

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for greater safeguards and accountability with respect to transferred defense articles and defense services.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

(no.) _____

(title) _____

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. VAN HOLLEN (for himself, Mr. DURBIN, Mr. KAINE, Mr. SCHATZ, Ms. WARREN, Mr. MERKLEY, Mr. WELCH, Mr. HEINRICH, Mr. CARPER, Mr. LUJÁN, Mr. SANDERS, Ms. HIRONO, and Mr. MARKEY)

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . SAFEGUARDS AND ACCOUNTABILITY WITH RE-**
3 **SPECT TO TRANSFERRED DEFENSE ARTI-**
4 **CLES AND DEFENSE SERVICES.**

5 (a) REQUIREMENTS.—

6 (1) COMPLIANCE WITH INTERNATIONAL HU-
7 MANITARIAN LAW AND LAW OF ARMED CONFLICT.—

8 Any defense articles or defense services provided
9 pursuant to this Act shall be used in accordance

1 with international law, including international hu-
2 manitarian law and the law of armed conflict, and
3 United States law.

4 (2) COMPLIANCE WITH PROHIBITION ON AS-
5 SISTANCE TO COUNTRIES THAT RESTRICT UNITED
6 STATES HUMANITARIAN ASSISTANCE.—

7 (A) IN GENERAL.—Consistent with section
8 620I(a) of the Foreign Assistance Act of 1961
9 (22 U.S.C. 2378–1(a)), prior to the disburse-
10 ment of any defense articles or defense services
11 provided pursuant to this Act, the President
12 shall obtain assurances that the recipient coun-
13 try will cooperate fully with any United States
14 efforts and United States-supported inter-
15 national efforts to provide humanitarian assist-
16 ance to civilians in an area of conflict where
17 United States defense articles or defense serv-
18 ices are being used by the recipient.

19 (B) WAIVER.—The President may waive
20 the requirement under subparagraph (A) if the
21 President determines that it is in the national
22 security interest of the United States to do so
23 and, consistent with section 620I(e) of the For-
24 eign Assistance Act of 1961 (22 U.S.C. 2378–
25 1(e)), notifies the appropriate congressional

1 committees of the determination and the rea-
2 sons for making the determination.

3 (3) RULE OF CONSTRUCTION.—Nothing in this
4 subsection shall be construed to limit the obligation
5 or expenditure of any funds appropriated by this Act
6 for air defense systems or other systems that the
7 President determines will be used for strictly defen-
8 sive purposes.

9 (b) REPORT.—

10 (1) IN GENERAL.—Not later than 30 days after
11 the date of the enactment of this Act, and every 180
12 days thereafter, the President shall submit to the
13 appropriate congressional committees a separate re-
14 port for each recipient country of defense articles or
15 defense services provided pursuant to this Act on the
16 use by such country, on or after January 1, 2023,
17 of defense articles and defense services provided or
18 funded in whole or in part by the United States.

19 (2) ELEMENTS.—The report required under
20 paragraph (1) shall include the following elements:

21 (A) A description of measures taken to ac-
22 count for defense articles or defense services
23 designated for the recipient, particularly meas-
24 ures with regard to such articles or services
25 that require enhanced end-use monitoring.

1 (B) A description of measures to ensure
2 that such defense articles or defense services
3 reach their intended recipient and are used for
4 their intended purposes, and any other meas-
5 ures to promote accountability for the use of
6 such articles or services.

7 (C) An assessment of whether such defense
8 articles or defense services have been used in a
9 manner consistent with international law, in-
10 cluding international humanitarian law and the
11 law of armed conflict, United States law, and
12 the standards contained in National Security
13 Memorandum/NSM-18, dated February 23,
14 2023, entitled “United States Conventional
15 Arms Transfer Policy”.

16 (D) A description of the procedures and
17 mechanisms used to make the assessment de-
18 scribed in subparagraph (C).

19 (E) An assessment of—

20 (i) the extent to which the use of such
21 defense articles or defense services is con-
22 sistent with United States practices and
23 mechanisms for minimizing civilian casual-
24 ties, including practices and mechanisms
25 developed pursuant to the Defense Depart-

1 ment’s Civilian Harm Mitigation and Re-
2 sponse Action Plan (CHMR-AP); and

3 (ii) the extent to which civilian harm
4 mitigation procedures and mechanisms
5 have been incorporated in the recipient’s
6 security assistance program pursuant to
7 CHMR-AP Objective 9.

8 (F) A description of the procedures and
9 mechanisms used to make the assessment de-
10 scribed under subparagraph (E).

11 (G) A description of any occurrences of
12 such defense articles or defense services not
13 reaching their intended recipient or being used
14 for their intended purposes, and a description
15 of any remedies taken.

16 (H) An assessment of whether the recipi-
17 ent of such defense articles or defense services
18 has been cooperating fully with United States
19 efforts and United States-supported inter-
20 national efforts to provide humanitarian assist-
21 ance to civilians in an area of conflict where
22 United States defense articles or defense serv-
23 ices are being used by the recipient.

1 (3) FORM.—The report required under para-
2 graph (1) shall be submitted in unclassified form but
3 may include a separate classified annex.

4 (c) DEFINITIONS.—In this section,:

5 (1) APPROPRIATE CONGRESSIONAL COMMIT-
6 TEES.—the term “appropriate congressional commit-
7 tees” means—

8 (A) the Committee on Foreign Relations,
9 the Committee on Armed Services, and the
10 Committee on Appropriations of the Senate;
11 and

12 (B) the Committee on Foreign Affairs, the
13 Committee on Armed Services, and the Com-
14 mittee on Appropriations of the House of Rep-
15 resentatives.

16 (2) DEFENSE ARTICLE; DEFENSE SERVICE.—
17 The terms “defense article” and “defense service”
18 have the meanings given those terms in section 47
19 of the Arms Export Control Act (22 U.S.C. 2794).