

Backgrounder: How the Senators' Amendment Became a National Security Memorandum

What Does the Amendment Do?

At its core, the Senators' amendment had **three objectives**:

1. To require that the weapons received by any country (under the supplemental) be used in accordance with international law, including international humanitarian law
2. To require that the president obtain assurances that any such recipient country will cooperate with U.S.-supported efforts to provide humanitarian assistance in conflict zones where U.S. weapons are being used
3. To require robust reporting on provisions 1 and 2 and assessments of compliance with U.S. laws and policies

How Does the NSM Accomplish These Objectives?

The NSM follows the amendment effort Senator Van Hollen led with Senators Dick Durbin, (D-Ill.), Tim Kaine (D-Va.), and Brian Schatz (D-Hawaii) and joined by Senators Elizabeth Warren (D-Mass.), Jeff Merkley (D-Ore.), Peter Welch (D-Vt.), Martin Heinrich (D-N.M.), Tom Carper (D-Del.), Ben Ray Lujan (D-N.M.), Bernie Sanders (I-Vt.), Mazie Hirono (D-Hawaii), Ed Markey (D-Mass.), Tina Smith (D-Minn.), Raphael Warnock (D-Ga.), Laphonza Butler (D-Calif.), Tammy Baldwin (D-Wis.), Jon Ossoff (D-Ga.), and Chris Murphy (D-Conn.). The NSM accomplishes each of the objectives set out by the amendment:

Objective 1: Assuring use of aid is in accordance with international law

In order to better ensure the use of U.S. assistance complies with international law, the NSM will – for the first time – require that, prior to the transfer of U.S. security assistance, recipient countries provide the U.S. with credible and reliable written assurances that U.S. weapons will be used in accordance with international humanitarian law and other applicable international law. Noted below, the NSM includes the necessary reporting requirements and enforcement mechanisms for the U.S. to take action if these assurances are not upheld.

Objective 2: Assuring cooperation with U.S.-supported humanitarian efforts

The NSM will – for the first time – require that, prior to the transfer of U.S. security assistance, recipient countries provide credible and reliable written assurances that they will facilitate and not arbitrarily deny or restrict U.S. and U.S.-supported efforts to provide humanitarian assistance in areas of conflict where such countries are using U.S. weapons.

Objective 3: Requiring robust reporting to Congress

The NSM requires that the State Department and Defense Department send a report to Congress within 90 days on the use of U.S. weapons in areas of armed conflict since January 2023 and subsequent reports annually thereafter, including:

- an assessment of whether weapons have been used in a manner inconsistent with international law, including international humanitarian law;
- an assessment and analysis of any credible reports indicating that U.S.-funded weapons have been used in a manner inconsistent with established best practices for preventing civilian harm, including the Defense Department's Civilian Harm Mitigation and Response Action Plan;
- an assessment and analysis of each foreign government's adherence to the assurances they have provided regarding U.S.-supported humanitarian efforts and compliance with the Humanitarian Aid Corridor Act (Sec. 6201(c) of the Foreign Assistance Act of 1961)

What else does the NSM Do?

Global Reach: As Senator Van Hollen had ultimately hoped to achieve, the NSM applies these requirements to any and all countries globally who receive U.S. security assistance moving forward.

Enforcement: The NSM also adds an enforcement mechanism to ensure that, if a country violates any of these assurances, there is a process to hold such country accountable, including by potentially suspending any further transfers of defense articles or defense services.

Defense Systems Exempt: Like the amendment, the NSM does not apply to air defense systems or other defense articles used for strictly defensive or non-lethal purposes.

Limited Waiver: Similar to the Senator's amendment, the NSM also includes a strictly limited national security waiver that is to be used only under "extraordinary circumstances." The administration must send a notification to Congress within 7 days if the waiver is used.