To enhance the consideration of human rights in arms exports.

IN THE SENATE OF THE UNITED STATES

Mr. Menendez (for himself, Mr. Leahy, and Mr. Kaine) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To enhance the consideration of human rights in arms exports.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

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

It is the policy of the United States that one of the purposes for controlling the export of defense articles and defense services to foreign countries is to prevent such exports from being used in violation of international humanitarian law or internationally recognized human rights, to require accountability for any such violations, and to ensure that the sale, export, or transfer of such articles and services serves to encourage governments of foreign countries to fully comply with international humanitarian law and observe internationally recognized human rights.

SEC. 3. PROHIBITION OF ARMS SALES TO COUNTRIES COMMITTING GENOCIDE OR WAR CRIMES.

(a) IN GENERAL.—No sale, export, or transfer of defense articles or defense services may occur to any country if the Secretary of State has credible information that the government of such country has committed or is committing genocide or violations of international humanitarian law after the date of the enactment of this Act.

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

(1) the government has adequately punished the persons directly or indirectly responsible for such
acts through a credible, transparent, and effective judicial process;

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

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

SEC. 4. MISUSE OF ARMS SALES FOR HUMAN RIGHTS ABUSES.

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

(1) the sale, export, or transfer of any defense article or defense service to a foreign country or international organization shall be pursuant to an agreement that the government of such country or such international organization will not use such article or service in the commission, or to enable the commission, of a violation of international humanitarian law or internationally recognized human rights;

(2) the United States Government has the legal right to require the return of any defense articles sold, exported, or transferred to a foreign country or international organization if the government of such country or such organization has used United States-origin defense articles in the commission, or
has enabled the commission, of a violation of international humanitarian law or internationally recognized human rights; and

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

(b) Eligibility for Defense Services or Articles.—Section 3(a) of the Arms Export Control Act (22 U.S.C. 2753(a)) is amended—

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

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

(3) by redesignating paragraph (4) as paragraph (5); and

(4) by inserting after paragraph (3) the following new paragraph:

“(4) the country or international organization has agreed not to use such article or service in the
commission, or to enable the commission, of a viola-
tion of international humanitarian law or inter-
ationally recognized human rights; and”.

(c) Authorized Purpose for Military Sales.—
Section 4 of the Arms Export Control Act (22 U.S.C.
2754) is amended—

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

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

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

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

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

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

(b) Inspector General Oversight.—Not later than one year after the date of the enactment of this Act, and annually thereafter for four years, the Inspector General of the Department of State shall submit to the appropriate congressional committees a report on the implementation of the requirement under subsection (a) during the preceding year.

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

(a) In General.—Any letter of offer to sell, or any application for a license to export or transfer, defense articles or defense services controlled for export shall be subject to the congressional review and disapproval requirements, regardless of monetary value, of section 36 of the Arms Export Control Act (22 U.S.C. 2776) if the Secretary of State has credible information, with respect to a country to which the defense articles or defense services are proposed to be sold, exported, or transferred, that—

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

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

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

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

(i) torture or rape;

(ii) ethnic cleansing of civilians;

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

(iv) unjust or wrongful detention;

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

(vi) extrajudicial killings, whether by
military, police, or other security forces.
(b) INCLUSION OF INFORMATION IN HUMAN RIGHTS REPORT.—The Secretary of State shall also provide to the appropriate congressional committees the report described in section 502B(c) of the Foreign Assistance Act (22 U.S.C. 2304(c)) biannually for the period of time specified in subsection (c) of this section regarding any country covered under subsection (a).

(c) DURATION.—

(1) IN GENERAL.—With respect to a letter of offer to sell or an application for a license to sell, export, or transfer described in subsection (a), the letter or application shall be subject to the requirements and procedures for congressional review and disapproval under section 36 of the Arms Export Control Act (22 U.S.C. 2776) for 2 years after the date on which the Secretary of State receives the information described in subsection (a).

(2) TERMINATION.—

(A) IN GENERAL.—With respect to such a letter or application, the enhanced congressional oversight under subsections (a) and paragraph (1) of this subsection shall terminate on the date on which the Secretary of State determines and so informs the appropriate congressional committees that—
(i) the credible information described in subsection (a)(2) is inaccurate; or
(ii) the activity has ceased, and the government of the applicable country has taken appropriate steps to ensure that such activity does not recur, including appropriate punishment for the person or persons involved in such activity.

(B) INFORMATION SUPPORTING DETERMINATION.—The Secretary of State shall submit to the appropriate congressional committees all information forming the basis for a determination under subparagraph (A). The determination shall, to the fullest extent possible, be unclassified, but may include a classified annex.

SEC. 7. LIMITATION ON SALES TO SECURITY FORCES INVOLVED IN GROSS VIOLATION OF HUMAN RIGHTS.

Section 620M(a) of the Foreign Assistance Act of 1961 (23 U.S.C. 2378d(a)) is amended by striking “No assistance” and all that follows through “Arms Export Control Act” and inserting “No assistance, including the sale of defense articles or defense services, shall be furnished under this Act, the Arms Export Control Act, or
any other provision of law controlling the export or transfer of such articles and services’’.

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

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

(1) in clause (i), by striking ‘‘; and’’ and inserting a semicolon;

(2) in clause (ii), by striking the period at the end and inserting ‘‘and;’’; and

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

“(iii) such articles and services are not being used to violate international humanitarian law or internationally recognized human rights.”.

(b) REPORT.—The Secretary shall report to the appropriate congressional committees on the measures that will be taken, including any additional resources needed, to conduct an effective end-use monitoring program to fulfill the requirement of clause (iii) of section 40A(a)(2)(B) of the Arms Export Control Act, as added by subsection (a)(3).
SEC. 9. HUMAN RIGHTS ELEMENTS IN AUXILIARY REPORTS.

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

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

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

(3) by adding at the end the following new sub-

paragraph:

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

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

Beginning on the date that is 180 days after the date of the enactment of this Act, the following defense articles may be sold, exported, or transferred only pursuant to section 36(b) of the Arms Export Control Act (22 U.S.C. 2776(b)): 
(1) Rockets, space launch vehicles, missiles, bombs (including equipment to enable precision guidance), torpedoes, depth charges, mines, and grenades.

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

(3) Aircraft, whether manned, unmanned, remotely piloted, or optionally piloted, as follows:

(A) Bombers.

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

(C) Turbofan- or turbojet-powered trainers used to train pilots for fighter, attack, or bomber aircraft.

(D) Attack helicopters.

(E) Unmanned aerial vehicles (UAVs) specially designed to incorporate a defense article.

(F) Aircraft specially designed to incorporate a defense article for the purpose of per-
forming an intelligence, surveillance, and reconnaissance function.

(G) Aircraft specially designed to incorporate a defense article for the purpose of performing an electronic warfare function, airborne warning and control aircraft, or aircraft specially designed to incorporate a defense article for the purpose of performing a command, control, and communications function.

SEC. 11. OVERSIGHT OF EXPORT OF SILENCERS TO FOREIGN NON-GOVERNMENTAL PERSONS.

(a) In General.—Any proposed license to export firearms silencers, mufflers, or sound suppressors to any foreign nongovernmental person, group, or organization may not be issued until after the proposed license is submitted in accordance with section 36(c) of the Arms Export Control Act (22 U.S.C. 2776(c)), regardless of the dollar value of the proposed export or whether other defense articles or services are included in such proposed license.

(b) Secretary of State Determination.—

(1) In General.—The license referred to in subsection (a) may not be issued unless the Secretary of State—
(A) determines that the proposed export does not pose a risk for the retransfer of the items referred to in such subsection to foreign persons, including terrorists, terrorist groups, insurgent groups, criminals or criminal organizations; and

(B) submits a report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives that sets forth the reasons for, and the information supporting, such determination.

(2) FORM OF REPORT.—The report required under paragraph (1)(B) shall be unclassified and shall be made available to the public to the maximum extent possible, but may include a classified annex.

SEC. 12. DEFINITIONS.

In this Act:

(1) The term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations and the Committee on Appropriations of the Senate; and
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(B) the Committee on Foreign Affairs and
the Committee on Appropriations of the House
of Representatives.

(2) The terms “defense article” and “defense
service” have the same meanings given the terms in
section 47 of the Arms Export Control Act (22