

115TH CONGRESS
1ST SESSION

S. J. RES. 40

To provide limitations on the transfer of air-to-ground munitions from the United States to Saudi Arabia.

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, APRIL 4), 2017

Mr. MURPHY (for himself, Mr. PAUL, Mr. DURBIN, and Mr. FRANKEN) introduced the following joint resolution; which was read twice and referred to the Committee on Foreign Relations

JOINT RESOLUTION

To provide limitations on the transfer of air-to-ground munitions from the United States to Saudi Arabia.

Whereas the enduring security partnership between the United States Government and the Government of Saudi Arabia has historically served to preserve the stability of the Arabian Gulf region;

Whereas the United States Government appreciates the Government of Saudi Arabia's participation in the Global Coalition to Counter ISIL;

Whereas the United States Armed Forces provide dedicated personnel and assets to the armed forces of Saudi Arabia to defend its territorial integrity and support its ongoing military operations in Yemen, including over 1,778 air-to-

air refueling sorties, and to assist with deliberate targeting to reduce collateral damage;

Whereas the Department of State has consistently urged all sides of the conflict in Yemen to take all feasible precautions to reduce the risk of harm to civilians and to comply with their obligations under international humanitarian law, which includes minimizing harm to civilians and differentiating between civilian infrastructure and military objectives;

Whereas the Department of State has consistently called on all parties in the conflict to accept the United Nations drafted roadmap as a basis for negotiations to secure a comprehensive peace agreement that ends the conflict and allows humanitarian assistance to reach all Yemenis;

Whereas the Panel of Experts established pursuant to United Nations Security Council Resolution 2140 (2014) reported on January 22, 2016, that the military coalition led by the Government of Saudi Arabia in Yemen “had conducted air strikes targeting civilians and civilian objects, in violation of International Humanitarian Law, including camps for internally displaced persons and refugees; civilian gatherings, including weddings; civilian vehicles, residential areas, medical facilities schools, mosques, markets, factories and food storage warehouses and other essential civilian infrastructure such as the airport in Sanaa, the port in Hudaydah, and domestic transit routes”;

Whereas the United Nations Panel of Experts reported on January 27, 2017, that the military coalition led by the Government of Saudi Arabia in Yemen “did not comply with international humanitarian law in at least 10 air-strikes that targeted houses, markets, factories and a

hospital” and that “the Panel considers it almost certain that the coalition did not meet international humanitarian law requirements of proportionality and precautions in attack”;

Whereas the United Nations Panel of Experts reported on January 27, 2017, that Houthi-Saleh forces “routinely use torture and commit international humanitarian law violations and human rights abuses”;

Whereas in the course of the conflict in Yemen, the systematic and widespread blockade of commercial goods has directly contributed to the obstruction of deliveries of aid and humanitarian assistance, while restricting vital imports of commercial fuel, food, and other goods;

Whereas the Washington Post reported on February 23, 2017, that coalition airstrikes near the port city of Hudaydah—the main entry point for food, medicine and humanitarian aid into northern Yemen—have slowed the delivery of supplies and exacerbated the misery;

Whereas, since 2010, the President has submitted for review sales to Saudi Arabia of defense articles and services with a potential value of more than \$110,000,000,000, including a \$1,290,000,000 sale of precision guided air-to-ground munitions that was notified to Congress on November 13, 2015;

Whereas the United States Government has reduced over time its support to the Saudi-led coalition, in part due to concern with civilian casualties resulting from Saudi airstrikes; and

Whereas designated foreign terrorist organizations, including al-Qa’ida in the Arabian Peninsula (AQAP) and the Islamic State of Iraq and the Levant (ISIL), which threat-

en the national security of the United States, have significantly expanded the territory under their control in Yemen since the Government of Saudi Arabia began military operations in Yemen on March 26, 2015, and stand to gain more strength and popular support amid a continuation of the conflict: Now, therefore, be it

1 *Resolved by the Senate and House of Representatives*
 2 *of the United States of America in Congress assembled,*

3 **SECTION 1. DEFINITIONS.**

4 In this resolution:

5 (1) AIR-TO-GROUND MUNITIONS.—The term
 6 “air-to-ground” munitions means any United States
 7 bomb or missile designed as a Category IV item on
 8 the United States Munitions List pursuant to sec-
 9 tion 38 (a)(1) of the Arms Export Control Act (22
 10 U.S.C. 2778 (a)(1)).

11 (2) APPROPRIATE CONGRESSIONAL COMMIT-
 12 TEES.—The term “appropriate congressional com-
 13 mittees” means the Committee on Foreign Rela-
 14 tions, the Committee on Armed Services, and the Se-
 15 lect Committee on Intelligence of the Senate.

16 (3) AUTHORIZED SALE.—The term “authorized
 17 sale” means any sale of United States defense arti-
 18 cles or services authorized pursuant to the Arms Ex-
 19 port Control Act (22 U.S.C. 2751 et seq.).

20 (4) DESIGNATED FOREIGN TERRORIST ORGANI-
 21 ZATIONS.—The term “designated foreign terrorist

1 organizations” means groups designated by the
2 United States as foreign terrorist organizations pur-
3 suant to section 219 of the Immigration and Nation-
4 ality Act (8 U.S.C. 1189) or Specially Designated
5 Global Terrorists pursuant to Executive Order
6 13224 (50 U.S.C. 1701 note).

7 (5) PROPOSED SALE.—The term “proposed
8 sale” means any sale notified to Congress pursuant
9 to subsections (b) or (c) of section 36 of the Arms
10 Export Control Act (22 U.S.C. 2776).

11 **SEC. 2. CONDITIONS OF TRANSFER.**

12 (a) LIMITATION.—No transfer to Saudi Arabia of
13 United States air-to-ground munitions may occur until the
14 President makes the certification described under section
15 3.

16 (b) CERTIFICATION AT TIME OF CONGRESSIONAL
17 NOTIFICATION.—Any notification to Congress made on or
18 after the date of the enactment of this resolution with re-
19 spect to a proposed sale to Saudi Arabia of air-to-ground
20 munitions shall be accompanied by the certification de-
21 scribed under section 3.

22 **SEC. 3. CONDITIONS REQUIRED PRIOR TO SALE.**

23 The certification described under this section is a cer-
24 tification by the President to the appropriate congres-
25 sional committees as follows:

1 (1) The Government of Saudi Arabia and its
2 coalition partners are taking all feasible precautions
3 to reduce the risk of harm to civilians and civilian
4 objects to comply with their obligations under inter-
5 national humanitarian law, which includes mini-
6 mizing harm to civilians, discriminating between ci-
7 vilian objects and military objectives, and exercising
8 proportional use of force in the course of military ac-
9 tions it pursues for the purpose of legitimate self-de-
10 fense as described in section 4 of the Arms Export
11 Control Act (22 U.S.C. 2754).

12 (2) The Government of Saudi Arabia and its
13 coalition partners are making demonstrable efforts
14 to facilitate the flow of critical humanitarian aid and
15 commercial goods, including commercial fuel and
16 commodities not subject to sanction or prohibition
17 under United Nations Security Council Resolution
18 2216 (2015).

19 (3) The Government of Saudi Arabia is taking
20 effective measures to target designated foreign ter-
21 rorist organizations, including al Qaeda in the Ara-
22 bian Peninsula and affiliates of the Islamic State of
23 Iraq and the Levant as part of its military oper-
24 ations in Yemen.

1 **SEC. 4. REPORTING REQUIREMENTS.**

2 (a) REPORTING REQUIREMENTS.—Prior to any
3 transfer of United States air-to-ground munitions to
4 Saudi Arabia pursuant to an authorized sale to Saudi Ara-
5 bia of air-to-ground munitions or the notification to Con-
6 gress of a proposed sale to Saudi Arabia of air-to-ground
7 munitions, the President or the President’s designee shall
8 provide a briefing to the appropriate congressional com-
9 mittees. The briefing shall include—

10 (1) a description of the nature, content, costs,
11 and purposes of any United States support for the
12 Government of Saudi Arabia’s coalition military op-
13 erations in Yemen on or after March 26, 2015;

14 (2) an assessment of whether the Government
15 of Saudi Arabia’s military operations in Yemen on
16 or after March 26, 2015, constitute legitimate self-
17 defense;

18 (3) an assessment of whether the Government
19 of Saudi Arabia’s coalition operations have deliber-
20 ately targeted civilian infrastructure in Yemen on
21 or after March 26, 2015, and whether the armed
22 forces of the Government of Saudi Arabia and its co-
23 alition partners have taken all possible steps to com-
24 ply with the rules of distinction, proportionality, and
25 precautions, as regulated by Additional Protocol I to
26 the Geneva Conventions of 12 August 1949, and Re-

1 lating to the Protection of Victims of International
2 Armed Conflicts, done at Geneva June 8, 1977;

3 (4) an assessment of whether the armed forces
4 of Saudi Arabia have used United States-origin mu-
5 nitions in any attacks against civilians or civilian in-
6 frastructure in Yemen on or after March 26, 2015,
7 and the effect of such attacks on the United States
8 credibility in the region;

9 (5) an assessment of the effect of Saudi Ara-
10 bia's military operations in Yemen on its ability to
11 contribute to United States efforts to defeat al
12 Qaeda in the Arabian Peninsula and the Islamic
13 State of Iraq and the Levant; and

14 (6) an assessment on how the transfer of major
15 defense equipment to Saudi Arabia contributes to
16 United States foreign policy and national security
17 objectives in the region.

18 (b) FORM OF BRIEFING.—The briefing required
19 under subsection (a) shall be conducted in an unclassified
20 forum but may be conducted in a classified setting as re-
21 quired.

1 **SEC. 5. SUNSET.**

2 This resolution shall cease to have effect three years
3 after the date of the enactment of this resolution, unless
4 renewed.

