AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 116–199

DEFENSE COOPERATION: USE OF EMERGENCY AUTHORITIES UNDER THE ARMS EXPORT CONTROL ACT

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

JULY 10, 2019

Printed for the use of the Committee on Foreign Relations

Available via the World Wide Web:
http://www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE
40–504 PDF WASHINGTON : 2020

COMMITTEE ON FOREIGN RELATIONS

JAMES E. RISCH, Idaho, *Chairman*

MARCO RUBIO, Florida
RON JOHNSON, Wisconsin
CORY GARDNER, Colorado
MITT ROMNEY, Utah
LINDSEY GRAHAM, South Carolina
JOHNNY ISAKSON, Georgia
JOHN BARRASSO, Wyoming
ROB PORTMAN, Ohio
RAND PAUL, Kentucky
TODD, YOUNG, Indiana
TED CRUZ, Texas

ROBERT MENENDEZ, New Jersey
BENJAMIN L. CARDIN, Maryland
JEANNE SHAHEEN, New Hampshire
CHRISTOPHER A. COONS, Delaware
TOM UDALL, New Mexico
CHRISTOPHER MURPHY, Connecticut
TIM KAINE, Virginia
EDWARD J. MARKEY, Massachusetts
JEFF MERKLEY, Oregon
CORY A. BOOKER, New Jersey

CHRISTOPHER M. SOCHA, *Staff Director*
JESSICA LEWIS, *Democratic Staff Director*
JOHN DUTTON, *Chief Clerk*

CONTENTS

	Page
Risch, Hon. James E., U.S. Senator From Idaho	1
Menendez, Hon. Robert, U.S. Senator From New Jersey	3
Cooper, Hon. R. Clarke, Assistant Secretary, Political–Military Affairs, U.S. Department of State, Washington, DC	4
Prepared statement	6

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Responses of R. Clarke Cooper to Questions Submitted by Senator James E. Risch	34
Responses of R. Clarke Cooper to Questions Submitted by Senator Robert Menendez	34
Responses of R. Clarke Cooper to Questions Submitted by Senator Todd Young	43
Responses of R. Clarke Cooper to Questions Submitted by Senator Edward J. Markey	45

DEFENSE COOPERATION: USE OF EMERGENCY AUTHORITIES UNDER THE ARMS EXPORT CONTROL ACT

WEDNESDAY, JULY 10, 2019

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:19 a.m., in room SD–419, Dirksen Senate Office Building, Hon. James E. Risch, chairman of the committee, presiding.

Present: Senators Risch [presiding], Gardner, Romney, Cruz, Menendez, Cardin, Shaheen, Coons, Murphy, Kaine, and Markey.

OPENING STATEMENT OF HON. JAMES E. RISCH, U.S. SENATOR FROM IDAHO

The CHAIRMAN. The committee will come to order.

Thank you all for being here today. And today, we are going to discuss the recent emergency declaration regarding U.S. arms sales.

To start, we should recognize and acknowledge that the law contemplates and, indeed, requires a partnership between the executive branch and the legislative branch regarding arms sales. This committee plays an important role to conduct rigorous oversight of the issue. At the same time, the law does grant the President authority to conduct sales without congressional approval in times of emergency. We will be focusing on that issue. This hearing will focus on these rules and authorities. We must consider the context for this latest declaration, namely the active threats and attacks from Iran and its proxies and our partners' capabilities to defend against those threats.

The Arms Export Control Act grants the President authority to declare an emergency concerning specific arms sales and avoid the standard process of congressional notification. Such presidential authority dates back more than 40 years to lessons learned from the October 1973 war in the Middle East. Presidents of both parties have used emergency authorities five—on five previous occasions. In each case, they address specific threats to U.S. allies and did not alter the standing process of congressional review nor have a meaningful impact on Congress's authority over time. I expect this latest declaration will continue that pattern and deserves review in that expectation.

As with one of the previous emergency declarations, this declaration came in response to threats and attacks from the Iranian re-

gime. Since mid-May, Iran and its proxies have struck commercial ships, civilian airports, and desalination plants critical to the civilian population. Additionally, they shot down multiple U.S. unmanned aircraft. Over the weekend, Iranian-backed Houthi forces in Yemen unveiled even newer models of ballistic missiles and unmanned aerial vehicles capable of striking deeper into Saudi Arabia. Iran's threats and actions toward the U.S. and our allies have been clear: We must respond to such threats, protect our interests, and support our allies as they defend themselves. Neither this President nor Congress nor the American people seek war with Iran. And I commend the President for his restraint in the face of numerous provocations.

I was in the room as the President considered the—one of the most recent provocations, and sought advice regarding that. Anyone—anyone who interprets the President's reasonable forbearance is making a grave mistake, that is a—ripe for miscalculation and it should not be mistaken. Attacking America, its interests, or our partners will lead to a strong defensive response. Emergency declarations are useful, not just for the tangible military capabilities they transfer to allies and partners, but are equally important for the messages they convey.

These particular sales come in the context of, and are colored by, larger challenges with our Saudi and Emirate partners, including the war in Yemen, the murder of Jamal Khashoggi, and other human rights issues. To address these challenges, I introduced the Saudi Arabia Diplomatic Review Act and sought broad input from all quarters, on a bipartisan basis, to produce legislation that will move us much more in the right direction. I want to thank all parties, including my friends on the other side of the aisle, who have been very helpful in trying to craft legislation that will get us to where we want to be. I have been impressed how carefully people have weighed this issue, and how impressed I have been with the attempt to reach legislation that balances the various aspects of this challenge.

This legislation calls for a comprehensive review of United States-Saudi relations. As we conduct this review, however, we must not—we must discourage Iran aggression, and must not leave Saudi Arabia vulnerable. Our partners desperately need the capabilities in these sales contemplated by other U.S. training and advising initiatives to improve their ability to minimize collateral damage and deter aggression. We are here today because of the continuing threats by Iran. As we move forward, I urge us all to seek measured solutions to these difficult challenges and avoid inadvertently strengthening our adversaries or damaging our partners and allies. I really believe this committee has done that and, hopefully, we will continue to do that.

I thank our witnesses for joining us today, and look forward to hearing their perspectives on these issues.

With that, Senator Menendez.

STATEMENT OF HON. ROBERT MENENDEZ,
U.S. SENATOR FROM NEW JERSEY

Senator MENENDEZ. Thank you, Mr. Chairman, for holding this hearing today to examine the appropriate role of congressional oversight on arms sales.

It is important that any President and any administration, and this one in particular, respect Congress as a coequal branch of government and execute our laws in good faith.

Now, despite your pledge during your confirmation hearing to do just that, Mr. Cooper, and your commitment to be transparent and forthcoming with this committee, since you began your tenure, the Department has shown only disdain for Congress and the laws that govern our arm export programs. Beyond that, you have balked at the idea that you should be held accountable for your actions.

On May 24th, the Secretary of State sent this committee 22 notifications for arms sales and transfers to Saudi Arabia and the United Arab Emirates, totaling more than $8 billion. In a boilerplate memo, the Secretary argued, unconvincingly, that these sales, some of which the committee had already cleared, were exempt from the legally required 30 days of congressional review and action, claiming a sudden, quote, "emergency threat from Iran." Yet, this administration has been unable to explain how, precisely, these sales respond to the supposed emergency. And at no time prior to May 24th did the administration once raise these sales as necessary to respond to the threat from Iran.

Let me be clear. Iran has and will continue to pose a threat to U.S. interests and allies in the region. And I have and will continue to improve—approve arms sales to allies that are in line with our long- and short-term strategic interests and basic U.S. principles, such as the basic respect for human life. But, if you look at these sales, it appears that the administration had other motives. Indeed, when pressed, rather than explain exactly how these sales will address a supposedly imminent threat from Iran, you and other administration officials demurred and said the sales were for, quote, "sustaining the global supply chain," for preventing, quote, "loss of sale to peer competitors," for maintaining U.S., quote, "credibility as an arms supplier," and so on.

So, I look forward to hearing you explain today, How would taking away American jobs and creating a Saudi jobs program of manufacturing F–18 panels for export for an aircraft the Saudis do not own or operate respond to an emergency? How would sales that would not be delivered for many, many months immediately respond to an emergency? And, as I have been asking for more than a year, how does the sale of precision-guided munitions for use in Yemen, presumably when the same—with the same atrocious results and human suffering we have seen over the last 4 years, respond to an emergency?

Mr. Cooper, you testified in a House hearing that the, quote, "protracted process of congressional review was problematic for the commercial sales." Indeed, unless I misunderstood, you implied that I personally, in exercising my rights as the Ranking Member of this committee, was the reason you had to push through all 22 sales. As you well know, the process was protracted because neither the Secretary nor the Department was willing or able to make

a persuasive case that selling precision-guided bombs to Saudi and the United Arab Emirates, the particular arms that I was holding, would improve protection of Yemeni civilians to Saudi airstrikes or end the UAE's human rights abuses in Yemen. In fact, not only did the Department not make a persuasive case, you made no case since last October, after Jamal Khashoggi was literally butchered, on orders from the highest levels of the Saudi government.

So, Mr. Chairman, my colleagues, the Secretary of State's message to us is clear, "Congress can review arms sales. Just do not take too long or ask tough questions. Otherwise, I will just ignore the law and cut you out of the process entirely."

Three weeks ago, in a bipartisan fashion, the Senate made clear what it thought of the Secretary of State's false emergency sales by approving an unprecedented 22 separate resolutions of disapproval of these sales. Two weeks ago, this committee approved our bipartisan bill, the Saudi Arabia False Emergencies, or SAFE, Act, to prevent similar abuses of the emergency authority in the future. I hope the Secretary and the administration appreciate the gravity of these actions and those to come.

The informal arms sale review process under the Arms Export Control Act has operated successfully for decades. It worked because successive administrations recognized that there is a value in consulting with the committees about any concerns that could arise from a sale, and they acted in good faith.

Simply put, Mr. Cooper, you and the Secretary have undermined this process. I urge you to take another look at the definition of "emergency" and rethink your approach to engaging Congress and abiding by the congressional oversight you claimed during your hearing you would respect.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Welcome, Secretary Cooper. The floor is yours.

STATEMENT OF HON. R. CLARKE COOPER, ASSISTANT SECRETARY, POLITICAL–MILITARY AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Mr. COOPER. Thank you very much, Mr. Chairman, Mr. Ranking Member, and Senators.

"In recent days, neutral shipping has been attacked. By providing a deterrent against hostile actions, this transfer lowers the risk of a broader conflict. The determination reflects the United States grave concern with the growing escalation in the Gulf and its implication for the security of our friends in the region." These words could precisely describe the context of the recent emergency certification this hearing has been convened to discuss, but they are actually from a State Department announcement from 1984. Then, as now, Iran's revolutionary government threatened international shipping in the Gulf, through its proxies, supported attacks on American interests in the region, resulting in deaths of 241 American service members in Beirut. Then, as now, our partners required the reassurance provided by an American demonstration of resolve. And then, as now, the administration took steps to deter war, not to bring it closer.

In his May 24th certification, Secretary Pompeo advanced a set of arms transfers to support our partners in the current crisis. These capabilities include aircraft support, munitions, logistics services, unmanned intelligence, surveillance, and reconnaissance platforms, training, and advisory services. None of these constitute introductions of fundamentally new capabilities to the region. None alter the military balance of power. None are of a nature or category that Congress has not previously reviewed and approved for these particular partners.

The Secretary's decision to exercise his statutory authorities under the Arms Export Control Act reflects the current threat from Iran as well as the persistent threat. Prior to making the certification, the administration saw and briefed Congress about an increased threat stream from Iran relating to both U.S. and partner interests throughout the region. These troubling and escalatory indications and warnings from the Iranian regime prompted an increased U.S. force posture in the region.

Events since the Secretary's certification served to further validate the urgent need for these sales: Iranian attacks on civilian crude commercial cargo ships and tankers in the Sea of Oman; continued attacks by the Iranian-backed Houthis—these are including utilization of one particular case of a cruise missile against civilian commercial airports; and the shoot down of a U.S. Broad Area Maritime Surveillance unmanned aerial system in international airspace.

These provocative actions mark a new evolution in the threat Iran poses to the region, to our partners, and to our own national security, including the security of the hundreds of thousands of Americans who live and work in the Gulf States. And the current situation in Iran has implications not only in the Gulf, but in a geostrategic level. In today's world, our partnerships are vital, and we must ensure our partners have the capabilities, the systems, the communications, the intelligence, and the training to play their due role in maintaining the stability and the security in their regions.

Our adversaries recognize the importance of our partnerships and have adopted purposeful strategies of trying to disrupt them at all levels, including in terms of our security cooperation; for instance, by seeking to replace us as suppliers of choice. As such, the Secretary's certification should not be seen not only as a deterrent to Iran and a reassurance to our partners, but it is also a rebuff to our competitors.

Before closing, I would like to address some of the specific concerns that have been raised by this committee. Many Senators—many Americans—are concerned about the use of arms we provide overseas, including in the context of the Yemen civil war. These concerns are appropriate, and we share them. From the beginning of the conflict, we have maintained a political solution is urgently needed, and supported the U.N.-led effort working toward that objective. America stands out from many foreign suppliers of defense materiel by the premium we place on ensuring that our capabilities are not contributing to gross violations of human rights. We have worked with the Saudi-led coalition, over the course of its operations, to reduce the occurrence of civilian casualties. Our support

in this regard has ranged from the provision of training on targeting to mentoring and advising the coalition on best practices, on lessons learned, and on integrating complex data into a system that is specifically designed to reduce civilian casualties. We have also provided higher-end legal training on the laws of armed conflict, and have directly and regularly engaged with both military and political leadership on this topic.

And finally, on the question of process, during both his confirmation and, as cited here today, my own confirmation, the Secretary and I did provide you our commitments on the congressional review process for arms sales. That commitment stands. I value deeply Congress's role in the review of arms transfers. I take pride in the depth and the detail of the working relationships that we have with the committees in the course of this process. The Secretary's certification is not setting aside of that process, but it is the utilization of a longstanding statutory authority to respond to an urgent contingency. As such, I would like to take this opportunity to affirm the value we place in our engagement with you on arms transfers and broader security assistance issues.

Mr. Chairman, in 1984, Ambassador Michael Armacost explained President Reagan's emergency certification to Congress in these words, "Our decisions were a prudent yet clear response to an escalating emergency which threatens Saudi Arabia and the Gulf. They satisfied a clear military need. In addition, we sent a political signal of both reassurance and deterrence. It was a measured response which promotes regional stability and security."

Mr. Chairman, Mr. Ranking Member, committee members, a political signal of both reassurance and deterrence, a measured response which promotes regional stability and security, these are the purposes for which President Reagan certified an emergency in 1984, and they are the purposes for which Senate—Secretary Pompeo invoked the same authority in May.

Thank you. And I look forward to your questions today.

[The prepared statement of Mr. Cooper follows:]

PREPARED STATEMENT OF R. CLARKE COOPER

Mr. Chairman, Ranking Member Menendez, Senators:

"In recent days, neutral shipping has been attacked . . . By providing a deterrent against hostile actions, this transfer lowers the risk of a broader conflict. The . . . determination reflects United States grave concern with the growing escalation in the Gulf and its implication for the security of our friends in the region."

These words could describe the context of the recent Emergency Certification this hearing has been convened to discuss, but they are actually from a State Department announcement from 1984. A hearing took place 35 years ago shortly after that announcement was made, similar to the one we are participating in today. At that hearing, then Under Secretary for Political Affairs, Ambassador Michael Armacost, told Congress of our "need to respond firmly and decisively to requests from the Gulf states for appropriate and justifiable security assistance." He added that:

"The states in the area must be confident that our interests in the Gulf are sufficiently important for us to help in a crisis. The United States has to be seen as a credible partner in the search for stability and security."

Then, as now, Iran's revolutionary government threatened international shipping in the Gulf. Then, as now, our partners required the reassurance provided by an American demonstration of resolve. And then, as now, the administration took steps to deter war, not to bring it closer.

On May 24th, 2019, the Department of State notified Congress that the Secretary determined that "an emergency exists which requires the immediate sale" of 22 foreign military and direct commercial sales to Saudi Arabia, the United Arab Emirates, and, in one case, Jordan. These sales included aircraft support, munitions, lo-

gistics services, unmanned intelligence, surveillance and reconnaissance platforms, training, and advisory services.

These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran; promote the vitality of our bilateral relationships by reassuring our partners; and preserving strategic advantage against near-peer competitors.

A combination of factors led the Secretary to determine the situation constituted an emergency and prompted him to make the Certification, including the significant increase in the intelligence threat streams related to Iran; the clear, provocative, and damaging actions taken by Iran's government; and the need to respond to military capability requests from our partners.

Iran is a malign actor and the leading state sponsor of terrorism. It poses conventional and asymmetric threats to our partners in the Gulf, and to U.S. interests in the region and beyond. While these facts are well-known, we have seen new, troubling and escalatory indications and warnings from the Iranian regime, which have prompted an increased U.S. force posture in the region. Indeed, events since the Secretary's certification further demonstrate the urgent need for these sales : Iranian attacks on civilian-crewed cargo ships and tankers in the Sea of Oman; continued attacks by the Iranian-backed Houthis, including one utilizing a cruise missile, against civilian commercial airports; the shoot-down of a U.S. Broad Area Maritime Surveillance unmanned aerial system in international airspace.

These latest actions, like those preceding the May 24th notification, include attacks on commercial shipping off the coast of the United Arab Emirates, attacks on pumping stations of the Saudi East-West Pipeline utilizing unmanned aerial vehicles, and a rocket fired into a park about a kilometer from the U.S. Embassy in Baghdad on May 19th. These are provocative actions that mark a new evolution in the threat Iran poses to the security of the hundreds of thousands of Americans who live and work in the Gulf States, and to the security of the region, and our partners.

Our posture regarding Iran remains focused on assuring our partners of our commitment to enhancing their defense capabilities. This action is not intended to be an escalatory military step; instead, it is a loud and clear message to Iran that we stand by our regional partners at a particularly dangerous time. This set of cases demonstrates the United States' resolve to stand with our partners and to ensure we remain their partner of choice.

In the Memorandum to Congress, the Secretary explained "Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad." He noted "Iran's actions have led directly to the deaths of over 600 U.S. military personnel in Iraq, untold suffering in Syria, and significant threats to Israeli security," and he observed that "current threat reporting indicates Iran engages in preparations for further malign activities throughout the Middle East region, including potential targeting of U.S. and allied military forces in the region." While the law requires the Department of State to notify Congress, Members of the Committee should understand clearly that the intended audience of this notification extends beyond Congress or even Iran.

As the 2017 National Security Strategy makes clear, we are in an era of global competition against near-peer adversaries, including Russia and China. That competition includes fostering security and defense relationships that have political, military, and economic components. In such an environment it is crucial that the United States remain the partner of choice and be trusted as a dependable provider of defense capabilities—including materiel—to our partners.

Our National Security Strategy describes the invaluable advantages that our strong relationships with allies and partners deliver. While the United States continues to build and offer our partners the most capable, advanced, defense technologies, we do not have a monopoly on fostering or maintaining reliable security relationships.

The National Security Strategy is realistic and very clear eyed the United States must compete for positive relationships around the world as China and Russia target their investments in the developing world to expand influence and gain competitive advantages against the United States.

Our adversaries, including Russia and China, have adopted deliberate, long-term strategies of trying to disrupt our partnerships by seeking to replace the United States as the credible supplier of choice. We simply cannot allow openings our adversaries will most certainly exploit to disrupt partnerships, to reduce our regional influence, to impact our defense industrial base, and to spread chaos.

Remaining a reliable security partner to our allies and friends around the world is also in the interest and furtherance of our values. When our adversaries sell weapons of war, they do not place the same, if any, premium as we do on addressing the risk the capabilities we provide may contribute to abuses of human rights or

violations of international humanitarian law. China does not work to expand transparency on the battlefield, and there is no Russian Conventional Arms Transfer Policy requiring action to facilitate partner efforts to reduce civilian casualties, which is a policy we have had in place since 2018.

When President Trump issued the updated Conventional Arms Transfer Policy in 2018, a centerpiece of the new Policy was its unprecedented directive that we work with partners to reduce the risk of civilian harm in their military operations. We are working on the implementation of that directive to shape future engagements, including with partners in advance of conflict situations.

Before I close, let me address a few other aspects of these sales and the emergency certification that may interest to you.

First, the step recently taken by the Secretary to certify an emergency has ample precedent. The statutory emergency authority in the Arms Export Control Act was exercised a total of five times since 1979, across administrations, both Democratic and Republican. In two of those cases, it was also for sales to Saudi Arabia due to threats posted by other countries in the region. There is, however, one element of the most recent emergency notification that is new: unlike in previous instances this authority has been invoked, Congress was provided with an unclassified Memorandum of Justification by the Department of State.

Second, we value deeply this Committee's and Congress' role more broadly in the review of the arms transfer process. I acknowledge the Committee's concerns regarding the Secretary's certification, evinced by actions such as your advancement by voice vote of Senator Menendez's SAFE Act in June. So let me be clear: we take pride in the depth and detail of the working relationship the Department has with the Committees in the course of this process. As the Secretary noted, we intend for this certification to be a one-time event for a discrete set of cases, utilizing statutory authority provided by Congress. As such, we view the Secretary's action as an affirmation of the value we continue to place on our engagement with you on arms transfers and broader security assistance issues.

The Department will continue to use the Tiered Review process, the informal review that this Committee, and its House counterpart, conduct of pending arms transfers, before those transfers are formally notified. I particularly appreciate the Committee's staff also has continued to engage in this process since the certification. In fact, since the emergency notification on May 24, 2019, the Department of State has already utilized the tiered review process for a new sale of F–16s to Bulgaria, Anti-Radiation Guided Missiles for Germany, and sustainment for Morocco's F–16 fleet.

Third, none of these sales constitute introductions of fundamentally new capabilities to the region; none fundamentally alter the military balance of power; none are of a nature or category that Congress has not previously reviewed and supported for these partners.

Finally, many Members—indeed, many Americans—are concerned about the end use of the arms we provide overseas, including in the context of the Yemen civil war. These concerns are appropriate and we share them. From the beginning of this conflict we have maintained a political solution is urgently needed, and supported the U.N.-led effort working toward that objective. In addition, we have worked with the Saudi-led Coalition over the course of its operations to reduce the occurrence of civilian casualties.

Our support in this regard has ranged from the provision of training on targeting and the supply of more precise munitions, to mentoring and advising the Coalition on best practices to reduce civilian casualties—such as the standing up and operationalization of the Saudi Joint Incident Assessment Team—to training on international humanitarian law, and direct engagement with political leadership on this topic. While more work is undoubtedly needed, our engagement with the Coalition has improved its ability to avoid civilian casualties in its operations.

So that is the global, steady-state picture: the need to meet a present emergency; to remain engaged with partners; to ensure we, rather than near-peer adversaries, are their primary security partners; to make clear we support our partners in the defense of their realms and the security of the regions; and to deter our shared adversaries from disrupting those objectives. Or, as Ambassador Armacost put it to Congress all those years ago, "Our decisions were a prudent yet clear response to an escalating emergency which threatens Saudi Arabia" (and the Gulf). "They satisfied a clear military need. In addition... we sent a political signal of both reassurance and deterrence. It was a measured response which promotes regional stability and security."

Mr. Chairman, Mr. Ranking Member, Committee Members: Those were the purposes for which President Reagan certified an emergency in 1984: and, within the

context of the imminent threat posed by Iran, they are the purposes for which Secretary Pompeo invoked the same authority on May 24.

Thank you, and I look forward to your questions.

The CHAIRMAN. Thank you very much, Mr. Cooper.

Do you have any current plans to invoke emergency on any sales in the immediate or near future?

Mr. COOPER. No, Mr. Chairman. The authority, as you noted, has been limited, applied very judiciously. This is the fifth application. The one I cited that was the most historic relevance was in 1984. The first application was in 1979. It has been judiciously applied across administrations from President Carter to President Trump.

The CHAIRMAN. You made reference, in your testimony, to the fact that there was the possibility, always, that someone like the Saudis, someone with—that has very substantial financial resources, could turn to one of our two major competitors on the globe and actually wind up in their orbit. Is that a substantial threat, do you believe?

Mr. COOPER. In an open fora, I would—it is safe to address that there is always the risk of near-peer adversaries looking for opportunities, not only in the Gulf region, but anywhere on the globe. I would say, when we are talking about the National Security Strategy and how we meet near-peer adversaries, it is not limited to where they are geographically set. It is a global concern. And, back to the calculus on the emergency certification, it was a message, on several levels. The immediate one was a deterrence to Iran. There was the reassurance, as noted here, to these partners. But, it was also a warning or a rebuff to near-peer adversaries who, maybe, were looking to augment or seek opportunity.

The CHAIRMAN. Thank you.

Senator Menendez.

Senator MENENDEZ. Mr. Cooper, would you agree that an emergency usually denotes something imminent, something urgent?

Mr. COOPER. Yes, Senator.

Senator MENENDEZ. I have—so, it would not refer to something from years ago. So, I have read this May 24th memo from the Secretary multiple times, and yet I just cannot seem to find where it lays out the emergency that these sales address. I see references to designations dating back to 1984, events from 2014, and general instability that has been plaguing the region for years. For years. But, nowhere do I see where it says what the emergency is.

So, tell me, what is the State Department's operative definition of an "emergency" that you used for these sales?

Mr. COOPER. Thank you, Senator.

So, the statement you are referring to, the actual declaration, is an unclassified document. And you were correct to note that there is context in there of this particular adversary and their persistent threat stream, as well as what their proxies may or are capable of doing. What actually equates to an emergency, as it—where we are today—is the current threat posture of Iran and what was calculated there, from an interagency aspect. There were multiple tools, including this——

Senator MENENDEZ. But, just——

Mr. COOPER. —declaration——

Senator MENENDEZ. Let me stop you, because I do not have unlimited time.

Mr. COOPER. Okay.

Senator MENENDEZ. Answer my question. What is the definition of "emergency" that you used for these sales?

Mr. COOPER. A confluence of conditions that were assessed required several tools by the administration, including an increase of force posture, this emergency declaration, and application of sanctions. That did equate an emergency status.

Senator MENENDEZ. None of that—none of that really has changed, though, from the present to the past. Did the legal advisor's office opine on what an "emergency" is?

Mr. COOPER. The legal advisor's office assured and cleared on the statutory authority that was made available for the Secretary to make this decision.

Senator MENENDEZ. Did the legal advisor issue a legal opinion?

Mr. COOPER. Legal advisor's office was part of the process, and then——

Senator MENENDEZ. I didn't ask you that.

Mr. COOPER. —the decision——

Senator MENENDEZ. I asked you, Did they issue an opinion?

Mr. COOPER. In this fora, I am not going to talk about the predecisional process on the option——

Senator MENENDEZ. Did they issue——

Mr. COOPER. —that the Secretary had.

Senator MENENDEZ. —an opinion? What is a pre-decisional process? They either issued an opinion or they did not issue an opinion. Did they issue an opinion? That is not a question of a predecisional process. Do you have opinion in your possession?

Mr. COOPER. Senator, the legal advisor's office participated in the application of the certification, as noted by statute for——

Senator MENENDEZ. Okay.

Mr. COOPER. —the Secretary's——

Senator MENENDEZ. You are not answering my——

Mr. COOPER. —authority.

Senator MENENDEZ. You are not answering my question. And I am not going to let you get away with what you got away with in the House. Either you have an opinion, in which case I want to see it, or, if you do not have an opinion that is written, then you ultimately invoked an emergency, but without a legally defined opinion of what that emergency is.

Why did the State Department never utter the word "emergency" to me or my staff in relation to any of these sales, at any point prior to the Secretary's emergency certification?

Mr. COOPER. Senator, as you noted and others have noted, on May 21st there was a classified briefing that was provided to Congress. In that briefing, there was details about the current threat posture with Iran. This certification was an option as a tool, including invocation of sanctions or application of sanctions——

Senator MENENDEZ. The words "emergency," Mr. Cooper, were never used by anyone, from the Secretary of State all the way down. Did you discuss declaring an emergency for these sales with the Secretary before the Secretary briefed the Senate and the House on May 21st and 22nd?

Mr. COOPER. Senator, all the cases in the emergency, including cases that were not included in the certification, were part of our interagency process, not only with the Department, but the normal review process. We provided options for the Secretary to make his decision on application of the certification.

Senator MENENDEZ. Did you discuss an emergency as part of that?

Mr. COOPER. Again, in an open fora, I would say, looking at intelligence community assessments——

Senator MENENDEZ. I am not asking you——

Mr. COOPER. —at the time——

Senator MENENDEZ. I am not ask—wait a minute.

Mr. COOPER. It is part of the——

Senator MENENDEZ. You want to divert to classified so you do not have to answer. I did not ask you a classified question. I simply asked you, did you declare the possibility of an emergency declaration prior to May 21st and 22nd? That is not classified.

Mr. COOPER. No, Senator. The calculus is inclusive of that data, so the data is not absent of intelligence data. So, that is part of the consideration of——

Senator MENENDEZ. I am not asking you about——

Mr. COOPER. —force posture——

Senator MENENDEZ. —intelligence data. I am not asking you about how you came to the decision of emergency in this case. I am simply asking you, Mr. Cooper—this is far from the transparency that you pledged to when you were before this committee, far from the transparency that led me to support your nomination. Simple question. Did you offer up an emergency as an option prior to May 21st and 22nd?

Mr. COOPER. There were a number of considerations and tools made available for the interagency, inclusive of sanctions, this emergency, and force posture. Any of those could have been applied, or none of those could have been applied.

Senator MENENDEZ. So, you did discuss an emergency prior to May 21st and 22nd.

Mr. COOPER. Threat posture is continuously assessed. It is assessed before May 21st, Senator. We do not stop assessing.

Senator MENENDEZ. Iran has been a continuing threat posture. Let us be honest.

Mr. COOPER. Upticks and changes in posture——

Senator MENENDEZ. Your unwillingness leads to a total lack of transparency and is insulting to the Senate, when the Secretary was before us the day before he ultimately made this decision and never mentioned, in front of 100 United States Senators, that there was going to be an emergency declaration. I find that—overwhelmingly amazing to try to believe that all of a sudden an emergency came up, just right after we were briefed. Preposterous.

The CHAIRMAN. Senator Gardner.

Senator GARDNER. Thank you, Secretary Cooper.

Secretary Cooper, you started to mention the word "uptick." Was the assessment by yourself, others, the belief that there was an uptick in hostilities?

Mr. COOPER. In a general sense, in this open fora, there was a shift in posture that required a number of tools for the administration, inclusive of this declaration, to be applied.

Senator GARDNER. And there was a concern that there was a strike or activity or hostility of some kind that was imminent?

Mr. COOPER. That is correct, in a very general sense.

Senator GARDNER. Would you consider an imminent hostility or strike an emergency?

Mr. COOPER. Correct.

Senator GARDNER. Thank you.

I want to change the subject a little bit here. I would like to switch gears and talk a little about the Indo-Pacific.

On December 31st, 2018, the President signed into law the Gardner-Markey Asia Reassurance Initiative Act, or ARIA. Section 209(b) of ARIA states, "The President should conduct regular transfers of defense articles to Taiwan that are tailored to meet the existing and likely future threats from the People's Republic of China, including supporting efforts—the efforts of Taiwan to develop and integrate asymmetric capabilities, as appropriate, including mobile, survivable, and cost-effective capabilities into its military forces."

June 28th, the Senate approved the fiscal year 2020 National Defense Authorization Act, including my amendment calling for the administration to fully comply with ARIA provisions. And 2 days ago, on July 8th, the State Department approved a possible $2.2 billion sale to Taiwan, including 108 Abrams tanks and 250 Stinger missiles. I commend the administration for making this decision and for implementing ARIA as Congress intended.

What is your assessments of—assessment of Taiwan's current defense capabilities and needs?

Mr. COOPER. Thank you, Senator.

I will say, in an open fora, that, in addition to ARIA, when we were doing the tiered review process, so going back to the process of lines of communication with Congress, and particularly Senate Foreign Relations Committee, those cases that were formally announced on Monday that you referenced went through the process, as normal. In addition, ARIA also comports with, aligns with, the Taiwan Relations Act. So, that was—that factored in and still aligns with our One China policy.

As far as their defense posture, safe to assess, and is well-known open source, that they certainly have a sovereignty of—a right to defend their sovereignty, and it is one that we certainly would not see impeded upon. And that does comport where we are with the Taiwan Relations Act.

Senator GARDNER. What is your assessment of likely and future threats that Taiwan faces from the People's Republic of China?

Mr. COOPER. Threats to Taiwan's sovereignty are not abated or going away, and that are—they are something that we need to factor with that partner. We are a reliable partner. They also were a reliable partner when we were looking at making sure that the Indo-Pacific region is open and free. And they are a part of that constellation of partners to ensure that we have an open and free Indo-Pacific.

Senator GARDNER. Yeah. And how has the administration supported the efforts of Taiwan, as I mentioned, to develop and integrate asymmetric capabilities, the mobile, survivable, cost-effective capabilities, into its military force?

Mr. COOPER. Again, with this particular partner, with the parameters that we have to work with them, we seek to make whatever capabilities robust. Again, it is about making sure that they are not only able to defend their sovereignty, but play a regional security role for an open and free Indo-Pacific.

Senator GARDNER. One of the challenges I think that we face is the pipeline that needs to be filled with continued action as it relates to fulfill our commitment of the Taiwan Relations Act and ARIA as it relates to Taiwan. Could you talk a little bit more about the pipeline, so to speak, of what else we will be doing to help Taiwan and fulfill our obligations?

Mr. COOPER. Looking forward and a way ahead, there are additional assets that would be going through the review process here at the Senate before we go to formal notification. And that is already happening. To your point about pipeline, certainly looking forward as to what capabilities may be required in the future, versus fighting previous, last year's, or different-generations' wars, looking at—back to the asymmetric, trans regional aspect of threats that Taiwan may be needing to address, not just for their own homeland sovereignty.

Senator GARDNER. I think part of the challenge with the arms sales is allowing too much time between transactions with Taiwan, allowing China greater opportunity to oppose, to raise political opposition. And if the pipeline is, indeed, filled and regularized, so to speak, I think that would present a better opportunity for the United States to engage with Taiwan and other allies, and to make sure that we fulfill the Taiwan Relations Act and ARIA, which calls for routinized or regularized sales versions.

Thank you.

Mr. COOPER. And, Senator, as you would note, their legislative body also has their particular processes that require a pipeline aspect, which is well noted at the Department and the—throughout the interagency.

Senator GARDNER. I commend you for the sale.

Thank you.

Mr. COOPER. Yeah.

The CHAIRMAN. Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

Mr. Chairman, I have sat on this committee with Democrats in the White House, Republicans in the White House, Democrats controlling this committee, Republicans controlling this committee, and the balance in the Arms Export Control Act has never been breached, except for this declaration. And I think this is extremely serious. So, I just want to put this on the record.

We pass the laws. And in the Arms Export Control Act that we passed, we made it clear about the mandatory nature of congressional involvement in arms sales. That is our prerogative, as the Article—first branch of government, on establishing policy. It is normal for us to give a national security waiver to a President, to give flexibility for unforeseen circumstances. We do that routinely

in our legislation. But, the exercise by this administration of that authority shows a disrespect for Congress and could very well affect the comity that exists between the two branches of government on arms sales, which means we are going to have to be more prescriptive in our laws, taking away discretion from the executive branch of government, which may not be in our national security interest, but our responsibility to make sure our policies are carried out, which were not carried out in this instance.

Mr. Cooper, you mentioned the 1984 declaration. In 1984, it was two sales, not 22 sales. In 1984, the arms were delivered immediately. That is not the case in this. And in 1984, you had strong support for Congress in what you were doing—what the President was doing. In this case, you do not. So, there is not an analogy between the use of the emergency declaration in 1984 and today.

How many of the 22 arms sales have been delivered, completed?

Mr. COOPER. Of the sales, the direct commercial sales, the licensing has been completed——

Senator CARDIN. How many deliveries have been made of the 22 arms sales? That is a simple question.

Mr. COOPER. As far as specificity on the different licenses and different deliveries, we can provide that in a record statement.

Senator CARDIN. Is it not safe to say that many of those arms sales have not been yet delivered?

Mr. COOPER. Licensings have been——

Senator CARDIN. Have they been delivered? As I understand the emergency declarations, they need the military equipment for our security. How many of those actual arms have been delivered to date? Not how many licenses have been issued. How many have been delivered?

Mr. COOPER. Delivery is pending. The issuance in emergency was providing that reassurance for our partners——

Senator CARDIN. And I understand that. So, they have not been delivered. The declaration was made on May 24th. The Arms Control Act requires a 15-to-30-day congressional review. It is a requirement. You could not go through a 15-to-30-day review, but you have been considering this for a long period of time, and the arms have not been delivered. Do you understand why we consider this to be an abuse?

Mr. COOPER. Senator, they had been under review. In many cases, close to a year. So, the cases that we talk about are not new. They had been under review. Now, as far as——

Senator CARDIN. I understand that, but the——

Mr. COOPER. Okay.

Senator CARDIN. —law requires the 15-to-30 day, which you blew through.

Mr. COOPER. We had covered that period, and had gone beyond that, Senator.

Senator CARDIN. I just urge you to recognize the risk factors that you are leaving for our country. If Congress feels disrespected by what this President has done—this administration has done—as to our constitutional role, it leaves us little choice but to limit the discretion to the executive branch of government, which we can legally do, because we are the legislative branch of government. And that is what is coming down.

I want to talk one other issue, if I might, which deals with the U.S. Conventional Arms Transfer Policy, that the U.S. shall not authorize a transfer when the U.S. has actual knowledge that transferred weapons will be used to commit crimes against humanity, grave breaches of Geneva Conventions, or attacks intentionally directed against civilian objects or civilians who are legally protected from attack. You have said that we have been working with the Saudis to reduce the number of civilian casualties, better targeting, et cetera. Yet, I think it is undisputed that, after those consultations, there were still attacks in which the international community said have violated the international Geneva Convention and civilians being targeted for death. That is what has been said several times. I could also go to the Philippines, where we have U.S. weapons that have been provided, and there has been extrajudicial killings that we know about that violate international norms. How are you protecting our policy that our arms cannot be made available, where we have knowledge that these governments have participated in actions that have violated these international norms?

Mr. COOPER. Thank you, Senator.

In addition to statute, the current policy, the CAT policy, this administration policy, goes above the statute on those requirements. It does not preclude us from pushing further and harder. No Department of Defense, no Ministry of Defense, is ever going to say they have reached a satisfactory point on——

Senator CARDIN. I know. But, the law——

Mr. COOPER. —mitigating civilian casualties——

Senator CARDIN. —requires that, if you have knowledge that they have violated, you do not transfer weapons. And you have transferred weapons after we have acknowledged that there has been violations.

Mr. COOPER. We do not suspend our security relationship with a partner that carries so much weight for our interests and our equities in the region, but we are not precluded from following up on issues and abuses. We are not precluded from assuring and providing training and improvements on mitigation of civilian casualties. There is no abating of that. There is room for work. And no one has ever denied that——

Senator CARDIN. So, just so I understand your answer, you are saying that the U.S. Convention Arms Transfer Policy can be sacrificed if we have an important relationship with a country?

Mr. COOPER. No, it should not be sacrificed.

Senator CARDIN. That is what you are doing, because you are transferring weapons after you have knowledge that they have violated international norms.

Mr. COOPER. It does not preclude us from course correction or reconciliation, Senator. Our policy is not just limited to arms transfers. It is a—an expression, a manifestation of what else we export: open society, human rights. That is a part of our policy. We do export the best of America with our arms transfer policy. With that also comes the responsibility of the application of those weapons. Adversaries do not provide a long sustainment tail. They also do not provide any tail of any support when it comes to application and precision of those services or weapons. It is what is required

of us, not only by statute. It is incumbent upon us, from a policy and moral aspect.

Senator CARDIN. I would just conclude by saying, you have tried, you have not succeeded, and you are still providing weapons, and that is against our Conventional Arms Transfer Policy.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Romney.

Senator ROMNEY. Mr. Cooper, appreciate your being here today.

We have a policy, as a Nation, to sell weapons to various nations throughout the world. There are many reasons for doing that. Surely, one is to support the weapon making industry in our country, which provides revenue and jobs for people here. I presume that is a very small part of the decision-making about whether we are going to sell weapons someplace, and it should be given very limited weight in our thinking about whether we are going to sell weapons. Overwhelmingly, I would anticipate that the decision to sell weapons to other nations should be related to a strategic purpose that we have as a Nation. And so, of course, we have a strategic purpose in providing the most modern weaponry available to our NATO allies and to other nations that we have very close relationships with.

But, then there are nations that are perhaps outside of that very close circle, that we also sell weapons to. And I would like to ask you what the decision rules are that you follow in thinking about those other nations, and how you decide what types of weapons to sell to them, and whether or not to sell weapons to them, and whether they fall into different categories, whether you have certain groups of countries that you sell certain types of weapons to, or, instead, whether you look on a one-off basis, nation by nation, and say, "Well, we are going to look here, at Taiwan, differently than we do Saudi Arabia, than we do another nation." Do they fall into different categories? And what are the decision rules that you follow in deciding, not just to the NATO and Israel and these very, very close allies, but to these other nations? What are the decision rules that you follow? What is the U.S. interest that you seek to foster by virtue of the decisions that you make?

Mr. COOPER. Thank you, Senator.

And you are correct to assess that no partner is particularly on par with another partner, another ally. And so, to your point about circles, yes, one can say there is, essentially, concentric rings of what is available, but it is also what is capable of that partner. The assessment is not limited to my part of the State Department. It is a whole-of-government assessment. This is in—all the way down at the field level, where we do country-team assessments through our Defense Cooperation Offices, as well as our political aspects. It does include a whole host of issues or whether you say factors of assessment of, where is this country, as far as a relationship with us, bilaterally? So, country by country. What particular role do they play in a partnership or in a broader security alliance, like NATO? Are there interoperability factors that we need to factor in, like NATO? Are there other political issues that we need to address? Are there human rights issues that we need to address? Are there other negotiations or factors that we are seeking to address or rec-

oncile at the same time a sale is being considered that also factors in the timing and sequencing of a sale?

Another big one that I would say is kind of a chapeau overall sales right now is, what are we looking at from the National Security Strategy, the chapeau of near-peer adversaries? Near-peer adversaries are not limited just to their home geographic regions. They are doing work in disruption through the globe. So, looking at a partner's capability to address that on our behalf is certainly a factor.

So, there is a host of interagency whole-of-government factors that go into—before we even informally notify the Congress about a potential sell, starting at the country team level, working with our embassies, and then working here at the ministerial, interagency, as well. But, it is very much country by country, case by case, certainly factoring in regional considerations, certainly factoring in primarily our interests. Is it—are there U.S. persons, are there U.S. interests that need to be protected? And there is also an absorption issue. Can the partner actually take the system or this program or platform and actually be able to apply it? So, there are some capacity factors, not just on their ability to defend their sovereignty and defend our interests. It is, can they do it with what is being provided?

Safe to say there are partners that we work with that might have eyes bigger than their capacities, and that is something that we work to actually frame better and provide them something—a generation or a capability that is more apropos to where they may be or where you would like to see them.

But, to your question, it varies on, what is the threat in the region? What is our bilateral relationship? What is their capacity to absorb? And also, timing and sequencing of other strategic interests that we may be addressing in the region.

Senator ROMNEY. Thank you.

Mr. Chairman.

The CHAIRMAN. Thank you, Senator Romney.

Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

Assistant Secretary Cooper, it has been said already, but I think it is worth repeating, because I share in the disappointment that has been expressed by members of this committee over the deliberate decision to ignore the intent of the Arms Export Control Act. It is very clear that was a deliberate decision to ignore that Act. Congress and the executive branch have a protocol on arms sales that works, that is fully capable of achieving our strategic goals, including addressing threats from Iran and Saudi Arabia's self-defense. And when the Secretary disrupts that protocol by declaring an emergency, he erodes the trust between our branches of government. And that has consequences. That has consequences for this administration, and it has consequences for future administrations. And I hope that you and the Secretary and other members of the State Department involved in this decision will think very carefully about what the negative consequences of those decisions will be.

So, I would like to follow up on questions that have been asked and ask if you can describe the specific capabilities that Saudi Arabia and the UAE were lacking that these 22 arms sales address in

a way that could not wait the 15 to 30 days for congressional approval. I have the list right here. So, I hope you will go through each one of those 22 arms sales and tell me which one of these was so immediate that it could not wait for congressional approval.

Mr. COOPER. Thank you, Senator.

On—and I have the same list—on the overall—to your question about capabilities and readiness, specific to any partner's capability or readiness or strengths or gaps, I would happily address that in a classified setting if we are talking about that specificity.

To the list, there were a number of cases that were under consideration or under review already. These were the ones that were assessed as what would be supportive of defense of sovereignty in filling particular gaps. One, if you want to ask about some immediacy, was on some of the training and sustainment ones, which were reading—reaching some suspense or timelines that were about to not happen or we would have gaps there, as far as support on that.

Senator SHAHEEN. But, as I understand your response to Senator Cardin, those have not yet been delivered. Is that correct?

Mr. COOPER. The training and sustainment ones, we were making sure there was not a break. On licensing for DCS, those licenses have been completed for—and ready for delivery. On the FMS, those LOAs are still being completed now that we know that these are the ones that have been identified for movement.

Senator SHAHEEN. And can you tell me whether there are any present or former State Department employees who have ties to any of the companies that are impacted by these sales, which may have been involved in any of the discussions to invoke this emergency provision?

Mr. COOPER. I am not going to talk personnel here, but I will say that ED—the interagency process applied here was U.S. Government process only. Nobody from industry was involved in this process.

Senator SHAHEEN. No, I did not ask that. I asked if there were any former State Department employees, present or former State Department employees with ties to companies affected by these sales, who were involved in the discussions around the emergency declaration.

Mr. COOPER. Not that I am aware of, Senator. This was a government decision, interagency decision. State Department processes applied here.

Senator SHAHEEN. And can you tell me the—as has been suggested, the—we are not supposed to transfer weapons—or the countries that we provide weapons to are not supposed to transfer those weapons for use on civilian targets or any unauthorized transfer. Yet, there have been reports that the UAE has supplied General Haftar, in Libya, with American-made missiles. Can you confirm whether that is the case? And is there an investigation? And how do we expect to sanction the UAE if the investigation shows that, in fact, they have supplied those missiles?

Mr. COOPER. Yes, ma'am.

So, Senator, there—the committee staff had a classified brief this Monday from the State Department specific to the issue raised about Javelins being present in Libya. What I can say in an open forum today is that the Javelins in question that are part of the

investigation that we are conducting and did brief committee staff on actually belong to France, not the UAE.

Senator SHAHEEN. And if they had shared those missiles, what kind of sanction would you expect us to impose on the UAE?

Mr. COOPER. As with any partner, when there is an investigation of end-use violation, there are consequences that could be cessation or suspension of particular programs. We have seen that, and we have applied that with other partners. Sometimes it is specific to the system, sometimes it is actually broader. It could actually touch other security assistance. But, there are consequences where the Department and Congress have worked concurrently to identify suspense's.

Senator SHAHEEN. And as I am sure you are aware, today we are hearing that Turkey, a NATO ally of ours, is expected to receive delivery of the S–400 system from Russia, NATO's adversary. How will the administration respond to that? We have requested briefings from State and Defense on this topic. When can we expect that kind of a briefing to happen?

Mr. COOPER. Well, Senator Shaheen, I cannot give you a date certain on briefing, but what I can talk about, and you and I had a discussion about at my confirmation hearing, is, we—the administration—actually, I think all parts of government have been very clear to our Turkish partners, regardless if it has been at an operational level or up at a senior principal level, of there being consequences of delivery of the S–400. The biggest issue that has been raised and amplified and reasserted with Turkey, with a NATO partner, is that the S–400 is a challenge to interoperability as a NATO partner and is an affront. We have made it very clear that there are consequences, and they are at risk of sanctions.

Speaking of tools provided by Congress, I mean, CATS is one of those tools that the administration has. I do not think there has been any lack of clarity to the Turkish government on our concern about them and their responsibilities as a NATO partner that they are putting at risk with the receipt of the S–400.

Senator Romney [presiding]. Thank you.

Senator SHAHEEN. Thank you. I am out of time, but I would just point out that Congress—the Senate has said that, if they receive delivery of the S–400, they should not receive the F–35s or be part of that program. Is that your understanding, as well?

Mr. COOPER. That—we are on the same page, Senator. That is very clear. They may not be listening, but we have all said it.

Senator ROMNEY. Thank you.

Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

Mr. Cooper, thank you for your testimony.

I want to break this issue down into two parts: substance and process.

On the substance, I agree with the administration that these arms sales were appropriate, not because the Saudis are steady and reliable allies. The Saudis are deeply problematic allies whose conduct often is lacking, and they have historically shown far too much of a willingness to get in bed with enemies of America. Even though they are a problematic ally, the Saudis are also, I believe, a critical counterweight to Iran. And on any rational and reason-

able comparison, measuring the threat to the United States of America between the Saudis and Iran, it is not remotely close. Iran is led by theocratic mullahs and an Ayatollah who chants "Death to America" and is the world's leading state sponsor of terrorism. That is the reason that I ultimately voted with the administration in support of these arms sales, is because helping the Saudis defend themselves against Iran is in the United States national security interest.

Can you articulate to this committee the threat that Iran poses, both to the Saudis, but, more fundamentally, to the United States?

Mr. COOPER. Thank you, Senator.

In an open fora, it has been referenced that the persistent threat has not gone away. That is fair. What has changed has been recent upticks in direct threats to U.S. persons and U.S. interests in the Gulf region. That is what is different.

To our partners, there are direct threats, not only by Tehran, but emanating through proxies from Tehran. We discussed a little bit of what has been in open source and open fora about attacks that have been incurred upon our Saudi partners, our Emirate partners, on their civilian populace and on their infrastructure. We have talked about the Houthis and what they are doing to exacerbate and expand the humanitarian crisis in Yemen, as well as being supported by Tehran. So, the threat is not going to go away, but deterrence through these sales, deterrence through sanctions, deterrence through presence and posture, is a way to address it. And I would say, in a closed fora, we could talk articulately about specificity of timing, very specific threats, specificity——

Senator CRUZ. How advanced is Iran's ballistic missile capability?

Mr. COOPER. In an open fora, Iran has capabilities that go beyond their localized scope, and are a threat to neighbors, and are a direct threat to partners other than the ones that we are talking about here today. They are—they have capabilities that emanate beyond Tehran to a broader region.

Senator CRUZ. Well, that is quite a bit of understatement, given that they are the leading state sponsor of terrorism in the world and they are directly responsible for the murders of over 600 U.S. servicemen and women.

Mr. COOPER. And they also are a facilitator of other forms of terrorism beyond direct reports or what we would call command and control of Tehran government. There are elements that are not under direct C2 or direct command and control from the Quds Force, as you referenced. But, again, we are in an open fora at this time.

Senator CRUZ. Well, as I said, I agree with the substance. But, shifting to the process, I have to say I agree with the concerns that have been expressed in this hearing on both sides of the aisle. The process that the State Department followed for these weapon sales, not to put too fine a point on it, was crap. Under the law, under the Arms Export Control Act, the administration needs congressional approval and has a 30-day notification period. And, for whatever reason, the administration, in what seems to me a not-fully-baked decisionmaking process, decided to circumvent the law, de-

cided to circumvent the constitutional responsibility of Congress and act unilaterally.

Now, if you have an army surging on the border and an imminent emergency, that is one thing. There is, in fact, an exception for that. It has now been 47 days since you declared an emergency. Did I hear you right, in your answer to questions earlier, that you cannot point to a single one of these 22 sales that have actually been delivered?

Mr. COOPER. Licenses have been completed on the DCS side for delivery.

Senator CRUZ. It is a simple question. Have they been delivered?

Mr. COOPER. On the servicing-and-training components, yes. But, if we are talking hardware, they are ready for delivery.

Senator CRUZ. So, that was 47 days ago, the emergency occurred. Did I also hear you right, where you said the review process on this was close to a year?

Mr. COOPER. This goes back to the cases you are referencing, the process here. There are—there were cases that had been before Congress in the tiered review process for close to a year.

Senator CRUZ. Well, if the Department had a year to gaze at its navel and consider this, the Department had 30 days to take it to Congress and follow the law. And it was foolishness not to. And do not make the mistake of thinking that it is simply Democrats who are concerned about this. I voted with the administration on the substance, because of the threat of Iran, but I will tell you, from my end, if the administration does it again and there is not a live and exigent emergency, you will not have my vote, and I predict you will not have the vote of a number of other Republicans, as well. The simpler process is: Follow the damn law, and respect it.

Thank you.

Senator ROMNEY. Thank you.

Senator Coons.

Senator COONS. Thank you, Senator Romney and Ranking Member Menendez.

I want to compliment you, Assistant Secretary Cooper, on managing to achieve a rare moment of bipartisanship on this committee.

[Laughter.]

Senator COONS. I will tell you, it is not often that my colleague from Texas and I agree completely on a matter. His statement that the Saudis are a deeply problematic partner who have shown, too often, a willingness to embrace enemies of our country, I agree with. And his condemnation, and that of many others on both sides of the aisle here, about the timing and the process, both of the consultation and the ultimate decision on these recent arms sales, is one of those moments that I will hope gets the attention of the administration.

I appreciate your service and your testimony here today. It is important that we continue to have an open and constructive dialogue between the executive and legislative branches. And, on something as significant as the Arms Export Control Act and the complicated consequences of our sales to our security and military partners and allies around the world, I think it is essential that we ask questions and get answers.

Most of the concerns I had intended to raise here today have already been addressed by my colleagues, so let me ask one or two additional questions.

We have sold billions of dollars in arms to our Gulf partners and allies over the years. In your view, have these sales produced capable militaries?

Mr. COOPER. As I was sharing earlier about partner-to-partner capacity assessments, no partner is the same. There is always an ongoing assessment about their ability to absorb either a particular platform or system. There is always an ongoing assessment on their ability to be able to maintain their own defense of their own sovereignty. And there is always an ongoing assessment on their capability or ability to be a regional security partner and carry water for us. There are always, at varying degrees, sales, and potential sales are assessed as to how we contribute to actually improve and augment capabilities. Sometimes the will of a partner does not always marry up to a capability of a partner. And that is not unique. But, it does actually amplify the necessity for constant assessment. When I say "assessment," this is not limited to the State Department. We share this with our interagency partners at the Department of Defense. We share this with the intelligence community. It is an ongoing process. It also includes, sometimes, making an honest assessment of if a partner—if we need to adjust what is provided to a partner.

Senator COONS. Well, Assistant Secretary Cooper, it is exactly that issue, an honest assessment and an adjustment that lies at the core of this conversation and what I hope will be a constructive process, led by the Chairman, to reconsider and reevaluate the U.S.-Saudi partnership, or relationship. Because, frankly, I have grave concerns over their conduct in the war in Yemen, over human rights actions within the Saudi Kingdom and against others in the region and the world. And, in my view, those of us who have stood with the Saudis over a number of years because of concerns—legitimate concerns about the threat that Iran poses to the region, to the world—for many of us, that patience has run out. We have made persistent, sustained, engaged efforts to improve their conduct against civilians in the war in Yemen, only to be shown, over and over again, that they have come up short. And I think it is long overdue for us to reconsider, What are the limits? What are the limits to our relationship with the Saudi Kingdom? Are there times when we are putting not just our security at risk, but our values at risk by the ways in which a long and close partner is conducting themselves?

So, I see my time is almost up. Let me just say this, in closing. You have heard comments today, forcefully conveyed from both sides of the aisle by Senators. Both the substance and the process for these emergency arms sales has gotten us to a place where the administration must respect the mandate of the law and the process to be followed in order for the executive branch to preserve the emergency exemption that exists in the law. If not, I suspect this body will act and restrict or remove that ability for future emergency waivers altogether.

Thank you.

The CHAIRMAN [presiding]. Thank you, Senator Coons.

I think those remarks are well taken. There is a lot of frustration right now. And we have a confluence of events that has gotten us to this point, and reevaluation is really, really important. And I really hope that—this morning I dropped, as you know, the bill Senator Shaheen and I are cosponsoring that is a bipartisan bill that strikes at that very issue and calls for a reevaluation and some very specific steps in that regard—I am really hoping that all of us can join together to pass a piece of legislation. Obviously, there is—it does not go as far as many people would like to go, particularly when it comes to some of the specifics of recent events. But, again, I think we should not focus on that as much as actually developing a bipartisan method for reevaluating the relationship. Because it has headed south on us since about 2015, and it—unfortunately, it is right at a time when our challenges from Iran are getting substantially more significant as we try to respectfully and reasonably impose the sanctions for what they are doing. And all of this causes a Rubik's Cube kind of a problem. But, look, we are up to this. We have done other things that are as difficult. And I hope we will all join together, in the next couple of weeks, as we try to work on this piece of legislation.

But, thank you for your remarks. I think your expression of frustration on parts of virtually everybody up here is well taken. Thank you, Senator Coons.

With that, Senator Kaine.

Senator KAINE. Thank you, Mr. Chair.

And, Assistant Secretary Cooper, thank you for your testimony.

My colleagues have done a good job of laying out the concern about compliance with the statute. And I am going to just go a different direction. And the direction is one word: Why? Why? Why bypass Congress on arms sales to the Saudi? Why bypass Congress and not provide Congress the traditional notification, when part (a)(10) authorizations are entered into to allow transfers of nuclear know-how to the Saudis? Why veto the congressional repudiation of the Saudi-led war in Yemen? Why refuse to comply with the direct congressional request under the Magnitsky Act to render a determination about whether the assassination of Jamal Khashoggi was a human rights violation or not? There are a series of instances, with this administration, where, in response to congressional action, and, in some cases, clear congressional mandates, in matters dealing with Saudi Arabia, that the administration is taking very unusual action.

Mr. Chair, I would like to introduce for the record a report from the House Oversight Committee, dated February 2019, "Whistleblowers Raise Grave Concerns With Trump administration's Efforts to Transfer Sensitive Nuclear Technology to Saudi Arabia."

The CHAIRMAN. That will be entered in the record. Thank you, Senator.

[The information referred to above can be accessed by the following link: https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Trump%20Saudi%20Nuclear%20Report%20-%202-19-2019.pdf]

Senator KAINE. Let me just list a series of dates. And, Assistant Secretary Cooper, this is not really in your bailiwick, it is a broader

set of questions for the administration that I know I and many other members of the Senate are concerned about.

As a candidate for President in August of 2015, then-candidate Donald Trump said, quote, "Saudi Arabia, I get along great with all of them. They buy apartments from me. They spend 40–50 million bucks. Am I supposed to dislike them?"

Shortly after he was inaugurated, in May of 2017, President Trump took his first visit abroad to Saudi Arabia, to Riyadh, and he announced a $110 billion arms deal.

In December of 2017, the Trump administration approved a part (a)(10) authorization authorizing transfer of nuclear know-how to the Saudis. In the past, this information had been publicly noticed to both Congress, the press, and the public. This notification—this authorization of transfer to the Saudis was not notified to Congress in December of 2017.

Within a month after the first transfer of this nuclear know-how to Saudi Arabia, an investment in real-estate firm Brookfield Business Partners announced a plan to do an unusual purchase for them. They bought Westinghouse Electric, one of the primary nuclear service industries in the United States, for $4.6 billion.

Shortly after Brookfield bought Westinghouse, Secretary Perry began testifying on the Hill in public settings, saying it was our goal as a nation to get the Saudis to use Westinghouse to construct reactors in Saudi Arabia. Public testimony about Westinghouse.

In August of 2018, Brookfield, which owns Westinghouse, made another unusual investment. Jared Kushner had a troubled real-estate deal on Fifth Avenue, New York, and Brookfield came in and entered into a 99-year lease worth more than a billion dollars that was—that has been reported as, essentially, bailing out a troubled deal. And they paid all of the lease money for 99 years up front. They paid it up front. After the administration has been promoting their Westinghouse-now-owned subsidiary to the Saudis, and transferring nuclear technology to the Saudis, Brookfield now comes in with a massive investment in Jared Kushner's personal property.

In October of 2018, Virginia resident and Washington Post journalist Jamal Khashoggi was murdered by the Saudi regime. Within just a very few weeks—days after that, the Trump administration approved another nuclear transfer under part (a)(10) to the Saudis without informing Congress or the public.

In November of 2018, President Trump said the U.S. stands with Saudi Arabia after Khashoggi's murder, even though the U.S. Intel Committee was saying that the royal family, and possibly MBS, was complicit in that murder.

Congress directed the administration, under the Magnitsky Act, to determine whether or not there was a human rights violation in February of 2019. The White House responded and refused to render a determination.

With days after that, they did another part (a)(10) transfer to the Saudis that they refused to notify Congress about.

In April of 2019, President Trump vetoed the bipartisan resolution to end U.S. military support for the Saudi-backed war in Yemen.

In May of 2019, the State Department submitted the emergency notifications we are talking about today, saying that they did not

have time, because of the emergency, to notify Congress, when, 47 days later, by your own testimony, the hardware has not actually been delivered.

And just last month, the U.N. published a Special Rapporteur's Report concerning the state-sponsored murder of Jamal Khashoggi, encouraging the U.N. and the FBI to continue to do more criminal investigation, which, as far as we know, is not being done.

This is the material that the House Oversight Committee is looking at. This is the material that we are very interested in. When you look at the financial ties between the President's own family and companies that stand to benefit, and that are being publicly promoted by the Secretary of Energy to benefit from this deal, and you ask the question of, Why is the administration bypassing Congress, not on matters dealing with other countries, but, again and again and again, on matters dealing with Saudi Arabia?—I think the hearing that we are having today is just the very tip of the iceberg about what Congress needs to do to exercise oversight about why there is such a departure from the ordinary course of business on matters of such national security sensitivity with respect to Saudi Arabia.

With that, Mr. Chair, I appreciate it.

The CHAIRMAN. Thank you, Senator Kaine.

Senator Murphy.

Senator MURPHY. Thank you very much, Mr. Chairman.

You know, it looks to us, these days, as if the United States is the junior partner in this relationship. I think of all of the timeline that Senator Kaine just went through. The idea that we transferred the Saudis nuclear technology literally days after the dismemberment of a journalist under U.S. protection came to light causes us all to wonder whether this is just one big scam. And I am glad we are doing this hearing.

I want to drill down on part of your testimony, Mr. Cooper, with respect to the purpose of our continued coalition with the Saudis. You say in your testimony that, quote, "We have worked with the Saudi-led coalition over the course of its operations to reduce the occurrence of civilian casualties." But, that is not, in fact, true. In fact, the opposite is true. Civilian casualties are dramatically increasing. In 2017, airstrikes killed approximately 2700 civilians inside Yemen. In 2018, airstrikes killed approximately 4600 civilians inside Yemen. And reports are consistent that approximately one-third of coalition airstrikes are hitting civilian targets. That number has not changed.

So, do you have different numbers, or do you agree with this broad assessment that civilian casualties are increasing, not decreasing?

Mr. COOPER. On the tragedy of the civilian casualties, there is an uptick, what we have seen from the Houthi activity, on civilians. I would offer, on the——

Senator MURPHY. That is not what I asked. I asked about the airstrikes. The airstrikes—the reports are that almost twice as many civilians were killed by airstrikes—and the airstrikes are by the coalition—in 2018 than 2017. Your testimony says you have worked to reduce civilian——

Mr. COOPER. Correct.

Senator MURPHY. —casualties. The data says they doubled.

Mr. COOPER. Correct. There is ongoing work to not only mitigate, but also refine targeting. So, this is not limited to where targets are conducted by the coalition. This is how they actually conduct the work. This is also avoiding areas where there would be civilian casualties. That work is not abated. It has actually been increased. We can talk to further detail about that.

Senator MURPHY. So, work has increased. But, just to get the facts right, I—your wording in the testimony is careful. You say you have "worked with them to reduce civilian casualties." But, would you concede that civilian casualties from airstrikes has increased, not decreased?

Mr. COOPER. I cannot speak to the exact numbers, but I can tell you that as—what we have done on capabilities to mitigate has increased on mitigating civilian casualties——

Senator MURPHY. Why can you not speak to numbers? I mean, do you not keep—you—do not—if you are working with them to decrease civilian casualties, would you not keep the numbers?

Mr. COOPER. On the interagency, we do work with our partners, with DOD and others, to get them to a capacity where they are more precise in identifying targets, more precise in executing their targets, and actually in avoidance of certain localities——

Senator MURPHY. I know that you work to that. I know that you are trying to work on that. But, you cannot testify before us today as to what the actual civilian casualties are. You do not know whether they have increased or decreased.

Mr. COOPER. The numbers associated with civilian casualties are not limited to what has been attributed to coalition numbers, Senator.

Senator MURPHY. But—okay, so you—do you know, or do you not know, whether civilian casualties have increased due to coalition airstrikes?

Mr. COOPER. I would say, in a general sense here, that there is a delta in information on what is attributed to a coalition-ascribed casualty and what may be ascribed to either a Houthi or one of the adversarial——

Senator MURPHY. All right. I will be happy to give you some fairly definitive information that states that they have doubled over time. And the fact that you are talking around this is maddening.

You talked earlier about consequences that would run to a U.S. ally that transfers arms that we have given to them to third parties not authorized to be the recipient of U.S. arms. As you know, in February of this year, there was a very disturbing report that suggested multiple U.S. weapon systems had been transferred to private militias operating inside Yemen. Reports are that U.S.-made Oshkosh armored vehicles were transferred to Abu Abbas, which is a militia linked with al-Qaeda. And UAE—and UAE's government, in fact, confirmed that they have transferred MRAP vehicles to the Giants Brigade, a Salafist militia that is doing work on the UAE's behalf inside Yemen.

Have you come to the conclusion that these transfers were made? And, if you have, what have the consequences been, and how can you justify continuing to sell arms to countries that are openly advertising that they are taking the weapons we give them and the

vehicles we give them and giving them to others that are not authorized to be in the possession?

Mr. COOPER. Thank you, Senator.

The UAE remains a security partner for us in the region, not just for their sovereignty, but also for our interests and equities. However, it does not preclude us from an investigation, it does not preclude us from following up, and it does not preclude us from any imposition or consequences.

So, specific to the MRAP question, that—I have been in long enough to be able to directly address that issue with Emirati government. We are working with our embassy to get more detail and finality on that issue. It is an ongoing investigation. It has not been completely resolved. But, we have directly approached the Emirati government, at a ministerial level and at a working level, specific to the reported MRAP transfer.

Senator MURPHY. My time is up. But, they have publicly confirmed that they transferred the MRAPs. There is no investigation needed. They told a CNN reporter that they gave the MRAPs to the Giants Brigade. And so, that report, coming in February, does not need a 5-month-long investigation. And part of our frustration about this new transfer of weapons to the Emiratis is, it signals that there are no consequences. And so, I would hope that this committee would make some further inquiry as to why an investigation is still ongoing, when, in February, the UAE government confirmed that they had taken these MRAPs and given them to a Salafist militia inside the UAE.

Sorry I went over my time. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Markey.

Senator MARKEY. During the June 12th House hearing on the so-called emergency, you said, quote, "Holding a partner accountable does not preclude us from working with a partner. If anything, detaching ourselves from a partner, removing ourselves from our partner, puts at risk ensuring that accountability." So, anyone remotely familiar with this subject sees the Trump administration has not held Saudi Arabia and the UAE to account for their unacceptable actions. In fact, it has rewarded them. And that fits a pattern of the Trump administration appeasement of the Saudis, including by, one, providing access to nuclear know-how; two, supporting an immoral war in Yemen; three, breaking our word on the Iran nuclear deal; and, four, helping Riyadh escape accountability for the murder of Jamal Khashoggi and for the use of child soldiers. So, this accountability you speak of is purely theoretical accountability.

So, Mr. Cooper, would China keep selling arms to countries that are committing human rights violations?

Mr. COOPER. I am sure China has, I would say, not any parameters or any bar that would preclude them from selling to any customer that was willing to receive their equipment or sub-par services.

Senator MARKEY. So, would Russia keep selling arms in such a case to countries that are committing human rights violations?

Mr. COOPER. Senator, I would say that any of those adversaries probably do not have the limits, the parameters, the requirements

that we, the United States Government, expect from any of our security partners, regardless of what region they are in.

Senator MARKEY. So, in practice, other countries require no accountability for the sales of deadly weapons. So, why is the United States doing what China or Russia would do in this situation? We are not extracting any accountability from the Saudis any more than the Chinese or the Russians would, so why should we continue?

Mr. COOPER. Well, blessedly, we are not operating on the same limited parameters or lack of parameters that those adversaries would be operating under. If anything, we have very tight parameters. We are also transparent. Those two adversaries you referenced do not operate in a transparent fashion either with their legislative branch or with their partner that they are doing dealings with. The recipient country probably does not—their populace is not, probably, aware of what system or sale that they have been signed up for, their government has committed it into.

Senator MARKEY. All right. But, the——

Mr. COOPER. And we also provide——

Senator MARKEY. —point——

Mr. COOPER. —we also provide sustainment in a way that an adversary does not. We make sure that our partners, if they receive or purchase a platform or system, know how to operate it, that it is operable, that we make sure that they can be capable and ready for——

Senator MARKEY. But, what you are——

Mr. COOPER. —our security interests.

Senator MARKEY. But, what you are saying is that we have transparency, so everyone knows that we are selling the equipment. We actually give them good training so they can operate the equipment. So, that is great. But, we do not actually, then, hold them accountable for their human rights violations. And so, I—we are transparent about that, as well. And so, yeah, maybe the Chinese or the Russians are not as transparent, but they also do not require any human rights compliance.

So, your argument that we should be a reliable security partner, and that will further our values, that just, unfortunately, demonstrates that the Trump administration's standards are no higher than those of China or of Russia, and we are in a race to the bottom, in terms of what our standards will be on human rights. And, thanks to the Trump administration, our ability to push our security partners for accountability and moral leadership is theoretical platitudes rather than a practical reality.

It is critical that the United States be the moral leader, the country that upholds the rules-based international order, the country that advances fundamental rights, freedoms, and accountability. But, the Trump administration intentionally is overlooking human rights considerations in our arms exports and using the guise of a, quote, "emergency" to do so.

So, Mr. Cooper, there is a wide bipartisan agreement that your efforts have been insufficient. And I have yet to see any evidence that the administration has any standard for how many bombed hospitals or how many targeted activists it would take to have the Trump administration change its course.

The problem is that the Trump administration refuses to actually use the very influence that you say that the arms sales provide. We have a dearth of leadership on the global stage, and anytime leaders around the world hear this administration refer to its morality, it rings increasingly hollow, Mr. Cooper. We need some evidence to convict this administration of actually having stood up for human rights in Saudi Arabia. Some evidence that that has happened. Thus far, it is still not evident to the American people.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Markey.

Senator——

Mr. COOPER. If I may, there is an—and, Senator, you are right to point out the necessity for us to not only export our know-how and our technology, but also to export what is what makes America unique. And that is export our values, export our open society, our free society. And we do do that. That is part of the process.

Specific to Saudi Arabia and UAE, there are dissident voices that are being supported by the administration, by the Secretary. There are cases that the Secretary is pressing specifically, as well as Ambassador Abizaid. There are also other human rights concerns that are not always enumerated in the open report. There is the annual report that our Department produces. But, those factors are not precluded at all. We can work with partners, but it—and we can also continue to address issues of concern that are about open society, free society, dissident voices, and human rights. We can do both. We have done both as a country. And we continue—can do so.

Senator MARKEY. Again, I—I thank you, but, again, Yemen, Khashoggi, nuclear know-how, pulling out of the Iran nuclear deal—I just think it is a one-way street, here. And there may be some small exceptions. But, on the larger picture, the United States is not standing up for the human rights values that we profess to be the world leader on.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Markey.

Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Mr. Cooper, as the Assistant Secretary for Political-Military Affairs, I assume you understand the difference between the informal review process on arms sales with this committee and the Senate-wide 30-day formal statutory review and resolution of disapproval. Is that a fair statement?

Mr. COOPER. Yes, Senator, and including how that is defined by if someone is a NATO ally or a different partner status.

Senator MENENDEZ. Well, I do not know about NATO allies. I simply care about what we do here.

So, in that regard, when you answered Senator Cardin and said some of these had been pending a year, the reality is, is that at—as it relates to the statutory 30-day Senate-wide review, you blew through that. So, that is not a completely accurate answer.

Let me ask you this. Forty-seven days after the Secretary claimed that there was an emergency, is it not true that State has not even given the government-to-government draft contracts to the Saudis and Emirates for all eight of the foreign military sales?

Mr. COOPER. There is ongoing on the LOAs for FMS, there is the working with the government-to-governments on if they have to be adjusted because some of them were dated during the—as you noted, the informal review process. So, it is getting some of those to date.

What is complete are the licenses on the DCS side, sir.

Senator MENENDEZ. I did not ask you that. I mean, I appreciate you answering questions that I did not ask.

Let me reiterate. Is it not true that State has not given the government-to-government draft contracts to the Saudis and Emirates for all eight of the foreign military sales? Yes or no?

Mr. COOPER. I cannot attest to the exact status of that here right now, Senator.

Senator MENENDEZ. You are the Assistant Secretary of State in charge of arms sales in this matter. There is an emergency. You know what this hearing is all about. And you cannot tell me that?

Well, let me help you out. As of July 1st, there have been three letters of offer and acceptance for the eight military sales. You cannot wait 30 days for the statutory Senate-wide congressional review of these sales, and yet, 47 days after the Secretary's declaration of an emergency, the administration still has not offered the government-to-government contract on a whole host of these. So, what is the sense of the emergency? What is the sense of the emergency?

Let me turn to something else. Has anyone at the State Department or the White House told, directed, or advised you not to answer specific questions during this hearing?

Mr. COOPER. No, I have not received any of that guidance.

Senator MENENDEZ. Okay. Then I expect a full and complete answer from you.

To your knowledge, did anyone in the White House advocate, direct that the State Department find a way to move these sales to Saudi Arabia, the UAE, or both, despite both my and Chairman Engel's holds?

Mr. COOPER. I am not aware of that, Senator. What I am aware of is, this was the Secretary's decision to make. It was an option for the Secretary. It was a tool for the—a tool of deterrence for the Secretary.

Senator MENENDEZ. So, the State Department made this decision fully independent of the White House, is what you are telling me.

Mr. COOPER. I can tell you, from where I sit, that Secretary Pompeo had several tools to look at, including imposition or application of sanctions. This was another set of tools in his toolkit to deter Iran. It was his decision to make, Senator.

Senator MENENDEZ. Let me reiterate my question. Did the State Department make this decision fully independent of the White House, yes or no? I do not want to hear about the toolkit and——

Mr. COOPER. No, no.

Senator MENENDEZ. —the tools, you know——

Mr. COOPER. But—so, there is an interagency process that is required. All these cases went through that. That is including NSC knowledge of these cases. So, the cases——

Senator MENENDEZ. So——

Mr. COOPER. —went through an interagency process, including——

Senator MENENDEZ. So, through the interagency process, the White House was involved.

Mr. COOPER. They would have to be, like on all cases. We just talked about Taiwan today. They would be in part of that process of the review of any case——

Senator MENENDEZ. You——

Mr. COOPER. —any arms case.

Senator MENENDEZ. You were confirmed on April 30th of this year. Is it not true that, upon your confirmation, there were already discussions taking place at the State Department about evoking an emergency declaration on some or all of the 22 arms sales?

Mr. COOPER. What I can attest and affirm is that there is always an ongoing assessment on any of the cases that we have, not just the Gulf ones that we are talking about today. Those would certainly——

Senator MENENDEZ. I am only——

Mr. COOPER. —have precluded——

Senator MENENDEZ. I am only interested in the ones we are talking about today——

Mr. COOPER. There would have been ongoing——

Senator MENENDEZ. —conversations, at the time that you took office, that there were already discussions at the State Department, in terms of invoking an emergency declaration on these sales.

Mr. COOPER. I cannot speak to an emergency declaration, but I would say it is safe to assess that these cases in the emergency declaration certainly would have been under——

Senator MENENDEZ. What——

Mr. COOPER. —consideration and of interest——

Senator MENENDEZ. What——

Mr. COOPER. —as one is looking at the posture of their defense, their sovereignty, their——

Senator MENENDEZ. What they——

Mr. COOPER. —ability to be a security——

Senator MENENDEZ. What day——

Mr. COOPER. —partner——

Senator MENENDEZ. What day did you first discuss, with anyone in the Department, invoking an emergency declaration for these sales?

Mr. COOPER. In an open fora, I am not going to talk to that or the pre-decisional——

Senator MENENDEZ. Well, what—"pre-decisional"? Wait a minute.

Mr. COOPER. This is the Secretary's decision, Senator.

Senator MENENDEZ. It is not a question of—I am not asking about the Secretary's decision. You know—what privilege are you asserting? You keep talking about "pre-decisional." What privilege are you asserting?

Mr. COOPER. The interagency review of what was taking place before we do information notification on any case, also the review of the intelligence——

Senator MENENDEZ. That is not——

Mr. COOPER. —assessments.

Senator MENENDEZ. That is not a privilege. You are testifying before the Senate's oversight committee of this particular Department, and there is no legal basis to refuse to respond, regardless of whether it is pre-decisional or not.

So, I am simply asking you for a date. When did you first discuss, with anyone in the Department, invoking an emergency declaration?

Mr. COOPER. As to a specific date, I cannot tell you, but I can tell you that being read into the Department, the Iran threat was certainly of interest. It is—would be for anybody who would be coming into the Department at that time. And any——

Senator MENENDEZ. But, the Iran threat——

Mr. COOPER. —any——

Senator MENENDEZ. The Iran threat that you now justify is not the same threat, back in April of this year.

Mr. COOPER. There is a posture shift. There is a posture shift. But, I would say that anybody arriving in the national security framework in a different capacity——

Senator MENENDEZ. Well, I would ask——

Mr. COOPER. —would be getting——

Senator MENENDEZ. —I would ask——

Mr. COOPER. —read onto a number of——

Senator MENENDEZ. —I would ask you——

Mr. COOPER. —statuses.

Senator MENENDEZ. —to look at your calendar and respond to me in writing. When was the first date that you began to discuss an emergency declaration on these 22 arms sales? Will you do that for the record?

Mr. COOPER. Will look for the QFR, Senator.

Mr. COOPER. I do want to reemphasize that review of any particular threat posture would have been part of my read-on. Fortunately, I was already in the national security framework, so much of that was not——

Senator MENENDEZ. My——

Mr. COOPER. —news to me.

Senator MENENDEZ. My point is that the threat posture in April is not the threat posture that now justifies——

Mr. COOPER. No, it is an adjusted posture, but it was one that was——

Senator MENENDEZ. Let me——

Mr. COOPER. —relevant to the time and——

Senator MENENDEZ. Let me ask you, today, one final question. I will have a whole bunch for the record, but not to delay the hearing anymore, and there is another vote on the floor.

Give me a simple yes or no. Did you or the Department receive a legal written opinion on this declaration?

Mr. COOPER. Our legal office, our legal advisory, was that it was within the statute that Congress had passed and was within the realm of the Secretary's authorities——

Senator MENENDEZ. I asked——

Mr. COOPER. —to apply.

Senator MENENDEZ. I did not ask you that. Thank you for answering a question I did not ask you. You have become very good

at that. I asked you a very specific question. Did you receive a written—underlined, underscored—written legal opinion?

Mr. COOPER. There was legal opinion provided for the process, Senator——

Senator MENENDEZ. A written legal opinion? Not legal opinion. A written legal opinion.

Mr. COOPER. There was a number of reviews that took place in the interagency, including legal, on what was in the statute, what was applicable, and what was available for the Secretary——

Senator MENENDEZ. Mr. Cooper, you are an incredibly bright man. You have served the country well in so many different ways. It pains me to have to go through this with you, but I will try a third time.

Written. Was there a written legal opinion? Yes or no?

Mr. COOPER. Senator, there were multiple reviews and multiple writings, not just from legal, but the interagency, on this. So, this was not a—this was not a—this was a very prudent process, so it is—we are talking a detailed review that took place for the Secretary to have that option to make a decision.

Senator MENENDEZ. Mr. Chairman, this is why we have challenges here. This is why—I try to work together to achieve certain goals. But, when a simple answer, "Yes, there was a written opinion," "No, there was not a written opinion," "There was a verbal opinion," "There was an oral opinion," it—I mean, when there is not responsiveness like this, then I have limited resources of what I can do to try to get a response. And that—and then creates the need to pursue those limited resources. And if I could only get, you know, honest, transparent answers to my questions, not to every gobbledygook that has nothing to do with my question, then we could all move along a lot further, we could all achieve a lot more, and we could all find more comity. But, for so long as this is the type of answer I am going to get, then I am going to use all the tools at my disposal to get the right answers, to get the honest answers, to get the transparent answers.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Menendez.

My experience in court is that all you can do is ask questions, but you cannot make them answer the questions the way you want them answered. So, that is just the way it is.

And, with that——

Senator MENENDEZ. Mr. Chairman, it is not "the way I want them answered." I would just like to get an honest answer.

The CHAIRMAN. Got that. But, the—again, you can only craft the questions, you cannot craft the answers.

In any event, that will conclude our hearing today.

Mr. Cooper, thank you very much for being with us today.

The record will remain open until the close of business on Friday. And we would ask that—the witness to respond as promptly as possible. Your responses will be made a part of the record.

With that, again, thanks from the committee. And the committee is adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

RESPONSES OF R. CLARKE COOPER TO QUESTIONS SUBMITTED BY SENATOR JAMES E. RISCH

Question. Will you commit to consulting with Committee leadership in advance of any future potential emergency declarations?

Answer. I am committed to the Congressional review process for arms sales. I value deeply Congress' role in the review of the arms transfer process; I take pride in the depth and detail of the working relationship we have with the Committees in the course of this process. The Secretary's certification is not a setting aside of that process, but the utilization of a longstanding statutory authority to respond to an urgent contingency. As such, I take this opportunity to affirm the value we place on our engagement with you on arms transfers and broader security assistance issues.

Question. Do you foresee needing to use the emergency authority to address any other current or likely scenario in the near term?

Answer. It is our hope and intent that this use of the emergency authorities under the Arms Export Control Act will not need to be repeated.

RESPONSES OF R. CLARKE COOPER TO QUESTIONS SUBMITTED BY SENATOR ROBERT MENENDEZ

Question. What is the State Department's operative definition of an "emergency"?

- Did the Legal Adviser's office opine on what an "emergency" is?
- If so, was that opinion in writing?
- If so, will you provide a copy of that written opinion to the Committee?
- If not, what legal privilege is State claiming to exercise that prevents it, or enables it, from providing that written opinion to the Committee?

Answer. While the Office of the Legal Adviser (L) did not provide a "written opinion" on the definition of "emergency" under section 36 of the Arms Export Control Act, L reviewed and cleared the action memorandum to the Secretary to approve the emergency determination and related memorandum of justification, consistent with regular practice. To support the Department's response to specific questions raised by the committee, L also provided legal advice on other issues, including through written analysis.

Question. Why did the State Department not inform Senator Menendez or his staff that an emergency declaration for these arms sales was being contemplated, or was going to be invoked, prior to May 24, 2019?

Answer. The Secretary met with members of Congress on May 21, 2019. This briefing was intended to provide Congress with classified information regarding the developing Iran threat posture. The Secretary made the emergency determination based on a number of factors, including the significant increase in the intelligence threat streams related to Iran; the clear, provocative, and damaging actions taken by Iran's government; and the need to respond to military capability requests from our partners in the Gulf region. This situation made it urgent to move forward with these cases for which the Department had repeatedly sought Congressional support.

Question. Did anyone from State Department inform any Member or staff of the Senate Foreign Relations Committee prior to May 24, 2019, about consideration of, or a decision made, to make the emergency declaration issued by the Secretary of State on May 24, 2019?

Answer. The Secretary met with members of Congress on May 21, 2019 to provide classified information regarding the developing Iran threat posture, which included consideration of long-held risks associated with Iran's malign behavior in the past, as well as more recent escalations.

Question. How many FMS Letters of Offer and Acceptance have been concluded, and how many have been transmitted for consideration, to the governments of Saudi Arabia and the United Arab Emirates?

Answer. All initial licenses or approvals have been issued for the 14 Direct Commercial Sales cases. Of the eight Foreign Military Sales cases, two have been offered to Saudi Arabia, one has been offered to the UAE, and we anticipate offering the remaining five in the coming months.

Question. How many of the 13 commercial sales have begun delivery? Which ones? What percentage of deliveries have been made so far of the total authorized in each sale?

Answer. This information is sensitive and/or proprietary to the U.S. companies involved; the Department would be happy to brief you on this information in an appropriate setting.

Question. Many of these sales could take months or years to be delivered, isn't that right?

If so, and these sales are important to build Saudi and UAE capacity to defend against a threat from Iran, does the expediting of these sales via an emergency declaration also give Iran an incentive to attack sooner, before the months and years pass for these weapons to be brought to bear against them?

Answer. Our posture regarding Iran remains focused on assuring our partners of our commitment to enhancing their defense capabilities. This action is not intended to be an escalatory military step; instead, it is a loud and clear message to Iran that we stand by our regional partners at a particularly dangerous time. This set of cases demonstrates the United States' resolve to stand with our partners and to ensure we remain their partner of choice.

Question. What date was the first discussion in the State Department regarding invoking an emergency determination for these sales?

Answer. I cannot speak to deliberative, pre-decisional communications that may be subject to Executive Branch confidentiality interests.

Question. When, specifically, did the Secretary decide to use an emergency declaration for these sales?

Answer. Secretary Pompeo made the determination on May 24, 2019.

Question. Did State Department personnel discuss declaring an emergency for these sales with the Secretary before the Secretary briefed the Senate and the House on May 21 and 22?

Answer. I cannot speak to deliberative, pre-decisional communications that may be subject to Executive Branch confidentiality interests.

Question. You testified at the House hearing that the decision memo to the Secretary was prepared, quote, "right before we issued the declaration." On what date, specifically, was that memo prepared?

- What does "right before" mean? An hour? 8 hours? 24 hours?
- Is that why the Secretary didn't follow the law and make individual justifications for each of the 22 sales, as required by law? He just didn't have the time to find out what the law was and whether he was complying with it?

Answer. I cannot speak to deliberative, pre-decisional communications that may be subject to Executive Branch confidentiality interests. The Secretary utilized an authority provided by the Arms Export Control Act, complying with all of its requirements.

Question. Did the office of the Legal Advisor produce a written legal analysis, determination, and/or recommendation that the Secretary actually had the authority to invoke an emergency for these sales?

Answer. The Office of the Legal Adviser (L) provided legal advice at various stages regarding the proposed exercise of the emergency authority under section 36 of the Arms Export Control Act, including reviewing and clearing the action memorandum to the Secretary to approve the emergency determination and related memorandum of justification. L reviews and clears all action memoranda to approve determinations under section 36 regarding arms sales in order to ensure the Department is acting within its legal authorities with respect to such determinations.

Question. If so, what was the date of that legal analysis, determination and/or recommendation?

Answer. The Office of the Legal Adviser provided advice at various stages throughout the clearance process. The decision package on the emergency determination was finalized and submitted to the Office of the Secretary on May 22 or 23, 2019. On May 23rd the Secretary approved the determination and the memorandum of justification.

Question. Will State Department provide a copy of that written or any related legal analysis, determination and/or recommendation to the Committee?

If not, what legal privilege is State claiming to exercise that prevents it, or enables it, from providing such written legal analysis, determination and/or recommendation to the Committee?

Answer. The Department is not in a position to provide a copy of any such advice related to the preparation of a report to Congress given the significant executive branch interests implicated in such a request, including interests related to the protection of internal Executive Branch deliberations and/or attorney-client communications.

Question. Mr. Cooper, can you explain why the Secretary invoked an emergency on Friday, May 24—the Friday before a weeklong Memorial Day recess? Why not 1 day prior? Why not 3 days prior, when the Secretary had briefed the Senate on the Iran threat?

Answer. The Secretary of State utilized an emergency authority in the Arms Export Control Act specifically to respond to the urgent threat posed by Iran; the timing of his decision reflected, among many factors, the escalation of those threats.

Question. Your written testimony also claims that the emergency certification was also intended to preserve, quote, "strategic advantage against near-peer competitors:"

- Is this the new standard for the State Department for congressional oversight, that it cannot be tolerated if it in any way undermines this "strategic advantage"?
- Does the Secretary now want to sell anything to any dictator for a strategic business advantage?

Answer. The Secretary of State utilized an emergency authority in the Arms Export Control Act specifically to respond to the urgent threat posed by Iran. This action is intended to support our partners' ability to contribute to deterring and—if necessary—defeating that threat. Our partners need to retain a high degree of readiness and know that the United States stands with them to ensure that have what they need for their own security in the region.

While this emergency certification was in response to the increased threat from Iran, it is also relevant that our adversaries, including Russia and China, have adopted deliberate long-term strategies of trying to disrupt our partnerships by seeking to replace the United States as the credible partner of choice.

Question. Mr. Cooper, in pushing through these sales and circumventing Congress, doesn't it send a dangerous message to authoritarian regimes and autocrats everywhere: that legislative oversight doesn't matter to Secretary Pompeo, the State Department, and the Trump administration, as when it is inconvenient, he'll just ignore it and declare an "emergency"?

Answer. These emergency certifications were made pursuant to and consistent with the longstanding statutory authority, which has been used by past administrations, both Republican and Democrat.

Question. Section 36(c)(2) of the Arms Export Control Act (arguably does not give the President or the Secretary the authority to declare an emergency for commercial sales for countries that are not members of NATO and are not Israel, Australia, South Korea, Japan or New Zealand. What is State's legal basis for why the Secretary can use authority not explicitly present in the statute?

Answer. The Secretary's certification met the requirements under section 36(c)(2) of the Arms Export Control Act for the sales at issue here. The opening clause of section 36(c)(2) makes clear that the regular notification procedures apply to licenses under any of the ensuing subparagraphs only if there is not an emergency certification.

Question. Would U.S. companies issued export licenses that are not legal under U.S. law be legally liable for violating U.S. export laws?

Answer. U.S. companies are entitled to rely on the terms of export licenses issued to them.

Question. Secretary Cooper, the law is very clear that the President has to provide individual justifications for each arms sale that is the subject of an invocation of an emergency determination. Yet, the Secretary only provided one, overarching boilerplate justification of the history of Iran's malign activities, for all 22 separate sales, as disparate as they are:

Does this in State's opinion comply with the AECA requirement to submit individual justifications for each sale? Why?

Answer. The Secretary's emergency certification was consistent with the relevant provisions of the AECA. The justification transmitted to Congress as part of the certification applied to each of the 22 cases.

Question. Mr. Cooper, is the Department investigating allegations that the UAE transferred MRAP vehicles to others in Yemen without U.S. permission?

- Approximately when did this investigation begin? Before the Secretary's May 24th declaration of an emergency?
- Why did the Secretary think it was a good idea to bypass the 30-day Congressional review period and expedite the process of getting these arms to UAE, some of which they could also retransfer without permission? Does he not care if U.S. arms are illicitly transferred or misused? Or he cares, just not enough to slow down the process as required by statute for Congressional review?

Answer. We are working with our partners to address these allegations, and we will continue to do so until we are confident all steps necessary are taken to safeguard U.S.-origin equipment. We intend to provide a full accounting of our review to your committee once our investigation is complete.

The bilateral relationship, including the provision of security assistance, with the UAE has existed for many decades. Based upon our decades of robust interaction with them, and our continued engagement regarding the MRAPs, the Department is confident that they remain a reliable partner and there is not a significant risk of diversion or misuses of these defense articles.

Question. Provide a detailed individual justification as to how the marketing, sale, and on-going support of ScanEagle and Integrator Unmanned Aerial Systems and support for future Intelligence, Surveillance, and Reconnaissance (ISR) requirements for the UAE Armed Forces will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. The sales also promote the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves the introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale of RQ–21A Blackjack UAVs for intelligence, surveillance and reconnaissance to the UAE will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale of Aircraft Follow On Logistics and Support Services for the Saudi Air Force, including repair and spare parts, will enable Saudi Arabia to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale of USMC Training for UAE Presidential Guard in unit operations such as operating the Javelin Anti-Tank Weapon System; plan, conduct and supervise individuals in Rappelling and Fast Roping from a static structure; Special Operations Basic Course and in operation of Special Forces Weapon Systems used within the Presidential Guard, will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the continuance of spare and repair parts and contractor support for the Tactical Air Surveillance Support System in Saudi Arabia will enable Saudi Arabia to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale of Aircraft Follow Logistics On and Support Services for the Saudi Air Force, including repair and spare parts, will enable Saudi Arabia to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of

power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale Advanced Precision Kill Weapons System rockets to the UAE will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale of Javelin anti-armor Guided Missiles to the UAE will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale Additional equipment for AH–64E Apaches, including one new helicopter, to the UAE will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how:

(A) The authorization of coproduction and manufacture in Saudi Arabia of Paveway Pre-Amp Circuit Card Assemblies (CCA), Guidance Electronics Assembly (GEA) CCAs, and Control Actuator System (CAS) CCAs for all Paveway variants;

(B) The authorization of coproduction and manufacture in Saudi Arabia of Paveway II Guidance Electronics Detector Assemblies (GEDA) and Computer Control Groups (CCG).

(C) The transfer of up to 64,603 additional kits, partial kits, and full-up-rounds will enable Saudi Arabia to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale of Integration, installation, operation, training, testing, maintenance, and repair of the Maverick AGM–65 Weapons System and the Paveway II, Paveway III, Enhanced Paveway II, and Enhanced Paveway III Weapons Systems to the UAE will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale of installation, integration, modification, maintenance, and repair services for F110–GE-132 gas turbine engines for use in F–16 Aircraft for use by the UAE in the amount of $50,000,000 or more will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale of Manufacture, production, test, inspection, modification, enhancement, rework, and repair of F/A–18E/F and derivative series aircraft panels to Saudi Arabia will enable Saudi

Arabia to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the sale of assistance to Saudi Arabia's Ministry of Defense Transformation Project will enable Saudi Arabia to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the authorization for a technical assistance agreement with the UAE to support the preparation, shipment, delivery, and acceptance of the Guidance Enhanced Missiles (GEM–T) (Patriot) will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the transfer of technical data and defense services in order to provide technically qualified personnel to advise and assist the Royal Saudi Air Force (RSAF) in maintenance and training for the RSAF F–15 fleet of aircraft will enable Saudi Arabia to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against

near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the authorization to retransfer of 500 Paveway II laser guided bombs to Jordan will enable Jordan to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the export of 15,000 120mm M933Al 120mm mortar bombs to the Saudi Arabian Royal Land Forces will enable Saudi Arabia to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the export of 100 M107Al, .50 caliber semi-automatic rifles and 100 sound suppressors to the UAE for end use by the General Headquarters, UAE Armed forces will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the export of defense articles, including data and defense services, to support the performance of maintenance and repair services of F–110 engines for the Kingdom of Saudi Arabia Ministry of Defense will enable the Saudi Arabia to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

Question. Provide a detailed individual justification as to how the transfer of defense articles, defense services, and technical data to support the integration of the FMU–152A/B Joint Programmable Bomb Fuze system into the UAE Armed Forces General Headquarters' fleet of aircraft and associated weapons will enable the UAE to counter a specific physical military threat or actual military attack from Iran, and include a description of the specific physical military threat.

Answer. The justification transmitted to Congress as part of the certification applied to each of the 22 cases. These sales and the associated emergency certification are intended to address the military need of our partners in the face of an urgent regional threat posed by Iran. This sale also promotes the vitality of our bilateral relationships by reassuring our partners and preserving strategic advantage against near-peer competitors. None of these sales involves introduction of fundamentally new capabilities to the region; none fundamentally alters the military balance of power; none is of a nature or category that Congress has not previously reviewed and supported for these partners.

Each of these cases furthers our interests in addressing a present emergency; remaining engaged with partners; ensuring the United States, rather than near-peer adversaries, is their primary security partner; supporting our partners in the defense of their homelands and the security of the region; and deterring our shared adversaries from disrupting those objectives.

RESPONSES OF R. CLARKE COOPER TO QUESTIONS SUBMITTED BY SENATOR TODD YOUNG

Question. Can you describe what threat was present against which the U.S. forces deployed to region would have been incapable of defending or deterring and thus require this sale?

Answer. The Secretary made the Emergency Certification based on a number of factors, including the significant increase in the intelligence threat streams related to Iran and the clear, provocative, and damaging actions taken by Iran's government; and the rapidly evolving security situation in the region that required accelerated and overt delivery of certain military capabilities to our partners.

Question. Do you believe the administration currently possesses the authority to engage in military action against Iran or is a new authorization for the use of military force required in order to act?

Answer. As Secretary Pompeo has noted, the administration's goal is to find a diplomatic solution to deter Iran's activities, not to engage in a conflict with Iran. I do not wish to comment on hypotheticals, but the administration is not currently seeking a new authorization for use of military force. Moreover, the administration has not, to date, interpreted either the 2001 or the 2002 AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq.

Question. What legitimate military capability would these sales have filled that would have increased the effectiveness of the Saudi and Emirati military forces?

Answer. Our partners have requirements for continuing supply and support for their defense programs to counter current and potential threats, including from Iran. Specifics on partner readiness and capabilities is sensitive and often classified information; we welcome the opportunity to brief the committee, you and/or your staff on these issues.

Question. If this truly was an emergency, the facts and information that necessitated that emergency are of great interest and concern to this committee. Are you able to describe those to us?

Answer. Iran is a malign actor and the leading state sponsor of terrorism. Iran continues to pose conventional and asymmetric threats to our partners in the Gulf, and to U.S. interests in the region and beyond. While these facts are well-known, we have seen new, troubling and escalatory indications and warnings from the Iranian regime prompting an increased U.S. force posture in the region. Indeed, events since the Secretary's certification further demonstrate the urgent need for these sales: Iranian attacks on civilian-crewed cargo ships and tankers in the Sea of Oman; continued Houthi attacks, including one utilizing a cruise missile, against civilian airports; the shoot-down of a U.S. Broad Area Maritime Surveillance unmanned aerial system in international airspace.

These latest actions, like those that preceded the May 24 notification, including attacks on commercial shipping off the coast of the United Arab Emirates, attacks on pumping stations of the Saudi East-West Pipeline utilizing unmanned aerial vehicles, and a rocket fired into a park about a kilometer from the U.S. Embassy in Baghdad on May 19 are provocative actions that mark a new evolution in the threat Iran poses to the security of the hundreds of thousands of Americans who live and work in the Gulf States, and to the security of the region, and our partners.

My testimony July 10 described these events. I would be happy to go into further detail in a classified setting for the committee, you, and/or your staff.

Question. Did the administration feel the need to use these emergency powers because of a clear threat, or was it more out of frustration with the politics and bureaucracy that was slowing these sales?

Answer.The Secretary of State utilized an emergency authority in the Arms Export Control Act specifically to respond to the urgent threat posed by Iran. This action is intended to support our partners' ability to contribute to deterring and—if necessary—defeating that threat. To do so our partners need to retain a high degree of readiness and know that the United States stands with them to ensure that have what they need to ensure their own security and security in the region.

Question. Do you believe the politics of the Senate have created a situation in which the State Department's fulfillment of its responsibilities are being hampered?

Answer. In regards to arms transfers, I can affirm the Department has the necessary authorities to fulfill its responsibilities. In the case of this Emergency Certification, the law provided an appropriate tool for the Secretary to apply against the increase in Iran-related threat streams. Congress plays an important role in the review of pending arms transfers, and the Department returned immediately to the regular Tiered Review process for further sales to these and other security partners.

Question. Mr. Secretary, what review occurred to ensure that these military sales would not be used in operations that result in humanitarian violations, especially in Yemen, home of perhaps the most intense humanitarian rights crisis in the world?

Answer. These cases received a full policy review, as would any other sales, including with regard to human rights and civilian casualties. Saudi Arabia and the UAE face legitimate security threats emanating from Yemen, and the Executive interagency continues to assist those partners in defending themselves. At the same time, the Executive interagency is also continuing to work with the Saudi-led Coalition to mitigate the risk of civilian casualties. The Coalition continues to implement organizational and process changes to mitigate the risk of civilian harm, and to enhance respect for rules of engagement and the law of armed conflict. We will continue to work closely with our partners in enhancing these efforts. The Department also continues to press partners to conduct transparent and credible investigations of civilian casualty incidents, hold accountable those responsible, and take steps to mitigate the risk of such incidents occurring again.

Question. Are you able to provide me an assurance that the State Department took humanitarian concerns into account when evaluating these sales?

Answer. The President's Conventional Arms Transfer Policy, issued in 2018, mandates consideration of "the risk that the transfer may be used to undermine inter-

national peace and security or contribute to abuses of human rights, including acts of gender-based violence and acts of violence against children, violations of international humanitarian law, terrorism, mass atrocities, or transnational organized crime." The Department requires consideration of humanitarian factors in its assessment of all arms transfers, including those submitted under the emergency certifications, which each received a full policy review.

RESPONSES OF R. CLARKE COOPER TO QUESTIONS SUBMITTED BY SENATOR EDWARD J. MARKEY

CIVILIAN CASUALTIES IN YEMEN

Question. According to the Armed Conflict Location & Event Data Project, the total number of reported fatalities in the Yemen conflict from the beginning of 2015 to present is 91,600. Around 12,000 have been reported so far in 2019.

The Saudi-led coalition and its allies remain responsible for the highest number of reported civilian fatalities from direct targeting. About two thirds of reported civilian fatalities in Yemen over the last four and a half years have been caused by Saudi-led coalition airstrikes.

In your written testimony, you stated, quote, "Remaining a reliable security partner to our allies and friends around the world is also in the interest and furtherance of our values:"

Do you believe the number of reported casualties reflects well on American values?

Answer. We share your concerns about the end use of the arms we provide overseas, including in the context of the Yemeni civil war. From the beginning of this conflict we have maintained that a political solution is urgently needed, and have supported the U.N.-led effort working toward that objective. In addition, we have engaged with the Saudi-led Coalition over the course of its operations to help it reduce the occurrence of civilian casualties. Every civilian casualty is a tragedy, and we have both a moral and strategic imperative to do as much as possible to prevent them and to help our partners and allies prevent them.

Question. Are you satisfied with the administration's efforts to minimize civilian casualties, which you said was a cornerstone of the Trump administration's Conventional Arms Transfer Policy in 2018?

Answer. I hope that no military is ever complacent that it has done enough to minimize civilian casualties, nor am I complacent that we have done enough to help our partners do so. That is why we continue to look for opportunities to help our partners do better. When President Trump issued the updated Conventional Arms Transfer Policy in 2018, a centerpiece of the new Policy was its unprecedented directive that we work with partners to reduce the risk of civilian harm in their military operations. We are working on the implementation of that directive to shape future engagements, including with partners in advance of conflict situations.

Question. Given that the 2018 U.S. Conventional Arms Transfer Policy requires the executive branch to account for human rights and international humanitarian law, which attacks reported in an open forum have concerned you the most with respect to the ability of the Saudi-led coalition to avoid civilian harm?

Answer. All incidents that incur civilian casualties are concerning. In particular, the August 9, 2018 strike in Saada governorate that hit a school bus was deeply concerning and drew significant attention. We regularly engage the Coalition [at the highest levels?] to encourage appropriate procedures to assess and minimize the risk of civilian harm, as well as accountability and transparency in investigations of strikes that lead to civilian casualties. The Coalition has indicated to us that it wants to improve further and remains open to our input on best practices. I remain committed to policies that reduce civilian harm wherever possible.

○