

Learning about Legislation #33 - Arms Sales and Congressional Review

In the weeks since the murder of journalist and United States resident Jamal Khashoggi, President Trump has often displayed how he sees foreign policy as an entirely transactional affair. When confronted with the issue of this heinous murder and human rights abuse, the president will inevitably bring up an arms deal with Saudi Arabia, and his unwillingness to endanger that arrangement. However, arms sales are not entirely the province of the Executive branch. Just as the Constitution grants a means for the Legislative branch to provide oversight in foreign policy via the Senate's power to ratify treaties, our Congress has a similar role in overseeing arms deals, which are an economic form of international treaty.

The Defense Security Cooperation Agency provides a succinct explanation of the legislation through which Congress can review arms sales. Their [Security Assistance Management Manual](#) explains:

The basic U.S. law providing the authority and general rules for the conduct of foreign military sales and commercial sales of defense articles, defense services, and training. The AECA came into existence with the passage of the Foreign Military Sales Act (FMSA) of 1968. An amendment in the International Security Assistance and Arms Export Control Act of 1976 changed the name of FMSA to the AECA.

The opening sections of the AECA, while they provide the President with the authority to enter into arms sales agreements, were not meant to authorize an environment where the United States would sell arms to anyone and everyone for mere financial gain. Section §2751 states:

It is the sense of the Congress that the President maintain adherence to **a policy of restraint** in conventional arms transfers and that, in implementing this policy worldwide, a balanced approach should be taken and full regard given to the security interests of the United States in all regions of the world and that particular attention should be paid to controlling the flow of conventional arms to the nations of the developing world. To this end, the President is encouraged to continue discussions with other arms suppliers in order to **restrain the flow of conventional arms** to less developed countries.

From there, the bill goes on to delineate different types of countries. Allies like the member-states of NATO are treated differently from other ally countries (like, say... Saudi Arabia). Financial thresholds are set, as are rules about re-transfer of military items to third parties.

The AECA is, as one might expect, a voluminous piece of legislation, within hundreds of edits and modifications made in the decades since its introduction. Since it is difficult to digest, the Congress had its analysts provide a [white paper](#) to help politicians understand their role in overseeing arms sales, under the provisions of the AECA. The most basic summary of the process from that guide states:

...the executive branch, after complying with the terms of applicable U.S. law, principally contained in the AECA, is free to proceed with an arms sales proposal unless Congress passes legislation prohibiting or modifying the proposed sale. Under current law Congress faces two fundamental obstacles to block or modify a presidential sale of military equipment: it must pass legislation expressing its will on the sale, and it must be capable of overriding a presumptive presidential veto of such legislation. Congress, however, is free to pass legislation to block or modify an arms sale at any time up to the point of delivery of the items involved.

This week, Senator Rand Paul used the rules set forth in the AECA to try to limit the sale of weapons that are being used in the war in Yemen. The Congressional white paper notes that a Senator can bring a resolution to stop an arms sale to the floor of the full Senate if "the committee fails to report back to the Senate by the end of the 10 calendar days it is entitled to review the resolution." Only 20 other senators (including our own Sen. Casey) shared Sen. Paul's desire to limit the United States' role in the provisioning of the war in Yemen, and his attempt ultimately failed. But while it is disappointing to have this one instance fall short, it was reassuring to see at least one of the houses in our legislative branch remember their constitutionally mandated responsibility to provide oversight to the executive branch.