

104TH CONGRESS
1ST SESSION

S. 326

To prohibit United States military assistance and arms transfers to foreign governments that are undemocratic, do not adequately protect human rights, are engaged in acts of armed aggression, or are not fully participating in the United Nations Register of Conventional Arms.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1 (legislative day, JANUARY 30), 1995

Mr. HATFIELD (for himself, Mr. DORGAN, Mr. FEINGOLD, Mr. BUMPERS, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To prohibit United States military assistance and arms transfers to foreign governments that are undemocratic, do not adequately protect human rights, are engaged in acts of armed aggression, or are not fully participating in the United Nations Register of Conventional Arms.

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 “Code of Conduct on
5 Arms Transfers Act of 1995”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Approximately 40,000,000 people, over 75
2 percent civilians, died as a result of civil and inter-
3 national wars fought with conventional weapons dur-
4 ing the 45 years of the Cold War, demonstrating
5 that conventional weapons can in fact be weapons of
6 mass destruction.

7 (2) Conflict has actually increased in the post-
8 Cold War era, with 34 major wars in progress dur-
9 ing 1993.

10 (3) War is both a human tragedy and an ongo-
11 ing economic disaster affecting the entire world, in-
12 cluding the United States and its economy, because
13 it decimates both local investment and potential ex-
14 port markets.

15 (4) International trade in conventional weapons
16 increases the risk and impact of war in an already
17 over-militarized world, creating far more costs than
18 benefits for the United States economy through in-
19 creased United States defense and foreign assistance
20 spending and reduced demand for United States ci-
21 vilian exports.

22 (5) The newly established United Nations Reg-
23 ister of Conventional Arms can be an effective first
24 step in support of limitations on the supply of con-
25 ventional weapons to developing countries, and com-

1 pliance with its reporting requirements by a foreign
2 government can be an integral tool in determining
3 the worthiness of such government for the receipts
4 of United States military assistance and arms trans-
5 fers.

6 (6) It is in the national security and economic
7 interests of the United States to reduce dramatically
8 the \$1,038,000,000,000 that all countries spend on
9 armed forces every year, \$242,000,000,000 of which
10 is spent by developing countries, an amount equiva-
11 lent to 4 times the total bilateral and multilateral
12 foreign assistance such countries receive every year.

13 (7) According to the Congressional Research
14 Service of the Library of Congress, the United
15 States supplies more conventional weapons to devel-
16 oping countries than all other countries combined,
17 averaging \$14,956,000,000 each year in agreements
18 to supply such weapons to developing countries since
19 the end of the Cold War, compared to
20 \$7,300,000,000 each year in such agreements prior
21 to the dissolution of the Soviet Union.

22 (8) In recent years the vast majority of United
23 States arms transfers to developing countries are to
24 countries with an undemocratic form of government
25 whose citizens, according to the Department of State

1 Country Reports on Human Rights Practices do not
2 have the ability to peaceably change their form of
3 government.

4 (9) Although a goal of United States foreign
5 policy should be to work with foreign governments
6 and international organizations to reduce militariza-
7 tion and dictatorship and therefore prevent conflicts
8 before they arise, during 4 recent deployments of
9 United States Armed Forces—to the Republic of
10 Panama, the Persian Gulf, Somalia, and Haiti—the
11 Armed Forces faced conventional weapons that had
12 been provided or financed by the United States to
13 undemocratic governments.

14 (10) The proliferation of conventional arms and
15 conflicts around the globe is a multilateral problem,
16 and the fact that the United States has emerged as
17 the world's primary seller of conventional weapons,
18 together with the world leadership role of the United
19 States, signifies that the United States is in a posi-
20 tion to seek multilateral restraints on the competi-
21 tion for and transfers of conventional weapons.

22 (11) The Congress has the constitutional re-
23 sponsibility to participate with the executive branch
24 of Government in decisions to provide military as-
25 sistance and arms transfers to a foreign government,

1 and in the formulation of a policy designed to reduce
2 dramatically the level of international militarization.

3 (12) A decision to provide military assistance
4 and arms transfers to a government that is undemo-
5 cratic, does not adequately protect human rights, is
6 currently engaged in acts of armed aggression, or is
7 not fully participating in the United Nations Reg-
8 ister of Conventional Arms, should require a higher
9 level of scrutiny than does a decision to provide such
10 assistance and arms transfers to a government to
11 which these conditions do not apply.

12 **SEC. 3. PURPOSE.**

13 The purpose of this Act is to provide clear policy
14 guidelines and congressional responsibility for determining
15 the eligibility of foreign governments to be considered for
16 United States military assistance and arms transfers.

17 **SEC. 4. PROHIBITION OF UNITED STATES MILITARY ASSIST-**
18 **ANCE AND ARMS TRANSFERS TO CERTAIN**
19 **FOREIGN GOVERNMENTS.**

20 (a) PROHIBITION.—Except as provided in subsections
21 (b) and (c), United States military assistance and arms
22 transfers may not be provided to a foreign government for
23 a fiscal year unless the President certifies to the Congress
24 for that fiscal year that such government meets the follow-
25 ing requirements:

1 (1) PROMOTES DEMOCRACY.—Such govern-
2 ment—

3 (A) was chosen by and permits free and
4 fair elections;

5 (B) promotes civilian control of the mili-
6 tary and security forces and has civilian institu-
7 tions controlling the policy, operation, and
8 spending of all law enforcement and security in-
9 stitutions, as well as the armed forces;

10 (C) promotes the rule of law, equality be-
11 fore the law, and respect for individual and mi-
12 nority rights, including freedom to speak, pub-
13 lish, associate, and organize; and

14 (D) promotes the strengthening of politi-
15 cal, legislative, and civil institutions of democ-
16 racy, as well as autonomous institutions to
17 monitor the conduct of public officials and to
18 combat corruption.

19 (2) RESPECTS HUMAN RIGHTS.—Such govern-
20 ment—

21 (A) does not engage in gross violations of
22 internationally recognized human rights, includ-
23 ing—

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

- 1 (ii) disappearances;
- 2 (iii) torture or severe mistreatment;
- 3 (iv) prolonged arbitrary imprisonment;
- 4 (v) systematic official discrimination
- 5 on the basis of race, ethnicity, religion,
- 6 gender, national origin, or political affili-
- 7 ation; and
- 8 (vi) grave breaches of international
- 9 laws of war or equivalent violations of the
- 10 laws of war in internal conflicts;
- 11 (B) vigorously investigates, disciplines, and
- 12 prosecutes those responsible for gross violations
- 13 of internationally recognized human rights;
- 14 (C) permits access on a regular basis to
- 15 political prisoners by international humani-
- 16 tarian organizations such as the International
- 17 Committee of the Red Cross;
- 18 (D) promotes the independence of the judi-
- 19 ciary and other official bodies that oversee the
- 20 protection of human rights;
- 21 (E) does not impede the free functioning of
- 22 domestic and international human rights orga-
- 23 nizations; and

1 (F) provides access on a regular basis to
2 humanitarian organizations in situations of con-
3 flict or famine.

4 (3) NOT ENGAGED IN CERTAIN ACTS OF ARMED
5 AGGRESSION.—Such government is not currently en-
6 gaged in acts of armed aggression in violation of
7 international law.

8 (4) FULL PARTICIPATION IN UNITED NATIONS
9 REGISTER OF CONVENTIONAL ARMS.—Such govern-
10 ment is fully participating in the United Nations
11 Register of Conventional Arms.

12 (b) REQUIREMENT FOR CONTINUING COMPLI-
13 ANCE.—Any certification with respect to a foreign govern-
14 ment for a fiscal year under subsection (a) shall cease to
15 be effective for that fiscal year if the President certifies
16 to the Congress that such government has not continued
17 to comply with the requirements contained in paragraphs
18 (1) through (4) of such subsection.

19 (c) EXEMPTION.—The prohibition contained in sub-
20 section (a) shall not apply with respect to a foreign govern-
21 ment for a fiscal year if—

22 (1) the President submits a request for an ex-
23 emption to the Congress containing a determination
24 that it is in the national security interest of the

1 United States to provide military assistance and
2 arms transfers to such government; and

3 (2) the Congress enacts a law approving such
4 exemption request.

5 (d) NOTIFICATION TO CONGRESS.—The President
6 shall submit to the Congress initial certifications under
7 subsection (a) and requests for exemptions under sub-
8 section (c) in conjunction with the submission of the an-
9 nual request for enactment of authorizations and appro-
10 priations for foreign assistance programs for a fiscal year
11 and shall, where appropriate, submit additional or amend-
12 ed certifications and requests for exemptions at any time
13 thereafter in the fiscal year.

14 **SEC. 5. SENSE OF THE CONGRESS.**

15 It is the sense of the Congress that the Committee
16 on International Relations of the House of Representa-
17 tives and the Committee on Foreign Relations of the Sen-
18 ate should hold hearings on controversial certifications
19 submitted under section 4(a) and all requests for exemp-
20 tions submitted under section 4(c).

21 **SEC. 6. UNITED STATES MILITARY ASSISTANCE AND ARMS**
22 **TRANSFERS DEFINED.**

23 For purposes of this Act, the terms “United States
24 military assistance and arms transfers” and “military as-
25 sistance and arms transfers” means—

1 (1) assistance under chapter 2 of part II of the
2 Foreign Assistance Act of 1961 (relating to military
3 assistance), including the transfer of excess defense
4 articles under sections 516 through 519 of that Act;

5 (2) assistance under chapter 5 of part II of the
6 Foreign Assistance Act of 1961 (relating to inter-
7 national military education and training);

8 (3) assistance under the “Foreign Military Fi-
9 nancing Program” under section 23 of the Arms Ex-
10 port Control Act; or

11 (4) the transfer of defense articles, defense
12 services, or design and construction services under
13 the Arms Export Control Act, including defense arti-
14 cles and defense services licensed or approved for ex-
15 port under section 38 of that Act.

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