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Challenging Weapons Deals Between the United States and Israel: Limitations and Prospects

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CHALLENGING WEAPONS DEALS BETWEEN THE UNITED STATES AND ISRAEL: LIMITATIONS AND PROSPECTS

Ryan J. McNamara[†]

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INTRODUCTION

Riad Ishkintna could do nothing to address the screams of his children.¹ Beneath the rubble of what was his apartment building, and pinned in place by a slab of concrete, he listened to their cries until they faded into silence.² Moments before the collapse, he was watching T.V. while his wife, Abir, prepared their five children for bed.³ An Israeli airstrike, likely from a Lockheed Martin F-35 jet⁴ delivering a Boeing GBU-31 Mark 84 bomb,⁵ leveled his building, killing four of his children,

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¹ Fares Akram, *Gaza Children Bearing the Brunt in Israel-Hamas Conflict*, AP NEWS (May 19, 2001), <https://perma.cc/9YL6-CK8X>.

² *Id.*

³ *Id.*

⁴ See Ayush Jain, *Israeli 'Adir' a Heavily Modified Variant of F-35 Stealth Jet Proved Its Mettle Against Hamas*, THE EURASIAN TIMES (May 23, 2021), <https://perma.cc/W7XV-7UGZ> (discussing the role of F-35 jets in the Israeli Airforce); see also Hosam Salem, *Rescuers Dig for Survivors as Gaza Suffers 'Most Intense' Bombing*, AL JAZEERA (May 16, 2021), <https://perma.cc/8GGX-VXNC> (describing eyewitness account that the airstrikes on the neighborhood “weren’t F-16 missiles; these were bombs from F-35 warplanes.”).

⁵ Evan Hill, et al., *Gaza’s Deadly Night: How Israeli Airstrikes Killed 44 People*, N. Y. TIMES (June 24, 2021) <https://perma.cc/RL7Y-DNKG> (describing that Gazans found shrapnel from the bombs dropped that night, including bomb sections with serial codes indicating they

his wife, and burying him for six hours.⁶ As rescue workers pulled him from the wreckage covered in dust, blood, and missing a finger, Riyad held up the victory sign to gathered neighbors and family members.⁷ His wife and four of his children would be among the 44 Palestinians killed on May 16, 2021 when Israeli warplanes brought down two residential buildings in Rimal, Gaza.⁸ Down the street from the Ishkintna's house, the al-Qawlaq family lost 21 members.⁹

The Ishkintna and Qawlaq families were victims of the broader May 2021 Israeli airstrike campaign on the blockaded Gaza Strip, Palestine resulting in over 230 deaths, 1000 homes destroyed, and 75,000 Palestinians displaced.¹⁰ Using United States ("U.S.") made aircrafts and munitions,¹¹ Israel bombed the impoverished enclave comprised of 70% refugees.¹² While international condemnation of the campaign was strong,¹³ President Biden reiterated his "unwavering support" for Israel's bombing campaign,¹⁴ and spoke publicly of a call with Prime Minister Netanyahu, which together with other statements from the Biden Administration, were seemingly green-lighting Israel's actions.¹⁵ The

were Boeing-made GBU-31 Mark 84 bombs with American made Joint Direct Attack Munition guidance kits).

⁶ Iyad Abuheweila & Vivian Yee, *'I Was Surrounded by Death': Gaza Father Is Rescued, Emerging to Grief*, N.Y. TIMES (May 20, 2021), <https://perma.cc/4ZXQ-8HR4>.

⁷ لحظة انتشار المواطن رياض اشكنتنا من تحت الأنقاض من منزله الذي قصفها الاحتلال في غزة [The Moment Citizen Riyad Ishkintna Was Lifted from Under the Rubble of His House That Was Bombed by the Occupation in Gaza], YOUTUBE (May 16, 2021), <https://perma.cc/4G2F-P7EZ>.

⁸ Tamara Nassar, *Al-Wihda Street Massacre*, ELECTRONIC INTIFADA (June 12, 2021), <https://perma.cc/2L9E-GQX8>.

⁹ *Id.*

¹⁰ Vivian Yee & Iyad Abuheweila, *With the Fighting Suspended, Assessing the Destruction in Gaza*, N.Y. TIMES (May 21, 2021), <https://perma.cc/KC6W-N9JZ>; see also *Shattered Rooms in Gaza Show Israeli Attacks' Toll on Children*, AL JAZEERA (June 2, 2021), <https://perma.cc/7FCC-2CUP>; see also *Escalation in the Gaza Strip, the West Bank and Israel Flash Update #9 covering 12:00 18 May – 12:00 19 May*, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS. (May 19, 2021), <https://perma.cc/DT2M-YGLE>.

¹¹ See Salem *supra* note 4; see also Hill *supra* note 5.

¹² *Gaza in 2020: UNRWA Operational Response May 2013 – Report*, UNITED NATIONS (May 30, 2013), <https://perma.cc/58ZR-JEFW>.

¹³ See *Human Rights Council Opens Special Session on "the Grave Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem"*, *Speakers Urge It to Establish an International Commission of Inquiry*, U.N. HUM. RTS. COUNCIL (May 27, 2021), <https://perma.cc/CF5J-GPYT>.

¹⁴ THE WHITE HOUSE, READOUT OF PRESIDENT JOSEPH R. BIDEN, JR. CALL WITH PRIME MINISTER BENJAMIN NETANYAHU OF ISRAEL (May 12, 2021), <https://perma.cc/J2R3-PEW4>.

¹⁵ Jacob Magid & AFP, *Biden Tells Netanyahu He Hopes Violence Will be 'Closing Down Sooner Than Later'*, TIMES ISRAEL (May 13, 2021), <https://perma.cc/X24B-HQKS> (providing that President Biden did not request the end of the bombing campaign, but rather stated that

U.S. support was not limited to phone calls and public statements. Biden Administration approved the potential sale of \$735 million in high tech bombs manufactured by the U.S. companies to replenish the Israeli Air Force's stockpiles,¹⁶ which rely heavily on U.S. weapons.¹⁷

Removing access to U.S. weapons would limit Israel's ability to enact such violence as occurred in May 2021. Fortunately for those interested in challenging such arms deals, they violate the plain language of U.S. federal law, including the Leahy Laws and the Symington Amendment.¹⁸ This Note seeks to review the potential of attempted legislative action to challenge U.S.-Israeli arms deals and considers the prospects for a relatively unexplored basis to challenge them: Israel's nuclear weapons. Part I gives background into the U.S. arms deals generally and with Israel in particular. Part II details statutes attempting to impose human rights considerations on arms deals. Part III describes prohibitions against arming countries with nuclear weapons developed outside of international arms control. Finally, Part IV discusses the U.S. and Israeli policy of non-recognition of Israel's nuclear weapons program. The Conclusion provides a summary of the argument and makes recommendations on how the U.S. should proceed further.

I. BACKGROUND

The U.S. tends to a vast network of foreign military assistance.¹⁹ It uses this aid to strengthen the military position of its allies, exert influence over their policy, and subsidize its own domestic weapons producers, among other considerations.²⁰ Aid to Israel comprises the largest package of foreign assistance of this type,²¹ and is a key component in the military

he told Netanyahu that his "expectation and hope is that this will be closing down sooner than later.").

¹⁶ Patricia Zengerle, *Biden Administration Approved \$735 Million Arms Sale to Israel - Sources*, REUTERS (May 17, 2021, 12:36 PM), <https://perma.cc/U8PQ-TAPH> (describing that Congress is likely to authorize the sale).

¹⁷ See generally Paul Gottinger & Ken Klippenstein, *US Provides Israel the Weapons Used on Gaza*, TRUTHOUT (July 23, 2014), <https://perma.cc/YWF6-7SP6> (discussing Israeli Air Force reliance on U.S. weapons to bomb Gaza).

¹⁸ See *infra* Part II and Part III.

¹⁹ See MARIAN L. LAWSON & EMILY M. MORGENSTERN, CONG. RSCH. SERV., FOREIGN ASSISTANCE: AN INTRODUCTION TO U.S. PROGRAMS AND POLICY 6 (2020), <https://perma.cc/M6FG-YMTJ> (stating that 35% of the almost \$47 billion U.S. foreign assistance delivered in the 2018 fiscal year was for military aid and nonmilitary security assistance).

²⁰ See generally JEREMY M. SHARP, CONG. RSCH. SERV., U.S. FOREIGN AID TO ISRAEL (2020), <https://perma.cc/NV7K-MFRD> ("This report provides an overview of U.S. foreign assistance to Israel. It includes a review of past aid programs, data on annual assistance, and analysis of current issues.").

²¹ *Id.* at 8.

advantages enjoyed by one of the U.S.'s most important military allies.²² The aid “has helped transform Israel’s armed forces into one of the most technologically sophisticated militaries in the world,”²³ and is used to help maintain the Israeli occupation of Palestine, expand settlements, and blockade Gaza.

In 2016, the U.S. and Israel signed their third ten-year Memorandum of Understanding (“MOU”) on arms deals, committing to a \$3.8 billion yearly base in aid.²⁴ The White House described the package as “a significant increase over the current MOU by every measure, and will enable Israel to acquire additional advanced military capabilities from the United States.”²⁵ This agreement further strengthens Israel’s “qualitative military edge,”²⁶ a concept enshrined in U.S. law, ensuring Israel has superior equipment and training over other armed forces in the region.²⁷

While Israel gets its military edge, the U.S. gets something out of the deal as well: Israel’s unparalleled military might, which allows it to contain other countries and forces hostile to U.S. hegemony in the region.²⁸ Alternate Prime Minister and Foreign Minister of Israel Yair Lapid was quite explicit about this point in an article written at the signing of the 2016 MOU, stating “America’s cooperation with Israel often allows it to pursue an active and influential policy in the Middle East.”²⁹ He described Israel as a “forward base for the West in the Middle East,” saying that without Israel, “the United States would almost certainly need at least one aircraft carrier in the Mediterranean, in addition to the two stationed in the Gulf, along with its more than 6,500 soldiers and crew.”³⁰

²² See *id.* at 8-9.

²³ *Id.* at 2.

²⁴ Off. of the Press Sec’y, *Fact Sheet: Memorandum of Understanding Reached with Israel*, WHITE HOUSE (Sept. 14, 2016), <https://perma.cc/9UHF-UQHN>.

²⁵ *Id.*

²⁶ See 22 U.S.C. § 2776(h)(3) (2014) (defining “qualitative military edge” to mean “the ability to counter and defeat any credible conventional military threat from any individual state or possible coalition of states or from non-state actors, . . . through the use of superior military means”); see also SHARP, *supra* note 20, at 3-5.

²⁷ 22 U.S.C. § 2776(h)(1) (2014) (“Any . . . sale or export of defense articles or defense services . . . to any country in the Middle East other than Israel shall include a determination that . . . [it] will not adversely affect Israel’s qualitative military edge over military threats to Israel.”).

²⁸ See Michael Eisenstadt & David Pollock, Opinion, *Friends with Benefits: Why the U.S.-Israeli Alliance is Good for America*, WASH. INST. FOR NEAR E. POL’Y (Nov. 7, 2012), <https://perma.cc/88F6-V7KL> (describing the U.S.-Israeli alliance as a “bulwark against Soviet influence in the Middle East and a counter to Arab nationalism.”).

²⁹ Yair Lapid, *The Invaluable U.S.-Israeli Alliance*, FOREIGN POL’Y (Aug. 23, 2016, 1:44 PM), <https://perma.cc/383X-DCSV>.

³⁰ *Id.*

Much like the U.S., Israel is in a constant state of military action: whether it be airstrikes in Gaza,³¹ military occupation and settlement construction in the West Bank,³² bombings in Syria,³³ or threatening to bomb Iran's nuclear facilities,³⁴ Israel must possess an overwhelming military advantage to achieve its goals.³⁵ Former Prime Minister of Israel Benjamin Netanyahu spoke on the issue, stating, "I'm asked if we will forever live by the sword — yes."³⁶

A challenge to U.S. aid to Israel is a challenge to U.S. hegemony in the Middle East, and represents a threat to core interests of the architects of U.S. foreign policy.³⁷ The extreme resistance by consecutive administrations and Congress to condition arms deals should be understood within this framework.³⁸

³¹ See, e.g., Paulina Villegas & Michael E. Miller, *Israeli Airstrikes Hit Gaza in Retaliation for Incendiary Balloons, in First Flare-up Since May Truce*, WASH. POST (June 16, 2021, 10:54 AM), <https://perma.cc/GK5L-8NPV>.

³² See *Palestinian Village Pays High Price in Defence of Its Land*, AL JAZEERA (June 7, 2021), <https://perma.cc/V3ER-THDW>.

³³ See, e.g., *4 Pro-Iran Fighters Said Killed in Alleged Israeli Strikes on Syria*, TIMES ISRAEL (Aug. 20, 2021, 5:05 PM), <https://perma.cc/A7C7-NC4D>.

³⁴ For discussion of the Israeli military threat to Iran, see generally *How Real is Israel's Threat Against Iran?*, MIDDLE E. POL'Y COUNCIL, <https://perma.cc/2NYD-HRXV> (last visited Dec. 28, 2021); see also John Haltiwanger, *Israel's Defense Minister Threatens Iran with Military Strike After Deadly Drone Attack*, BUS. INSIDER (Aug. 5, 2021, 5:14 PM), <https://perma.cc/SRY5-R3J5>.

³⁵ Laurie Kellman, *Israeli Defense Minister Threatens Iran with Military Action*, AP NEWS (Aug. 5, 2021), <https://perma.cc/SCE8-7HW7>. See PATRICK SCOTT, ISRAEL'S QUALITATIVE MILITARY EDGE: U.S. ARMS TRANSFER POLICY 1 (2021) (stating the U.S. ensures Israel's military strength as part of a "decades-long strategy to selectively supply arms with the intent to secure Israel's continued materiel [sic] advantage against U.S. adversaries" and promote "coalition of anti-Iranian states in the region and bolster its relative power against Iran.").

³⁶ Barak Ravid, *Netanyahu: I Don't Want a Binational State, but We Need to Control All of the Territory for the Foreseeable Future*, HAARETZ (Oct. 26, 2015), <https://perma.cc/2T5M-J455>.

³⁷ For a discussion of U.S. military benefits for arming Israel, see Ryan McNamara, *Why the US Backs Israel*, JACOBIN (Sept. 18, 2016), <https://perma.cc/SU6W-BVE8> ("[W]hen Egyptian president Gamal Abdel Nasser was leading the Arab Nationalist movement and challenging American and European influence in the region, Israel proved a bulwark, eventually dealing Egypt a crushing military defeat in 1967."); see also SHARP, *supra* note 20, at 1 (discussing the "shared strategic goals in the Middle East" the two nations have, and the role U.S. aid to Israel plays in furthering those goals).

³⁸ McNamara, *supra* note 37.

II. THE LEAHY LAWS

Legislative efforts to impose human rights requirements on foreign aid have historically faced an uphill challenge.³⁹ Perhaps the first explicit attempt to impose such requirements on the executive branch by Congress was a 1974 amendment to the Foreign Assistance Act of 1961.⁴⁰ This comprehensive piece of legislation prohibits the U.S. from providing military aid to any country “the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.”⁴¹ However, despite its clear and comprehensive language (or perhaps because of it), this statute, codified as § 2304, was, and remains, disregarded by administrations obligated to follow its provisions.⁴² The Carter Administration has remained the only administration to partially follow the obligations established in § 2304 to cut off military aid based on consistent human rights violations.⁴³ Since 1981, zero arms deals have been canceled or affected by this law.⁴⁴ Because the statute jeopardizes entire regimes of aid going to the U.S.’s most critical allies, the Executive disregards it, claiming it is too broad or unfairly punishes an entire military for the acts of a few individuals.⁴⁵

³⁹ See generally David Weissbrodt, *Human Rights Legislation and U.S. Foreign Policy*, 7 GA. J. INT’L & COMPAR. L. 231 (1977), <https://perma.cc/R3JF-M7QH> (describing history of legislative efforts to impose human rights requirements on foreign aid in the U.S.).

⁴⁰ The statute reads:

The United States shall, . . . promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.

See 22 U.S.C. § 2304(a)(1) (2014).

⁴¹ *Id.* at § 2304(a)(2).

⁴² See Stephen B. Cohen, *Conditioning U.S. Security Assistance on Human Rights Practices*, 76 AM. J. INT’L L. 246, 249, 276 (1982) (discussing the Nixon and Ford Administrations’ “disregard of the statute” and the Carter Administration’s improved adherence to but “considerable” discretion following the statute).

⁴³ *Id.*; See NINA M. SERAFINO ET AL., CONG. RSCH. SERV., “LEAHY LAW” HUMAN RIGHTS PROVISIONS AND SECURITY ASSISTANCE: ISSUE OVERVIEW 3 n.8 (2014), <https://perma.cc/MW7B-GBVW> (stating that the legislation [also known as Section 502B] is rarely used and that, “in response to CRS requests, the State Department did not report any instances in which Section 502B was invoked.”).

⁴⁴ Jess Hunter-Bowman, *To the People: Enhancing Leahy Law Human Rights Enforcement Through a Private Cause of Action*, 51 VAL. U. L. REV. 831, 839 (2017), <https://perma.cc/C8HZ-8JPG>.

⁴⁵ Daniel R. Mahanty, *The “Leahy Law” Prohibiting US Assistance to Human Rights Abusers: Pulling Back the Curtain*, JUST SEC. (June 27, 2017), <https://perma.cc/F3XD-CM4W> (“The executive branch has never once complied with this provision, which successive administrations interpreted as too vague and too broad.”); see also Hunter-Bowman, *supra* note 44, at 839.

Perhaps in light of the lack of application of § 2304, U.S. Senator Patrick Leahy created legislation that was much more likely to be enforced.⁴⁶ Senator Leahy wrote two statutes, which together are often referred to as the “Leahy Laws” or “Leahy Law.”⁴⁷ One statute prohibits the furnishing of assistance authorized by the Foreign Assistance Act of 1961 (FAA) and the Arms Export Control Act to foreign military and security forces where there is credible information the unit has committed gross violations of human rights.⁴⁸ The other prevents the Department of Defense from providing training to foreign military or security units suspected of committing gross violations of human rights, unless the state removes those entities from the unit receiving assistance.⁴⁹ Senator Leahy stated the original provision had two primary purposes: first, to prevent U.S. taxpayer money from aiding units that “committed heinous crimes,” and second, to “encourage foreign governments to bring to justice the individual members of units responsible for such atrocities.”⁵⁰

By focusing on units and individuals within a country’s security forces and not the entire military of a nation, Senator Leahy felt that the statute was more likely to be enforced.⁵¹ Additionally, the Department of Defense statute allows aid to resume if a country who has a unit in violation of Leahy requirements takes “all necessary corrective steps,” including simply removing the accused bad actors from the unit.⁵² The FAA statute allows the Secretary of State to block any prohibitions if they determine and report to congressional committees “that the government of such country is taking effective steps to bring the responsible members of the security forces unit to justice.”⁵³ Because of these provisions, the Leahy Laws do not significantly threaten arms deals the Executive is keen on keeping them intact.⁵⁴

⁴⁶ For a history of the development of the legislation, *see generally* Hunter-Bowman, *supra* note 44, 833-57.

⁴⁷ *See generally* 22 U.S.C. § 2378d (2014); 10 U.S.C. § 362 (2016).

⁴⁸ 22 U.S.C. § 2378d(a) (2014).

⁴⁹ 10 U.S.C. § 362(a)(1) (2016).

⁵⁰ 160 CONG. REC. S4452 (daily ed. 2014), <https://perma.cc/9CG3-YWF8> (including statement of Stephen Richard).

⁵¹ *See Remarks of Senator Patrick Leahy United States Institute of “Workshop on Leveraging U.S. Security Assistance to Prevent and Redress Human Rights Violations”*, PATRICK LEAHY [hereinafter LEAHY] (Feb. 11, 2016), <https://perma.cc/A7UQ-95HD> (speaking on the ability of the Leahy Laws not to jeopardize foreign relations goals, Senator Leahy has stated that rather than a “pie-in-the-sky idea the Congress wanted that should be ignored,” the Leahy Laws represent a “convergence of universal values and national security interests.”).

⁵² 10 U.S.C. § 362(b) (2016).

⁵³ 22 U.S.C. § 2378d(b) (2014).

⁵⁴ Hunter-Bowman, *supra* note 44, at 860; *see also* Eric Schmitt, *Military Says Law Barring U.S. Aid to Rights Violators Hurts Training Mission*, N.Y. TIMES (June 20, 2013), <https://perma.cc/FKP7-M2TH>.

But the Leahy Laws' strength is also their weakness. They are designed to weed out funding for individuals and units within a military accused of violating human rights without jeopardizing the entire aid package given to the country.⁵⁵ However, the largest scale violations of human rights are not committed by rogue units, but instead, are committed under the calm calculations of military and civilian leaders.⁵⁶ By focusing on individual units, the Leahy Laws do not touch the fundamental problems or reach the core perpetrators.⁵⁷ Additionally, the laws' provisions allowing internal investigations and "corrective measures" or "effective steps" to resume aid shipments allow countries to appear motivated to address human rights violations without undertaking any structural changes.⁵⁸

Adding to this problem, the much softer Leahy Laws are "a statutory replacement of § 2304's aid restriction mechanism."⁵⁹ Since the Leahy Laws were enacted, § 2304 "has not been referenced in debates on aid to security forces with abusive human rights records, much less enforced, which buttresses this interpretation."⁶⁰ As opposed to § 2304, rejections of aid based on the Leahy Laws represent small enough inconveniences that the "overall amount of American military aid to the country isn't necessarily affected."⁶¹ Therefore, if it were enforced against Israeli military units in its typical, bad-apple focused manner, the material significance would be minimal.⁶²

Seeking to strengthen the Leahy Laws, U. S. Congresswoman Betty McCollum prepared a bill to amend the laws—H.R. 2407.⁶³ The legislation seeks to prohibit U.S. aid from being used for the military

⁵⁵ See 22 U.S.C. § 2378d(b) (2014); see also Hunter-Bowman, *supra* note 44, at 844; Sara Egozi, *Aid Is Key to Reform Local Forces on Rights, Leahy Says Restricting U.S. Assistance Aims for Rehabilitation, Not Punishment*, U.S. INST. OF PEACE (Feb. 12, 2016), <https://perma.cc/3GCK-QGZE>; see also LEAHY, *supra* note 51.

⁵⁶ See, e.g., UNITED NATIONS, HUMAN RIGHTS SITUATION IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM, ¶¶ 21-22, 28, 31, 53, 55, 57 (Jan. 20, 2016), <https://perma.cc/LG9H-YCDE> (addressing how in the Israeli context, for example, the practices violating human rights on a large scale include administrative detention, torture, decades-long military occupation, collective punishment, and extrajudicial killings, among others).

⁵⁷ *Id.* ¶¶ 21-22, 28, 31, 53, 55, 57.

⁵⁸ See 22 U.S.C. § 2378d(b) (2014); 10 U.S.C. § 362(b) (2016).

⁵⁹ Hunter-Bowman, *supra* note 44, at 860.

⁶⁰ *Id.*

⁶¹ Nahal Toosi, *State Dept. Assures Leahy on Israeli Human Rights Scrutiny*, POLITICO (May 5, 2016, 1:20 PM), <https://perma.cc/K2BY-CPJA>.

⁶² See *id.*

⁶³ See Promoting Human Rights for Palestinian Children Living Under Israeli Military Occupation Act, H.R. 2407, 116th Cong. § 6 (2019) [hereinafter H.R. 2407], <https://perma.cc/MRX4-PURF>.

detention of children by any country, including Israel.⁶⁴ Congresswoman McCollum's proposed bill argues that given that "the Israeli government receives billions of dollars in assistance from the United States, Congress must work to ensure that American taxpayer dollars never support the Israeli military's detention or abuse of Palestinian children."⁶⁵ Because H.R. 2407 targets units that use military detention against children, it represented a significant broadening of the scope of units traditionally denied military aid under the Leahy Laws.⁶⁶ The detention of Palestinian children is not undertaken exclusively by rogue "bad apples" in the Israeli military; instead, such detentions are the product of an elaborate system that include all levels of military and police.⁶⁷ The Israeli military is responsible for arresting the children, who are often brought to police stations, then tried in the military courts by judges who are active duty or reserve officers in the Israeli army.⁶⁸ Therefore, if McCollum's bill became law and were enforced, it would comprise a much broader conditioning of aid than simply denying assistance to an individual or unit.⁶⁹ Any attempt to use the Leahy Laws to meaningfully hold Israel accountable would require similar efforts to amend its provisions.⁷⁰

⁶⁴ *Id.*

⁶⁵ *Resources on H.R. 2407, Promoting Human Rights for Palestinian Children Living Under Israeli Military Occupation Act*, BETTY MCCOLLUM, <https://perma.cc/WA3Z-ERT8> (last visited Oct. 22, 2021).

⁶⁶ For an understanding of McCollum's broader goals than typical Leahy Law rejections, see *McCollum Introduces Promoting Human Rights For Palestinian Children Living Under Israeli Military Occupation Act*, BETTY MCCOLLUM (May 1, 2019), <https://perma.cc/B8TG-KUVZ> (referring to the military detention of children not as acts of bad apples, but as "state-sponsored child abuse" McCollum noted the scale of the problem, stating "[m]ore than 10,000 Palestinian children have been arrested, detained, abused, and prosecuted by Israeli security forces in the Israeli military court system since 2000.").

⁶⁷ DEFENSE FOR CHILD. INT'L - PALESTINE, NO WAY TO TREAT A CHILD: PALESTINIAN CHILDREN IN THE ISRAELI DETENTION SYSTEM 9 (Apr. 14, 2016), <https://perma.cc/VH92-XKEB> (describing how since 1967, when the Israeli military issued Military Proclamation No. 2, claiming judicial powers over the West Bank, the military has operated military courts for Palestinian children).

⁶⁸ *Id.* at 16-18. For discussion of the history of Israeli military courts in the Occupied Palestinian Territories, see Sharon Weill, *The Judicial Arm of the Occupation: The Israeli Military Courts in the Occupied Territories*, 89 INT'L REV. RED CROSS 395, 399-400 (2007), <https://perma.cc/K6GQ-JYZQ>.

⁶⁹ See H.R. 2407, *supra* note 63, § 6 (prohibiting the authorization of funds to any foreign country "used to support the military detention, interrogation, abuse, or ill-treatment of children in violation of international humanitarian law," or to support actions taken against children including torture, restraining in stress positions, hooding, sensory deprivation, incommunicado detention, solitary confinement, administrative detention, arbitrary detention, denial of access to parents of counsel during interrogations, confessions obtained by force or coercion).

⁷⁰ See Hunter-Bowman, *supra* note 44, at 834 (addressing how the political question doctrine has prevented the justiciability of individual's claims against the Executive that it is violating the Leahy Laws).

A. Leahy: Rogue Action from the U.S. Executive

Legislation seeking to install human rights requirements into the process of granting military aid faces another mammoth obstacle: regardless of how precise the legislative wording exacting the requirements, or rigorous the procedures, the Executive can ignore any such legislation.⁷¹ The Iran-Contra Affair provides an enlightening example.⁷² During the 1980s, the U.S. trained, armed, and recruited the Contras—a right-wing militia group in Nicaragua.⁷³ After a series of high profile terrorist attacks undertaken by the Contras with U.S.-supplied weapons and intelligence,⁷⁴ Congress passed a series of amendments known as the Bolan Amendment, blocking the White House’s ability to fund the Contras.⁷⁵ The Reagan Administration directly violated the legislation by bringing the operation underground, selling weapons secretly to Iran to create a clandestine fund to continue supporting the Contras.⁷⁶

The Iran-Contra Affair is not an isolated incident of Executive rogue action. Harold Koh, legal advisor of the Department of State in the Obama Administration, wrote a 1988 article detailing “a pattern of executive circumvention of legislative constraint in foreign affairs that stretches back to the Vietnam War and persists even after the Iran-Contra Affair.”⁷⁷ Koh argued that the War Powers Resolution, an early statute designed to prevent “undeclared creeping wars” like the Vietnam War, never

⁷¹ See *id.* at 838 (“However, the Nixon and Ford administrations ‘openly disregarded’ the statute [§ 2304].”).

⁷² See Peter S. Michaels, *Lawless Intervention: United States Foreign Policy in El Salvador and Nicaragua*, 7 B.C. THIRD WORLD. L. J. 223, 254-55 (1987), <https://perma.cc/436C-J8BG> (discussing the Executive’s actions in Nicaragua that violated legislation, including the conversion of non-lethal aid into lethal supplies for the Contras, and covert aid shipments).

⁷³ THE WHITE HOUSE, NATIONAL SECURITY DECISION DIRECTIVE NUMBER 17 1-2 (1982), <https://perma.cc/Y28Y-LZPT> (authorizing “National Security Decisions Directive on Cuba and Central America”).

⁷⁴ See Larry Rohter, *Nicaragua Rebels Accused of Abuses*, N.Y. TIMES (Mar. 7, 1985) <https://perma.cc/5UCC-HZ5B>; INT’L CT. JUST., MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA (NICAR. V. U.S.) 14 (Int’l Ct. Just. Rep. 1986).

⁷⁵ H.R.J Res. 631, 97th Cong. § 793 (1982) (“None of the funds provided in this act may be used by the Central Intelligence Agency or Department of Defense to furnish military activities, to any group . . . for the purpose of overthrowing the Government of Nicaragua . . .”).

⁷⁶ See Robert Parry & Peter Kornbluh, *Iran-Contra’s Untold Story*, FOREIGN POL’Y no. 72, 1988, at 1-30 (detailing President Reagan’s secret arms dealings with Iran).

⁷⁷ Harold Hongju Koh, *Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran-Contra Affair*, 97 YALE L.J. 1255, 1259 (1988).

“consistently prevented the creeping escalation it was expressly designed to control.”⁷⁸

In the case of Israel, the U.S. Executive largely acts as if it is free from its obligations under the Leahy Laws. Israel is the only country with whom the U.S. does not track where the weapons it provides goes.⁷⁹ This provides the weapons agreements with an additional layer of protection from any claims based on the Leahy Laws, because the U.S. stays willfully ignorant as to which units receive the weapons.⁸⁰ Additionally, demonstrating their unwillingness to enforce the statute, the Obama administration took no action on the request from Senator Leahy himself as well as ten members of the U.S. House of Representatives, who were seeking an investigation into whether Israel was violating human rights and should be penalized under the Leahy Laws.⁸¹ The Biden Administration too, through public statements issued during the presidential campaign, betrayed its intention to ignore the provisions of the Leahy Laws, stating “[Biden] would not tie military assistance to Israel to any political decisions that it makes. Period. Full stop. He said it; he’s committed to it.”⁸²

Some commentators take issue with the feasibility of enforcing any meaningful human rights conditions on military aid, arguing that the U.S. military and its most important allies are among the largest serial violators of human rights, and an impartial and honest application of such laws would require an unprecedented and unrealistic shift in U.S. foreign

⁷⁸ *Id.* at 1260 n.15 (citing President Reagan’s buildup of troops in Lebanon in August 1982 without Congressional consultation, then later extending their stay); *id.* at 1261 (characterizing the War Powers Resolution so ineffective that 15 years after its passing “Congress has contemplated reenacting a variant of it in order to enforce the Resolutions original purpose.”).

⁷⁹ See Josh Ruebner et al., *Bringing Assistance to Israel in Line with Rights and U.S. Laws*, CARNEGIE ENDOWMENT FOR INT’L PEACE (May 12, 2021), <https://perma.cc/JGY2-5SZT>.

⁸⁰ *Id.*; see also *Human Rights Watch Letter to US Secretary*, HUM. RTS. WATCH (Aug 11, 2014, 12:37 PM), <https://perma.cc/6SQL-ADGW> (“However, we understand there is no mechanism in place to track which Israeli units are receiving US military assistance, much less to sanction units found to have used such assistance in violation of US laws.”).

⁸¹ Letter from Patrick Leahy, Sen., U.S. Senate, & Henry C. Johnson, et al., Rep. U.S. House of Representatives, to John Kerry, Sec’y of State, U.S. Dep’t of State (Feb. 17, 2016), <https://perma.cc/QF7P-7B9E> (“In light of these reports we request that you act promptly to determine their credibility and whether they trigger the Leahy Law and, if so, take appropriate action called for under the law.”).

⁸² Richard Silverstein, *A Biden Presidency Would Not Be Good News for Palestine*, AL JAZEERA (June 4, 2020), <https://perma.cc/UL2Z-PLUL>. Zarefah Baroud, *The Leahy Laws: Why Biden’s Promise to Israel is Illegal*, COUNTERPUNCH (Oct. 2, 2020), <https://perma.cc/37R8-3QMH> (quoting future Vice President Harris reiterating the promise to ignore the Leahy Laws while campaigning “Joe (Biden) has made it clear he will not tie security assistance to any political decisions that Israel makes, and I couldn’t agree more.”).

relations.⁸³ Others believe the Leahy Laws are too easy to circumvent, stating that “if the Executive wished to finance military units that have committed human rights violations, it could fund the unit through covert operations or waive the Leahy Law.”⁸⁴ Still, others argue there is a correlation between receiving U.S. military aid and increasing human rights violations.⁸⁵ Such claims, if true, highlight fundamental deficiencies with the Leahy Laws’ approach to arms deals which result in minimal impact to the structure and bottom line on the U.S. weapons packages.⁸⁶

Considering the limitations of the Leahy Laws when challenging arms deals to Israel, perhaps an alternative approach based on Israel’s status as a nuclear rogue state could be more impactful.⁸⁷

III. NUCLEAR PROHIBITION

U.S. law prohibits economic and military aid to countries which develop nuclear weapons outside the framework of the international arms control regime absent mandatory executive actions to waive the restrictions.⁸⁸ The Symington Amendment of 1976 bars “economic and military assistance to any country that imported or exported spent nuclear fuel reprocessing or uranium enrichment equipment, materials, or technology but failed to comply with International Atomic Energy Agency [regulations].”⁸⁹ The Glenn Amendment of 1977 bars aid to states not recognized as nuclear powers in the non-proliferation treaty that nevertheless detonate nuclear explosions, among other prohibitions.⁹⁰ These amendments were integrated into the Nuclear Non-Proliferation Act of 1978, and later incorporated into the Arms Export Control Act.⁹¹

⁸³ For a detailed discussion of this position, *see generally* NOAM CHOMSKY & EDWARD S. HERMAN, *THE WASHINGTON CONNECTION AND THIRD WORLD FASCISM 1* (Pluto Press ed. 2015) (“The United States itself has a long history of imposing oppressive and terrorist regimes in regions of the world within the reach of its power . . .”).

⁸⁴ Nathanael Tenorio Miller, *The Leahy Law: Congressional Failure, Executive Overreach, and the Consequences*, 45 CORNELL INT’L L. J. 667, 686 (2012).

⁸⁵ Wayne Sandholtz, *United States Military Assistance and Human Rights*, 38 HUM. RTS. Q. 1070, 1072, 1098 (2016) (analyzing aid data from over 150 countries and 30 years of records and concluding “that the receipt of US military assistance is associated with worse human rights performance”).

⁸⁶ Toosi, *supra* note 61.

⁸⁷ *Infra* Part IV.

⁸⁸ International Security Assistance and Arms Export Control Act of 1976, H.R. 13680, 94th Cong. § 669 (1976) (Symington Amendment); International Security Assistance Act of 1977, H.R. 6884, 95th Cong. § 670 (1977) (Glenn Amendment).

⁸⁹ *Foreign Relations of the United States, 1977-1980, Volume XIX, South Asia*, OFF. HISTORIAN, <https://perma.cc/96RW-NT9K> (last visited Oct. 1, 2021).

⁹⁰ 22 U.S.C. § 2799aa-1(B) (2014).

⁹¹ *See generally id.* at (a)-(b) (incorporating the Symington and Glenn Amendments).

The amendments include language allowing the Executive, by Executive Order, to waive any restrictions, if they determine that the termination of assistance would have a serious adverse effect on vital U.S. interests, and the country in question would not acquire or develop nuclear weapons or assist other nations in doing so.⁹² Any such determination must be reported to Congress who may then legislate on the issue.⁹³ Unlike Leahy's targeting of units, these provisions block military and economic aid to a country at large, and if enforced, would be a meaningful deterrent to a country not in compliance with its requirements.⁹⁴

The Glenn and Symington Amendments were created at a time of growing popular protests against nuclear proliferation.⁹⁵ In the 1970s when several states were developing latent nuclear capacity, international efforts to curtail proliferation were crucial.⁹⁶ The international community understood the dangers of potential out-of-control proliferation.⁹⁷ As former Secretary of State George Shultz put it, "proliferation begets proliferation."⁹⁸ When one country develops a nuclear weapon, no matter how defense-focused its posture, neighboring countries will be incentivized to develop their own, lest they face an insurmountable

⁹² *Id.* at (b)(6)(B) ("[S]anctions which are required to be imposed against a country under paragraph (1)(C) or (1)(D) shall not apply if . . . the application of such sanctions against such country would have a serious adverse effect on vital United States interests."); *see, e.g.*, JEANNE J. GRIMMETT, CONG. RSCH. SERV., NUCLEAR SANCTIONS: SECTION 102(B) OF THE ARMS EXPORT CONTROL ACT AND ITS APPLICATION TO INDIA AND PAKISTAN Summary (2001), <https://perma.cc/J86K-2J5G> (describing how sanctions and waivers were applied to India and Pakistan).

⁹³ 22 U.S.C. § 2799aa(b)(2)(A) (stating that within 30 calendar days of certification that exceptions allow a waiver of the prohibitions, Congress may enact a "joint resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the enactment of that resolution the certification shall cease to be effective").

⁹⁴ *See* John Glenn, *Glenn: How U.S. Aids Spread of Nukes*, ORLANDO SENTINEL (June 28, 1992), <https://perma.cc/ZGZ9-KTXD> (stating that Sen. Symington and Sen. Glenn created their legislation to "require a cutoff of economic and military assistance to any country" violating their legislation).

⁹⁵ *See* VICTORIA L. DAUBERT & SUE ELLEN MORAN, ORIGINS, GOALS, AND TACTICS OF THE U.S. ANTI-NUCLEAR PROTEST MOVEMENT vi (1985) (presenting research findings on the U.S. Anti-Nuclear Protest Movement); *see also* *Anti-Nuclear Activists and Protest Actions*, NAT'L PARK SERV. (Oct. 20, 2020), <https://perma.cc/9NL3-9249>; *see also* Jacob Weisberg, *Ronald Reagan's Disarmament Dream*, THE ATL. (Jan. 1, 2016), <https://perma.cc/WQ2U-CLQ8> (discussing potential for nuclear weapons abolition).

⁹⁶ *See generally* Joseph F. Pilat, *Exploring Nuclear Latency*, WOODROW WILSON INT'L CTR. FOR SCHOLARS (Oct. 2, 2014), <https://perma.cc/CWW8-NLC9> (stating that latent nuclear capacity occurs when a state has the capability to develop a nuclear weapon quickly if they so choose).

⁹⁷ *See* Scott D. Sagan, *Why Do States Build Nuclear Weapons?*, INT'L SEC., Winter 1997, at 54, 58.

⁹⁸ George P. Shultz, *Preventing the Proliferation of Nuclear Weapons*, 84 DEP'T OF STATE BULL. 17, 18 (1984).

military disadvantage.⁹⁹ And any time one state develops nuclear weapons to balance against a rival arsenal, it “creates a nuclear threat to another state in the region, which then has to initiate its own nuclear weapons program to maintain its national security.”¹⁰⁰

Within this framework, U.S. legislators began working to limit the U.S.’s role in encouraging proliferation. Senator Symington spoke of the legislative intent behind his amendment in a committee meeting: “In effect, this amendment says to other nations, if you wish to take the dangerous and costly steps necessary to achieve a nuclear weapons option, you cannot expect the United States to help underwrite that effort indirectly or directly.”¹⁰¹ Additionally, U.S. leaders have also stated that being serious about preventing proliferation allows them to “have the standing to go to other countries” and negotiate nonproliferation treaties or chemical weapons disarmaments.¹⁰²

Israel maintains an unannounced nuclear weapons program, and continually engages in activities which bar it from receiving U.S. aid under the Symington Amendment.¹⁰³ In October 1986, Mordechai Vanunu, a former technician at the Israel’s Negev nuclear facility, provided the sourcing for an article that publicly broke the story of Israel’s unannounced nuclear arsenal.¹⁰⁴ His testimony and pictures of the site were scrutinized by nuclear experts who confirmed that Israel in fact had nuclear weapons, the secret weapons factory has been active since the 1960s, and the French provided technology to turn it into a weapons

⁹⁹ See Sagan, *supra* note 97, at 57 (“Because of the enormous destructive power of nuclear weapons, any state that seeks to maintain its national security must balance against any rival state that develops nuclear weapons by gaining access to a nuclear deterrent itself.”).

¹⁰⁰ *Id.* at 57-59. (discussing the defensive-minded motivation behind proliferation and its effects on other nations, including the Soviet program that was “reinvigorated” after the U.S. attacks on Hiroshima and Nagasaki; England’s and France’s developed in responses to Soviet nuclear capabilities; China could be said to have developed the bomb after being threatened with nuclear attacks by the U.S. in the Korean war and during the Taiwan Straits crisis; India could be said to have developed nuclear weapons in response to China’s development; Pakistan developed theirs after seeing India, a recently hostile country, with superior military force already, develop theirs.).

¹⁰¹ H.R. Rep. No. 94-876, at 52 (1976), <https://perma.cc/S2R7-42JM>.

¹⁰² Barack Obama, Former President of the U.S., press conference on financial crisis, *in Transcript: Obama Takes Questions on Economy*, CNN (Feb. 9, 2009, 10:04 PM), <https://perma.cc/25NT-DGVB> (stressing the need for the U.S. to be viewed as legitimately motivated to reduce nuclear arsenals when engaging in nuclear non-proliferation talks generally, but also specifically in a “region as volatile as the Middle East.”).

¹⁰³ See Raed Jarrar, *Declassified Documents, Gag Orders, and Israel’s Nuclear Weapons*, AM. FRIENDS SERV. COMM. (Aug 3, 2015), <https://perma.cc/BQL4-LW4Y>.

¹⁰⁴ Peter Hounam, *Revealed: The Secrets of Israel’s Nuclear Arsenal*, SUNDAY TIMES (Oct. 5, 1986), <https://perma.cc/6XDQ-7T4Q> (“The Nuclear scientists consulted by The Sunday Times are convinced by Vanunu’s evidence . . . includ[ing] Theodore Taylor, one of the worlds most experienced weapons experts.”).

producer.¹⁰⁵ For years prior, U.S. officials were aware of the program.¹⁰⁶ Recently declassified records show Henry Kissinger telling the U.S. diplomats in Tel Aviv of his near certainty that Israel had begun its nuclear project.¹⁰⁷ Israel never officially acknowledged its nuclear arsenal, and did not sign the flagship atomic regulatory agreement, the Nuclear Non-Proliferation Treaty (“NPT”).¹⁰⁸ Israel does not allow International Atomic Energy Agency inspections of its weapons-producing sites.¹⁰⁹ Additionally, Israel provided nuclear knowledge, experts, and materials to the apartheid regime in South Africa, including offering to sell nuclear warheads to them in violation of the Symington Amendment provisions against delivering nuclear materials and technology to another country.¹¹⁰ Israel received yellowcake uranium¹¹¹ from South Africa to develop its weapons, violating the provisions against receiving nuclear materials from others as well.¹¹²

¹⁰⁵ *Id.* (quoting Dr. Theodore Taylor, former head of the Pentagon atomic weapons test program: “There should no longer be any doubt that Israel is and for at least a decade has been a fully fledged nuclear weapons state . . .” and Frank Barnaby, a nuclear physicist who worked at the British nuclear weapons research facility in Berkshire: “[I]t was clear to me that the details he gave me were scientifically accurate and clearly showed that he had not only worked on these processes but knew the details of the techniques.”).

¹⁰⁶ See William Burr & Avner Cohen, *Duplicity and Self-Deception: Israel, the United States, and the Dimona Inspections, 1964-65*, NAT’L SEC. ARCHIVE (Nov. 10, 2020), <https://perma.cc/3D5K-2WVW> (asserting that other senior U.S. officials did not share Kissinger’s certainty but were aware Israel had secretly purchased uranium concentrate from Argentina, and contracted with a French company for development and production of a two-stage nuclear capable short range ballistic missile.); see generally EDWIN S. TOWNSLEY & CLARENCE A. ROBINSON, CRITICAL TECHNOLOGY ASSESSMENT IN ISRAEL AND NATO NATIONS III-4 (1987), <https://perma.cc/NXH9-NK45> (“The SOREQ and the Dimona/Beer Sheva facilities are the equivalent of our Los Alamos, Lawrence Livermore and Oat Ridge National Laboratories. The SOREQ center runs the full nuclear gamut of activities . . . This is the technology base required for nuclear weapons design and fabrication.”)

¹⁰⁷ Burr & Cohen, *supra* note 106.

¹⁰⁸ See *Fact Sheet: Nuclear Non-Proliferation Treaty (NPT)*, CTR. FOR ARMS CONTROL AND NON-PROLIFERATION (Apr. 14, 2017), <https://perma.cc/4JXE-3GWA>.

¹⁰⁹ See generally Burr & Cohen, *supra* note 106.

¹¹⁰ Chris McGreal, *Revealed: How Israel Offered to Sell South Africa Nuclear Weapons*, GUARDIAN (May 24, 2010, 5:13 AM), <https://perma.cc/5CHW-3VUF> (addressing the documents obtained by a U.S. academic, Sasha Polakow-Suransky, including top secret minutes of meetings between senior officials of both countries, detailing the proposed sale and undermine Israel’s ambiguity about their program).

¹¹¹ See *Yellowcake*, U. S. NUCLEAR REGUL. COMM’N (Mar. 9, 2021), <https://perma.cc/UM4N-A3L5> (defining yellowcake uranium as the material which is frequently enriched or refined in the process of making nuclear weapons or to create fuel for nuclear reactors).

¹¹² International Security Assistance and Arms Export Control Act of 1976, H.R. 13680, 94th Cong. § 669(3)(B) (1976).

IV. AMBIGUITY

Both the U.S. and Israel have a policy to neither confirm nor deny the existence of Israel's nuclear weapons.¹¹³ The agreement is not publicly discussed by either side, but has been reported in major media.¹¹⁴ Some speculate Israel agrees not to confirm the existence of the weapons because the ambiguity helps dodge international non-proliferation efforts, and any confirmation would draw attention to the potential illegality of the U.S. arms deals with Israel.¹¹⁵ Because Israel keeps the details of its program secret, estimates about their nuclear capabilities vary.¹¹⁶ What is significantly less speculative is that the ambiguity is unconvincing.¹¹⁷ This is perhaps most visible when the U.S. and Israel resist international efforts to create a nuclear-free weapons zone in the Middle East.¹¹⁸

¹¹³ See Avner Cohen & William Burr, *How Israel Hid its Secret Nuclear Program*, POLITICO, (Apr. 15, 2015), <https://perma.cc/JW9B-DFZB> (“Johnson realized that the U.S. had limited leverage on the issue and planted the seeds of compromise and looked the other way; . . . Nixon accepted the Israel’s de facto nuclear status as long as it stayed secret . . .”).

¹¹⁴ See *id.*; Adam Entous, *How Trump and Three Other U.S. Presidents Protected Israel’s Worst Kept Secret: Its Nuclear Arsenal*, NEW YORKER (June 18, 2018), <https://perma.cc/N3QV-EUJM> (“When a delegation of senior Israeli officials visited the Trump White House . . . they wanted to discuss several issues with their new American counterparts. Topping the list was a secret letter concerning a subject the Israelis had promised the Americans never to discuss publicly—Israel’s undeclared nuclear arsenal.”).

¹¹⁵ See Entous, *supra* note 114 (“The Israelis would not declare, test, or threaten to use their nuclear weapons, and the Americans would not pressure the Israelis to sign a landmark international nuclear-nonproliferation treaty known as the N.P.T.”).

¹¹⁶ See *Israel’s Nuclear Inventory*, CTR. FOR ARMS CONTROL AND NON-PROLIFERATION (Mar. 31, 2020), <https://perma.cc/63LM-YPJA> (stating “Israel is widely believed to possess 90 plutonium-based nuclear warheads and to have produced enough plutonium for 100-200 weapons.”); see also Hans M. Kristensen & Robert S. Norris, *Israeli Nuclear Weapons*, 70 BULL. ATOMIC SCIENTISTS 97, 102-04 (2014), <https://perma.cc/C5UW-EDDC> (stating that based on documents obtained from Freedom of Information Act requests, it is likely that “public claims about the size of the Israeli nuclear arsenal are exaggerated,” concluding that the stockpile is approximately 80 nuclear warheads).

¹¹⁷ See generally Rick Gladstone, *Support for a Nuclear Weapons Ban is Growing Within NATO, an Advocacy Group Says*, N.Y. TIMES (June 14, 2021), <https://perma.cc/3QWJ-C8J4> (“[N]egotiations were boycotted by the United States and the world’s eight other nuclear-armed states—Britain, China, France, India, Israel, North Korea, Pakistan and Russia”); see also Chaim Levinson, *Trump Reverses U.S. Policy: Israeli Nukes Not Up for Debate Until Mideast States Recognize Country’s Right to Exist*, HAARETZ (June 19, 2018), <https://perma.cc/L4DL-8JWS> (“The Trump administration has taken the position that Israel should not be required to discuss giving up nuclear weapons, which according to foreign sources it possesses, without recognition by all states in Middle East of the country’s right to exist.”).

¹¹⁸ See Kelsey Davenport, *IAEA Members Reject Israel Resolution*, ARMS CONTROL TODAY (Oct. 9, 2021), <https://perma.cc/K76U-BBVE> (stating how through different international means, Egypt and other Middle Eastern countries have put forth proposals for nuclear weapon free zones in the Middle East, often with the U.S. and Israel isolated in voting against such resolutions).

President Obama made a public statement ahead of international non-proliferation talks that all but confirmed Israel's nuclear weapons program, soothing any potential fears that the conference would pressure Israel to disarm.¹¹⁹ Obama stated he and Prime Minister Netanyahu, "discussed issues that arose out of the nuclear nonproliferation conference" and reiterated "there is no change in U.S. policy when it comes to these issues. We strongly believe . . . Israel has unique security requirements."¹²⁰ Obama continued, stating that "the United States will never ask Israel to take any steps that would undermine their security interests."¹²¹ In fact, the U.S. was shipping Israel the most state-of-the-art delivery system for delivering nuclear gravity bombs at the time.¹²²

This ambiguity and assurances to shield Israel from any disarmament negotiations highlight both the need for the application of the Symington Amendment, and the resistance it would face from the U.S. Executive. Encouraging proliferation, preventing disarmament, and providing Israel with nuclear delivery systems violates the policy behind the Symington and Glenn Amendments.¹²³ It incentivizes countries positioned adversely to Israel to develop weapons of mass destruction programs as a deterrent, and it destroys any credibility the U.S. could bring to disarmament negotiations by demonstrating the U.S.'s bad faith disregard for its nuclear obligations under the NPT.¹²⁴

CONCLUSION

Challenging U.S.-Israeli arms agreement based on the Symington and Glenn amendments, and the long dormant § 2304, would constitute a much more materially meaningful challenge than under the Leahy Laws—they frame the issue of arming Israel not around individual bad

¹¹⁹ Barack Obama, Former President of the U.S., Remarks Following a Meeting with Prime Minister Benjamin Netanyahu of Israel and an Exchange with Reporters (July 6, 2010), <https://perma.cc/M475-ZT7X>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² See Kristensen & Norris, *supra* note 116, at 105 ("[T]he Israeli Air Force (IAF) has had several types of US-produced aircraft capable of carrying nuclear gravity bombs. These include the A-4 Skyhawk, F-4 Phantom, and more recently F-16 and F-15E. Moreover, Israel has purchased 20 F35A Lightnings to replace older F-16s, and plans to buy more.").

¹²³ For a discussion of the policy behind the amendments and a discussion of the Ronald Reagan and George H.W. Bush Sr. Administrations' "willful misinterpretation" of them with respect to Pakistan's nuclear proliferation, see Glenn, *supra* note 94,

¹²⁴ See Gladstone, *supra* note 117 (stating that all NATO countries as well as Israel boycotted international talks about nuclear weapons abolition, despite the signatories of the NPT being obliged to engage in good faith negotiations to disarm); see also Eli Lake, Opinion, *Israel Thanks Obama for Keeping Its Nuclear 'Secret'*, BLOOMBERG (May 26, 2015, 6:30 AM), <https://perma.cc/N5A8-84QJ> (discussing U.S. efforts to block nuclear disarmament).

actors, but around its core policies and its operation as a “forward operating base for the West.”¹²⁵ That is not to say a legislative challenge based on Israel’s nuclear weapons will not face obstacles, not limited to the U.S. policy of nuclear ambiguity.¹²⁶ The Symington and Glenn amendments offer, at the least, an example of legislation that aims for a meaningful denial of military aid.¹²⁷ Although the Leahy Laws may seem like the vehicle for this upon initial inspection, a deeper look shows, absent significant adjustments like those sought by Congresswoman McCollum, they can do little to block the weapons shipments to which Palestine falls victim. While significant obstacles lie ahead of any congressional action to challenge these agreements, the stories of the Ishkinna and al-Qawlaq families¹²⁸ and so many more affected by U.S. military aid to Israel, demonstrate the urgency of obstructing such weapons deals.

¹²⁵ Yair Lapid, *The Invaluable U.S.-Israeli Alliance*, FOREIGN POL’Y (Aug. 23, 2016, 1:44 PM), <https://perma.cc/2DQU-BT4K>.

¹²⁶ See generally Part IV.

¹²⁷ See Glenn, *supra* note 94 (discussing how the Glenn and Symington amendments “require a cutoff of economic and military assistance to any country” in violation of its provisions)

¹²⁸ See generally Akram, *supra* note 1; Nassar, *supra* note 8.