

112TH CONGRESS
2D SESSION

H. R. 5749

To prohibit the transfer of defense articles and defense services to the governments of foreign countries that are engaging in gross violations of internationally-recognized human rights, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2012

Mr. GRIJALVA (for himself, Mr. CONYERS, Mr. DEFazio, Mr. FARR, Mr. FILLNER, Ms. HAHN, Mr. HOLT, Mr. JACKSON of Illinois, Mr. KUCINICH, Ms. LEE of California, Mr. POLIS, Mr. STARK, and Ms. WATERS) introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To prohibit the transfer of defense articles and defense services to the governments of foreign countries that are engaging in gross violations of internationally-recognized human rights, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Arms Sale Responsi-
5 bility Act of 2012”.

1 **SEC. 2. SENSE OF CONGRESS PROVISIONS.**

2 (a) **TRANSFER OF CONVENTIONAL ARMS.**—It is the
3 sense of Congress that it should be the policy of the
4 United States to maintain adherence to a policy of re-
5 straint in transferring conventional arms if evidence exists
6 of substantial risk that such arms will be used to commit
7 or facilitate serious violations of international human
8 rights law or international humanitarian law.

9 (b) **ARMS CONTROL AGREEMENTS.**—In furtherance
10 of the policy described in subsection (a), the President,
11 in negotiating any conventional arms control agreement,
12 should undertake a concerted effort—

13 (1) to encourage the national control list of
14 each party to the agreement to cover all types of
15 weaponry, munitions, armaments and related mate-
16 rial used for potentially lethal force in military and
17 law enforcement operations, as well as any parts,
18 components and accessories thereof, and machines,
19 technologies and technical expertise for making, de-
20 veloping and maintaining those items;

21 (2) to conduct an effective inquiry and mean-
22 ingful assessment of each application or proposal for
23 authorization to export or internationally transfer
24 arms on a case-by-case basis;

25 (3) to deny an arms transfer authorization if
26 there is a substantial risk that the arms will be used

1 to commit or facilitate serious violations of inter-
2 national human rights law or international humani-
3 tarian law and to ensure such denial remains in
4 place until steps are taken to mitigate the level of
5 risk;

6 (4) to require import and transit state author-
7 izations, and certified end use assurances, before
8 issuing an export license or authorization for any
9 international transfer of conventional arms and to
10 ensure minimum details in the end use assurance in-
11 clude the exporter, consignee, purchasers, country of
12 final destination, description of type and quantity of
13 items, specific purpose they will be used, an expira-
14 tion date, and an undertaking that they will not be
15 used for purposes other than those declared or re-
16 exported without permission;

17 (5) to require delivery verification to be offi-
18 cially certified on receipt of the shipment of conven-
19 tional arms by the end user, which includes at a
20 minimum, the name and address of the exporter and
21 the importer, the serial number of the import certifi-
22 cate, a description of the goods, the quantity and
23 value, the port of arrival and the name of the ship,
24 aircraft or other carrier; and

1 (6) to require each party to the agreement to
2 establish a clear legal framework for lawful
3 brokering and shipping activities relating to trans-
4 fers of conventional arms.

5 **SEC. 3. PROHIBITION ON TRANSFER OF DEFENSE ARTI-**
6 **CLES AND DEFENSE SERVICES TO CERTAIN**
7 **FOREIGN GOVERNMENTS.**

8 (a) PROHIBITION.—For each fiscal year beginning on
9 or after the date of enactment of this Act, no defense arti-
10 cles or defense services may be transferred to the govern-
11 ment of a foreign country under the Foreign Assistance
12 Act of 1961 or the Arms Export Control Act unless the
13 President submits to Congress a certification described in
14 subsection (b) with respect to the transfer of such defense
15 articles or defense services.

16 (b) CERTIFICATION.—A certification referred to in
17 subsection (a) is a certification that—

18 (1) the government of the foreign country is not
19 engaging in gross violations of internationally-recog-
20 nized human rights, including—

21 (A) by carrying out—

22 (i) excessive force against or unlawful
23 killings of unarmed protesters;

24 (ii) extrajudicial or arbitrary execu-
25 tions;

- 1 (iii) disappearances;
- 2 (iv) torture or severe mistreatment;
- 3 (v) prolonged arbitrary imprisonment;
- 4 (vi) systematic official discrimination
- 5 on the basis of race, ethnicity, religion,
- 6 gender, national origin, or political affili-
- 7 ation; or
- 8 (vii) grave breaches of international
- 9 humanitarian law; and
- 10 (B) by failing to—
- 11 (i) vigorously investigate, discipline, or
- 12 prosecute those individuals responsible for
- 13 gross violations of internationally-recog-
- 14 nized human rights;
- 15 (ii) allow the free functioning of do-
- 16 mestic and international human rights or-
- 17 ganizations;
- 18 (iii) provide access on a regular basis
- 19 to humanitarian organizations in humani-
- 20 tarian emergencies; or
- 21 (iv) divert the transfer of defense arti-
- 22 cles or defense services to a third country
- 23 which facilitates 1 or more of the actions
- 24 described in subparagraph (A); and

1 (2) the government of the country is not identi-
2 fied by the Secretary of State in the Department of
3 State's most recent Country Reports on Human
4 Rights Practices as having governmental armed
5 forces or government supported armed groups, in-
6 cluding paramilitaries, militias, or civil defense
7 forces, that recruit or use child soldiers.

8 (c) FAILURE TO CONTINUE TO COMPLY.—Any cer-
9 tification with respect to a foreign government for a fiscal
10 year under subsection (b) shall cease to be effective for
11 that fiscal year if the President certifies to Congress that
12 such government has not continued to comply with the re-
13 quirements contained in such subsection.

14 (d) NOTIFICATIONS TO CONGRESS.—The President
15 shall submit to Congress initial certifications under sub-
16 section (b) as part of the submission of the annual con-
17 gressional presentation documents for foreign assistance
18 programs for each fiscal year beginning on or after the
19 date of enactment of this Act and shall, where appro-
20 priate, submit additional or amended certifications at any
21 time thereafter in that fiscal year.

22 (e) EXEMPTIONS.—

23 (1) IN GENERAL.—The prohibition contained in
24 subsection (a) shall not apply with respect to a for-
25 eign government for a fiscal year if—

1 (A) subject to paragraph (2), the President
2 submits a request for an exemption to Congress
3 containing a determination that it is in the na-
4 tional security interest of the United States to
5 provide defense articles or defense services to
6 such government; or

7 (B) the President determines that an
8 emergency exists under which it is vital to the
9 interest of the United States to provide military
10 defense articles or defense services to such gov-
11 ernment.

12 (2) DISAPPROVAL.—A request for an exemption
13 to provide defense articles or defense services to a
14 foreign government shall not take effect, or shall
15 cease to be effective, if a law is enacted disapproving
16 such request.

17 (f) DEFINITIONS.—In this section—

18 (1) the term “defense article” has the meaning
19 given the term in section 47(3) of the Arms Export
20 Control Act; and

21 (2) the term “defense service” has the meaning
22 given the term in section 47(4) of the Arms Export
23 Control Act.

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