

116TH CONGRESS  
1ST SESSION

# S. 854

To require human rights certifications for arms sales, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 25, 2019

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

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## A BILL

To require human rights certifications for arms sales, 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 “Enhancing Human  
5 Rights Protections in Arms Sales Act of 2019”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

8 (1) the advancement of human rights is criti-  
9 cally important to the security, stability, peace, and  
10 prosperity of United States allies and partners, and

1 the United States Government should promote the  
2 increased observance of internationally recognized  
3 human rights globally;

4 (2) as the world's oldest democracy and the  
5 largest arms exporter, the human rights standards  
6 that the United States sets on arms transfers has  
7 global ramifications, influencing standards set by  
8 other nations around the world;

9 (3) global arms transfers continue to flow into  
10 conflict zones and countries rife with internal repres-  
11 sion at an alarming rate;

12 (4) the United States Government has the abil-  
13 ity to determine whether United States arms trans-  
14 fers are used to commit gross violations of human  
15 rights and other violations of United States law;

16 (5) Congress took strong action to prohibit, in  
17 the Foreign Assistance Act of 1961 (U.S.C. 2151 et  
18 seq.), sales of defense articles or services to any  
19 country whose government engages in a consistent  
20 pattern of gross violations of internationally recog-  
21 nized human rights; and

22 (6) Congress should take further action to en-  
23 sure that arms transfers—

24 (A) are not used to commit or facilitate  
25 violations of internationally recognized human

1 rights or violations of international humani-  
2 tarian law in conflict zones; and

3 (B) are provided only to countries that are  
4 demonstrably improving their efforts to protect  
5 the human rights and freedoms of their citizens  
6 and to promote participation and accountability  
7 in governance.

8 **SEC. 3. HUMAN RIGHTS CERTIFICATION REQUIREMENTS**  
9 **FOR ARMS SALES.**

10 (a) CERTIFICATION REQUIREMENT.—Section 36 of  
11 the Arms Export Control Act (22 U.S.C. 2776) is amend-  
12 ed by adding at the end the following new subsection:

13 “(j)(1) Any certification relating to a proposed sale  
14 or export under this section of defense articles or defense  
15 services designated under Category III, IV, VII, or VIII  
16 on the United States Munitions List pursuant to section  
17 38(a)(1) to a foreign country shall include a certification  
18 by the Secretary of State that—

19 “(A) during the fiscal year in which assistance  
20 is to be furnished or military equipment or tech-  
21 nology is to be sold or transferred, the defense arti-  
22 cles or defense services will not be used in hostilities  
23 in which the United States has credible information,  
24 including from credible nongovernmental investiga-  
25 tions, that war crimes, crimes against humanity,

1 gross violations of internationally recognized human  
2 rights, or atrocities have been committed by the gov-  
3 ernment of the recipient country;

4 “(B) during the current fiscal year in which as-  
5 sistance is to be furnished or military equipment or  
6 technology is to be sold or transferred, and during  
7 the preceding three fiscal years, the government of  
8 the foreign country—

9 “(i) has not ordered or directed ethnic  
10 cleansing of civilians;

11 “(ii) has not recruited and used child sol-  
12 diers;

13 “(iii) has not tortured, falsely imprisoned,  
14 or engaged in the targeted killing of political  
15 opponents, human rights defenders, or journal-  
16 ists;

17 “(iv) has not operated or had effective con-  
18 trol or direction over secret detention facilities;

19 “(v) has not engaged, through military,  
20 paramilitary, security, or police forces over  
21 which the government exercises effective con-  
22 trol, in extrajudicial killings;

23 “(vi) has not diverted, transferred, lost, or  
24 given United States weapons to third parties;  
25 and

1           “(vii) has made significant and demon-  
2           strable efforts domestically to—

3           “(I) ensure the protection of inter-  
4           nationally recognized human rights and  
5           freedoms, including the rights of women,  
6           religious, ethnic, and other minorities, and  
7           freedoms of press, expression, and assem-  
8           bly in the foreign country;

9           “(II) denounce extremist ideologies  
10          and doctrines;

11          “(III) prevent and ensure account-  
12          ability for significant acts of corruption;  
13          and

14          “(IV) promote transparent and inclu-  
15          sive governance; and

16          “(C) in any conflict in which the recipient gov-  
17          ernment of the foreign country engages, that govern-  
18          ment will—

19               “(i) facilitate unfettered civilian access to  
20               humanitarian relief and commercial goods;

21               “(ii) support, in statements and actions,  
22               diplomatic and political resolution of the con-  
23               flict; and

24               “(iii) make significant and demonstrable  
25               efforts to—

1                   “(I) ensure command and control of  
2                   such weapons to prevent proliferation to  
3                   non-state actors and proxies; and

4                   “(II) track, prevent, and publicly in-  
5                   vestigate civilian casualties.

6           “(2) For three years following the provision of the  
7 assistance, or sale or transfer of the military equipment  
8 or technology as described in paragraph (1), the Secretary  
9 of State shall provide to the Committee on Foreign Rela-  
10 tions of the Senate and the Committee on Foreign Affairs  
11 of the House of Representatives notice of any violation de-  
12 scribed in subparagraphs (A) through (C) of paragraph (1)  
13 within 60 days of receiving credible information about the  
14 violation.

15           “(3) The certification requirement under paragraph  
16 (1) does not apply to ground-based missile defense sys-  
17 tems.

18           “(4)(A) The President may waive the certification re-  
19 quirement under paragraph (1) not earlier than 30 legisla-  
20 tive days after the Secretary of State, in coordination with  
21 the Secretary of Defense, submits to the Committee on  
22 Foreign Relations of the Senate and the Committee on  
23 Foreign Affairs of the House of Representatives an un-  
24 classified certification, which may include a classified  
25 annex, stating that the waiver is in the national security

1 interest of the United States, including a report detail-  
2 ing—

3 “(i) the status of recipient government efforts  
4 relating to each required certification described in  
5 subparagraphs (A) through (C) of such paragraph  
6 for which a waiver is necessary; and

7 “(ii) relevant information received by the De-  
8 partment of State and the Department of Defense  
9 from credible human rights organizations and inter-  
10 governmental human rights monitoring bodies relat-  
11 ing to each such waived certification.

12 “(B) The President may not waive the certification  
13 requirement under paragraph (1) if Congress, within the  
14 30-legislative-day period referred to in subparagraph (A),  
15 enacts a joint resolution prohibiting the proposed sale or  
16 export. Any such joint resolution shall be considered in  
17 accordance with the procedures set forth in section  
18 36(b)(2).”.

19 **SEC. 4. STRATEGY ON ENHANCING HUMAN RIGHTS CONSID-**  
20 **ERATIONS IN UNITED STATES MILITARY AS-**  
21 **SISTANCE AND ARMS TRANSFERS.**

22 (a) IN GENERAL.—Not later than 180 days after the  
23 date of the enactment of this Act, the Secretary of State,  
24 with the concurrence of the Secretary of Defense, shall  
25 submit to the appropriate congressional committees a

1 strategy to enhance United States efforts to ensure human  
2 rights protections for United States military assistance  
3 and arms transfers. The strategy shall include processes  
4 and procedures to—

5           (1) determine when United States military as-  
6           sistance and arms transfers are used to commit  
7           gross violations of internationally recognized human  
8           rights;

9           (2) determine when United States military as-  
10          sistance and arms transfers are used to undermine  
11          international peace and security or contribute to  
12          gross violations of internationally recognized human  
13          rights, including acts of gender-based violence and  
14          acts of violence against children, violations of inter-  
15          national humanitarian law, terrorism, mass atroc-  
16          ities, or transnational organized crime;

17          (3) detect other violations of United States law  
18          concerning United States military or security assist-  
19          ance, cooperation, and arms transfers, including the  
20          diversion of such assistance or the use of such as-  
21          sistance by security force or police units credibly im-  
22          plicated in gross violations of internationally recog-  
23          nized human rights;



1           (4) train partner militaries, security, and police  
2 forces on methods for preventing civilian casualties;  
3 and

4           (5) determine whether individuals or units that  
5 have received United States military, security, or po-  
6 lice training or have participated or are scheduled to  
7 participate in joint exercises with United States  
8 forces have later been credibly implicated in gross  
9 violations of internationally recognized human  
10 rights.

11       (b) APPROPRIATE CONGRESSIONAL COMMITTEES  
12 DEFINED.—In this section, the term “appropriate con-  
13 gressional committees” means the Committee on Foreign  
14 Relations of the Senate and the Committee on Foreign  
15 Affairs of the House of Representatives.

16 **SEC. 5. END USE MONITORING OF MISUSE OF ARMS IN**  
17 **HUMAN RIGHTS ABUSES.**

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

20           (1) in clause (i), by striking “and” at the end;

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

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

1                   “(iii) such articles and services are  
2                   not being used by non-state actors and  
3                   proxies for the commission of war crimes  
4                   and other gross human rights abuses.”.

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