



NATIONAL SECURITY MEMORANDUM 20 & SECTION 620I OF THE FOREIGN ASSISTANCE ACT: REQUIREMENTS, PROCESS, AND ENFORCEMENT

Issue Brief #21 | March 14, 2024

On February 8, 2024, President Biden issued National Security Memorandum 20 ([NSM-20](#)) on “Safeguards and Accountability with Respect to Transferred Defense Articles and Defense Services.” This issue brief lays out the key requirements and processes in NSM-20 and provides recommendations to ensure it achieves its stated goals of “strengthen[ing] United States national security by reinforcing respect for human rights, international humanitarian law” and “ensuring that adequate safeguards and accountability exist with respect to transferred defense articles” in the context of reducing civilian harm in the Gaza war. It also examines Section 620I of the Foreign Assistance Act (FAA) of 1961, which is incorporated into NSM-20 and also remains US law in its own right.

To which countries does NSM-20 apply?

NSM-20 applies to foreign governments that receive US-supplied defense articles funded with Congressional appropriations. It may also apply to recipients of defense services (e.g. training) provided by the US government, at the discretion of the Secretaries of State or Defense.

What does NSM-20 require of the countries to which it applies?

Foreign governments must provide “credible and reliable written assurances” that they will:

- Use covered defense articles “in accordance with **international humanitarian law**, and, as applicable, other international law”; and
- Meet the requirements of **Section 620I of the FAA – by facilitating and not arbitrarily denying, restricting or otherwise impeding, directly or indirectly, the transport or delivery of US humanitarian assistance** and US government-supported international efforts to provide humanitarian assistance in any area of armed conflict in which they use covered defense articles.

For countries to which NSM-20 applies that are using covered defense articles in an “active armed conflict” – such as Israel – the Secretary of State must obtain these written assurances within 45 days after the memorandum’s issue date (by March 24, 2024).

What is Section 620I of the Foreign Assistance Act?

Also referred to as the Humanitarian Aid Corridor Act, [Section 620I](#) states that the US shall not provide any assistance under the FAA or the [Arms Export Control Act](#) (AECA) to any country “when it is made known to the President that the government of such country prohibits or otherwise restricts, directly or indirectly, the transport or delivery of United States humanitarian assistance.” Separate from NSM-20, Section 620I retains its independent legal status and is subject to presidential enforcement. The President has waiver authority – if they determine it is in the national security interest and submit the appropriate notification to Congress, assistance may be provided to a country otherwise violating Section 620I.

Regarding NSM-20's written assurances requirement, what are the consequences of non-compliance?

If a covered country fails to provide “credible and reliable” written assurances to the Secretary of State by the deadline, the US government must pause the transfer of defense articles and applicable defense services until the assurances are provided.

If written assurances are provided, but the Secretary of State or Defense determines that their credibility or reliability “has been called into question and should be revisited,” that Secretary must notify the National Security Advisor within 45 days of their assessment and indicate steps to “assess and remediate the situation.” Remediation may range from “refreshing the assurances” to suspending the transfer of defense articles or services.

What Congressional reporting requirements are included in NSM-20?

Significant Congressional reporting requirements are a key feature of NSM-20. The Secretaries of State and Defense must submit the first report to relevant Congressional committees within 90 days of the memorandum's issuance (by May 8, 2024), and annually thereafter. Written reports must include:

- Any **new written assurances** provided by covered countries;
- A assessment of “**any credible reports or allegations**” that covered defense articles or services have been used “**in a manner not consistent with international law, including international humanitarian law**” – and any determinations made by the respective Secretary as to whether misuse has occurred;
- An assessment of whether covered countries abided by their obligations under Section 620I of the FAA, specifically including **whether they have “fully cooperated” with US and US-supported international efforts to provide humanitarian assistance** in the area of armed conflict where covered defense articles are being used;
- An assessment of **whether covered defense articles and services have been used in a manner inconsistent with “established practices for mitigating civilian harm,”** including US military-adopted practices and measures implemented in response to the Department of Defense's Civilian Harm and Mitigation Response Action Plan; and
- A description of any known **instances of defense articles not being received by the intended foreign country recipient** or “being misused for purposes inconsistent with intended purposes.”

Notably, the initial report to Congress must also retrospectively provide the above information – with regard to defense articles to be delivered following the furnishing of written assurances required by the memorandum – for covered defense articles provided since January 2023 to foreign countries engaged in armed conflict at any time in 2023.

Does NSM-20 have any bearing on Iron Dome or other missile-defense systems?

No. NSM-20 expressly states that its requirements do not apply to defense articles or services that are: air defense systems, “intended to be used for strictly defensive purposes,” “exclusively for non-lethal purposes other than in armed conflict,” “non-lethal in nature,” or transfers strictly for the operational needs of the Department of Defense.

Additionally, the memorandum's written assurances requirement (but not its Congressional reporting requirement) can be waived by the Secretaries of State or Defense "in rare or extraordinary circumstances justified by an imperative associated with the national security of the United States." Such a waiver must be "limited in time, scope and nature as deemed necessary to advance the interests of United States national security."

In the context of the current war in Gaza, what can Congress do to ensure NSM-20 achieves its stated goals?

Congress can ensure NSM-20 achieves its goals by: 1) insisting on robust, transparent, comprehensive reporting; 2) publicly and privately raising concerns with the Administration over the credibility and reliability of assurances from relevant governments, when appropriate; and 3) insisting on swift, meaningful consequences for breaches of NSM-20 commitments.

The first report to Congress under NSM-20 represents a clear opportunity to assess and, if appropriate, press for robust enforcement. Lawmakers should insist on transparency, including compliance with NSM-20's requirement for disclosure of procedures used to make assessments.

It is encouraging that Senator Van Hollen, lead sponsor of the amendment to the national security supplemental that provided a template for NSM-20, has joined with colleagues to [seek details](#) from the Administration on implementation. The specifics requested by the Senators include details regarding the tools and methodologies the Administration will use to conduct assessments and make determinations, as well as processes it is creating to ensure that civil society actors can share relevant credible information about potential violations of international law.

In addition, Members of Congress can push for the Secretaries of State and Defense to make ad hoc assessments and take remedial action at any time under Section 1(b) of NSM-20. While discretionary, the administration should be pressed for ad hoc enforcement in response to clear instances of non-compliance by the Israeli government with relevant US or international law. Congressional pressure for enforcement of Section 620I, both as part of NSM-20 and as freestanding legislation, should be a key priority. For example, Members of Congress should bring to the President's attention credible reporting of cases in which a recipient of aid under the FAA or AECA is restricting delivery of US-supported humanitarian assistance.

To ensure that NSM-20 achieves its pressing goals and Section 620I is adequately enforced, sustained and effective Congressional pressure will be indispensable.