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2D SESSION

S. 4946

To counter Saudi Arabia’s possible pursuit of weapons of mass destruction,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 2, 2020

Mr. MARKEY (for himself and Mr. MERKLEY) introduced the following bill;
which was read twice and referred to the Committee on Foreign Relations

A BILL

To counter Saudi Arabia’s possible pursuit of weapons of
mass destruction, 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 “Stopping Activities Un-
5 derpinning Development In Weapons of Mass Destruction
6 Act” or the “SAUDI WMD Act”.

7 **SEC. 2. FINDINGS.**

8 Congress makes the following findings:

9 (1) The People’s Republic of China (in this Act
10 referred to as “China”), became a full-participant of

1 the Nuclear Suppliers Group in 2004, committing it
2 to apply a strong presumption of denial in exporting
3 nuclear-related items that a foreign country could
4 divert to a nuclear weapons program.

5 (2) China also committed to the United States,
6 in November 2000, to abide by the foundational
7 principles of the 1987 Missile Technology Control
8 Regime (MTCR) to not “assist, in any way, any
9 country in the development of ballistic missiles that
10 can be used to deliver nuclear weapons (i.e., missiles
11 capable of delivering a payload of at least 500 kilo-
12 grams to a distance of at least 300 kilometers)”.

13 (3) In the 1980s, China secretly sold the King-
14 dom of Saudi Arabia (in this Act referred to as
15 “Saudi Arabia”) conventionally armed DF-3A bal-
16 listic missiles, and in 2007, reportedly sold Saudi
17 Arabia dual-use capable DF-21 medium-range bal-
18 listic missiles of a 300 kilometer, 500-kilogram
19 range and payload threshold which should have trig-
20 gered a denial of sale under the MTCR.

21 (4) The 2020 Department of State Report on
22 the Adherence to and Compliance with Arms Con-
23 trol, Nonproliferation, and Disarmament Agree-
24 ments and Commitments found that China “contin-
25 ued to supply MTCR-controlled goods to missile pro-

1 grams of proliferation concern in 2019” and that
2 the United States imposed sanctions on nine Chinese
3 entities for covered missile transfers to Iran.

4 (5) A June 5, 2019, press report indicated that
5 China allegedly provided assistance to Saudi Arabia
6 in the development of a ballistic missile facility,
7 which if confirmed, would violate the purpose of the
8 MTCR and run contrary to the longstanding United
9 States policy priority to prevent weapons of mass de-
10 struction proliferation in the Middle East.

11 (6) The Arms Export and Control Act of 1976
12 (Public Law 93–329) requires the President to sanc-
13 tion any foreign person or government who know-
14 ingly “exports, transfers, or otherwise engages in the
15 trade of any MTCR equipment or technology” to a
16 country that does not adhere to the MTCR.

17 (7) China concluded two nuclear cooperation
18 agreements with Saudi Arabia in 2012 and 2017, re-
19 spectively, which may facilitate China’s bid to build
20 two reactors in Saudi Arabia to generate 2.9
21 Gigawatt-electric (GWe) of electricity.

22 (8) On August 4, 2020, a press report revealed
23 the alleged existence of a previously undisclosed ura-
24 nium yellowcake extraction facility in Saudi Arabia
25 allegedly constructed with the assistance of China,

1 which if confirmed, would indicate significant
2 progress by Saudi Arabia in developing the early
3 stages of the nuclear fuel cycle that precede uranium
4 enrichment.

5 (9) Saudi Arabia’s outdated Small Quantities
6 Protocol and its lack of an in force Additional Pro-
7 tocol to its International Atomic Energy Agency
8 (IAEA) Comprehensive Safeguards Agreement se-
9 verely curtails IAEA inspections, which has led the
10 Agency to call upon Saudi Arabia to either rescind
11 or update its Small Quantities Protocol.

12 (10) In May 24, 2018, testimony before the
13 Committee on Foreign Relations of the Senate, Sec-
14 retary of State Mike Pompeo said that the United
15 States would insist upon the “gold standard” in any
16 bilateral civilian nuclear cooperation “123” agree-
17 ment with Saudi Arabia—no in-country enrichment
18 of uranium or reprocessing of plutonium—a stand-
19 ard the United States achieved with the United Arab
20 Emirates in their own May 2009 bilateral 123
21 agreement.

22 (11) On March 15, 2018, the Crown Prince of
23 Saudi Arabia, Mohammad bin-Salman, stated that
24 “if Iran developed a nuclear bomb, we would follow
25 suit as soon as possible,” raising questions about

1 whether a Saudi Arabian nuclear program would re-
2 main exclusively peaceful, particularly in the absence
3 of robust international IAEA safeguards.

4 (12) An August 9, 2019, study by the United
5 Nations High Commissioner for Human Rights
6 found that the Saudi Arabia-led military coalition
7 airstrikes in Yemen and its restrictions on the flow
8 of humanitarian assistance to the country, both of
9 which have disproportionately impacted civilians,
10 may be violations of international humanitarian law.

11 **SEC. 3. DETERMINATION OF POSSIBLE MTCR TRANSFERS**
12 **TO SAUDI ARABIA.**

13 (a) MTCR TRANSFERS.—Not later than 30 days
14 after the date of the enactment of this Act, the President
15 shall submit to the appropriate committees of Congress
16 a written determination, and any documentation to sup-
17 port that determination detailing—

18 (1) whether any foreign person knowingly ex-
19 ported, transferred, or engaged in trade of any item
20 designated under Category I of the MTCR Annex
21 item with Saudi Arabia in the previous three fiscal
22 years; and

23 (2) the sanctions the President has imposed or
24 intends to impose pursuant to section 11B(b) of the
25 Export Administration Act of 1979 (50 U.S.C.

1 4612(b)) against any foreign person who knowingly
2 engaged in the export, transfer, or trade of that item
3 or items.

4 (b) WAIVER.—Notwithstanding any provision of
5 paragraphs (3) through (7) of section 11(B)(b) of the Ex-
6 port Administration Act of 1979 (50 U.S.C. 4612(b)), the
7 President may only waive the application of sanctions
8 under such section with respect to Saudi Arabia if that
9 country is verifiably determined to no longer possess an
10 item designated under Category I of the MTCR Annex re-
11 ceived in the previous three fiscal years.

12 (c) FORM OF REPORT.—The determination required
13 under subsection (a) shall be unclassified with a classified
14 annex.

15 **SEC. 4. PROHIBITION ON UNITED STATES ARMS SALES TO**
16 **SAUDI ARABIA IF IT IMPORTS NUCLEAR**
17 **TECHNOLOGY WITHOUT SAFEGUARDS.**

18 (a) IN GENERAL.—The United States shall not sell,
19 transfer, or authorize licenses for export of any item des-
20 ignated under Category III, IV, VII, or VIII on the United
21 States Munitions List pursuant to section 38(a)(1) of the
22 Arms Export Control Act (22 U.S.C. 2778(a)(1)) to Saudi
23 Arabia, other than ground-based missile defense systems,
24 if Saudi Arabia has, in the previous 3 fiscal years—

1 (1) knowingly imported any item classified as
2 “plants for the separation of isotopes of uranium”
3 or “plants for the reprocessing of irradiated nuclear
4 reactor fuel elements” under Part 110 of the Nu-
5 clear Regulatory Commission export licensing au-
6 thority; or

7 (2) engaged in nuclear cooperation related to
8 the construction of any nuclear-related fuel cycle fa-
9 cility or activity that has not been notified to the
10 IAEA and would be subject to complementary access
11 if an Additional Protocol was in force.

12 (b) WAIVER.—The Secretary of State may waive the
13 prohibition under subsection (a) with respect to a foreign
14 country if the Secretary submits to the appropriate com-
15 mittees of Congress a written certification that contains
16 a determination, and any relevant documentation on which
17 the determination is based, that Saudi Arabia—

18 (1) has brought into force an Additional Pro-
19 tocol to the IAEA Comprehensive Safeguards Agree-
20 ment based on the model described in IAEA
21 INFCIRC/540;

22 (2) has concluded a civilian nuclear cooperation
23 agreement with the United States under section 123
24 of the Atomic Energy Act of 1954 (42 U.S.C. 2153)
25 or another supplier that prohibits the enrichment of

1 uranium or separation of plutonium on its own terri-
2 tory; and

3 (3) has rescinded its Small Quantities Protocol
4 and is not found by the IAEA Board of Governors
5 to be in noncompliance with its Comprehensive Safe-
6 guards Agreement.

7 (c) RULE OF CONSTRUCTION.—Nothing in this Act
8 shall be construed as superseding the obligation of the
9 President under section 502B(a)(2) or section 620I(a) of
10 the Foreign Assistance Act of 1961 (22 U.S.C.
11 2304(a)(2), 22 U.S.C. 2378–1(a)), respectively, to not
12 furnish security assistance to Saudi Arabia or any country
13 if it—

14 (1) engages in a consistent pattern of gross vio-
15 lations of internationally recognized human rights;
16 or

17 (2) prohibits or otherwise restricts, directly or
18 indirectly, the transport or delivery of United States
19 humanitarian assistance.

20 **SEC. 5. MIDDLE EAST NONPROLIFERATION STRATEGY.**

21 (a) IN GENERAL.—Not later than 60 days after the
22 date of the enactment of this Act, and annually thereafter,
23 the Secretary of State and the Secretary of Energy, in
24 consultation with the Director of National Intelligence,
25 shall provide the appropriate committees of Congress, as

1 an appendix to the Report on the Adherence to and Com-
2 pliance with Arms Control, Nonproliferation, and Disar-
3 mament Agreements and Commitments, a report on
4 MTCR compliance and the United States Middle East
5 nonproliferation strategy.

6 (b) ELEMENTS.—The report required under sub-
7 section (a) shall include the following elements:

8 (1) An assessment of China's compliance, in the
9 previous fiscal year, with its November 2000 com-
10 mitment to abide by the MTCR and United States
11 diplomatic efforts to address non-compliance.

12 (2) A description of every foreign person that,
13 in the previous fiscal year, engaged in the export,
14 transfer, or trade of MTCR items to a country that
15 is a non-MTCR adherent, and a description of the
16 sanctions the President imposed pursuant to section
17 11B(b) of the Export Administration Act of 1979
18 (50 U.S.C. 4612(b)).

19 (3) A detailed strategy to prevent the prolifera-
20 tion of ballistic missile and sensitive nuclear tech-
21 nology in the Middle East and North Africa from
22 China and other foreign countries, including the fol-
23 lowing elements:

24 (A) An assessment of the proliferation
25 risks associated with concluding or renewing a

1 civilian nuclear cooperation “123” agreement
2 with any country in the Middle-East and North
3 Africa and the risks of such if that same equip-
4 ment and technology is sourced from a foreign
5 state.

6 (B) An update on United States bilateral
7 and multilateral diplomatic actions to com-
8 mence negotiations on a Weapons of Mass De-
9 struction Free Zone (WMDFZ) since the 2015
10 Nuclear Nonproliferation Treaty Review Con-
11 ference.

12 (C) A description of United States Govern-
13 ment efforts to achieve global adherence and
14 compliance with the Nuclear Suppliers Group,
15 MTCR, and the 2002 International Code of
16 Conduct against Ballistic Missile Proliferation
17 guidelines.

18 (4) An account of the briefings to the appro-
19 priate committees of Congress in the reporting pe-
20 riod detailing negotiations on any new or renewed ci-
21 vilian nuclear cooperation “123” agreement with any
22 country consistent with the intent of the Atomic En-
23 ergy Act of 1954 (42 U.S.C. 2011 et seq.).

24 (c) FORM OF REPORT.—The report required under
25 subsection (a) shall be unclassified with a classified annex.

1 **SEC. 6. DEFINITIONS.**

2 In this Act:

3 (1) APPROPRIATE COMMITTEES OF CON-
4 GRESS.—The term “appropriate committees of Con-
5 gress” means—

6 (A) the Select Committee on Intelligence of
7 the Senate;

8 (B) the Committee on Foreign Relations of
9 the Senate;

10 (C) the Select Committee on Intelligence of
11 the House of Representative; and

12 (D) the Committee on Foreign Affairs of
13 the House of Representatives.

14 (2) FOREIGN PERSON; PERSON.—The terms
15 “foreign person” and “person” mean—

16 (A) a natural person that is an alien;

17 (B) a corporation, business association,
18 partnership, society, trust, or any other non-
19 governmental entity, organization, or group,
20 that is organized under the laws of a foreign
21 country or has its principal place of business in
22 a foreign country;

23 (C) any foreign governmental entity oper-
24 ating as a business enterprise; and

1 (D) any successor, subunit, or subsidiary
2 of any entity described in subparagraph (B) or
3 (C).

4 (3) MIDDLE EAST AND NORTH AFRICA.—The
5 term “Middle East and North Africa” means those
6 countries that are included in the Area of Responsi-
7 bility of the Assistant Secretary of State for Near
8 Eastern Affairs.

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