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


Referred to the Committee on ________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. Van Hollen (for himself, Mr. Durbin, Mr. Kaine, Mr. Schatz, Ms. Warren, Mr. Merkley, Mr. Welch, Mr. Heinrich, Mr. Carper, Mr. Luján, Mr. Sanders, Ms. Hirono, and Mr. Markey)

Viz:

1 At the appropriate place, insert the following:

2 SEC.__. SAFEGUARDS AND ACCOUNTABILITY WITH RESPECT TO TRANSFERRED DEFENSE ARTICLES AND DEFENSE SERVICES.

3 (a) REQUIREMENTS.—

4 (1) COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW AND LAW OF ARMED CONFLICT.— Any defense articles or defense services provided pursuant to this Act shall be used in accordance
with international law, including international humanitarian law and the law of armed conflict, and United States law.

(2) Compliance with prohibition on assistance to countries that restrict United States humanitarian assistance.—

(A) In general.—Consistent with section 620I(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2378–1(a)), prior to the disbursement of any defense articles or defense services provided pursuant to this Act, the President shall obtain assurances that the recipient country will cooperate fully with any United States efforts and United States-supported international efforts to provide humanitarian assistance to civilians in an area of conflict where United States defense articles or defense services are being used by the recipient.

(B) Waiver.—The President may waive the requirement under subparagraph (A) if the President determines that it is in the national security interest of the United States to do so and, consistent with section 620I(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2378–1(c)), notifies the appropriate congressional
committees of the determination and the reasons for making the determination.

(3) Rule of construction.—Nothing in this subsection shall be construed to limit the obligation or expenditure of any funds appropriated by this Act for air defense systems or other systems that the President determines will be used for strictly defensive purposes.

(b) Report.—

(1) In general.—Not later than 30 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall submit to the appropriate congressional committees a separate report for each recipient country of defense articles or defense services provided pursuant to this Act on the use by such country, on or after January 1, 2023, of defense articles and defense services provided or funded in whole or in part by the United States.

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

(A) A description of measures taken to account for defense articles or defense services designated for the recipient, particularly measures with regard to such articles or services that require enhanced end-use monitoring.
(B) A description of measures to ensure that such defense articles or defense services reach their intended recipient and are used for their intended purposes, and any other measures to promote accountability for the use of such articles or services.

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

(D) A description of the procedures and mechanisms used to make the assessment described in subparagraph (C).

(E) An assessment of—

(i) the extent to which the use of such defense articles or defense services is consistent with United States practices and mechanisms for minimizing civilian casualties, including practices and mechanisms developed pursuant to the Defense Depart-
ment’s Civilian Harm Mitigation and Response Action Plan (CHMR-AP); and

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

(F) A description of the procedures and mechanisms used to make the assessment described under subparagraph (E).

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

(H) An assessment of whether the recipient of such defense articles or defense services has been cooperating fully with United States efforts and United States-supported international efforts to provide humanitarian assistance to civilians in an area of conflict where United States defense articles or defense services are being used by the recipient.
(3) FORM.—The report required under paragraph (1) shall be submitted in unclassified form but may include a separate classified annex.

(c) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—the term “appropriate congressional committees” means—

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

and

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

(2) DEFENSE ARTICLE; DEFENSE SERVICE.—

The terms “defense article” and “defense service” have the meanings given those terms in section 47 of the Arms Export Control Act (22 U.S.C. 2794).