

116TH CONGRESS
2D SESSION

S. 4814

To ensure that sales, exports, or transfers of F-35 aircraft do not compromise the qualitative military edge of the United States or Israel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20 (legislative day, OCTOBER 19), 2020

Mr. MENENDEZ (for himself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To ensure that sales, exports, or transfers of F-35 aircraft do not compromise the qualitative military edge of the United States or Israel, 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 “Israel and United
5 States Security Enhancement for F-35 Exports Act of
6 2020” or the “SECURE F-35 Exports Act of 2020”.

1 **SEC. 2. ASSESSMENT OF ISRAEL'S QUANTITATIVE MILI-**
2 **TARY DISADVANTAGE.**

3 (a) IN GENERAL.—Section 201(a) of the Naval Ves-
4 sel Transfer Act of 2008 (Public Law 110–429; 22 U.S.C.
5 2776 note) is amended—

6 (1) by inserting “, and does not suffer a quan-
7 titative military disadvantage from,” after “quali-
8 tative military edge over”; and

9 (2) by adding at the end the following new sub-
10 section:

11 “(f) PUBLIC DISCLOSURE.—The report required
12 under subsection (c) shall be unclassified, without
13 redactions, and public to the maximum extent possible,
14 but may also include a classified annex without
15 redactions.”.

16 (b) ASSESSMENTS.—

17 (1) INITIAL ASSESSMENT AND REPORT.—Not
18 later than 60 days after the date of the enactment
19 of this Act, the President shall submit to the appro-
20 priate congressional committees a report with an as-
21 sessment of whether Israel suffers from a quan-
22 titative military disadvantage as described in section
23 201(a) of the Naval Vessel Transfer Act of 2008
24 (Public Law 110–429; 22 U.S.C. 2776 note), as
25 amended by subsection (a). The report shall be un-
26 classified, without redactions and public to the max-

1 country (other than a member state of the North At-
2 lantic Treaty Organization, Australia, Israel, Japan,
3 Republic of Korea, or New Zealand) of F-35 air-
4 craft (including any variant or successor combat air-
5 craft) is submitted to Congress pursuant to the re-
6 quirements of section 36 of the Arms Export Con-
7 trol Act (22 U.S.C. 2776), the President shall sub-
8 mit to the appropriate congressional committees a
9 report with an assessment of the risks presented by
10 such sale, export, or transfer to the security of the
11 United States, including the critical military and
12 technological military advantage such aircraft pro-
13 vide to the United States Armed Forces.

14 (2) ELEMENTS.—The assessment required
15 under paragraph (1) shall include—

16 (A) a comprehensive overview of the poten-
17 tial compromise of United States military tech-
18 nology used in F-35 aircraft by potential for-
19 eign intelligence activities;

20 (B) a description of the protective meas-
21 ures that will be taken to safeguard against
22 such compromise; and

23 (C) a description of the counter-measures
24 that could be taken should such compromise
25 occur.

1 (b) CERTIFICATION.—Not later than 15 days before
2 a proposed sale, export, or transfer described under sub-
3 section (a)(1), the President shall submit to the Com-
4 mittee on Foreign Relations of the Senate and the Com-
5 mittee on Foreign Affairs of the House of Representatives
6 a certification that such sale, export, or transfer does not
7 present a significant danger of compromising the critical
8 military and technological military advantage such aircraft
9 provide to the United States Armed Forces.

10 (c) FORM.—The assessment and certification re-
11 quired under this section shall be unclassified, without
12 redactions and public to the maximum extent possible, but
13 may also include a classified annex without redactions.

14 **SEC. 4. CERTIFICATIONS RELATED TO SALE OF F-35 AIR-**
15 **CRAFT TO COUNTRIES IN THE MIDDLE EAST.**

16 (a) CERTIFICATIONS BEFORE SALE.—Not later than
17 30 days before concluding a Letter of Offer and Accept-
18 ance (or corresponding agreement or contract) for the sale
19 of, or concluding a contract for the manufacture of, F-
20 35 aircraft to be transferred to any country in the Middle
21 East other than Israel, the President shall submit to the
22 Committee on Foreign Relations of the Senate and the
23 Committee on Foreign Affairs of the House of Representa-
24 tives a certification, together with a report providing a de-
25 tailed justification therefor, that—

1 (1) the transfer of F-35 aircraft to the recipi-
2 ent country will not compromise or undermine
3 Israel's qualitative military edge, as defined in sec-
4 tion 36(h) of the Arms Export Control Act (22
5 U.S.C. 2776(h));

6 (2) the recipient country has provided specific,
7 reliable, and verifiable assurances to the United
8 States that it will not use these aircraft in activities
9 or operations inimical to the security of Israel, or to
10 the foreign policy and national security interests of
11 the United States, including that the recipient coun-
12 try will—

13 (A) not utilize them against allies and
14 partners of the United States;

15 (B) not transfer or share any component
16 technology of the F-35 aircraft to any third
17 party or third country; and

18 (C) ensure sufficient security against hos-
19 tile technical collection efforts against the air-
20 craft that could compromise militarily signifi-
21 cant or otherwise sensitive information;

22 (3) the recipient country has provided specific,
23 reliable, and verifiable assurances to the United
24 States that it will not use these aircraft to commit,
25 or enable the commission of, a violation of inter-

1 national humanitarian law or internationally recog-
2 nized human rights;

3 (4) if the recipient country violates such assur-
4 ances, the United States will have the means to ad-
5 dress and ameliorate these violations to reduce the
6 impact on the security of Israel or on the foreign
7 policy and national security interests of the United
8 States, including a listing of such means; and

9 (5) the United States will require technology se-
10 curity measures on the delivery, operation, storage,
11 and servicing of such aircraft sufficient to signifi-
12 cantly reduce the danger of compromise of the mili-
13 tary technology.

14 (b) CERTIFICATIONS BEFORE DELIVERY.—Not later
15 than 45 days before permitting the delivery of any F-35
16 aircraft to any country in the Middle East other than
17 Israel, the President shall submit to the Committee on
18 Foreign Relations of the Senate and the Committee on
19 Foreign Affairs of the House of Representatives a certifi-
20 cation, together with a report providing a detailed jus-
21 tification therefor, that—

22 (1) the transfer of F-35 aircraft will not com-
23 promise or undermine Israel's qualitative military
24 edge, as defined in section 36(2) of the Arms Export
25 Control Act;

1 (2) the United States has instituted technology
2 security measures on the delivery, operation, storage,
3 and servicing of such aircraft sufficient to signifi-
4 cantly reduce the danger of compromise of the mili-
5 tary;

6 (3) such country has not, since the Letter of
7 Offer and Acceptance (or corresponding agreement
8 or contract) for such aircraft was concluded, en-
9 gaged in military, paramilitary, or intelligence oper-
10 ations inimical to the security of Israel or to the for-
11 eign policy and national security interests of the
12 United States, including—

13 (A) transferring any United States-origin
14 equipment, directly or indirectly, to a United
15 States-designated terrorist organization or to
16 adversaries of Israel or the United States;

17 (B) providing weapons, directly or indi-
18 rectly, from any source country, including
19 China, to armed militias fighting against part-
20 ners and allies of the United States;

21 (C) conducting surveillance on any private
22 United States citizen; or

23 (D) committing, or enabling the commis-
24 sion of, a violation of international humani-

1 tarian law or internationally recognized human
2 rights; and

3 (4) the recipient country has not purchased or
4 otherwise acquired foreign technology, equipment, or
5 defense articles or services, including from the Rus-
6 sian Federation or the People’s Republic of China,
7 that could be used to compromise the technology of
8 such aircraft and put United States troops or mili-
9 tary strategies at risk, unless such technology is also
10 subject to monitoring by United States personnel.

11 (c) SUBSEQUENT CERTIFICATIONS.—The President
12 shall, not later than 180 days after the date on which the
13 first F–35 combat aircraft transferred to a country in the
14 Middle East other than Israel arrives in its territory, and
15 annually thereafter for 10 years, certify to the appropriate
16 committees of Congress that—

17 (1) the transfer of F–35 aircraft to such coun-
18 try has not compromised or undermined Israel’s
19 qualitative military edge, as defined in section
20 36(h)(3) of the Arms Export Control Act (22 U.S.C.
21 2776(h)(3));

22 (2) the United States continues to institute
23 technology security measures on the delivery, oper-
24 ation, storage, and servicing of such aircraft suffi-

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

○