

116TH CONGRESS
2D SESSION

S. 4739

To amend the Arms Export Control Act to provide for better monitoring and verification of the use of defense articles and defense services by countries of concern, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2020

Mrs. MURRAY introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To amend the Arms Export Control Act to provide for better monitoring and verification of the use of defense articles and defense services by countries of concern, 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 “Values in Arms Export
5 Act of 2020”.

1 **SEC. 2. MONITORING AND VERIFICATION OF USE OF DE-**
 2 **FENSE ARTICLES AND DEFENSE SERVICES.**

3 Chapter 3A of the Arms Export Control Act (22
 4 U.S.C. 2785) is amended—

5 (1) by redesignating the second section des-
 6 ignated section 40A as section 40B; and

7 (2) by inserting after section 40B, as so redes-
 8 ignated, the following new section:

9 **“SEC. 40C. MONITORING AND VERIFICATION OF USE OF DE-**
 10 **FENSE ARTICLES AND DEFENSE SERVICES.**

11 **“(a) PRINCIPLES.—**

12 **“(1) STATEMENT OF POLICY.—**It is the policy
 13 of the United States that a country’s respect for and
 14 compliance with internationally recognized principles
 15 of human rights and the law of war are central and
 16 deciding factors in determining the eligibility of the
 17 country to purchase defense articles or defense serv-
 18 ices under this Act.

19 **“(2) EXAMPLES OF INCONSISTENT ACTIONS**
 20 **AND BEHAVIORS.—**Actions or behavior by a country
 21 inconsistent with the principles described in para-
 22 graph (1) include the following:

23 **“(A)** Gross violations of internationally
 24 recognized human rights (as defined in section
 25 502B(d) of the Foreign Assistance Act of 1961
 26 (22 U.S.C. 2304(d))).

1 “(B) Failure to adhere to standards of
2 proportionality and discrimination.

3 “(C) Patterns or egregious incidents of de-
4 struction or damage of medical facilities or
5 other civilian infrastructure.

6 “(D) Patterns or egregious incidents of
7 harming or disregard for the safety of medical
8 personnel, aid workers, peacekeepers, or jour-
9 nalists.

10 “(E) Patterns or egregious incidents of
11 harming or disregard for the safety of civilians.

12 “(F) The denial of humanitarian relief re-
13 sulting in serious harm to civilian populations.

14 “(G) Gross or systemic corruption, lack of
15 transparency, or lack of accountability in the
16 government or among security forces.

17 “(3) REPORTING OF INCONSISTENT ACTIONS
18 AND BEHAVIORS.—

19 “(A) REPORTS BY OFFICERS OR EMPLOY-
20 EES OF UNITED STATES.—Any officer or em-
21 ployee of the United States Government sta-
22 tioned in a country with knowledge of action or
23 behavior by that country that is inconsistent
24 with the principles described in paragraph (1)
25 shall report the action or behavior to the chief

1 of mission (as defined in section 102 of the
2 Foreign Service Act of 1980 (22 U.S.C. 3902))
3 for that country.

4 “(B) REPORTING TO SECRETARY OF
5 STATE.—A chief of mission that receives a re-
6 port under subparagraph (A) with respect to an
7 action or behavior shall promptly report the ac-
8 tion or behavior to the Secretary of State.

9 “(C) REPORTING TO CONGRESS.—Not
10 later than seven days after the Secretary re-
11 ceives a report under subparagraph (B) with re-
12 spect to an action or behavior, the Secretary
13 shall submit to Congress a report on the action
14 or behavior. The report shall be submitted in
15 unclassified form, but may include a classified
16 annex if necessary. The report shall include at
17 a minimum the following information:

18 “(i) The title or subject of each re-
19 port.

20 “(ii) A description of significant prob-
21 lems, abuses, and deficiencies related to
22 the inconsistent actions and behaviors of
23 the country in question.

1 “(iii) A description of the evidence or
2 information used to form the basis for the
3 report.

4 “(4) INTELLIGENCE COMMUNITY REPORTING.—
5 The Director of National Intelligence may specify
6 additional reporting procedures for officers or em-
7 ployees who are members of the intelligence commu-
8 nity. Such procedures shall encompass reporting and
9 analysis of information relevant to the principles de-
10 scribed in this subsection but which may be insuffi-
11 ciently verified or not of sufficient severity for re-
12 porting under paragraph (3).

13 “(5) INCLUSION IN INTELLIGENCE PRIOR-
14 ITIES.—The Director of National Intelligence shall
15 ensure that collection and analysis of information re-
16 lated to the principles described in this subsection is
17 included in each National Intelligence Priorities
18 Framework, or any successor directive.

19 “(b) MONITORING AND VERIFICATION PROGRAM.—

20 “(1) IN GENERAL.—The Secretary of Defense
21 shall carry out a program of monitoring and
22 verification of the use of defense articles and defense
23 services acquired under this Act by countries of con-
24 cern.

1 “(2) ELEMENTS.—The program established
2 under this subsection shall include the following ele-
3 ments:

4 “(A) The observation and evaluation by
5 members of the United States Armed Forces of
6 the targeting process used by the country of
7 concern, the employment of the acquired de-
8 fense articles by the country of concern, the re-
9 turn of any unused defense articles, and the
10 post-use assessment of damage and casualties.

11 “(B) Employment by the Secretary of De-
12 fense of direct observation, real-time video
13 feeds, other real-time sensory data and collec-
14 tion methods, and other appropriate sources of
15 information that can be independently authenti-
16 cated by the United States Government, as op-
17 posed to reports or other nonobjective media
18 created or provided by a country of concern,
19 which are not appropriate sources of informa-
20 tion.

21 “(3) AVAILABILITY AND USE OF INFORMA-
22 TION.—

23 “(A) IN GENERAL.—The Secretary of De-
24 fense shall make available to the Secretary of
25 State, the appropriate congressional commit-

tees, and the Human Rights and Law of War Oversight Board established under section 4 of the Values in Arms Export Act of 2020 all information collected or evaluated as part of the program established under this subsection.

“(B) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this paragraph, the term ‘appropriate congressional committees’ means—

“(i) the Committee on Foreign Relations, the Committee on Armed Services, and the Committee on Appropriations of the Senate; and

“(ii) the Committee on Foreign Affairs, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

“(4) SEPARATE BUDGETARY LINE ITEM.—The Secretary of Defense shall include in the budget justification materials submitted to Congress in support of the Department of Defense budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) specific identification, as a budgetary line

1 item, of the amounts required for the program es-
2 tablished under this subsection.

3 “(5) FUNDING.—Funding to carry out the re-
4 quirements of this section shall be derived from
5 amounts collected under section 21. The President
6 shall ensure such charges pursuant to such section
7 are sufficient to fully meet all requirements of this
8 section without cost to the United States.

9 “(c) EVALUATION BY THE SECRETARY OF STATE.—

10 “(1) CONSIDERATION OF INFORMATION.—The
11 Secretary of State—

12 “(A) shall consistently review all relevant
13 information related to a country of concern to
14 determine to whether the country has engaged
15 in any action or behavior inconsistent with the
16 principles described in subsection (a)(1), includ-
17 ing—

18 “(i) information gathered through the
19 program established under subsection (b);

20 “(ii) information from any agency of
21 the United States Government, including
22 reports under subsection (a)(3);

23 “(iii) information referred by Mem-
24 bers of Congress; and

“(iv) credible reports or information gathered by members of the media, non-governmental organizations, foreign countries, international organizations, or academic experts; and

“(B) may consider exculpatory information proffered by the country if—

“(i) the information can be independently authenticated by the United States;

“(ii) the country provides access to all information in its possession about alleged incidents of the use of security forces of the country in a manner that is inconsistent with the principles described in subsection (a)(1); and

“(iii) there is no evidence that the country has attempted to obstruct investigations by independent parties.

“(2) DETERMINATIONS REQUIRED.—In each case in which a country of concern may have engaged in an action or behavior inconsistent with the principles described in subsection (a)(1), the Secretary of State, based on United States standards and policy for the conduct of the United States Armed Forces or international law, as applicable,

1 shall make a determination as to the legality and ap-
2 propriateness of—

3 “(A) the action or behavior; and

4 “(B) the employment of defense articles or
5 defense services acquired under this Act in the
6 action or behavior.

7 “(d) DESIGNATION OF COUNTRIES OF CONCERN.—

8 “(1) COUNTRY OF CONCERN DEFINED.—In this
9 section, the term ‘country of concern’—

10 “(A) means—

11 “(i) a country designated as a country
12 of concern by the President, the Secretary
13 of State, the Secretary of Defense, or the
14 Human Rights and Law of War Oversight
15 Board established under section 4 of the
16 Values in Arms Export Act of 2020;

17 “(ii) a country designated as a coun-
18 try of concern by law or by Congress
19 through the adoption of a concurrent reso-
20 lution; or

21 “(iii) any country with respect to
22 which the United States has determined
23 that one or more units of the security
24 forces of the country is ineligible for assist-
25 ance pursuant to section 620M of the For-

1 eign Assistance Act of 1961 (22 U.S.C.
2 2378d) or section 362 of title 10, United
3 States Code, notwithstanding any waiver
4 exercised under such sections; and

5 “(B) does not include the North Atlantic
6 Treaty Organization, or any member country of
7 such Organization, Japan, Australia, the Re-
8 public of Korea, Israel, or New Zealand.

9 “(2) DURATION OF DESIGNATION.—The des-
10 ignation of a country as a country of concern under
11 paragraph (1)—

12 “(A) shall remain in effect for a period of
13 three years; and

14 “(B) may be renewed, before the previous
15 designation expires, in any manner in which a
16 designation may be made under paragraph (1).

17 “(3) EXPEDITED PROCEDURES.—

18 “(A) CONSIDERATION IN SENATE.—Any
19 bill, joint resolution, or concurrent resolution
20 designating a country as a country of concern
21 under paragraph (1)(A)(ii) shall be considered
22 in the Senate in accordance with the provisions
23 of section 601(b) of the International Security
24 Assistance and Arms Export Control Act of
25 1976 (Public Law 94–329; 90 Stat. 765).

1 “(B) CONSIDERATION IN HOUSE OF REP-
2 RESENTATIVES.—For the purpose of expediting
3 the consideration of bills, joint resolutions, or
4 concurrent resolutions designating a country as
5 a country of concern under paragraph
6 (1)(A)(ii), a motion to proceed to the consider-
7 ation of any such bill, joint resolution, or con-
8 current resolution after it has been reported by
9 the appropriate committee shall be treated as
10 highly privileged in the House of Representa-
11 tives.

12 “(e) INELIGIBILITY FOR SALES AND TRANSFERS.—

13 “(1) IN GENERAL.—A country shall be ineli-
14 gible for sale or transfer of defense articles (includ-
15 ing spare parts for such articles) or defense services,
16 or the extension of credit (including participation in
17 the extension of credit) or loan guarantees under
18 this Act, for a 10-year period beginning on, and
19 shall immediately discontinue the use of, or return
20 to the United States, any covered defense articles in
21 its possession effective as of, the date—

22 “(A) the country is designated a country of
23 concern under subsection (d) for the second
24 time in a 10-year period;

1 “(B) the Secretary of State, in consulta-
2 tion with the Secretary of Defense, determines
3 that the country, at the end of the three-year
4 designation period under subsection (d)(2), has
5 failed to demonstrate sufficient improvement in
6 adherence to the principles described in sub-
7 section (a)(1); or

8 “(C) during the three-year designation pe-
9 riod under subsection (d)(2), the country en-
10 gages in an action or behavior inconsistent with
11 those principles.

12 “(2) RESTORATION OF ELIGIBILITY.—A coun-
13 try may qualify for early termination of the 10-year
14 ineligibility period under paragraph (1)—

15 “(A) if the Secretary of State determines
16 and reports to Congress that the government of
17 the country has taken meaningful steps to cor-
18 rect the deficiencies upon which such ineligi-
19 bility is based, which shall include—

20 “(i) enacting and enforcing new laws
21 or policy;

22 “(ii) substantial remedial training for
23 government officials and members of the
24 military or security forces;

1 “(iii) in the case of organized armed
 2 groups that are not part of the formal
 3 chain of command for regular and irreg-
 4 ular forces of the country, but that are
 5 controlled or supported by the country to
 6 any degree, taking actions to cease any
 7 support for or affiliation with those organi-
 8 zations or to cause them to cease partici-
 9 pation in hostilities; and

10 “(iv) fully investigating and holding
 11 accountable individuals at any level who
 12 were responsible for human rights and law
 13 of armed conflict violation; and

14 “(B) upon the enactment of a joint resolu-
 15 tion approving such early termination of ineligi-
 16 bility.

17 “(3) IMMEDIATE LIMITED INELIGIBILITY UPON
 18 INITIAL DESIGNATION.—A country shall be ineligible
 19 for sale or transfer of a covered defense article
 20 under this Act for a three-year period beginning on
 21 the date the country is designated a country of con-
 22 cern.

23 “(4) WAIVER FOR VALID TRAINING.—

24 “(A) IN GENERAL.—The President may
 25 waive the application of this subsection to

1 International Military Education and Training
2 (IMET) assistance or training provided by any
3 United States Government agency, and carried
4 out by United States Government personnel, re-
5 lating to the law of armed conflict, human
6 rights, anticorruption, or similar issues.

7 “(B) LIMITATION ON SCOPE OF WAIVER.—

8 In no case may a waiver under subparagraph
9 (A) extend to cover operations that are part of
10 any armed conflict or any activity that would be
11 subject to the War Powers Resolution (50
12 U.S.C. 1541 et seq.).

13 “(5) COVERED DEFENSE ARTICLE DEFINED.—

14 In this subsection, the term ‘covered defense article’
15 means—

16 “(A) any defense article in the same cat-
17 egory of the United States Munitions List as a
18 defense article determined to have been involved
19 in the country’s designation as a country of
20 concern; and

21 “(B) any spare parts or services related to
22 the defense article determined to have been in-
23 volved in the country’s designation as a country
24 of concern.

1 “(f) IMPOSITION OF SANCTIONS WITH RESPECT TO
2 GOVERNMENT OFFICIALS.—

3 “(1) IN GENERAL.—The Secretary of the
4 Treasury shall impose sanctions pursuant to the
5 International Emergency Economic Powers Act (50
6 U.S.C. 1701 et seq.) with respect to appropriate of-
7 ficials of the government of a country described in
8 subsection (e)(1). In imposing such sanctions, the
9 Secretary shall prioritize senior members of the gov-
10 ernment, or those in significant leadership positions,
11 who have authority over the personnel or conduct in-
12 volved in the country’s designation as a country of
13 concern.

14 “(2) WAIVER.—The President may waive the
15 imposition of sanctions under paragraph (1) with re-
16 spect to an official described in that paragraph if the
17 President—

18 “(A) determines that it is in the vital na-
19 tional security interests of the United States to
20 issue the waiver; and

21 “(B) submits to Congress a justification
22 for the waiver, including a comprehensive expla-
23 nation for why the official should receive the
24 waiver.

1 “(3) REPORTS REQUIRED.—Not later than one
2 year after the date of the enactment of this section,
3 and annually thereafter, the Secretary of the Treas-
4 ury shall submit to Congress a report on the imposi-
5 tion of sanctions under paragraph (1) that in-
6 cludes—

7 “(A) a description of any waivers issued
8 under paragraph (2); and

9 “(B) an assessment of the effectiveness of
10 the sanctions in changing the action or behavior
11 of each country that resulted in ineligibility
12 under subsection (e).

13 “(g) REQUIRED AGREEMENT TERMS.—Any agree-
14 ment for the sale of defense articles or defense services
15 under this Act entered into after the date of the enactment
16 of this section shall include terms requiring the country
17 receiving such articles or services to agree to the require-
18 ments of this section and to permit and fully cooperate
19 with any investigation by United States Government per-
20 sonnel into an action or behavior by the country that may
21 be inconsistent with the principles described in subsection
22 (a)(1). No such sale or transfer shall be permitted without
23 inclusion of such requirements.

24 “(h) REPORTS REQUIRED.—

1 “(1) IN GENERAL.—Not later than 180 days
2 after the date of the enactment of this section, and
3 every 180 days thereafter, the Secretary of State
4 shall submit to Congress a report that includes—

5 “(A) an assessment of whether each coun-
6 try of concern has engaged in actions or behav-
7 ior inconsistent with the principles described in
8 subsection (a)(1) during the 180-day period
9 preceding submission of the report, including
10 any progress in improving, or worsening of,
11 such actions or behavior of that country;

12 “(B) an identification of each country of
13 concern for which, during the 180-day period
14 following submission of the report—

15 “(i) the designation of the country as
16 a country of concern will expire;

17 “(ii) more than 10 years will have
18 elapsed following the designation of the
19 country as a country of concern; or

20 “(iii) a 10-year ineligibility period
21 under subsection (e) will expire;

22 “(C) an assessment of any progress made
23 during the 180-day period preceding submission
24 of the report by a country subject to a 10-year
25 ineligibility period under subsection (e) toward

1 eligibility for early termination of that period
2 under paragraph (2) of that subsection;

3 “(D) all reports submitted pursuant to
4 subsection (a)(3) during the 180-day period
5 preceding submission of the report;

6 “(E) in coordination with the Secretary of
7 Defense, the findings of the program estab-
8 lished under subsection (b), including any in-
9 stances in which a country failed to fully com-
10 ply with the program; and

11 “(F) an identification of any country that
12 has failed to fully comply with investigations
13 described in subsection (g).

14 “(2) FORM OF REPORT.—Each report required
15 by paragraph (1) shall be submitted in unclassified
16 form to the maximum extent possible, but may in-
17 clude a classified annex.

18 “(i) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed as authorizing the use of military
20 force or otherwise authorizing the President to introduce
21 United States forces into hostilities that have not been
22 specifically authorized by Congress pursuant to the War
23 Powers Resolution (50 U.S.C. 1541 et seq.).”.

1 **SEC. 3. REQUIRED ASSESSMENT OF RISK OF EXPORTED**
2 **WEAPONS BEING USED TO VIOLATE PRIN-**
3 **CIPLES OF HUMAN RIGHTS OR THE LAW OF**
4 **ARMED CONFLICT.**

5 (a) **LETTERS OF OFFER.**—Section 36(b)(1) of the
6 Arms Export Control Act (22 U.S.C. 2776(b)(1)) is
7 amended—

8 (1) in subparagraph (O), by striking “; and”
9 and inserting a semicolon;

10 (2) in subparagraph (P), by striking the period
11 at the end and inserting “; and”; and

12 (3) by inserting after subparagraph (P) the fol-
13 lowing new subparagraph:

14 “(Q) an assessment of the risk of the de-
15 fense articles, defense services, or design and
16 construction services to be offered being used to
17 violate principles of human rights or the law of
18 armed conflict, prepared by the Secretary of
19 State through the Assistant Secretary for the
20 Bureau of Democracy, Human Rights, and
21 Labor, in consultation with the Secretary of
22 Defense and the Director of Central Intel-
23 ligence.”.

24 (b) **EXPORT LICENSE APPLICATIONS.**—Section
25 36(c)(1) of the Arms Export Control Act (22 U.S.C.
26 2776(c)(1)) is amended—

1 (1) by striking “and (C)” and inserting “(C)”;
 2 and

3 (2) by inserting after “items to be exported”
 4 the following: “, and (D) an assessment of the risk
 5 of the items being used to violate principles of
 6 human rights or the law of armed conflict, prepared
 7 by the Secretary of State through the Assistant Sec-
 8 retary for the Bureau of Democracy, Human Rights,
 9 and Labor, in consultation with the Secretary of De-
 10 fense and the Director of Central Intelligence”.

11 **SEC. 4. HUMAN RIGHTS AND LAW OF WAR OVERSIGHT**
 12 **BOARD.**

13 (a) IN GENERAL.—There is established as an inde-
 14 pendent agency within the executive branch a Human
 15 Rights and Law of War Oversight Board (referred to in
 16 this section as the “Board”).

17 (b) PURPOSE.—The Board shall—

18 (1) analyze and review the actions and conduct
 19 of recipient countries for strict adherence to the law
 20 of armed conflict and human rights principles, and
 21 their continual efforts to improve such adherence;
 22 and

23 (2) ensure that human rights and law of armed
 24 conflict concerns are appropriately considered in the
 25 negotiation, approval, and execution of arms sales,

1 including as required under section 40C of the Arms
2 Export Control Act, as added by section 2 of this
3 Act.

4 (c) FUNCTIONS.—

5 (1) ADVICE AND COUNSEL ON POLICY DEVELOPMENT
6 AND IMPLEMENTATION.—The Board
7 shall—

8 (A) review proposed legislation, regula-
9 tions, and policies related to international arms
10 sales;

11 (B) advise the President and the depart-
12 ments, agencies, and elements of the executive
13 branch to ensure that human rights and the law
14 of armed conflict are appropriately considered
15 in the development and implementation of such
16 legislation, regulations, policies, and guidelines;

17 (C) in providing advice on such proposals,
18 consider whether such proposals would—

19 (i) diminish to any degree the over-
20 sight by entities of the executive branch of
21 the end use of United States-provided
22 arms; or

23 (ii) lessen to any degree the centrality
24 of compliance by recipient states with prin-
25 ciples of human rights or the law of armed

1 conflict as a core factor in decisions of
2 whether to approve sales; and

3 (D) submit to Congress, the President, or
4 the head of any executive branch department,
5 agency, or entity, such recommendations for
6 policy, regulation, or law relevant to the pur-
7 pose or functions of the Board that the Board
8 deems advisable.

9 (2) OVERSIGHT.—The Board shall continually
10 review—

11 (A) the regulations, policies, and proce-
12 dures, and the implementation of the regula-
13 tions, policies, and procedures, of the depart-
14 ments, agencies, and elements of the executive
15 branch relating to arms sales to ensure that
16 principles of human rights or the law of armed
17 conflict are a central focus and consideration at
18 each stage of the arms sales process, including
19 end use;

20 (B) whether entities of the executive
21 branch are adhering to such policies;

22 (C) other actions by the executive branch
23 relating to arms sales to determine whether
24 such actions—

1 (i) diminish to any degree the over-
2 sight by entities of the executive branch of
3 the end use of United States-provided
4 arms; or

5 (ii) lessen to any degree the centrality
6 of compliance by recipient states with prin-
7 ciples of human rights or the law of armed
8 conflict as a core factor in decisions of
9 whether to approve sales; and

10 (D) the adherence of recipient states to
11 human rights principles and the law of armed
12 conflict, the extent to which United States-pro-
13 vided weapons are being used or could be used
14 in contravention of those principles and laws,
15 and whether recipient states are working to im-
16 prove their adherence to the maximum extent of
17 their capabilities.

18 (3) TESTIMONY.—The members of the Board
19 shall appear and testify before Congress upon re-
20 quest.

21 (4) ASSESSMENTS.—The Board shall submit to
22 Congress, at the time of any notification under sub-
23 section (b) or (c) of section 36 of the Arms Export
24 Control Act (22 U.S.C. 2776), the assessment of the
25 Board, along with any minority views, of the appro-

1 priateness of the proposed sale based on the recipi-
2 ent state's adherence to principles of human rights
3 and the law of armed conflict.

4 (d) DESIGNATIONS.—

5 (1) IN GENERAL.—The Board may in its sole
6 discretion, by a majority vote of the Members, des-
7 ignate a country as a country of concern under sec-
8 tion 40C(d)(1)(A)(i) of the Arms Export Control
9 Act, as added by section 2 of this Act. Not later
10 than the time of the designation, the Board shall
11 transmit to the Senate, the House of Representa-
12 tives, and the President the Board's determination
13 supporting such designation, along with any minor-
14 ity views. The determination shall be in unclassified
15 form to the maximum extent possible, but may in-
16 clude a classified annex as necessary.

17 (2) REVERSAL.—The President may vacate a
18 designation by the Board under paragraph (1). In
19 exercising this authority, the President shall submit
20 to the Board, the Senate, and the House of Rep-
21 resentatives a detailed justification for the action.
22 This authority may not be delegated.

23 (e) REPORTS.—

24 (1) IN GENERAL.—The Board shall periodically,
25 but not less frequently than annually, submit to the

1 Senate, the House of Representatives, and the Presi-
2 dent a report on the activities of the Board.

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

5 (A) A description of the major activities of
6 the Board during the preceding period.

7 (B) Information on the findings, conclu-
8 sions, and recommendations of the Board re-
9 sulting from its advice and oversight functions
10 under subsection (c).

11 (C) The minority views on any findings,
12 conclusions, and recommendations of the Board
13 resulting from its advice and oversight func-
14 tions under subsection (c).

15 (D) A summary of each proposal reviewed
16 by the Board under subsection (c)(1) that—

17 (i) the Board advised against imple-
18 mentation or advised significant modifica-
19 tions of; and

20 (ii) notwithstanding such advice, ac-
21 tions were taken to implement.

22 (E) For the preceding period, a description
23 of any requests submitted under subsection
24 (g)(1)(C) for the issuance of subpoenas that

1 were modified or denied by the Attorney Gen-
2 eral.

3 (3) FORM.—The report required under this
4 subsection shall be submitted in unclassified form to
5 the greatest extent possible, but may include a clas-
6 sified annex as necessary.

7 (f) INFORMING THE PUBLIC.—The Board—

8 (1) shall make its reports, including its reports
9 to Congress, available to the public to the greatest
10 extent that is consistent with the protection of clas-
11 sified information and applicable law; and

12 (2) shall hold public hearings and otherwise in-
13 form the public of its activities, as appropriate and
14 in a manner consistent with the protection of classi-
15 fied information and applicable law, but may, not-
16 withstanding section 552b of title 5, United States
17 Code, meet or otherwise communicate in any number
18 to confer or deliberate in a manner that is closed to
19 the public.

20 (g) ACCESS TO INFORMATION.—

21 (1) AUTHORIZATION.—If determined by the
22 Board to be necessary to carry out its responsibil-
23 ities under this section, the Board is authorized to—

24 (A) have access from any department,
25 agency, or element of the executive branch, or

1 any Federal officer or employee of any such de-
2 partment, agency, or element, to all relevant
3 records, reports, audits, reviews, documents, pa-
4 pers, recommendations, or other relevant mate-
5 rial, including classified information consistent
6 with applicable law;

7 (B) interview, take statements from, or
8 take public testimony from personnel of any de-
9 partment, agency, or element of the executive
10 branch, or any Federal officer or employee of
11 any such department, agency, or element;

12 (C) at the direction of a majority of the
13 members of the Board, submit a written re-
14 quest to the Attorney General that the Attorney
15 General require, by subpoena, persons (other
16 than departments, agencies, and elements of the
17 executive branch) to produce any relevant infor-
18 mation, documents, reports, answers, records,
19 accounts, papers, and other documentary or tes-
20 timonial evidence; and

21 (D) conduct travel or site visits.

22 (2) ASSISTANCE.—The Secretary of State, the
23 Secretary of Defense, and any other head of a de-
24 partment, agency, or entity shall provide to the

1 Board any necessary assistance to facilitate activities
2 set forth under paragraph (1).

3 (3) REVIEW OF SUBPOENA REQUEST.—

4 (A) IN GENERAL.—Not later than 30 days
5 after the date of receipt of a request by the
6 Board under paragraph (1)(C), the Attorney
7 General shall—

8 (i) issue the subpoena as requested; or

9 (ii) provide the Board, in writing, with
10 an explanation of the grounds on which the
11 subpoena request has been modified or de-
12 nied.

13 (B) NOTIFICATION.—If a subpoena request
14 is modified or denied under subparagraph
15 (A)(ii), the Attorney General shall, not later
16 than 5 days after the date of that modification
17 or denial, notify the Senate and the House of
18 Representatives.

19 (4) ENFORCEMENT OF SUBPOENA.—In the case
20 of contumacy or failure to obey a subpoena issued
21 pursuant to paragraph (1)(C), the United States
22 district court for the judicial district in which the
23 subpoenaed person resides, is served, or may be
24 found may issue an order requiring such person to
25 produce the evidence required by such subpoena.

1 (5) AGENCY COOPERATION.—Whenever infor-
2 mation or assistance requested under subparagraph
3 (A) or (B) of paragraph (1) is, in the judgment of
4 the Board, unreasonably refused or not provided, the
5 Board shall report the circumstances to the head of
6 the department, agency, or element concerned with-
7 out delay. The head of the department, agency, or
8 element concerned shall ensure that the Board is
9 given access to the information, assistance, material,
10 or personnel the Board determines to be necessary
11 to carry out its functions.

12 (6) ACCESS.—Nothing in this section shall be
13 construed to authorize the Board, or any agent
14 thereof, to gain access to information regarding an
15 activity covered by section 503(a) of the National
16 Security Act of 1947 (50 U.S.C. 3093(a)).

17 (h) MEMBERSHIP.—

18 (1) MEMBERS.—The Board shall be composed
19 of a full-time chairman and four additional mem-
20 bers, who shall be appointed by the President, by
21 and with the advice and consent of the Senate.

22 (2) QUALIFICATIONS.—

23 (A) IN GENERAL.—Members of the Board
24 shall be selected solely on the basis of their pro-
25 fessional qualifications, achievements, public

1 stature, expertise in human rights and the law
 2 of armed conflict, and relevant experience, and
 3 without regard to political affiliation, but in no
 4 event shall more than three members of the
 5 Board be members of the same political party.

6 (B) PROHIBITION ON APPOINTMENT OF IN-
 7 DIVIDUALS EMPLOYED BY CERTAIN ENTI-
 8 TIES.—An individual who was employed, during
 9 the preceding 5-year period, by an entity that
 10 engages in activities subject to the Arms Export
 11 Control Act (22 U.S.C. 2751 et seq.) is not eli-
 12 gible to serve as a member of the Board.

13 (C) SELECTION OF MEMBERS NOT OF PO-
 14 LITICAL PARTY OF PRESIDENT.—The President
 15 shall, before appointing an individual who is not
 16 a member of the same political party as the
 17 President, consult with the leadership of that
 18 party, if any, in the Senate and the House of
 19 Representatives.

20 (3) INCOMPATIBLE OFFICE.—An individual ap-
 21 pointed to the Board may not, while serving on the
 22 Board, be an elected official, officer, or employee of
 23 the Federal Government, other than in the capacity
 24 as a member of the Board.

1 (4) TERM.—Each member of the Board shall
2 serve a term of 6 years, except that—

3 (A) a member appointed to a term of office
4 after the commencement of such term may
5 serve under such appointment only for the re-
6 mainder of such term; and

7 (B) upon the expiration of the term of of-
8 fice of a member, the member shall continue to
9 serve until the member's successor has been ap-
10 pointed and qualified, except that no member
11 may serve under this subparagraph—

12 (i) for more than 60 days when Con-
13 gress is in session unless a nomination to
14 fill the vacancy shall have been submitted
15 to the Senate; or

16 (ii) after the adjournment sine die of
17 the session of the Senate in which such
18 nomination is submitted.

19 (5) QUORUM AND MEETINGS.—The Board shall
20 meet upon the call of the chairman or a majority of
21 its members. Three members of the Board shall con-
22 stitute a quorum.

23 (i) COMPENSATION AND TRAVEL EXPENSES.—

24 (1) COMPENSATION.—

1 (A) CHAIRMAN.—The chairman of the
 2 Board shall be compensated at the rate of pay
 3 payable for a position at level III of the Execu-
 4 tive Schedule under section 5314 of title 5,
 5 United States Code.

6 (B) MEMBERS.—Each member of the
 7 Board shall be compensated at a rate of pay
 8 payable for a position at level IV of the Execu-
 9 tive Schedule under section 5315 of title 5,
 10 United States Code, for each day during which
 11 that member is engaged in the actual perform-
 12 ance of the duties of the Board.

13 (2) TRAVEL EXPENSES.—Members of the
 14 Board shall be allowed travel expenses, including per
 15 diem in lieu of subsistence, at rates authorized for
 16 persons employed intermittently by the Government
 17 under section 5703(b) of title 5, United States Code,
 18 while away from their homes or regular places of
 19 business in the performance of services for the
 20 Board.

21 (j) STAFF.—

22 (1) APPOINTMENT AND COMPENSATION.—The
 23 chairman of the Board, in accordance with rules
 24 agreed upon by the Board, shall appoint and fix the
 25 compensation of a full-time executive director and

1 such other personnel as may be necessary to enable
2 the Board to carry out its functions, without regard
3 to the provisions of title 5, United States Code, gov-
4 erning appointments in the competitive service, and
5 without regard to the provisions of chapter 51 and
6 subchapter III of chapter 53 of such title relating to
7 classification and General Schedule pay rates, except
8 that no rate of pay fixed under this subsection may
9 exceed the equivalent of that payable for a position
10 at level V of the Executive Schedule under section
11 5316 of title 5, United States Code.

12 (2) APPOINTMENT IN ABSENCE OF CHAIR-
13 MAN.—If the position of chairman of the Board is
14 vacant, during the period of the vacancy, the Board,
15 at the direction of the unanimous vote of the serving
16 members of the Board, may exercise the authority of
17 the chairman under paragraph (1).

18 (3) DETAILEES.—Any Federal employee may
19 be detailed to the Board without reimbursement
20 from the Board, and such detailee shall retain the
21 rights, status, and privileges of the detailee's regular
22 employment without interruption.

23 (4) CONSULTANT SERVICES.—The Board may
24 procure the temporary or intermittent services of ex-
25 perts and consultants in accordance with section

1 3109 of title 5, United States Code, at rates that do
2 not exceed the daily rate paid a person occupying a
3 position at level IV of the Executive Schedule under
4 section 5315 of such title.

5 (k) SECURITY CLEARANCES.—

6 (1) IN GENERAL.—The appropriate depart-
7 ments, agencies, and elements of the executive
8 branch shall cooperate with the Board to expedi-
9 tiously provide the Board members and staff with
10 appropriate security clearances to the extent possible
11 under existing procedures and requirements.

12 (2) RULES AND PROCEDURES.—After consulta-
13 tion with the Secretary of Defense, the Attorney
14 General, and the Director of National Intelligence,
15 the Board shall adopt rules and procedures of the
16 Board for physical, communications, computer, doc-
17 ument, personnel, and other security relating to car-
18 rying out the functions of the Board.

19 (l) TREATMENT AS AGENCY, NOT AS ADVISORY COM-
20 MITTEE.—The Board—

21 (1) is an agency (as defined in section 551(1)
22 of title 5, United States Code); and

23 (2) is not an advisory committee (as defined in
24 section 3(2) of the Federal Advisory Committee Act
25 (5 U.S.C. App.)).

1 (m) ETHICS POLICY.—

2 (1) IN GENERAL.—Not later than 180 days
3 after the first date on which three members have
4 been appointed to the Board, by and with the advice
5 and consent of the Senate, the Board shall adopt
6 policies governing ethical conduct of its members
7 and staff, which shall include—

8 (A) restrictions on lobbying or advocating
9 to the Board by entities that engage in activi-
10 ties covered by the Arms Export Control Act
11 (22 U.S.C. 2751 et seq.); and

12 (B) periods of prohibition on employment
13 of members and staff of the Board by such en-
14 tities following their service on the Board or the
15 staff of the Board.

16 (2) REVIEW.—The Board shall review and re-
17 vise as appropriate such policies not less frequently
18 than every three years.

19 (3) TRANSMISSION TO PRESIDENT AND CON-
20 GRESS.—The Board shall transmit the policies re-
21 quired by paragraph (1), and any revisions to such
22 policies under paragraph (2), to the President and
23 to Congress.

24 (n) INITIAL ASSESSMENT.—The Board shall conduct
25 an initial assessment of the capability of the Department

1 of State, the Department of Defense, and the Defense Se-
 2 curity Cooperation Agency to carry out the requirements
 3 of section 40C of the Arms Export Control Act, as added
 4 by section 2 of this Act. The Board shall transmit to Con-
 5 gress a report on its findings not later than 18 months
 6 after the first date on which three members shall have
 7 been appointed to the Board, by and with the advice and
 8 consent of the Senate.

9 (o) AUTHORIZATION OF APPROPRIATIONS.—There
 10 are authorized to be appropriated to carry out this section
 11 amounts as follows:

12 (1) For fiscal year 2021, \$5,000,000.

13 (2) For fiscal year 2022, \$7,000,000.

14 (3) For fiscal year 2023, \$9,000,000.

15 (4) For fiscal year 2024, \$11,000,000.

16 (5) For fiscal year 2025 and each subsequent
 17 fiscal year, such sums as may be necessary.

18 **SEC. 5. INCLUSION IN BLUE LANTERN PROGRAM OF CON-**
 19 **SIDERATION OF USE OF DEFENSE ARTICLES**
 20 **AND SERVICES TO COMMIT SERIOUS VIOLA-**
 21 **TIONS OF THE LAWS OF ARMED CONFLICT**
 22 **AND INTERNATIONAL HUMAN RIGHTS LAW.**

23 Subsection (b)(1) of section 40B of the Arms Export
 24 Control Act, as redesignated by section 2(1), is amended
 25 by inserting “(including use to commit serious violations

1 of the laws of armed conflict and international human
 2 rights law)” after “to diversion or other misuse”.

3 **SEC. 6. CONSIDERATION OF RISK OF COMMISSION OF VIO-**
 4 **LATIONS OF HUMAN RIGHTS OR THE LAW OF**
 5 **ARMED CONFLICT IN ISSUING EXPORT LI-**
 6 **CENSES.**

7 Section 38(a)(2) of the Arms Export Control Act (22
 8 U.S.C. 2778(a)(2)) is amended by inserting after “con-
 9 flict,” the following: “be used to commit violations of
 10 human rights or the law of armed conflict,”.

11 **SEC. 7. INITIAL DESIGNATIONS OF COUNTRIES OF CON-**
 12 **CERN.**

13 (a) DESIGNATIONS.—Saudi Arabia and the United
 14 Arab Emirates are hereby designated as countries of con-
 15 cern for purposes of section 40C of the Arms Export Con-
 16 trol Act, as added by section 2 of this Act.

17 (b) BASIS FOR DESIGNATIONS.—The designations
 18 under subsection (a) are based on the following defense
 19 articles:

- 20 (1) GBU–12 Paveway II Laser Guided Bomb.
- 21 (2) GBU–31/32/38 Joint Direct Attack Muni-
- 22 tion.
- 23 (3) MK–82 bomb.
- 24 (4) White phosphorus munitions,

1 **SEC. 8. COMPTROLLER GENERAL REPORT.**

2 Not later than three years after the date of the enact-
3 ment of this Act, the Comptroller General of the United
4 States shall submit to Congress a report reviewing the im-
5 plementation of section 40C of the Arms Export Control
6 Act, as added by section 2 of this Act.

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