

Congress of the United States

Washington, DC 20515

April 30, 2024

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear President Biden,

We write to express our concern about the recently issued National Security Memorandum on Safeguards and Accountability with Respect to Transferred Defense Articles and Defense Services (NSM-20).¹ This NSM is a redundant requirement that adds unnecessary bureaucracy and contributes to frustration from the partners and allies that count on U.S. security assistance. In addition, the timing of its release makes clear that its aim is to placate critics of security assistance to our vital ally Israel. Moreover, its vague language leaves open the possibility for Executive overreach that would have serious negative consequences for our national security.

While human rights is an important component of the national interest, American priorities are much broader – particularly in an era of strategic competition. We must ensure that our arms sales policies don't preclude a relationship with the United States. This NSM, while making no substantive change, threatens America's ability to create and maintain partners and allies.

NSM-20 requires that countries receiving U.S. security assistance provide “credible and reliable written assurances . . . that the recipient country will use such defense articles in accordance with international humanitarian law and, as applicable, other international law.”² However, the Foreign Assistance Act (FAA) already mandates that “[n]o assistance shall be furnished under this chapter or the Arms Export Control Act [AECA] to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.”³ In this regard, the memorandum itself acknowledges that it does nothing more than “support” the FAA and applicable international law.”⁴

Indeed, the message that no new legal requirements are contained within the Memorandum was repeatedly conveyed in a State Department briefing to Congress on March 22, 2024. Further, on March 26, 2024, State Department spokesman Matthew Miller acknowledged that “it has always been required that these countries that are receiving defense articles from the United States act in

¹ The White House, *National Security Memorandum on Safeguards and Accountability with Respect to Transferred Defense Articles and Defense Services (NSM-20)* dated 8 Feb. 2024.

² *Id.*

³ 22 U.S.C. § 2378d.

⁴ The White House, *National Security Memorandum on Safeguards and Accountability with Respect to Transferred Defense Articles and Defense Services (NSM-20)* dated 8 Feb. 2024.

compliance with international humanitarian law . . . That is not a requirement that was imposed by the NSM; it is something that was already required by U.S. law.”⁵

NSM-20 plainly was designed to appease critics of Israel. Following the brutal October 7, 2023, terrorist attack on Israel by Hamas – a U.S. designated Foreign Terrorist Organization (FTO) – Israel has been engaged in a campaign to destroy the military and governing capacity of Hamas in Gaza. Israel faces near-daily rocket fire from Hezbollah, another FTO, into its northern territory (where tens of thousands of citizens have been displaced), while Iran and Iranian-backed proxies in Iraq, Syria, and Yemen pose grave threats to Israel. Iran’s unprecedented drone and missile attack on April 13, 2024, was only the latest in a long series of aggressive actions that threaten regional stability. The February 2024 release date of the NSM, and the subsequent media attention it has generated on Israel alone, make clear that the policy is primarily motivated to placate anti-Israel sentiment at home and abroad.

Moreover, the vague standards of the NSM leave open the possibility of overly broad or inconsistent interpretations that undermine the reliability of U.S. security assistance. For example, the NSM requires that the assurances must be “credible and reliable”⁶ but does not provide any objective standard by which this assessment should be made. Furthermore, defense articles must be used in accordance not only with international humanitarian law, but also with “other international law”⁷ as well, without specifying what that might be. Recipient countries must also not “arbitrarily deny, restrict, or otherwise impede”⁸ U.S. humanitarian assistance or “United States Government-supported international efforts to provide humanitarian assistance”. But no clear standard is established to adjudicate what is “arbitrary” and what is required as a matter of national security. Additionally, it is unclear what is defined as U.S. supported humanitarian assistance. The imprecise language for such a significant foreign policy issue sends a clear message that the substance is irrelevant. These standards are not based on any rule of law, but are arbitrary and capricious.

As Chairman of the House Foreign Affairs Committee and Ranking Member of the Senate Foreign Relations Committee, we remain committed to the human rights standards codified in the FAA and AECA. We do not, however, support a redundant reporting requirement motivated by anti-Israel sentiment. Accordingly, we urge you to revoke NSM-20, abide by the robust and vital human rights safeguards already codified in U.S. security assistance law, and continue to support our critical partners around the world.

⁵ U.S. Department of State, *Department Press Briefing* dated 26 Mar. 2024.

⁶ The White House, *National Security Memorandum on Safeguards and Accountability with Respect to Transferred Defense Articles and Defense Services (NSM-20)* dated 8 Feb. 2024.

⁷ *Id.*

⁸ *Id.*

Sincerely,

A handwritten signature in blue ink that reads "Michael T. McCaul". The signature is fluid and cursive, with the first name being the most prominent.

Michael T. McCaul
Chairman
House Foreign Affairs Committee

A handwritten signature in blue ink that reads "James E. Risch". The signature is fluid and cursive, with the last name being the most prominent.

James E. Risch
Ranking Member
Senate Foreign Relations Committee

CC: Secretary Antony Blinken
Department of State