

Defense One

A New Bill Seeks to Patch the Flaws in the Arms Export Control Act

A. Trevor Thrall and Jordan Cohen

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In the years after Vietnam, a Congress grown wary of presidential mismanagement of foreign policy passed several pieces of legislation, including the Arms Export Control Act, or AECA, and War Powers Resolution, which gave them the power to exercise more authority on foreign policy. Despite these laws, however, the White House increasingly has managed to limit congressional involvement in the foreign policymaking process.

Last month, Sens. Chris Murphy, Mike Lee, and Bernie Sanders proposed legislation aimed at reining in this “imperial presidency.” Their National Security Powers Act legislation seeks to restrict the president’s ability to declare war and unilaterally sell weapons abroad.

Nowhere is the current imbalance of power more obvious than in arms sales. Over the past 20 years, the White House has sold weapons worth more than \$888 billion to 167 countries, including countries mired in conflict, countries whose governments routinely turn weapons on their own people, and countries in which corruption makes it impossible to know where American weapons will wind up being used, or by whom. Over that period, Congress has tried on numerous occasions to exert its influence to halt weapons sales, with little to show for it. The National Security Powers Act would fix the two major flaws in the AECA, and thereby provide Congress more power to restrict weapons sales.

The first flaw is that it requires Congress to move too quickly. The AECA gives Congress the ability to halt weapons sales, but only if it can pass a resolution of disapproval within thirty days

of being notified of the sale by the executive branch. As anyone who has been watching Congress lately can imagine, this is a next-to-impossible feat regardless of the issue. In fact, in more than 40 years since the AECA became law, Congress has never managed to halt a weapons sale through this mechanism.

Second, the AECA requires Congress to be too united to exert any influence. Over the past two years, members of Congress have tried and failed to prevent sales to Israel, the Philippines, the United Arab Emirates, and Saudi Arabia. In the first three cases, the resolutions failed to gain enough support largely because members of Congress knew they had no chance to pass. In the Saudi Arabia case, resolutions to halt sales actually passed in both houses, only to be vetoed by President Trump. In short, the bar for exerting influence is so high that Congress rarely tries to block arms sales, and when it has, it has always failed.

The National Security Powers Act would flip the script on arms sales by requiring Congress to approve every sale before it can move forward. This move would eliminate the two major weaknesses of the AECA and give Congress a much stronger voice in the arms sales process. This system would promote at least two important positive outcomes.

First, this will force the president and defense lobbyists to justify these sales publicly. Today the president can avoid debate about unpopular sales by linking them to popular ones or by burying sales in other kinds of legislation. And because it is so difficult today for Congress to prevent arms sales, Congress has far less incentive to raise concerns than it would under the new system. Requiring approval for arms sales in Congress will give members the opportunity to press the president to explain to the public why controversial sales should take place. Presidents will be less likely to pursue risky arms sales and the American public will be better informed.

The second positive outcome is that it gives Congress the ability to ensure sales will not help enable human rights violations. In just the past two years, the United States has sold weapons to the Philippines, Saudi Arabia, and the United Arab Emirates. The latter two countries have been involved in the war in Yemen, and they have all committed violence against their citizens. Under the current AECA, however, Congress has been able to exert little influence over sales to such countries. As an example, the Leahy Laws make it illegal to provide weapons to specific military units that have been involved in human rights abuses, but do nothing to prevent American arms from going to that military's government, or even to other units in the military itself. With the ability to prevent the president from forcing arms transfers through Congress and increased salience of weapons transfers debate, the National Security Powers Act can work to supplement the things like Leahy laws' current capabilities.

The National Security Powers Act will face resistance. Whether or not Congress manages to replace the War Power Resolution, however, the proposed revisions to the AECA should move forward. The new legislation will help prevent the United States from selling weapons to countries engaged in violent conflict, countries where corruption feeds black markets for weapons, and countries with records of harming their own citizens.

If Congress does pass the legislation, it should find a warm welcome in the White House. In September 1986, then-Senator Joe Biden stated in a defense of flipping the script on arms sales, “the major foreign policy business of the United States must be conducted on the basis of far stronger support from the Congress. If a president’s tools of leadership and persuasion cannot prevail, there is sound reason for reconsideration of the policy.”

A. Trevor Thrall is associate professor at the Schar School of Policy & Government at George Mason University and senior fellow at the Cato Institute.