarian law or international human rights
11 law, and a description of any measures to be
12 taken by the recipient government or by the
13 United States to prevent and monitor any such
14 use.”.

15 **SEC. 10. REQUIREMENT FOR CERTAIN WEAPONS TO BE**
16 **SUBJECT TO CONDITIONS AND END USE**
17 **MONITORING AS FOREIGN MILITARY SALES.**

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

23 (1) Rockets, space launch vehicles, missiles,
24 bombs (including equipment to enable precision

1 guidance), torpedoes, depth charges, mines, and gre-
2 nades.

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

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

12 (A) Bombers.

13 (B) Fighters, fighter/bombers, and fixed-
14 wing attack aircraft.

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

18 (D) Attack helicopters.

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

21 (F) Aircraft specially designed to incor-
22 porate a defense article for the purpose of per-
23 forming an intelligence, surveillance, and recon-
24 naissance function.

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

8 **SEC. 11. DEFINITIONS.**

9 In this Act:

10 (1) The term “appropriate congressional com-
11 mittees” means—

12 (A) the Committee on Foreign Relations
13 and the Committee on Appropriations of the
14 Senate; and

15 (B) the Committee on Foreign Affairs and
16 the Committee on Appropriations of the House
17 of Representatives.

18 (2) The terms “defense article” and “defense
19 service” have the same meanings given the terms in
20 section 47 of the Arms Export Control Act (22
21 U.S.C. 2794).

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