115TH CONGRESS
2nd Session
HOUSE OF REPRESENTATIVES
REPORT
115–483

CYBER DIPLOMACY ACT OF 2017

JANUARY 3, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROYCE of California, from the Committee on Foreign Affairs, submitted the following

R E P O R T

[To accompany H.R. 3776]

[Including cost estimate of the Congressional Budget Office]

The Committee on Foreign Affairs, to whom was referred the bill (H.R. 3776) to support United States international cyber diplomacy, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cyber Diplomacy Act of 2017".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The stated goal of the United States International Strategy for Cyberspace, launched on May 16, 2011, is to "work internationally to promote an open, interoperable, secure, and reliable information and communications infrastructure that supports international trade and commerce, strengthens international security, and fosters free expression and innovation . . . in which norms of responsible behavior guide States' actions, sustain partnerships, and support the rule of law in cyberspace.".

(2) The Group of Governmental Experts (GGE) on Developments in the Field of Information and Telecommunications in the Context of International Security, established by the United Nations General Assembly, concluded in its June 24, 2013, report "that State sovereignty and the international norms and principles that flow from it apply to States' conduct of [information and communications technology or ICT] related activities and to their jurisdiction over ICT infrastructure with their territory.".

(3) On January 13, 2015, China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan proposed a troubling international code of conduct for information security which defines responsible State behavior in cyberspace to include "curbing the dissemination of information" and the "right to independent control of information and communications technology" when a country's political security is threatened.

(4) The July 22, 2015, GGE consensus report found that, "norms of responsible State behavior can reduce risks to international peace, security and stability.".

(5) On September 25, 2015, the United States and China announced a commitment "that neither country's government will conduct or knowingly support cyber-enabled theft of intellectual property, including trade secrets or other confidential business information, with the intent of providing competitive advantages to companies or commercial sectors.".

(6) At the Antalya Summit from November 15–16, 2015, the Group of 20 (G20) Leaders' Communique affirmed the applicability of international law to State behavior in cyberspace, called on States to refrain from cyber-enabled theft of intellectual property for commercial gain, and endorsed the view that all States should abide by norms of responsible behavior.

(7) The March 2016 Department of State International Cyberspace Policy Strategy noted that, "the Department of State anticipates a continued increase and expansion of our cyber-focused diplomatic efforts for the foreseeable future.".

(8) On December 1, 2016, the Commission on Enhancing National Cybersecurity established within the Department of Commerce recommended "the President should appoint an Ambassador for Cybersecurity to lead U.S. engagement with the international community on cybersecurity strategies, standards, and practices.".

(9) The 2017 Group of 7 (G7) Declaration on Responsible States Behavior in Cyberspace recognized on April 11, 2017, "the urgent necessity of increased international cooperation to promote security and stability in cyberspace . . . consisting of the applicability of existing international law to State behavior in cyberspace, the promotion of voluntary, non-binding norms of responsible State behavior during peacetime" and reaffirmed "that the same rights that people have offline must also be protected online.".

(10) In testimony before the Select Committee on Intelligence of the Senate on May 11, 2017, the Director of National Intelligence identified six cyber threat actors, including Russia for "efforts to influence the 2016 US election"; China, for "actively targeting the US Government, its allies, and US companies for cyber espionage"; Iran for "leverage[ing] cyber espionage, propaganda, and attacks to support its security priorities, influence events and foreign perceptions, and counter threats"; North Korea for "previously conduct[ing] cyber-attacks against US commercial entities—specifically, Sony Pictures Entertainment in 2014"; terrorists, who "use the Internet to organize, recruit, spread propaganda, raise funds, collect intelligence, inspire action by followers, and coordinate operations"; and criminals who "are also developing and using sophisticated cyber tools for a variety of purposes including theft, extortion, and facilitation of other criminal activities".

(11) On May 11, 2017, President Trump issued Presidential Executive Order 13800 on Strengthening the Cybersecurity of Federal Networks and Infrastruc-

ture which designated the Secretary of State to lead an interagency effort to develop strategic options for the President to deter adversaries from cyber threats and an engagement strategy for international cooperation in cybersecurity, noting that "the United States is especially dependent on a globally secure and resilient internet and must work with allies and other partners" toward maintaining "the policy of the executive branch to promote an open, interoperable, reliable, and secure internet that fosters efficiency, innovation, communication, and economic prosperity, while respecting privacy and guarding against deception, fraud, and theft.".

SEC. 3. UNITED STATES INTERNATIONAL CYBERSPACE POLICY.

(a) IN GENERAL.—Congress declares that it is the policy of the United States to work internationally with allies and other partners to promote an open, interoperable, reliable, unfettered, and secure internet governed by the multistakeholder model which promotes human rights, democracy, and rule of law, including freedom of expression, innovation, communication, and economic prosperity, while respecting privacy and guarding against deception, fraud, and theft.

(b) IMPLEMENTATION.—In implementing the policy described in subsection (a), the President, in consultation with outside actors, including technology companies, nongovernmental organizations, security researchers, and other relevant stakeholders, shall pursue the following objectives in the conduct of bilateral and multilateral relations:

(1) Clarifying the applicability of international laws and norms, including the law of armed conflict, to the use of ICT.

(2) Clarifying that countries that fall victim to malicious cyber activities have the right to take proportionate countermeasures under international law, provided such measures do not violate a fundamental human right or peremptory norm.

(3) Reducing and limiting the risk of escalation and retaliation in cyberspace, such as massive denial-of-service attacks, damage to critical infrastructure, or other malicious cyber activity that impairs the use and operation of critical infrastructure that provides services to the public.

(4) Cooperating with like-minded democratic countries that share common values and cyberspace policies with the United States, including respect for human rights, democracy, and rule of law, to advance such values and policies internationally.

(5) Securing and implementing commitments on responsible country behavior in cyberspace based upon accepted norms, including the following:

(A) Countries should not conduct or knowingly support cyber-enabled theft of intellectual property, including trade secrets or other confidential business information, with the intent of providing competitive advantages to companies or commercial sectors.

(B) Countries should cooperate in developing and applying measures to increase stability and security in the use of ICTs and to prevent ICT practices that are acknowledged to be harmful or that may pose threats to international peace and security.

(C) Countries should take all appropriate and reasonable efforts to keep their territories clear of intentionally wrongful acts using ICTs in violation of international commitments.

(D) Countries should not conduct or knowingly support ICT activity that, contrary to international law, intentionally damages or otherwise impairs the use and operation of critical infrastructure, and should take appropriate measures to protect their critical infrastructure from ICT threats.

(E) Countries should not conduct or knowingly support malicious international activity that, contrary to international law, harms the information systems of authorized emergency response teams (sometimes known as "computer emergency response teams" or "cybersecurity incident response teams") or related private sector companies of another country.

(F) Countries should identify economic drivers and incentives to promote securely-designed ICT products and to develop policy and legal frameworks to promote the development of secure internet architecture.

(G) Countries should respond to appropriate requests for assistance to mitigate malicious ICT activity aimed at the critical infrastructure of another country emanating from their territory.

(H) Countries should not restrict cross-border data flows or require local storage or processing of data.

(I) Countries should protect the exercise of human rights and fundamental freedoms on the Internet and commit to the principle that the human rights that people have offline enjoy the same protections online.

SEC. 4. DEPARTMENT OF STATE RESPONSIBILITIES.

(a) OFFICE OF CYBER ISSUES.—Section 1 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a) is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection:

"(g) OFFICE OF CYBER ISSUES.—

"(1) IN GENERAL.—There is established an Office of Cyber Issues (in this subsection referred to as the 'Office'). The head of the Office shall have the rank and status of ambassador and be appointed by the President, by and with the advice and consent of the Senate.

"(2) DUTIES.—

"(A) IN GENERAL.—The head of the Office shall perform such duties and exercise such powers as the Secretary of State shall prescribe, including implementing the policy of the United States described in section 3 of the Cyber Diplomacy Act of 2017.

"(B) DUTIES DESCRIBED.—The principal duties of the head of the Office shall be to—

"(i) serve as the principal cyber-policy official within the senior management of the Department of State and advisor to the Secretary of State for cyber issues;

"(ii) lead the Department of State's diplomatic cyberspace efforts generally, including relating to international cybersecurity, internet access, internet freedom, digital economy, cybercrime, deterrence and international responses to cyber threats;

"(iii) promote an open, interoperable, reliable, unfettered, and secure information and communications technology infrastructure globally;

"(iv) represent the Secretary of State in interagency efforts to develop and advance the United States international cyberspace policy;

"(v) coordinate within the Department of State and with other components of the United States Government cyberspace efforts and other relevant functions, including countering terrorists' use of cyberspace; and

"(vi) act as liaison to public and private sector entities on relevant cyberspace issues.

"(3) QUALIFICATIONS.—The head of the Office should be an individual of demonstrated competency in the field of—

"(A) cybersecurity and other relevant cyber issues; and

"(B) international diplomacy.

"(4) ORGANIZATIONAL PLACEMENT.—The head of the Office shall report to the Under Secretary for Political Affairs or official holding a higher position in the Department of State.

"(5) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as precluding—

"(A) the Office from being elevated to a Bureau of the Department of State; and

"(B) the head of the Office from being elevated to an Assistant Secretary, if such an Assistant Secretary position does not increase the number of Assistant Secretary positions at the Department above the number authorized under subsection (c)(1).".

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Office of Cyber Issues established under section 1(g) of the State Department Basic Authorities Act of 1956 (as amended by subsection (a) of this section) should be a Bureau of the Department of State headed by an Assistant Secretary, subject to the rule of construction specified in paragraph (5)(B) of such section 1(g).

(c) UNITED NATIONS.—The Permanent Representative of the United States to the United Nations shall use the voice, vote, and influence of the United States to oppose any measure that is inconsistent with the United States international cyberspace policy described in section 3.

SEC. 5. INTERNATIONAL CYBERSPACE EXECUTIVE ARRANGEMENTS.

(a) IN GENERAL.—The President is encouraged to enter into executive arrangements with foreign governments that support the United States international cyberspace policy described in section 3.

(b) TRANSMISSION TO CONGRESS.—The text of any executive arrangement (including the text of any oral arrangement, which shall be reduced to writing) entered into by the United States under subsection (a) shall be transmitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate not later than five days after such arrangement is signed or otherwise agreed to, together with an explanation of such arrangement, its pur-

pose, how such arrangement is consistent with the United States international cyberspace policy described in section 3, and how such arrangement will be implemented.

(c) STATUS REPORT.—Not later than one year after the text of an executive arrangement is transmitted to Congress pursuant to subsection (b) and annually thereafter for seven years, or until such an arrangement has been discontinued, the President shall report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on the status of such arrangement, including an evidence-based assessment of whether all parties to such arrangement have fulfilled their commitments under such arrangement and if not, what steps the United States has taken or plans to take to ensure all such commitments are fulfilled, whether the stated purpose of such arrangement is being achieved, and whether such arrangement positively impacts building of cyber norms internationally. Each such report shall include metrics to support its findings.

(d) EXISTING EXECUTIVE ARRANGEMENTS.—Not later than 60 days after the date of the enactment of this Act, the President shall satisfy the requirements of subsection (c) for the following executive arrangements already in effect:

(1) The arrangement announced between the United States and Japan on April 25, 2014.

(2) The arrangement announced between the United States and the United Kingdom on January 16, 2015.

(3) The arrangement announced between the United States and China on September 25, 2015.

(4) The arrangement announced between the United States and Korea on October 16, 2015.

(5) The arrangement announced between the United States and Australia on January 19, 2016.

(6) The arrangement announced between the United States and India on June 7, 2016.

(7) The arrangement announced between the United States and Argentina on April 27, 2017.

(8) The arrangement announced between the United States and Kenya on June 22, 2017.

(9) The arrangement announced between the United States and Israel on June 26, 2017.

(10) Any other similar bilateral or multilateral arrangement announced before the date of the enactment of this Act.

SEC. 6. INTERNATIONAL STRATEGY FOR CYBERSPACE.

(a) STRATEGY REQUIRED.—Not later than one year after the date of the enactment of this Act, the Secretary of State, in coordination with the heads of other relevant Federal departments and agencies, shall produce a strategy relating to United States international policy with regard to cyberspace.

(b) ELEMENTS.—The strategy required under subsection (a) shall include the following:

(1) A review of actions and activities undertaken to support the United States international cyberspace policy described in section 3.

(2) A plan of action to guide the diplomacy of the Department of State with regard to foreign countries, including conducting bilateral and multilateral activities to develop the norms of responsible international behavior in cyberspace, and status review of existing efforts in multilateral fora to obtain agreements on international norms in cyberspace.

(3) A review of alternative concepts with regard to international norms in cyberspace offered by foreign countries.

(4) A detailed description of new and evolving threats to United States national security in cyberspace from foreign countries, State-sponsored actors, and private actors to Federal and private sector infrastructure of the United States, intellectual property in the United States, and the privacy of citizens of the United States.

(5) A review of policy tools available to the President to deter and de-escalate tensions with foreign countries, State-sponsored actors, and private actors regarding threats in cyberspace, and to what degree such tools have been used and whether or not such tools have been effective.

(6) A review of resources required to conduct activities to build responsible norms of international cyber behavior.

(7) A clarification of the applicability of international laws and norms, including the law of armed conflict, to the use of ICT.

(8) A clarification that countries that fall victim to malicious cyber activities have the right to take proportionate countermeasures under international law, including exercising the right to collective and individual self-defense.

(9) A plan of action to guide the diplomacy of the Department of State with regard to existing mutual defense agreements, including the inclusion in such agreements of information relating to the applicability of malicious cyber activities in triggering mutual defense obligations.

(c) FORM OF STRATEGY.—

(1) PUBLIC AVAILABILITY.—The strategy required under subsection (a) shall be available to the public in unclassified form, including through publication in the Federal Register.

(2) CLASSIFIED ANNEX.—

(A) IN GENERAL.—If the Secretary of State determines that such is appropriate, the strategy required under subsection (a) may include a classified annex consistent with United States national security interests.

(B) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as authorizing the public disclosure of an unclassified annex under subparagraph (A).

(d) BRIEFING.—Not later than 30 days after the production of the strategy required under subsection (a), the Secretary of State shall brief the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on such strategy, including any material contained in a classified annex.

(e) UPDATES.—The strategy required under subsection (a) shall be updated—

(1) not later than 90 days after there has been any material change to United States policy as described in such strategy; and

(2) not later than one year after each inauguration of a new President.

(f) PREEXISTING REQUIREMENT.—Upon the production and publication of the report required under section 3(c) of the Presidential Executive Order 13800 on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure on May 11, 2017, such report shall be considered as satisfying the requirement under subsection (a) of this section.

SEC. 7. ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.

(a) REPORT RELATING TO ECONOMIC ASSISTANCE.—Section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n) is amended by adding at the end the following new subsection:

"(h)(1) The report required by subsection (d) shall include an assessment of freedom of expression with respect to electronic information in each foreign country. Such assessment shall consist of the following:

"(A) An assessment of the extent to which government authorities in each country inappropriately attempt to filter, censor, or otherwise block or remove nonviolent expression of political or religious opinion or belief via the internet, including electronic mail, as well as a description of the means by which such authorities attempt to block or remove such expression.

"(B) An assessment of the extent to which government authorities in each country have persecuted or otherwise punished an individual or group for the nonviolent expression of political, religious, or ideological opinion or belief via the internet, including electronic mail.

"(C) An assessment of the extent to which government authorities in each country have sought to inappropriately collect, request, obtain, or disclose personally identifiable information of a person in connection with such person's nonviolent expression of political, religious, or ideological opinion or belief, including expression that would be protected by the International Covenant on Civil and Political Rights.

"(D) An assessment of the extent to which wire communications and electronic communications are monitored without regard to the principles of privacy, human rights, democracy, and rule of law.

"(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic personnel shall consult with human rights organizations, technology and internet companies, and other appropriate nongovernmental organizations.

"(3) In this subsection—

"(A) the term 'electronic communication' has the meaning given such term in section 2510 of title 18, United States Code;

"(B) the term 'internet' has the meaning given such term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3));

"(C) the term 'personally identifiable information' means data in a form that identifies a particular person; and

"(D) the term 'wire communication' has the meaning given such term in section 2510 of title 18, United States Code.".

(b) REPORT RELATING TO SECURITY ASSISTANCE.—Section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304) is amended—

(1) by redesignating the second subsection (i) (relating to child marriage status) as subsection (j); and

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

"(k)(1) The report required by subsection (b) shall include an assessment of freedom of expression with respect to electronic information in each foreign country. Such assessment shall consist of the following:

"(A) An assessment of the extent to which government authorities in each country inappropriately attempt to filter, censor, or otherwise block or remove nonviolent expression of political or religious opinion or belief via the internet, including electronic mail, as well as a description of the means by which such authorities attempt to block or remove such expression.

"(B) An assessment of the extent to which government authorities in each country have persecuted or otherwise punished an individual or group for the nonviolent expression of political, religious, or ideological opinion or belief via the internet, including electronic mail.

"(C) An assessment of the extent to which government authorities in each country have sought to inappropriately collect, request, obtain, or disclose personally identifiable information of a person in connection with such person's nonviolent expression of political, religious, or ideological opinion or belief, including expression that would be protected by the International Covenant on Civil and Political Rights.

"(D) An assessment of the extent to which wire communications and electronic communications are monitored without regard to the principles of privacy, human rights, democracy, and rule of law.

"(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic personnel shall consult with human rights organizations, technology and internet companies, and other appropriate nongovernmental organizations.

"(3) In this subsection—

"(A) the term 'electronic communication' has the meaning given such term in section 2510 of title 18, United States Code;

"(B) the term 'internet' has the meaning given such term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3));

"(C) the term 'personally identifiable information' means data in a form that identifies a particular person; and

"(D) the term 'wire communication' has the meaning given such term in section 2510 of title 18, United States Code.".

SUMMARY AND PURPOSE

H.R. 3776, the Cyber Diplomacy Act, seeks to ensure robust U.S. international engagement on emerging cyberspace issues and in support of an open, interoperable, unfettered, reliable and secure internet. To do this, the bill articulates a United States international cyberspace policy guided by the multistakeholder model that advances democratic principles and rejects attempts by authoritarian regimes to exert more control and censorship over the internet. In implementing this policy, the bill requires the President to pursue specific objectives in the conduct of bilateral and multilateral relations, including securing and implementing commitments on responsible country behavior in cyberspace based upon accepted norms. Additionally, the legislation establishes a high-level Ambassador for Cyberspace to lead the State Department's cyber diplomacy efforts and directs the U.S. Ambassador to the United Nations to advance United States international cyberspace policy. To improve congressional oversight of executive arrangements with foreign governments that support the United States international cyberspace policy, H.R. 3776 establishes a congressional notification process for preexisting and future arrangements and requires each new President to update the United

States international strategy for cyberspace. Finally, the bill requires the State Department's annual country report on human rights to include assessments related to internet freedoms.

BACKGROUND AND NEED FOR THE LEGISLATION

Malicious cyber activities by state and non-state actors threaten U.S. foreign policy, security, and economic interests around the globe. The 2017 Worldwide Threat Assessment of the United States Intelligence Community stated, "Our adversaries are becoming more adept at using cyberspace to threaten our interests and advance their own, and despite improving our cyber defenses, nearly all information, communication networks, and systems will be at risk for years." Vulnerabilities to information communication technology (ICT) are no longer theoretical. In testimony before the Select Committee on Intelligence of the Senate on May 11, 2017, the Director of National Intelligence identified six cyber threat actors, including Russia for "efforts to influence the 2016 US election;" China, for "actively targeting the US Government, its allies, and US companies for cyber espionage;" Iran for "leverage[ing] cyber espionage, propaganda, and attacks to support its security priorities, influence events and foreign perceptions, and counter threats;" North Korea for "previously conduct[ing] cyber-attacks against US commercial entities—specifically, Sony Pictures Entertainment in 2014;" terrorists, who "use the Internet to organize, recruit, spread propaganda, raise funds, collect intelligence, inspire action by followers, and coordinate operations;" and criminals who "are also developing and using sophisticated cyber tools for a variety of purposes including theft, extortion, and facilitation of other criminal activities."

In 2015, hackers stole the personnel files of some 20 million current and former Federal employees in a massive data breach of the Office of Personnel Management (OPM). The WanaCry and Petya ransomware attacks in 2017 demonstrate the reach of hackers who affected millions of computers in over 150 countries, crippling hospitals and halting international shipping. Cybercrime is estimated to cost $450 billion each year to the economy globally. Research indicates that number could climb to $2 trillion by 2019.

The State Department plays a critical role in promoting an open, interoperable, unfettered, reliable, and secure cyberspace by de-escalating cyber tensions with foreign countries through the development of international norms of responsible state behavior in cyberspace, and deterring malicious actors from carrying out destructive cyber operations. In recognition of the growing challenges in cyberspace and the importance of a whole-of-government approach to addressing them, the State Department established the Office of the Coordinator for Cyber Issues in 2011 to lead the Department's engagement on cybersecurity and other cyber issues. The first of its kind in any foreign ministry in the world, the Coordinator was housed within the Office of the Secretary of State, giving it the functional status of an Assistant Secretary. However, the position was not subject to Senate confirmation and was never formally authorized in statute.

Since its establishment, Office of the Coordinator for Cyber Issues launched "whole of government" cyber dialogues with numerous countries, designed and carried out regional capacity build-

ing initiatives, worked to reduce cyber threats worldwide by combatting operational threats such as Distributed Denial of Service and large-scale cyber intrusions for the purposes of stealing intellectual property and proprietary business information. For example, the U.S. and China agreed in 2015 not to conduct cyber espionage for commercial gain against each other.

The Office of the Coordinator for Cyber Issues has also worked diplomatically to build a consensus around the U.S. vision of an open, interoperable, secure and reliable cyberspace, as laid out in the 2011 International Strategy for Cyberspace and reaffirmed by Executive Order 138000 on May 11, 2017. Central to this effort is the promotion of an international framework of cyber stability that includes building a consensus around norms of acceptable behavior and reaching agreement on transparency and confidence-building measures designed to reduce the risk of miscalculation that could inadvertently lead to conflict in cyberspace. In 2013, the United Nations (UN) group of government experts (GGE) agreed that international law, including the UN Charter, applies to state activity in cyberspace. In 2015, the same group agreed to four peacetime norms promoted by the U.S.: (1) states should not interfere with each other's critical infrastructure; (2) they should not target each other's computer emergency response teams (CERT); (3) they should assist other nations investigating cyberattacks; and (4) they are responsible for actions that originate from their territory.

Executive Order 13800 recognizes the State Department's important contributions to the nation's cybersecurity by charging the Secretary of State with leading an inter-agency effort to develop recommendations for the President on (1) strategic options for deterring adversaries and better protecting the American people from cyber threats; and (2) an engagement strategy for international cooperation in cybersecurity. Despite the prominent role assigned to the Department by the President's Executive Order, Secretary Tillerson notified Congress of his intention to downgrade the Office of the Coordinator for Cyber Issues and merge it into an existing office within the Bureau of Economic and Business Affairs.

At a full committee hearing on September 26, 2017, Members questioned Deputy Secretary Sullivan about placing the Department's cyber diplomacy functions within the Bureau of Economic and Business Affairs and expressed a desire for the Department to have continued high-level leadership focused on the whole range of cyber issues not relegated just to economics, but also including cybersecurity, internet access, online rights, deterrence, and cyber crime. Representative Wilson and Representative McCaul reminded the Deputy Secretary that the House passed the Digital Global Access Policy Act (or the Digital GAP Act) with broad bipartisan support in 2016 and 2017, expressing the Sense of Congress that there should be an Assistant Secretary for Cyberspace to lead the Department's diplomatic cyberspace policy. The Deputy Secretary responded that "the final decision about where and at what level we will place the cybersecurity responsibility hasn't been decided" and said that he "had a number of conversations [with Secretary Tillerson] about the need to elevate this issue within the State Department, cyber broadly defined, not only our cyber defense but our cyber diplomacy," concluding that his "expectation is that as part of our redesign, we will elevate to a Senate-confirm level the role."

HEARINGS

The committee held a hearing in 2015, entitled "Cyber War: Definitions, Deterrence, and Foreign Policy" with a private sector panel. In July 2017, the committee noticed a hearing on "U.S. Cyber Diplomacy" with the Coordinator for Cyber Issues which was cancelled after the State Department informed the committee that the Coordinator would not be available. Additionally, the Subcommittee on Asia and the Pacific held a hearing in April 2017 on "China's Technological Rise: Challenges to U.S. Innovation and Security" related to the contents of H.R. 3776.

COMMITTEE CONSIDERATION

On November 15, 2017, the Committee on Foreign Affairs marked up H.R. 3776 in open session, pursuant to notice. An amendment in the nature of a substitute (offered by Chairman Royce) and three amendments to that amendment in the nature of a substitute (offered by Mr. Castro, Mr. McCaul, and Mr. Schneider) were considered *en bloc* with the underlying bill, and were agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of Rules of the House of Representatives, the committee reports that findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of House Rule X, are incorporated in the descriptive portions of this report, particularly in the "Background and Need for the Legislation" and "Section-by-Section Analysis" sections.

NEW BUDGET AUTHORITY, TAX EXPENDITURES, AND FEDERAL MANDATES

In compliance with clause 3(c)(2) of House Rule XIII and the Unfunded Mandates Reform Act (P.L. 104–4), the committee adopts as its own the estimate of new budget authority, entitlement authority, tax expenditure or revenues, and Federal mandates contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 14, 2017.

Hon. EDWARD R. ROYCE, *Chairman,*
Committee on Foreign Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3776, the Cyber Diplomacy Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sunita D'Monte, who can be reached at 226–2840.

Sincerely,

KEITH HALL.

Enclosure

cc: Honorable Eliot L. Engel
Ranking Member

H.R. 3776—Cyber Diplomacy Act of 2017

As ordered reported by the House Committee on Foreign Affairs on November 15, 2017.

H.R. 3776 would codify the role and responsibilities of an existing office within the Department of State that works to advance U.S. interests in cyberspace and coordinates U.S. efforts to promote open, reliable, and secure communications technology. In addition, the bill would require briefings or reports to the Congress on:

- Executive agreements on cyberspace policy made with other countries;
- Updates to an existing international policy on cyberspace; and
- Freedom of expression through electronic means in foreign countries.

The department indicated that implementing H.R. 3776 would not change the current policies and practices of the office nor would it impose any additional costs. Using information about the costs of similar reports, CBO estimates that implementing the reporting requirements under H.R. 3776 would cost less than $500,000 over the 2018–2022 period; such spending would be subject to the availability of appropriated funds.

Enacting H.R. 3776 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3776 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3776 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Sunita D'Monte. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

DIRECTED RULE MAKING

Pursuant to clause 3(c) of House Rule XIII, as modified by section 3(i) of H. Res. 5 during the 115th Congress, the committee notes that H.R. 3776 contains no directed rule-making provisions.

NON-DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House Rule XIII, the committee states that no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to

section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

PERFORMANCE GOALS AND OBJECTIVES

The objective of this legislation is to bolster American leadership on international cyberspace efforts, including by encouraging the President to leverage the expertise of various stakeholders to secure and implement international commitments on responsible state behavior in cyberspace based upon norms. The overriding goal is to ensure that the internet is open, interoperable, reliable, and secure. Section 5 of the Act requires the President to transmit to Congress the details of any executive arrangements entered into by the United States with foreign governments in support of such commitments, including annual status reports which shall include an evidence-based assessment of whether all parties to such arrangement have fulfilled their commitments under such arrangement including metrics to support such findings. This will enable Congress to conduct effective oversight of performance and results.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 3776 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

NEW ADVISORY COMMITTEES

H.R. 3776 does not establish or authorize any new advisory committees.

EARMARK IDENTIFICATION

H.R. 3776 contains no congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of House Rule XXI.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. The bill may be cited as the "Cyber Diplomacy Act of 2017".

Section 2. Findings. Includes 11 congressional findings.

Section 3. United States International Cyberspace Policy. Establishes the United States international cyberspace policy, guided by the "multistakeholder model" that rejects Russia and China's concept of government-led "cyber sovereignty" and specifies five key objectives for the President to pursue in implementing such policy, such as securing commitments on responsible country behavior in cyberspace based upon norms outlined in the bill.

Section 4. Department of State Responsibilities. Amends the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a) to establish an Office of Cyber Issues headed by an Ambassador who shall report to the Under Secretary for Political Affairs or official holding a higher position in the Department of State and expresses the sense of Congress that the Office should be a Bureau of the Department headed by an Assistant Secretary. This section also directs the U.S. Permanent Representative at the United Nations to

use the voice, vote, and influence of the United States to oppose measures that are inconsistent with and not reflective of the international cyberspace policy established under Section 3.

The establishment of the Office of Cyber Issues by this section shall not be construed as duplicating any other offices, positions or functions in effect at the Department of State. Rather, the Office of Cyber Issues shall be the sole office with the primary responsibility for the duties described in this section.

Section 5. International Cyberspace Agreements. Encourages the President to enter into arrangements with foreign governments to support the United States international cyberspace policy established under Section 3 and establishes a congressional notification process for preexisting and future arrangements which shall include an evidence-based assessment of whether all parties to such arrangements have fulfilled their commitments and if not, what steps the United States has taken or plans to take to ensure all such commitments are fulfilled, whether the stated purpose of such arrangement is being achieved, and whether such arrangement positively impacts building of cyber norms internationally.

Section 6. International Strategy for Cyberspace. Requires each new President to produce a comprehensive strategy relating to the United States international strategy with regard to cyberspace.

Section 7. Annual Country Reports on Human Rights Practices. Requires the State Department's annual country report on human rights to include assessments related to Internet freedoms.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

STATE DEPARTMENT BASIC AUTHORITIES ACT OF 1956

* * * * * * *

TITLE I—BASIC AUTHORITIES GENERALLY

ORGANIZATION OF THE DEPARTMENT OF STATE

SECTION 1. (a) SECRETARY OF STATE.—

(1) The Department of State shall be administered, in accordance with this Act and other provisions of law, under the supervision and direction of the Secretary of State (hereinafter referred to as the "Secretary").

(2) The Secretary, the Deputy Secretary of State, and the Deputy Secretary of State for Management and Resources shall be appointed by the President, by and with the advice and consent of the Senate.

(3)(A) Notwithstanding any other provision of law and except as provided in this section, the Secretary shall have and exercise any authority vested by law in any office or official of the Department of State. The Secretary shall administer, coordinate, and direct the Foreign Service of the United States and

the personnel of the Department of State, except where authority is inherent in or vested in the President.

(B)(i) The Secretary shall not have the authority of the Inspector General or the Chief Financial Officer.

(ii) The Secretary shall not have any authority given expressly to diplomatic or consular officers.

(4) The Secretary is authorized to promulgate such rules and regulations as may be necessary to carry out the functions of the Secretary of State and the Department of State. Unless otherwise specified in law, the Secretary may delegate authority to perform any of the functions of the Secretary or the Department to officers and employees under the direction and supervision of the Secretary. The Secretary may delegate the authority to redelegate any such functions.

(b) UNDER SECRETARIES.—

(1) IN GENERAL.—There shall be in the Department of State not more than 6 Under Secretaries of State, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) UNDER SECRETARY FOR ARMS CONTROL AND INTERNATIONAL SECURITY.—There shall be in the Department of State, among the Under Secretaries authorized by paragraph (1), an Under Secretary for Arms Control and International Security, who shall assist the Secretary and the Deputy Secretary in matters related to international security policy, arms control, and nonproliferation. Subject to the direction of the President, the Under Secretary may attend and participate in meetings of the National Security Council in his role as Senior Advisor to the President and the Secretary of State on Arms Control and Nonproliferation Matters.

(3) UNDER SECRETARY FOR PUBLIC DIPLOMACY.—There shall be in the Department of State, among the Under Secretaries authorized by paragraph (1), an Under Secretary for Public Diplomacy, who shall have primary responsibility to assist the Secretary and the Deputy Secretary in the formation and implementation of United States public diplomacy policies and activities, including international educational and cultural exchange programs, information, and international broadcasting. The Under Secretary for Public Diplomacy shall—

(A) prepare an annual strategic plan for public diplomacy in collaboration with overseas posts and in consultation with the regional and functional bureaus of the Department;

(B) ensure the design and implementation of appropriate program evaluation methodologies;

(C) provide guidance to Department personnel in the United States and overseas who conduct or implement public diplomacy policies, programs, and activities;

(D) assist the United States Agency for International Development and the Broadcasting Board of Governors to present the policies of the United States clearly and effectively; and

(E) submit statements of United States policy and editorial material to the Broadcasting Board of Governors for broadcast consideration.

(4) NOMINATION OF UNDER SECRETARIES.—Whenever the President submits to the Senate a nomination of an individual for appointment to a position in the Department of State that is described in paragraph (1), the President shall designate the particular Under Secretary position in the Department of State that the individual shall have.

(c) ASSISTANT SECRETARIES.—

(1) IN GENERAL.—There shall be in the Department of State not more than 24 Assistant Secretaries of State who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5. Each Assistant Secretary of State shall be appointed by the President, by and with the advice and consent of the Senate, except that the appointments of the Assistant Secretary for Public Affairs and the Assistant Secretary for Administration shall not be subject to the advice and consent of the Senate.

(2) ASSISTANT SECRETARY OF STATE FOR DEMOCRACY, HUMAN RIGHTS, AND LABOR.—(A) There shall be in the Department of State an Assistant Secretary of State for Democracy, Human Rights, and Labor who shall be responsible to the Secretary of State for matters pertaining to human rights and humanitarian affairs (including matters relating to prisoners of war and members of the United States Armed Forces missing in action) in the conduct of foreign policy and such other related duties as the Secretary may from time to time designate. The Secretary of State shall carry out the Secretary's responsibility under section 502B of the Foreign Assistance Act of 1961 through the Assistant Secretary.

(B) The Assistant Secretary of State for Democracy, Human Rights, and Labor shall maintain continuous observation and review all matters pertaining to human rights and humanitarian affairs (including matters relating to prisoners of war and members of the United States Armed Forces missing in action) in the conduct of foreign policy including the following:

(i) Gathering detailed information regarding humanitarian affairs and the observance of and respect for internationally recognized human rights in each country to which requirements of sections 116 and 502B of the Foreign Assistance Act of 1961 are relevant.

(ii) Preparing the statements and reports to Congress required under section 502B of the Foreign Assistance Act of 1961.

(iii) Making recommendations to the Secretary of State and the Administrator of the Agency for International Development regarding compliance with sections 116 and 502B of the Foreign Assistance Act of 1961, and as part of the Assistant Secretary's overall policy responsibility for the creation of United States Government human rights policy, advising the Administrator of the Agency for International Development on the policy framework under which section 116(e) projects are developed and consulting

with the Administrator on the selection and implementation of such projects.

(iv) Performing other responsibilities which serve to promote increased observance of internationally recognized human rights by all countries.

(3) NOMINATION OF ASSISTANT SECRETARIES.—Whenever the President submits to the Senate a nomination of an individual for appointment to a position in the Department of State that is described in paragraph (1), the President shall designate the regional or functional bureau or bureaus of the Department of State with respect to which the individual shall have responsibility.

(d) OTHER SENIOR OFFICIALS.—In addition to officials of the Department of State who are otherwise authorized to be appointed by the President, by and with the advice and consent of the Senate, and to be compensated at level IV of the Executive Schedule of section 5315 of title 5, United States Code, four other such appointments are authorized.

(e) COORDINATOR FOR COUNTERTERRORISM.—

(1) IN GENERAL.—There is within the office of the Secretary of State a Coordinator for Counterterrorism (in this paragraph referred to as the "Coordinator") who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) DUTIES.—

(A) IN GENERAL.—The Coordinator shall perform such duties and exercise such powers as the Secretary of State shall prescribe.

(B) DUTIES DESCRIBED.—The principal duty of the Coordinator shall be the overall supervision (including policy oversight of resources) of international counterterrorism activities. The Coordinator shall be the principal adviser to the Secretary of State on international counterterrorism matters. The Coordinator shall be the principal counterterrorism official within the senior management of the Department of State and shall report directly to the Secretary of State.

(3) RANK AND STATUS OF AMBASSADOR.—The Coordinator shall have the rank and status of Ambassador at Large.

(f) HIV/AIDS RESPONSE COORDINATOR.—

(1) IN GENERAL.—There shall be established within the Department of State in the immediate office of the Secretary of State a Coordinator of United States Government Activities to Combat HIV/AIDS Globally, who shall be appointed by the President, by and with the advice and consent of the Senate. The Coordinator shall report directly to the Secretary.

(2) AUTHORITIES AND DUTIES; DEFINITIONS.—

(A) AUTHORITIES.—The Coordinator, acting through such nongovernmental organizations (including faith-based and community-based organizations), partner country finance, health, and other relevant ministries, and relevant executive branch agencies as may be necessary and appropriate to effect the purposes of this section, is authorized—

(i) to operate internationally to carry out prevention, care, treatment, support, capacity development, and other activities for combatting HIV/AIDS;

(ii) to transfer and allocate funds to relevant executive branch agencies; and

(iii) to provide grants to, and enter into contracts with, nongovernmental organizations (including faith-based and community-based organizations), partner country finance, health, and other relevant ministries, to carry out the purposes of section.

(B) DUTIES.—

(i) IN GENERAL.—The Coordinator shall have primary responsibility for the oversight and coordination of all resources and international activities of the United States Government to combat the HIV/AIDS pandemic, including all programs, projects, and activities of the United States Government relating to the HIV/AIDS pandemic under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 or any amendment made by that Act.

(ii) SPECIFIC DUTIES.—The duties of the Coordinator shall specifically include the following:

(I) Ensuring program and policy coordination among the relevant executive branch agencies and nongovernmental organizations, including auditing, monitoring, and evaluation of all such programs.

(II) Ensuring that each relevant executive branch agency undertakes programs primarily in those areas where the agency has the greatest expertise, technical capabilities, and potential for success.

(III) Avoiding duplication of effort.

(IV) Establishing an interagency working group on HIV/AIDS headed by the Global AIDS Coordinator and comprised of representatives from the United States Agency for International Development and the Department of Health and Human Services, for the purposes of coordination of activities relating to HIV/AIDS, including—

(aa) meeting regularly to review progress in partner countries toward HIV/AIDS prevention, treatment, and care objectives;

(bb) participating in the process of identifying countries to consider for increased assistance based on the epidemiology of HIV/AIDS in those countries, including clear evidence of a public health threat, as well as government commitment to address the HIV/AIDS problem, relative need, and coordination and joint planning with other significant actors;

(cc) assisting the Coordinator in the evaluation, execution, and oversight of country operational plans;

(dd) reviewing policies that may be obstacles to reaching targets set forth for HIV/AIDS prevention, treatment, and care; and

(ee) consulting with representatives from additional relevant agencies, including the National Institutes of Health, the Health Resources and Services Administration, the Department of Labor, the Department of Agriculture, the Millennium Challenge Corporation, the Peace Corps, and the Department of Defense.

(V) Coordinating overall United States HIV/AIDS policy and programs, including ensuring the coordination of relevant executive branch agency activities in the field, with efforts led by partner countries, and with the assistance provided by other relevant bilateral and multilateral aid agencies and other donor institutions to promote harmonization with other programs aimed at preventing and treating HIV/AIDS and other health challenges, improving primary health, addressing food security, promoting education and development, and strengthening health care systems.

(VI) Resolving policy, program, and funding disputes among the relevant executive branch agencies.

(VII) Holding annual consultations with nongovernmental organizations in partner countries that provide services to improve health, and advocating on behalf of the individuals with HIV/AIDS and those at particular risk of contracting HIV/AIDS, including organizations with members who are living with HIV/AIDS.

(VIII) Ensuring, through interagency and international coordination, that HIV/AIDS programs of the United States are coordinated with, and complementary to, the delivery of related global health, food security, development, and education.

(IX) Directly approving all activities of the United States (including funding) relating to combatting HIV/AIDS in each of Botswana, Cote d'Ivoire, Ethiopia, Guyana, Haiti, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, Vietnam, Zambia, and other countries designated by the President, which other designated countries may include those countries in which the United States is implementing HIV/AIDS programs as of the date of the enactment of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 and other countries in which the United States is implementing HIV/AIDS programs as part of its foreign assistance program. In designating additional countries under this subparagraph, the President shall give priority to those countries in which there is a high prevalence of HIV or risk of significantly increasing incidence of

HIV within the general population and inadequate financial means within the country.

(X) Working with partner countries in which the HIV/AIDS epidemic is prevalent among injection drug users to establish, as a national priority, national HIV/AIDS prevention programs.

(XI) Working with partner countries in which the HIV/AIDS epidemic is prevalent among individuals involved in commercial sex acts to establish, as a national priority, national prevention programs, including education, voluntary testing, and counseling, and referral systems that link HIV/AIDS programs with programs to eradicate trafficking in persons and support alternatives to prostitution.

(XII) Establishing due diligence criteria for all recipients of funds appropriated for HIV/ AIDS assistance pursuant to the authorization of appropriations under section 401 of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (22 U.S.C. 7671) and all activities subject to the coordination and appropriate monitoring, evaluation, and audits carried out by the Coordinator necessary to assess the measurable outcomes of such activities.

(XIII) Publicizing updated drug pricing data to inform the purchasing decisions of pharmaceutical procurement partners.

(C) DEFINITIONS.—In this paragraph:

(i) AIDS.—The term "AIDS" means acquired immune deficiency syndrome.

(ii) HIV.—The term "HIV" means the human immunodeficiency virus, the pathogen that causes AIDS.

(iii) HIV/AIDS.—The term "HIV/AIDS" means, with respect to an individual, an individual who is infected with HIV or living with AIDS.

(iv) RELEVANT EXECUTIVE BRANCH AGENCIES.—The term "relevant executive branch agencies" means the Department of State, the United States Agency for International Development, the Department of Health and Human Services (including the Public Health Service), and any other department or agency of the United States that participates in international HIV/ AIDS activities pursuant to the authorities of such department or agency or this Act.

(g) OFFICE OF CYBER ISSUES.—

(1) IN GENERAL.—There is established an Office of Cyber Issues (in this subsection referred to as the "Office"). The head of the Office shall have the rank and status of ambassador and be appointed by the President, by and with the advice and consent of the Senate.

(2) DUTIES.—

(A) IN GENERAL.—The head of the Office shall perform such duties and exercise such powers as the Secretary of State shall prescribe, including implementing the policy of

the United States described in section 3 of the Cyber Diplomacy Act of 2017.

(B) DUTIES DESCRIBED.—The principal duties of the head of the Office shall be to—

(i) serve as the principal cyber-policy official within the senior management of the Department of State and advisor to the Secretary of State for cyber issues;

(ii) lead the Department of State's diplomatic cyberspace efforts generally, including relating to international cybersecurity, internet access, internet freedom, digital economy, cybercrime, deterrence and international responses to cyber threats;

(iii) promote an open, interoperable, reliable, unfettered, and secure information and communications technology infrastructure globally;

(iv) represent the Secretary of State in interagency efforts to develop and advance the United States international cyberspace policy;

(v) coordinate within the Department of State and with other components of the United States Government cyberspace efforts and other relevant functions, including countering terrorists' use of cyberspace; and

(vi) act as liaison to public and private sector entities on relevant cyberspace issues.

(3) QUALIFICATIONS.—The head of the Office should be an individual of demonstrated competency in the field of—

(A) cybersecurity and other relevant cyber issues; and

(B) international diplomacy.

(4) ORGANIZATIONAL PLACEMENT.—The head of the Office shall report to the Under Secretary for Political Affairs or official holding a higher position in the Department of State.

(5) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as precluding—

(A) the Office from being elevated to a Bureau of the Department of State; and

(B) the head of the Office from being elevated to an Assistant Secretary, if such an Assistant Secretary position does not increase the number of Assistant Secretary positions at the Department above the number authorized under subsection (c)(1).

[(g)**]** *(h)* QUALIFICATIONS OF CERTAIN OFFICERS OF THE DEPARTMENT OF STATE.—

(1) OFFICER HAVING PRIMARY RESPONSIBILITY FOR PERSONNEL MANAGEMENT.—The officer of the Department of State with primary responsibility for assisting the Secretary with respect to matters relating to personnel in the Department of State, or that officer's principal deputy, shall have substantial professional qualifications in the field of human resource policy and management.

(2) OFFICER HAVING PRIMARY RESPONSIBILITY FOR DIPLOMATIC SECURITY.—The officer of the Department of State with primary responsibility for assisting the Secretary with respect to diplomatic security, or that officer's principal deputy, shall have substantial professional qualifications in the fields of (A)

management, and (B) Federal law enforcement, intelligence, or security.

(3) OFFICER HAVING PRIMARY RESPONSIBILITY FOR INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT.—The officer of the Department of State with primary responsibility for assisting the Secretary with respect to international narcotics and law enforcement, or that officer's principal deputy, shall have substantial professional qualifications in the fields of (A) management, and (B) law enforcement or international narcotics policy.

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FOREIGN ASSISTANCE ACT OF 1961

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PART I

CHAPTER 1—POLICY; DEVELOPMENT ASSISTANCE AUTHORIZATIONS

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SEC. 116. HUMAN RIGHTS.—(a) No assistance may be provided under this part to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of person, unless such assistance will directly benefit the needy people in such country.

(b) In determining whether this standard is being met with regard to funds allocated under this part, the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives may require the Administrator primarily responsible for administering part I of this Act to submit in writing information demonstrating that such assistance will directly benefit the needy people in such country, together with a detailed explanation of the assistance to be provided (including the dollar amounts of such assistance) and an explanation of how such assistance will directly benefit the needy people in such country. If either committee or either House of Congress disagrees with the Administrator's justification it may initiate action to terminate assistance to any country by a concurrent resolution under section 617 of this Act.

(b) No assistance may be provided to any government failing to take appropriate and adequate measures, within their means, to protect children from exploitation, abuse or forced conscription into military or paramilitary services.

(c) In determining whether or not a government falls within the provisions of subsection (a) and in formulating development assistance programs under this part, the Administrator shall consider, in consultation with the Assistant Secretary of State for Democracy, Human Rights, and Labor and in consultation with the Ambassador at Large for International Religious Freedom—

(1) the extent of cooperation of such government in permitting an unimpeded investigation of alleged violations of internationally recognized human rights by appropriate international organizations, including the International Committee of the Red Cross, or groups or persons acting under the authority of the United Nations or of the Organization of American States;

(2) specific actions which have been taken by the President or the Congress relating to multilateral or security assistance to a less developed country because of the human rights practices or policies of such country; and

(3) whether the government—

(A) has engaged in or tolerated particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998; or

(B) has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom (as defined in section 3 of the International Religious Freedom Act of 1998), when such efforts could have been reasonably undertaken.

(d) The Secretary of State shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, by February 25 of each year, a full and complete report regarding—

(1) the status of internationally recognized human rights, within the meaning of subsection (a)—

(A) in countries that receive assistance under this part, and

(B) in all other foreign countries which are members of the United Nations and which are not otherwise the subject of a human rights report under this Act;

(2) wherever applicable, practices regarding coercion in population control, including coerced abortion and involuntary sterilization;

(3) the status of child labor practices in each country, including—

(A) whether such country has adopted policies to protect children from exploitation in the workplace, including a prohibition of forced and bonded labor and policies regarding acceptable working conditions; and

(B) the extent to which each country enforces such policies, including the adequacy of the resources and oversight dedicated to such policies;

(4) the votes of each member of the United Nations Commission on Human Rights on all country-specific and thematic resolutions voted on at the Commission's annual session during the period covered during the preceding year;

(5) the extent to which each country has extended protection to refugees, including the provision of first asylum and resettlement;

(6) the steps the Administrator has taken to alter United States programs under this part in any country because of human rights considerations;

(7) wherever applicable, violations of religious freedom, including particularly severe violations of religious freedom (as

defined in section 3 of the International Religious Freedom Act of 1998);

(8) wherever applicable, a description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur during the preceding year, including descriptions of—

(A) acts of physical violence against, or harassment of Jewish people, and acts of violence against, or vandalism of Jewish community institutions, including schools, synagogues, and cemeteries;

(B) instances of propaganda in government and non-government media that attempt to justify or promote racial hatred or incite acts of violence against Jewish people;

(C) the actions, if any, taken by the government of the country to respond to such violence and attacks or to eliminate such propaganda or incitement;

(D) the actions taken by such government to enact and enforce laws relating to the protection of the right to religious freedom of Jewish people; and

(E) the efforts of such government to promote anti-bias and tolerance education;

(9) wherever applicable, consolidated information regarding the commission of war crimes, crimes against humanity, and evidence of acts that may constitute genocide (as defined in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide and modified by the United States instrument of ratification to that convention and section 2(a) of the Genocide Convention Implementation Act of 1987);

(10) for each country with respect to which the report indicates that extrajudicial killings, torture, or other serious violations of human rights have occurred in the country, the extent to which the United States has taken or will take action to encourage an end to such practices in the country;

(11)(A) wherever applicable, a description of the nature and extent—

(i) of the compulsory recruitment and conscription of individuals under the age of 18 by armed forces of the government of the country, government-supported paramilitaries, or other armed groups, and the participation of such individuals in such groups; and

(ii) that such individuals take a direct part in hostilities;

(B) what steps, if any, taken by the government of the country to eliminate such practices;

(C) such other information related to the use by such government of individuals under the age of 18 as soldiers, as determined to be appropriate by the Secretary; and

(12) wherever applicable—

(A) a description of the status of freedom of the press, including initiatives in favor of freedom of the press and efforts to improve or preserve, as appropriate, the independence of the media, together with an assessment of progress made as a result of those efforts;

(B) an identification of countries in which there were violations of freedom of the press, including direct physical attacks, imprisonment, indirect sources of pressure, and censorship by governments, military, intelligence, or police

forces, criminal groups, or armed extremist or rebel groups; and

(C) in countries where there are particularly severe violations of freedom of the press—

(i) whether government authorities of each such country participate in, facilitate, or condone such violations of the freedom of the press; and

(ii) what steps the government of each such country has taken to preserve the safety and independence of the media, and to ensure the prosecution of those individuals who attack or murder journalists.

(e) The President is authorized and encouraged to use not less than $3,000,000 of the funds made available under this chapter, chapter 10 of this part, and chapter 4 of part II for each fiscal year for studies to identify, and for openly carrying out, programs and activities which will encourage or promote increased adherence to civil and political rights, as set forth in the Universal Declaration of Human Rights, in countries eligible for assistance under this chapter or under chapter 10 of this part, except that funds made available under chapter 10 of this part may only be used under this subsection with respect to countries in sub-Saharan Africa. None of these funds may be used, directly or indirectly, to influence the outcome of any election in any country.

(f)(1) The report required by subsection (d) shall include the following:

(A) A description of the nature and extent of severe forms of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, in each foreign country.

(B) With respect to each country that is a country of origin, transit, or destination for victims of severe forms of trafficking in persons, an assessment of the efforts by the government of that country to combat such trafficking. The assessment shall address the following:

(i) Whether government authorities in that country participate in, facilitate, or condone such trafficking.

(ii) Which government authorities in that country are involved in activities to combat such trafficking.

(iii) What steps the government of that country has taken to prohibit government officials from participating in, facilitating, or condoning such trafficking, including the investigation, prosecution, and conviction of such officials.

(iv) What steps the government of that country has taken to prohibit other individuals from participating in such trafficking, including the investigation, prosecution, and conviction of individuals involved in severe forms of trafficking in persons, the criminal and civil penalties for such trafficking, and the efficacy of those penalties in eliminating or reducing such trafficking.

(v) What steps the government of that country has taken to assist victims of such trafficking, including efforts to prevent victims from being further victimized by traffickers, government officials, or others, grants of relief from deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter.

(vi) Whether the government of that country is cooperating with governments of other countries to extradite traffickers when requested, or, to the extent that such cooperation would be inconsistent with the laws of such country or with extradition treaties to which such country is a party, whether the government of that country is taking all appropriate measures to modify or replace such laws and treaties so as to permit such cooperation.

(vii) Whether the government of that country is assisting in international investigations of transnational trafficking networks and in other cooperative efforts to combat severe forms of trafficking in persons.

(viii) Whether the government of that country refrains from prosecuting victims of severe forms of trafficking in persons due to such victims having been trafficked, and refrains from other discriminatory treatment of such victims.

(ix) Whether the government of that country recognizes the rights of victims of severe forms of trafficking in persons and ensures their access to justice.

(C) Such other information relating to trafficking in persons as the Secretary of State considers appropriate.

(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations and other appropriate nongovernmental organizations.

(g) CHILD MARRIAGE STATUS.—

(1) IN GENERAL.—The report required under subsection (d) shall include, for each country in which child marriage is prevalent, a description of the status of the practice of child marriage in such country.

(2) DEFINED TERM.—In this subsection, the term "child marriage" means the marriage of a girl or boy who is—

(A) younger than the minimum age for marriage under the laws of the country in which such girl or boy is a resident; or

(B) younger than 18 years of age, if no such law exists.

(h)(1) The report required by subsection (d) shall include an assessment of freedom of expression with respect to electronic information in each foreign country. Such assessment shall consist of the following:

(A) An assessment of the extent to which government authorities in each country inappropriately attempt to filter, censor, or otherwise block or remove nonviolent expression of political or religious opinion or belief via the internet, including electronic mail, as well as a description of the means by which such authorities attempt to block or remove such expression.

(B) An assessment of the extent to which government authorities in each country have persecuted or otherwise punished an individual or group for the nonviolent expression of political, religious, or ideological opinion or belief via the internet, including electronic mail.

(C) An assessment of the extent to which government authorities in each country have sought to inappropriately collect, request, obtain, or disclose personally identifiable information of a person in connection with such person's nonviolent expression

of political, religious, or ideological opinion or belief, including expression that would be protected by the International Covenant on Civil and Political Rights.

(D) An assessment of the extent to which wire communications and electronic communications are monitored without regard to the principles of privacy, human rights, democracy, and rule of law.

(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic personnel shall consult with human rights organizations, technology and internet companies, and other appropriate nongovernmental organizations.

(3) In this subsection—

(A) the term "electronic communication" has the meaning given such term in section 2510 of title 18, United States Code;

(B) the term "internet" has the meaning given such term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3));

(C) the term "personally identifiable information" means data in a form that identifies a particular person; and

(D) the term "wire communication" has the meaning given such term in section 2510 of title 18, United States Code.

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TITLE XII—FAMINE PREVENTION AND FREEDOM FROM HUNGER

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CHAPTER 1—POLICY

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SEC. 502B. HUMAN RIGHTS.—(a)(1) The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.

(2) Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights. Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces of a country, and licenses may not be issued under the Export Administration Act of 1979 for the export of crime control and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate (when licenses are to be issued pursuant to the Export Administration Act of 1979), that extraor-

dinary circumstances exist warranting provision of such assistance and issuance of such licenses. Assistance may not be provided under chapter 5 of this part to a country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that extraordinary circumstances exist warranting provision of such assistance.

(3) In furtherance of paragraphs (1) and (2), the President is directed to formulate and conduct international security assistance programs of the United States in a manner which will promote and advance human rights and avoid identification of the United States, through such programs, with governments which deny to their people internationally recognized human rights and fundamental freedoms, in violation of international law or in contravention of the policy of the United States as expressed in this section or otherwise.

(4) In determining whether the government of a country engages in a consistent pattern of gross violations of internationally recognized human rights, the President shall give particular consideration to whether the government—

(A) has engaged in or tolerated particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998; or

(B) has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom when such efforts could have been reasonably undertaken.

(b) The Secretary of State shall transmit to the Congress, as part of the presentation materials for security assistance programs proposed for each fiscal year, a full and complete report, prepared with the assistance of the Assistant Secretary of State for Democracy, Human Rights, and Labor and with the assistance of the Ambassador at Large for International Religious Freedom, with respect to practices regarding the observance of and respect for internationally recognized human rights in each country proposed as a recipient of security assistance. Wherever applicable, such report shall include consolidated information regarding the commission of war crimes, crimes against humanity, and evidence of acts that may constitute genocide (as defined in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide and modified by the United States instrument of ratification to that convention and section 2(a) of the Genocide Convention Implementation Act of 1987). Wherever applicable, such report shall include information on practices regarding coercion in population control, including coerced abortion and involuntary sterilization. Such report shall also include, wherever applicable, information on violations of religious freedom, including particularly severe violations of religious freedom (as defined in section 3 of the International Religious Freedom Act of 1998). Wherever applicable, such report shall include a description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur, including the descriptions of such acts required under section 116(d)(8). Such report shall also include, for each country with respect to which the report indicates that extrajudicial killings, torture, or other serious violations of

human rights have occurred in the country, the extent to which the United States has taken or will take action to encourage an end to such practices in the country. Each report under this section shall list the votes of each member of the United Nations Commission on Human Rights on all country-specific and thematic resolutions voted on at the Commission's annual session during the period covered during the preceding year. Each report under this section shall describe the extent to which each country has extended protection to refugees, including the provision of first asylum and resettlement. Each report under this section shall also include (i) wherever applicable, a description of the nature and extent of the compulsory recruitment and conscription of individuals under the age of 18 by armed forces of the government of the country, government-supported paramilitaries, or other armed groups, the participation of such individuals in such groups, and the nature and extent that such individuals take a direct part in hostilities, (ii) what steps, if any, taken by the government of the country to eliminate such practices, and (iii) such other information related to the use by such government of individuals under the age of 18 as soldiers, as determined to be appropriate by the Secretary of State. In determining whether a government falls within the provisions of subsection (a)(3) and in the preparation of any report or statement required under this section, consideration shall be given to—

(1) the relevant findings of appropriate international organizations, including nongovernmental organizations, such as the International Committee of the Red Cross; and

(2) the extent of cooperation by such government in permitting an unimpeded investigation by any such organization of alleged violations of internationally recognized human rights.

(c)(1) Upon the request of the Senate or the House of Representatives by resolution of either such House, or upon the request of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, the Secretary of State shall, within thirty days after receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Assistant Secretary of State for Democracy, Human Rights, and Labor, with respect to the country designated in such request, setting forth—

(A) all the available information about observance of and respect for human rights and fundamental freedom in that country, and a detailed description of practices by the recipient government with respect thereto;

(B) the steps the United States has taken to—

(i) promote respect for and observance of human rights in that country and discourage any practices which are inimical to internationally recognized human rights, and

(ii) publicly or privately call attention to, and disassociate the United States and any security assistance provided for such country from, such practices;

(C) whether, in the opinion of the Secretary of State, notwithstanding any such practices—

(i) extraordinary circumstances exist which necessitate a continuation of security assistance for such country, and, if so, a description of such circumstances and the extent to which such assistance should be continued (subject to such

conditions as Congress may impose under this section), and

(ii) on all the facts it is in the national interest of the United States to provide such assistance; and

(D) such other information as such committee or such House may request.

(2)(A) A resolution of request under paragraph (1) of this subsection shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) The term "certification", as used in section 601 of such Act, means, for the purposes of this subsection, a resolution of request of the Senate under paragraph (1) of this subsection.

(3) In the event a statement with respect to a country is requested pursuant to paragraph (1) of this subsection but is not transmitted in accordance therewith within thirty days after receipt of such request, no security assistance shall be delivered to such country except as may thereafter be specifically authorized by law from such country unless and until such statement is transmitted.

(4)(A) In the event a statement with respect to a country is transmitted under paragraph (1) of this subsection, the Congress may at any time thereafter adopt a joint resolution terminating, restricting, or continuing security assistance for such country. In the event such a joint resolution is adopted, such assistance shall be so terminated, so restricted, or so continued, as the case may be.

(B) Any such resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(C) The term "certification", as used in section 601 of such Act, means, for the purposes of this paragraph, a statement transmitted under paragraph (1) of this subsection.

(d) For the purposes of this section—

(1) the term "gross violations of internationally recognized human rights" includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person;

(2) the term "security assistance" means—

(A) assistance under chapter 2 (military assistance) or chapter 4 (economic support fund) or chapter 5 (military education and training) or chapter 6 (peacekeeping operations) or chapter 8 (antiterrorism assistance) of this part;

(B) sales of defense articles or services, extensions of credits (including participations in credits), and guaranties of loans under the Arms Export Control Act; or

(C) any license in effect with respect to the export to or for the armed forces, police, intelligence, or other internal security forces of a foreign country of—

(i) defense articles or defense services under section 38 of the Armed Export Control Act (22 U.S.C. 2778); or

(ii) items listed under the 600 series of the Commerce Control List contained in Supplement No. 1 to part 774 of subtitle B of title 15, Code of Federal Regulations;

(e) Notwithstanding any other provision of law, funds authorized to be appropriated under part I of this Act may be made available for the furnishing of assistance to any country with respect to which the President finds that such a significant improvement in its human rights record has occurred as to warrant lifting the prohibition on furnishing such assistance in the national interest of the United States.

(f) In allowing the funds authorized to be appropriated by this Act and the Arms Export Control Act, the President shall take into account significant improvements in the human rights records of recipient countries, except that such allocations may not contravene any other provision of law.

(g) Whenever the provisions of subsection (e) or (f) of this section are applied, the President shall report to the Congress before making any funds available pursuant to those subsections. The report shall specify the country involved, the amount and kinds of assistance to be provided, and the justification for providing the assistance, including a description of the significant improvements which have occurred in the country's human rights record.

(h)(1) The report required by subsection (b) shall include the following:

(A) A description of the nature and extent of severe forms of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, in each foreign country.

(B) With respect to each country that is a country of origin, transit, or destination for victims of severe forms of trafficking in persons, an assessment of the efforts by the government of that country to combat such trafficking. The assessment shall address the following:

(i) Whether government authorities in that country participate in, facilitate, or condone such trafficking.

(ii) Which government authorities in that country are involved in activities to combat such trafficking.

(iii) What steps the government of that country has taken to prohibit government officials from participating in, facilitating, or condoning such trafficking, including the investigation, prosecution, and conviction of such officials.

(iv) What steps the government of that country has taken to prohibit other individuals from participating in such trafficking, including the investigation, prosecution, and conviction of individuals involved in severe forms of trafficking in persons, the criminal and civil penalties for such trafficking, and the efficacy of those penalties in eliminating or reducing such trafficking.

(v) What steps the government of that country has taken to assist victims of such trafficking, including efforts to prevent victims from being further victimized by traffickers, government officials, or others, grants of relief from deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter.

(vi) Whether the government of that country is cooperating with governments of other countries to extradite traffickers when requested, or, to the extent that such cooperation would be inconsistent with the laws of such country or with extradition treaties to which such country is a party, whether the government of that country is taking all appropriate measures to modify or replace such laws and treaties so as to permit such cooperation.

(vii) Whether the government of that country is assisting in international investigations of transnational trafficking networks and in other cooperative efforts to combat severe forms of trafficking in persons.

(viii) Whether the government of that country refrains from prosecuting victims of severe forms of trafficking in persons due to such victims having been trafficked, and refrains from other discriminatory treatment of such victims.

(ix) Whether the government of that country recognizes the rights of victims of severe forms of trafficking in persons and ensures their access to justice.

(C) Such other information relating to trafficking in persons as the Secretary of State considers appropriate.

(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations and other appropriate nongovernmental organizations.

(i) The report required by subsection (b) shall include, wherever applicable—

(1) a description of the status of freedom of the press, including initiatives in favor of freedom of the press and efforts to improve or preserve, as appropriate, the independence of the media, together with an assessment of progress made as a result of those efforts;

(2) an identification of countries in which there were violations of freedom of the press, including direct physical attacks, imprisonment, indirect sources of pressure, and censorship by governments, military, intelligence, or police forces, criminal groups, or armed extremist or rebel groups; and

(3) in countries where there are particularly severe violations of freedom of the press—

(A) whether government authorities of each such country participate in, facilitate, or condone such violations of the freedom of the press; and

(B) what steps the government of each such country has taken to preserve the safety and independence of the media, and to ensure the prosecution of those individuals who attack or murder journalists.

[(i)] *(j)* CHILD MARRIAGE STATUS.—

(1) IN GENERAL.—The report required under subsection (b) shall include, for each country in which child marriage is prevalent, a description of the status of the practice of child marriage in such country.

(2) DEFINED TERM.—In this subsection, the term "child marriage" means the marriage of a girl or boy who is—

(A) younger than the minimum age for marriage under the laws of the country in which such girl or boy is a resident; or

(B) younger than 18 years of age, if no such law exists.

(k)(1) The report required by subsection (b) shall include an assessment of freedom of expression with respect to electronic information in each foreign country. Such assessment shall consist of the following:

(A) An assessment of the extent to which government authorities in each country inappropriately attempt to filter, censor, or otherwise block or remove nonviolent expression of political or religious opinion or belief via the internet, including electronic mail, as well as a description of the means by which such authorities attempt to block or remove such expression.

(B) An assessment of the extent to which government authorities in each country have persecuted or otherwise punished an individual or group for the nonviolent expression of political, religious, or ideological opinion or belief via the internet, including electronic mail.

(C) An assessment of the extent to which government authorities in each country have sought to inappropriately collect, request, obtain, or disclose personally identifiable information of a person in connection with such person's nonviolent expression of political, religious, or ideological opinion or belief, including expression that would be protected by the International Covenant on Civil and Political Rights.

(D) An assessment of the extent to which wire communications and electronic communications are monitored without regard to the principles of privacy, human rights, democracy, and rule of law.

(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic personnel shall consult with human rights organizations, technology and internet companies, and other appropriate nongovernmental organizations.

(3) In this subsection—

(A) the term "electronic communication" has the meaning given such term in section 2510 of title 18, United States Code;

(B) the term "internet" has the meaning given such term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3));

(C) the term "personally identifiable information" means data in a form that identifies a particular person; and

(D) the term "wire communication" has the meaning given such term in section 2510 of title 18, United States Code.

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