To ensure that sales, exports, or transfers of F–35 aircraft do not compromise the qualitative military edge of the United States or Israel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MENENDEZ (for himself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To ensure that sales, exports, or transfers of F–35 aircraft do not compromise the qualitative military edge of the United States or Israel, and for other purposes.

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 “Israel and United
5 States Security Enhancement for F-35 Exports Act of
6 2021” or the “SECURE F-35 Exports Act of 2021”.
SEC. 2. ASSESSMENT OF ISRAEL’S QUANTITATIVE MILITARY DISADVANTAGE.

(a) IN GENERAL.—Section 201(a) of the Naval Vessel Transfer Act of 2008 (Public Law 110–429; 22 U.S.C. 2776 note) is amended—

(1) by inserting “, and does not suffer a quantitative military disadvantage from,” after “qualitative military edge over”; and

(2) by adding at the end the following new subsection:

“(f) PUBLIC DISCLOSURE.—The report required under subsection (c) shall be unclassified, without redactions, and public to the maximum extent possible, but may also include a classified annex without redactions.”.

(b) ASSESSMENTS.—

(1) INITIAL ASSESSMENT AND REPORT.—Not later than 60 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report with an assessment of whether Israel suffers from a quantitative military disadvantage as described in section 201(a) of the Naval Vessel Transfer Act of 2008 (Public Law 110–429; 22 U.S.C. 2776 note), as amended by subsection (a). The report shall be unclassified, without redactions and public to the max-
imum extent possible, but may also include a classified annex without redactions.

(2) Subsequent assessments and reports.—The President shall direct subsequent assessments on Israel’s quantitative military disadvantage be performed every four years, to coincide with and be included in the quadrennial assessment and report required under section 201 of the Naval Vessel Transfer Act of 2008 (Public Law 110–429; 22 U.S.C. 2776 note).

(c) Public Disclosure of Certification on Sale of F–35 to UAE.—The President shall publicly disclose, to the maximum extent possible, the certification required under section 36(h) of the Arms Export Control Act (22 U.S.C. 2776(h)) relating to any sale, export, or transfer of F–35 aircraft and associated defense articles and defense services to the United Arab Emirates.

SEC. 3. ASSESSMENT OF THREAT AGAINST UNITED STATES QUALITATIVE MILITARY EDGE INHERENT IN EXPORT OF F–35 AND SUCCESSOR COMBAT AIRCRAFT.

(a) Requirement for Report and Assessment.—

(1) In general.—Not later than 15 days before a proposed sale, export, or transfer to a foreign
country (other than a member state of the North At-

tantic Treaty Organization, Australia, Israel, Japan,

Republic of Korea, or New Zealand) of F–35 air-

craft (including any variant or successor combat air-

craft) is submitted to Congress pursuant to the re-

requirements of section 36 of the Arms Export Con-

trol Act (22 U.S.C. 2776), the President shall sub-

mit to the appropriate congressional committees a

report with an assessment of the risks presented by

such sale, export, or transfer to the security of the

United States, including the critical military and

technological military advantage such aircraft pro-

vide to the United States Armed Forces.

(2) ELEMENTS.—The assessment required

under paragraph (1) shall include—

(A) a comprehensive overview of the poten-

tial compromise of United States military tech-

ology used in F–35 aircraft by potential for-

eign intelligence activities, including—

(i) the presence in the country of for-

eign intelligence personnel from countries

hostile to the United States, or which the

President considers to be a risk to the se-

curity of the United States, and their ac-

tivities; and
(ii) the willingness and capability of the country to disrupt and constrain those activities, with particular consideration to their potential effectiveness in preventing the compromise of sensitive information of F–35 aircraft;

(B) a description of the protective measures that will be taken to safeguard against such compromise; and

(C) a description of the counter-measures that could be taken should such compromise occur.

(b) CERTIFICATION.—Not later than 15 days before a proposed sale, export, or transfer described under subsection (a)(1), the President shall submit to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a certification that such sale, export, or transfer does not present a significant danger of compromising the critical military and technological military advantage such aircraft provide to the United States Armed Forces.

(c) FORM.—The assessment and certification required under this section shall be unclassified, without redactions and public to the maximum extent possible, but may also include a classified annex without redactions.
SEC. 4. CERTIFICATIONS RELATED TO SALE OF F–35 AIR-
CRAFT TO COUNTRIES IN THE MIDDLE EAST.

(a) Certifications Before Sale.—Not later than
30 days before concluding a Letter of Offer and Accept-
ance (or corresponding agreement or contract) for the sale
of, or concluding a contract for the manufacture of, F–
35 aircraft to be transferred to any country in the Middle
East other than Israel, the President shall submit to the
Committee on Foreign Relations of the Senate and the
Committee on Foreign Affairs of the House of Representa-
tives a certification, together with a report providing a de-
tailed justification therefor, that—

(1) the transfer of F–35 aircraft to the recipi-
ent country will not compromise or undermine
Israel’s qualitative military edge, as defined in sec-
tion 36(h) of the Arms Export Control Act (22
U.S.C. 2776(h));

(2) the recipient country has provided specific,
reliable, and verifiable assurances to the United
States that it will not use these aircraft in activities
or operations inimical to the security of Israel, or to
the foreign policy and national security interests of
the United States, including that the recipient coun-
try will—

(A) not utilize them against allies and
partners of the United States;
(B) not transfer or share any component technology of the F–35 aircraft to any third party or third country; and

(C) ensure sufficient security against hostile technical collection efforts against the aircraft that could compromise militarily-significant or otherwise sensitive information;

(3) the recipient country has provided specific, reliable, and verifiable assurances to the United States that it will not use these aircraft to commit, or enable the commission of, a violation of international humanitarian law or internationally recognized human rights;

(4) if the recipient country violates such assurances, the United States will have the means to address and ameliorate these violations to reduce the impact on the security of Israel or on the foreign policy and national security interests of the United States, including a listing of such means; and

(5) the United States will require technology security measures on the delivery, operation, storage, and servicing of such aircraft sufficient to significantly reduce the danger of compromise of the military technology.
(b) Certifications Before Delivery.—No delivery of any F–35 aircraft to any country in the Middle East other than Israel shall occur until 45 days after the President has submitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a certification, together with a report providing a detailed justification therefor, that—

(1) the transfer of F–35 aircraft will not compromise or undermine Israel’s qualitative military edge, as defined in section 36(2) of the Arms Export Control Act;

(2) the United States has instituted technology security measures on the delivery, operation, storage, and servicing of such aircraft sufficient to significantly reduce the danger of compromise of the military;

(3) such country has not, since the Letter of Offer and Acceptance (or corresponding agreement or contract) for such aircraft was concluded, engaged in military, paramilitary, or intelligence operations inimical to the security of Israel or to the foreign policy and national security interests of the United States, including—

(A) transferring any United States-origin equipment, directly or indirectly, to a United
States-designated terrorist organization or to adversaries of Israel or the United States;

(B) providing weapons, directly or indirectly, from any source country, including China, to armed militias fighting against partners and allies of the United States;

(C) conducting surveillance on any private United States citizen; or

(D) committing, or enabling the commission of, a violation of international humanitarian law or internationally recognized human rights; and

(4) the recipient country has not purchased or otherwise acquired foreign technology, equipment, or defense articles or services, including from the Russian Federation or the People’s Republic of China, and has provided written assurances that it will not purchase or otherwise acquire foreign technology equipment, defense articles, or defense services that could be used to compromise the technology of such aircraft and put United States troops or military strategies at risk, unless such technology is also subject to monitoring by United States personnel.

(c) SUBSEQUENT CERTIFICATIONS.—The President shall, not later than 180 days after the date on which the
first F–35 combat aircraft transferred to a country in the Middle East other than Israel arrives in its territory, and annually thereafter for 10 years, certify to the appropriate committees of Congress that—

(1) the transfer of F–35 aircraft to such country has not compromised or undermined Israel’s qualitative military edge, as defined in section 36(h)(3) of the Arms Export Control Act (22 U.S.C. 2776(h)(3));

(2) the United States continues to institute technology security measures on the delivery, operation, storage, and servicing of such aircraft sufficient to significantly reduce the danger of compromise of the military technology of such aircraft;

(3) such country has not engaged in military, paramilitary, or intelligence operations inimical to the security of Israel or to the foreign policy and national security interests of the United States within the prior year as outlined in subparagraphs (A) through (C) of subsection (b)(3); and

(4) such country has not committed, or enabled the commission of, a violation of international humanitarian law or internationally recognized human rights.
(d) Form.—The certifications and justifications submitted under this section shall be unclassified, without redactions and public to the maximum extent possible, but may also include a classified annex without redactions.

SEC. 5. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.

In this Act, the term “appropriate congressional committees” means—

(1) the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Appropriations of the Senate; and

(2) the Committee on Foreign Affairs, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.