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Selling Arms, Waiving Rights:The Structural Failure of US Human Rights Law in Weapons Transfers

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Abstract

The United States is the world's largest arms exporter and a professed champion of international human rights. This article identifies a critical analytical gap: the arms transfer legal framework; the Leahy Laws, Section 502B of the Foreign Assistance Act, and the Arms Export Control Act; is structurally predisposed toward non-enforcement. Its institutional design predictably privileges executive discretion while maintaining the appearance of human rights conditionality. Through legal analysis, historical case studies of Yemen and Gaza, and institutional critique, this article demonstrates that non-enforcement is a structural design feature, not a malfunction, and proposes a framework for genuine reform.

Keywords: *Arms transfers, human rights, US Foreign Policy, executive discretion, structural complicity.*

1. Introduction

The United States simultaneously occupies the position of the world's foremost advocate for international human rights and its largest exporter of conventional arms—two roles that have coexisted, in permanent and unresolved tension, since the end of the Cold War.[1]

In fiscal year 2023, the United States authorized $238 billion in total arms transfer agreements, including $157.5 billion in direct commercial sales—a figure that represents approximately thirty-four percent of all global arms exports.[2] A substantial proportion of these transfers flowed to governments that the State Department's own annual Country Reports on Human Rights Practices identified as engaged in systematic gross violations of internationally recognized human rights: Egypt, Saudi Arabia, Israel, the United Arab Emirates, the Philippines, and others.[3]

Since 1974, Congress has constructed a statutory architecture that nominally prohibits arms transfers to rights-violating governments. The principal instruments are: Section 502B of the Foreign Assistance Act (FAA), which bars security assistance to governments engaged in a "consistent pattern of gross violations of internationally recognized human rights"; the Leahy Laws of 1996 and 1997, which prohibit assistance to specific foreign military units credibly documented as committing gross violations; and the Arms Export Control Act (AECA) of 1976, which establishes the framework for government-to-government and commercial arms sales.[4] These statutes are genuinely on the books. They have been cited in congressional testimony, diplomatic communiqués, and State Department legal opinions for five decades. And yet they have never—in nearly fifty years of their operation—successfully prevented a major arms sale on human rights grounds.

This article argues that this consistent pattern is less a series of episodic failures than a structural consequence of an institutional architecture that predictably privileges executive discretion. Rather than arising solely from an intentional, top-down grand design, this framework has evolved through decades of political compromise, bureaucratic layering, and executive-legislative contestation. The result is an arrangement that functions as a mechanism of structural complicity: it operates as a system where the appearance of legal constraint can inadvertently serve to legitimize the underlying transfers that the constraint is intended to police.

To investigate these dynamics, this article employs a qualitative methodological framework combining doctrinal legal analysis with comparative process-tracing across two illustrative case studies (Yemen and Gaza). The doctrinal analysis maps the statutory contours and structural limits of the primary legal instruments. The case studies then trace the operational pathways of these instruments under distinct geopolitical pressures to demonstrate how their institutional architecture systematically channels decision-making away from enforcement, illuminating the broader structural predispositions of the system.

The April 2025 report of the Government Accountability Office (GAO) confirmed that existing State Department processes "don't fully address the risk that these weapons may be used in human rights abuses."[5] This characteristically understated conclusion describes a framework that has never, in practice, operated as the enforcement mechanism its drafters intended.

This article proceeds as follows. Part II provides a systematic legal analysis of the arms transfer framework and identifies four structural defects common to each of its principal instruments. Part III presents comparative case studies of Yemen and Gaza as empirical demonstrations of structural non-compliance. Part IV introduces the theoretical framework of structural complicity and situates it within the existing literature. Part V examines the Trump administration's 2025 acceleration of institutional dismantlement. Part VI proposes a framework for genuine structural reform. Part VII concludes.

The significance of this analysis extends beyond arms policy. If the United States cannot enforce its own domestic human rights law on arms transfers—the domain where it possesses the most direct leverage and clearest legal authority—the implications for the broader project of embedding human rights into American foreign policy are foundational, not peripheral.

2. The Legal Architecture and Its Structural Defects

Section 502B of the Foreign Assistance Act

Section 502B of the Foreign Assistance Act, enacted in 1974 and strengthened in 1976, was Congress's first systematic attempt to incorporate human rights into the law governing US arms transfers.[6] It provides, in relevant part, that "no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."[7] The provision was, in its conception, a significant departure from the prior norm of purely executive-driven arms policy. It transformed human rights from a diplomatic preference into a statutory condition on the executive's authority to transfer weapons.

In practice, however, Section 502B has rarely functioned as the operative constraint its drafters intended. Four structural defects explain this failure.

First, the definitional threshold—"consistent pattern of gross violations"—is simultaneously extraordinarily high and substantively vague. Neither the statute nor its implementing regulations define "gross violation" with sufficient precision to compel any particular finding against any particular government.[8] The executive branch has historically interpreted this standard to require something approaching systematic, state-directed torture or mass killing conducted at scale, rather than the more common patterns of targeted political violence, extrajudicial killing, arbitrary detention, and denial of due process that characterize most rights-violating recipient governments. Under this interpretation, highly valued strategic allies of the United States have seldom met the threshold in formal determinations.

Second, the statute contains an explicit national security waiver: the President may furnish assistance otherwise prohibited by Section 502B by certifying in writing to the Speaker of the House and the Senate Foreign Relations Committee "that extraordinary circumstances exist warranting provision of such assistance."[9] This waiver is, in practice, virtually unconditioned. No administration has ever been denied the ability to invoke it, and federal courts have consistently declined to review the adequacy of a President's "extraordinary circumstances" determination, treating such judgments as non-justiciable political questions involving core executive foreign affairs authority.[10]

Third, Section 502B contains no enforcement mechanism. It is a prohibition without a remedy. There is no private right of action for individuals injured by US-supplied weapons used in violation of the statute. There is no judicial avenue through which Congress, civil society organizations, or affected foreign nationals may compel the executive to comply with the prohibition. The combination of an unlimited waiver provision and non-justiciability converts Section 502B from a legal obligation into a political aspiration.[11]

Fourth, and most significant for the volume of arms actually at stake, Section 502B applies only to "security assistance" as defined by the FAA—principally Foreign Military Financing (FMF), International Military Education and Training (IMET), and direct government-to-government grants.[12] It does not apply to Foreign Military Sales (FMS), in which the US government acts as broker for commercial arms transactions, or to Direct Commercial Sales (DCS), in which US manufacturers sell directly to foreign governments under State Department licenses. Since FMS and DCS account for the overwhelming majority of US arms transfers by dollar value—including virtually all transfers to Israel, Saudi Arabia, and the UAE—Section 502B's formal reach is limited to a fraction of the total system.

Table 1. US Arms Transfer Legal Framework: Statutory Provisions, Waiver Authority, and Enforcement Record (1976–2026)

Statute	Prohibition	Waiver Authority	Enforced? (1976–2026)
Section 502B, FAA (1974)	No security assistance to governments with "consistent pattern of gross violations"	Presidential certification of "extraordinary circumstances"	Never. No 502B finding has ever halted a major transfer.
Leahy Law — FAA § 620M (1996)	No assistance to foreign military units with "credible information" of gross violations	Secretary of State may waive on national security / humanitarian emergency grounds	Partial. Applies only to grant assistance; never applied to FMS/DCS.

Statute	Prohibition	Waiver Authority	Enforced? (1976–2026)
Leahy Law — DoD Approp. § 362 (1997)	No DoD funds to assist units with credible gross violation information	Secretary of Defense waiver — national security	Partial. Structural gaps identical to FAA Leahy.
AECA — Congressional Review (1976)	Congress may block major FMS via joint resolution of disapproval	Presidential veto; 2/3 override required	Never. No joint resolution has ever successfully blocked a sale.
Section 620I, FAA (1996)	No assistance to governments blocking delivery of US humanitarian aid	No explicit waiver; executive discretion in application	Never invoked since enactment.
CAT Policy (Biden 2023, revoked 2025)	"More likely than not" standard: restrict transfers where weapons would be used to commit serious IHL violations	Executive policy — no statutory basis; revocable at will	Revoked 14 March 2025 by Trump administration.

Sources: 22 U.S.C. § 2304 (Sec. 502B); 22 U.S.C. § 2378d (Leahy-FAA); 10 U.S.C. § 362 (Leahy-DoD); 22 U.S.C. §§ 2751 et seq. (AECA); GAO-25-107077 (2025); CRS IF11197 (2025). Author compilation.

The Leahy Laws: Unit-Level Vetting and Its Limits

The Leahy Laws, enacted in 1996 and 1997 and named for their principal Senate champion, Senator Patrick Leahy of Vermont, represent a more targeted approach to human rights conditionality in arms transfers.[13] Rather than prohibiting assistance to entire governments found to be engaged in a consistent pattern of gross violations, the Leahy Laws prohibit the provision of assistance to specific units of foreign security forces when the State Department or Department of Defense possesses "credible information that the unit has committed a gross violation of human rights."[14] The unit-level approach was deliberately conceived: Senator Leahy believed that targeting specific perpetrators, rather than entire governments, would make the prohibition politically viable while preventing US complicity in particular documented atrocities.

In practice, the Leahy Laws have been described by their proponents as the most effective human rights mechanism in US security assistance law.[15] This characterization requires qualification. As of 2025, the State Department's Leahy vetting system had identified units in Ukraine, Colombia, Jordan, Egypt, and a number of other countries as ineligible for assistance.[16] It had never identified an Israeli military unit as ineligible, despite decades of documented violations and despite the State Department's own internal acknowledgment—revealed in sworn congressional testimony by former official Josh Paul—that the Bureau of Democracy, Human Rights, and Labor (DRL) had identified specific Israeli units with credible information of gross violations, and that a formal finding had been blocked at the senior political level.[17]

Several structural features of the Leahy Laws explain their limited effectiveness. First, the statute does not define "assistance." The executive branch has consistently interpreted this term to cover only support provided with US-appropriated grant funds.[18] This interpretation excludes from Leahy vetting the entirety of FMS and DCS—the mechanisms through which the United States transfers the vast majority of its weapons by value. The result is that the world's most important legal mechanism for human rights conditionality in US arms policy formally applies only to a narrow category of grant assistance while leaving untouched the multi-hundred-billion-dollar commercial and government-to-government system.

Second, the Leahy Laws require "credible information" of a gross violation, but they do not specify who determines credibility or on what evidentiary standard. In practice, the State Department's vetting bureau makes credibility determinations, and any finding that would result in a prohibition requires approval from senior political officials.[19] This institutional structure creates a constituency of political appointees—those responsible for managing bilateral relationships with major arms recipients—with an interest in blocking vetting findings that would constrain transfers. The Josh Paul testimony, discussed in detail in Part III, documents precisely this dynamic: working-level officials identifying credible information, and senior officials declining to authorize the formal finding that would trigger a legal prohibition.

Third, even where a Leahy prohibition is formally triggered, the Leahy Laws contain exceptions permitting assistance where necessary for "national security" or "humanitarian emergency" purposes.[20] Like Section 502B's national security waiver, these exceptions function as near-universal escape valves when political will to enforce the prohibition against a strategic ally is absent. The overall architecture is one in which enforcement is possible but never mandatory—an arrangement that reliably produces non-enforcement when enforcement is politically costly.

The Arms Export Control Act: The Congressional Veto That Has Never Worked

The Arms Export Control Act of 1976 provides the framework for government-to-government FMS and establishes a congressional notification and oversight process for major arms transfers.[21] Under the AECA, the executive must notify Congress of proposed FMS cases exceeding specified dollar thresholds. Congress may then block a sale through a joint resolution of disapproval, subject to presidential veto. In theory, this process provides meaningful legislative oversight of the arms sales system. In practice, no joint resolution of disapproval has ever successfully blocked an arms sale in the AECA's fifty-year history.[22]

The structural obstacles to an effective congressional veto are formidable. A joint resolution requires majority passage in both chambers and is subject to presidential veto, requiring two-thirds in both chambers to override—a threshold practically impossible to reach when the executive is politically invested in a sale. The AECA's notification requirement gives Congress only fifteen to thirty days to act, depending on the recipient country, which is insufficient time to organize a legislative majority against a well-resourced executive lobbying campaign. The executive has also demonstrated a willingness to fragment large arms packages into multiple smaller notifications that individually fall below reporting thresholds, circumventing the notification requirement while achieving the same transfer in aggregate—a practice documented by the GAO in relation to multiple recent Israel notifications.[23]

The AECA also contains no general human rights prohibition comparable to Section 502B. It requires only that arms transfers be "consistent with" US foreign policy and the purposes of the foreign assistance program—a standard of such generality that it cannot be enforced against any specific sale on human rights grounds without executive concurrence.[24] The most substantive human rights provision integrated into the AECA framework was the Biden administration's 2023 Conventional Arms Transfer (CAT) policy, which committed for the first time to a "more likely than not" standard for restricting transfers where weapons would be used to commit serious violations of international humanitarian law.[25] This policy rested entirely on executive discretion and contained no statutory basis. It was revoked by the Trump administration on March 14, 2025.[26]

3. Case Studies in Structural Non-Compliance

Yemen (2015–2021): The Architecture in Action

The Yemen conflict provides the clearest demonstration of the legal architecture's structural failure in the post-Cold War period. Between 2015 and 2021, the United States provided Saudi Arabia and the United Arab Emirates with billions of dollars in weapons—including precision-guided munitions, aircraft, aerial refueling support, intelligence sharing, and logistical assistance—that were used in air campaigns documented by the UN Panel of Experts, Human Rights Watch, Amnesty International, and the State Department itself as involving deliberate strikes on civilian infrastructure, hospitals, markets, wedding gatherings, and school buses.[27]

The legal case for triggering the arms transfer prohibitions was compelling under every applicable standard. Saudi Arabia's conduct met any reasonable definition of a "consistent pattern of gross violations" under Section 502B.[28] While official statutes and GAO findings carry primary legal weight, internal assessments and testimonial accounts from former officials indicate that specific Royal Saudi Air Force units were evaluated by the Bureau of Democracy, Human Rights, and Labor (DRL) as meeting the credible information standard for Leahy restrictions, though formal findings were ultimately not finalized at the senior political level.[29] Section 620I of the FAA, which prohibits assistance to governments blocking delivery of US humanitarian aid, was directly applicable to the Saudi-led blockade of Yemeni ports.[30] Multiple State Department and USAID officials produced internal assessments documenting the humanitarian consequences of the air campaign and the direct connection between US weapons and civilian casualties.[31]

None of these legal arguments resulted in the suspension or conditioning of major arms transfers. The Obama administration suspended a single shipment of cluster munitions in late 2016 following media attention to a specific strike on a funeral gathering that killed one hundred forty people—but explicitly framed the suspension as a policy choice, not a legal conclusion, and resumed the broader sales program before the end of its term.[32] The Trump administration reversed the suspension and accelerated sales. The Biden administration entered office in January 2021 promising to end "offensive" arms sales to Saudi Arabia for use in Yemen, but within months had authorized sales of defensive systems and subsequently resumed offensive transfers with a State Department determination of policy consistency.[33] The Section 502B finding was never made. No Leahy restriction was imposed on any Saudi unit. No joint resolution of disapproval passed. The legal architecture, across three administrations of different political parties, produced no legal consequence.

The Yemen case is particularly significant for structural analysis because the failure was bipartisan and consistent. Each of the three administrations that conducted arms transfers during the Yemen conflict publicly acknowledged the severity of the humanitarian crisis. The failure of enforcement was not attributable to ignorance or political indifference—it was attributable to the architecture's design, which made enforcement optional while providing each administration with sufficient legal ambiguity to characterize its transfers as consistent with existing obligations.

Gaza (2023–2026): The Architecture Under Maximum Stress

The Gaza conflict since October 2023 constitutes the most severe test the arms transfer legal architecture has faced since its creation. The International Court of Justice found in January 2024 that South Africa's allegation of genocide in Gaza was "plausible" and issued provisional measures ordering Israel to take all measures within its power to prevent acts within the scope of the Genocide Convention.[34] Amnesty International and Human Rights Watch each published findings of genocide.[35] The UN Special Committee on Israeli Practices, multiple UN Special Rapporteurs, and the UN Secretary-General documented systematic destruction of civilian infrastructure, mass forced displacement, denial of humanitarian access, and the use of starvation as a weapon of war.[36]

The legal case for triggering each of the principal arms transfer prohibitions was, by any objective standard, overwhelming. The criteria for a Leahy finding against specific Israel Defense Forces (IDF) units—credible information of gross violations of human rights—had been met on the State Department's own internal analysis.[37] Section 502B's "consistent pattern" threshold had been crossed on the evidence produced by the US government's own reporting. Section 620I's prohibition on assistance to governments restricting delivery of US humanitarian aid was directly applicable to documented Israeli restrictions on food, water, fuel, and medicine entering Gaza.[38] And the Biden administration's own National Security Memorandum 20 (NSM-20), issued in February 2024, required written assurances from arms recipients—including Israel specifically—that they would use US-supplied weapons in accordance with international humanitarian law.[39]

The legal framework produced no enforcement. The Leahy finding against specific IDF units was blocked at the senior political level, as documented in sworn congressional testimony by Josh Paul, who resigned as a senior State Department official in October 2023 in protest at the decision to continue arms transfers without a vetting determination.[40] The Section 502B determination was never made. Section 620I was not invoked notwithstanding a State Department legal assessment suggesting its applicability.[41] NSM-20 was rescinded by the Trump administration on February 21, 2025.[42] The Biden administration's single substantive arms restriction—a hold on one shipment of two-thousand-pound bombs announced in May 2024 and attributed to concerns about civilian harm in a planned Rafah offensive—was subsequently reversed and the munitions delivered.[43]

The April 2025 GAO report found that the State Department's Civilian Harm Incident Response Guidance (CHIRG)—the principal mechanism for monitoring civilian harm from US weapons—"doesn't fully address the risk that these weapons may be used in human rights abuses" and recommended that State develop processes to incorporate external parties' documentation of civilian harm into its response procedures.[44] The Trump administration rejected the GAO recommendations.[45]

Table 2. Comparative Case Study: Yemen and Gaza — Legal Criteria, Documented Violations, and Legal Outcomes

Criterion	Yemen (2015–2021)	Gaza (2023–2026)
Legal threshold met (502B)?	Yes — UN Panel of Experts, HRW, Amnesty, and State Dept own reporting documented consistent pattern	Yes — ICJ "plausible genocide" finding; Amnesty, HRW, multiple UN Special Rapporteurs documented genocide and war crimes
Leahy violation documented?	Yes — specific RSAF units identified internally by DRL; finding blocked at senior level	Yes — DRL identified IDF units internally; finding blocked at senior level (Josh Paul testimony)
§ 620I applicable?	Yes — documented Saudi humanitarian blockade of Yemen	Yes — documented Israeli restrictions on food, water, fuel, medicine to Gaza
Legal consequence?	None. Single cluster munitions suspension (2016) reversed; all other transfers continued	None. 2,000-lb bomb hold (May 2024) reversed; NSM-20 rescinded Feb 2025; transfers accelerated
Total US arms transfers (period)	~$64.1 billion to Saudi Arabia and UAE (2015–2021)	~$17.9 billion to Israel (Oct 2023–Mar 2025, excl. supplemental appropriations)
Congressional action?	Multiple joint resolutions introduced; all vetoed or failed to pass both chambers	Multiple joint resolutions introduced; none passed; NSM-20 rescinded without congressional vote

Sources: ICJ Provisional Measures (2024); GAO-25-107077; Chilcot Report (2016); Josh Paul Congressional Testimony (2024); Amnesty International; Human Rights Watch; State Dept Country Reports. Author compilation.

Figure 1. US Arms Transfer Agreements by Top Recipient Country (FY2023, USD Billions)

Recipient	Value of US Arms Transfers (FY2023) — Each ░ ≈ $3B	Total ($B)
Saudi Arabia		**$57.4B**
Israel		**$38B**

Recipient	Value of US Arms Transfers (FY2023) — Each ▒ ≈ $3B	Total ($B)
Taiwan		**$19B**
UAE		**$16.2B**
Australia		**$14.1B**
Germany		**$12.8B**
Japan		**$10.4B**
Poland		**$9.7B**
Qatar		**$7.6B**
India		**$6.9B**

Source: Defense Security Cooperation Agency (DSCA), Fiscal Year 2023 Annual Report (2024). Recipients marked with documented State Dept. human rights violations shown in amber/green.

4. Structural Complicity: A Theoretical Framework

The pattern documented in the preceding sections—a legal framework that nominally prohibits arms transfers to rights-violating states while structurally ensuring that enforcement does not occur—requires a theoretical framework adequate to describe and explain it. The existing scholarship on human rights in US foreign policy offers two principal analytical frameworks, neither of which fully captures the problem.

The first is the "gap" framework: human rights law contains genuine obligations, but the United States fails to enforce them due to competing strategic interests, institutional capture, or deficits of political will.[46] This framework is descriptively accurate but analytically shallow. It treats enforcement failure as a contingent political problem susceptible to reform through better implementation—as though stronger civil society pressure, more rigorous congressional oversight, or improved bureaucratic procedures would eventually bring US policy into alignment with its nominal legal obligations. Five decades of consistent non-enforcement suggest that this optimism is structurally unwarranted.

The second is the "selective application" framework, advanced by realist scholars of US foreign policy: the United States invokes human rights obligations against adversaries while systematically exempting allies.[47] This framework is also empirically well-supported and has been confirmed by quantitative studies demonstrating that Leahy vetting is applied more rigorously to non-ally governments.[48] However, it does not explain why a nominally ally-blind legal framework was constructed at all, or why its enforcement mechanisms were designed in the particular ways that make them systematically unenforceable.

This article proposes a third framework: structural complicity. The arms transfer legal architecture is not primarily a constraint on state behavior that happens to fail in practice. It is, in its design, a mechanism for managing the reputational and political costs of state behavior that the state intends to continue. The architecture's definitional vagueness, waiver provisions, and non-justiciability are not accidental—they are the product of a legislative bargain in which Congress extracted rhetorical and symbolic concessions (nominal human rights conditions) in exchange for preserving executive operational freedom to sell arms to whomever the executive considers strategically essential.[49]

The concept of structural complicity, drawn from international criminal law and critical legal theory, refers to wrongdoing produced not by isolated acts of individual wrongdoers but by systems and institutions whose normal functioning enables, facilitates, or legitimizes harmful conduct.[50] On this account, what the US arms transfer legal framework produces is not a failure to prevent harm but a legally licensed mechanism for facilitating it: a system in which the appearance of legal constraint serves to legitimate the underlying transfers that the constraint nominally prohibits.

This framework has significant implications for reform strategy. If the framework's non-enforcement is a design feature rather than a malfunction, incremental reforms to its implementation—more rigorous vetting procedures, strengthened congressional notification requirements, improved GAO oversight—will not resolve the structural problem. What is required is architectural redesign: replacing the system's permissive default (transfers are permitted unless an affirmative finding of gross violation is made by the executive) with a prohibitive default (transfers are prohibited unless an affirmative finding of rights compliance is made by an independent body), and creating justiciable rights for the victims of US-supplied weapons to challenge transfers before US courts.

Table 3. Top Recipients of US Arms (FY2023) Cross-Referenced with State Department Human Rights Documentation and Legal Enforcement Actions

Recipient (FY2023)	State Dept Violations Documented	US Arms Transfers (FY2023)	502B Finding Made?	Leahy Applied?
Saudi Arabia	Extrajudicial killings, torture, forced disappearances, restrictions on freedoms	$5.7 billion	No	No
Israel	Excessive force, forced displacement, torture in detention,	$3.8 billion (base) + supplementals	No	No

Recipient (FY2023)	State Dept Violations Documented	US Arms Transfers (FY2023)	502B Finding Made?	Leahy Applied?
	denial of humanitarian access			
UAE	Arbitrary detention, torture, restrictions on expression and association	$2.1 billion	No	No
Egypt	Mass extrajudicial killings, systematic torture, enforced disappearances	$1.3 billion	No	Partial (minor units only)
Philippines	Extrajudicial killings in drug war; enforced disappearances of activists	$0.5 billion	No	Partial

Sources: DSCA FY2023 Annual Report; State Dept Country Reports on Human Rights Practices 2023; CRS IF11197 (2025); Stimson Center Leahy Law tracker. Author compilation.

V. The 2025 Acceleration: Systematic Institutional Dismantlement

The Trump administration's second term has accelerated the structural tendencies identified in the preceding analysis to a degree that warrants separate examination, both for its immediate legal significance and for what it reveals about the architecture's fundamental vulnerability.

First, the revocation of the Biden CAT policy on March 14, 2025, and reversion to the 2018 Trump CAT policy eliminated the "more likely than not" standard for restricting arms transfers where weapons would be used to commit serious violations of international humanitarian law.[51] While the 2018 policy retained nominal human rights considerations, its operative standard was weaker and its implementation guidance less specific. The practical effect was to reduce the legal threshold for permitting transfers to rights-violating governments to the minimum consistent with existing statute—and as the foregoing analysis demonstrates, existing statute provides only minimal constraint.

Second, the Trump administration's deep cuts to the State Department's Bureau of Democracy, Human Rights, and Labor—which administers the Leahy vetting system, produces the Country Reports on Human Rights Practices, and provides the evidentiary foundation for all statutory human rights determinations—have severely degraded the institutional capacity upon which any enforcement of the legal framework depends.[52] A vetting system that depends on the quality of human rights information produced by DRL cannot function if DRL is systematically defunded and staffed with political appointees whose primary qualification is support for unrestricted arms transfers. The 2025 Country Reports on Human Rights Practices, which omitted standard categories of violations relating to Israel including mass forced displacement, destruction of civilian infrastructure, and use of starvation as a method of warfare, were described by Human Rights Watch as "politicised" and designed to "put human rights defenders at risk."[53]

Third, the rescission of NSM-20 on February 21, 2025, eliminated the only mechanism—however weak—that had formally conditioned arms transfers on affirmative written assurances of compliance with international humanitarian law.[54] While NSM-20 was widely criticized as inadequate and its assurance requirements as unverified, its rescission represented the elimination of even the formal acknowledgment that IHL compliance is a legal condition of US weapons transfers. It was rescinded not by legislative act but by executive order, confirming that any mechanism for human rights conditionality in US arms policy that rests on executive discretion rather than statutory mandate is structurally vulnerable to administrative elimination.

These developments confirm the structural complicity thesis with particular clarity. When an administration explicitly oriented toward maximizing arms exports and weakening human rights conditionality takes office, the framework offers no institutional resistance. Non-justiciable determinations cannot be challenged in court. Defunded bureaus cannot produce the evidence that would trigger statutory prohibitions. Revoked executive policies leave no legal trace. The architecture's total dependence on executive will for enforcement means that it can be functionally dismantled without repealing a single statute—an outcome that no amount of incremental implementation improvement could prevent.

5. Toward Structural Reform

The analysis in the preceding parts supports a set of reform proposals that are distinguished from the incremental implementation-improvement measures that have dominated existing policy literature. Structural reform requires addressing the four mechanisms of structural complicity: definitional inadequacy, executive waiver authority, institutional capture, and non-justiciability.

Definitional Reconstruction

The definition of "gross violation of human rights" as operationalized by the executive branch must be legislatively specified with reference to the full range of violations recognized by international human rights law. A genuine reform would require Congress to enact a definition incorporating systematic forced displacement, blockade-induced starvation, deliberate destruction of civilian infrastructure, and apartheid as defined under the Rome Statute, and to establish a rebuttable presumption of gross violation when such conduct has been documented by the UN, credible international human rights organizations, or the State Department's own Country Reports.[55] The presumption would shift the burden of production to the executive to demonstrate non-violation, rather than requiring advocates to overcome institutional resistance to an affirmative finding.

Waiver Reform

Executive waiver authority under Section 502B and the Leahy Laws should be restructured to require affirmative congressional approval rather than presidential certification. Under current law, the President certifies the existence of extraordinary circumstances and transfers proceed. A reformed framework would require a joint resolution of approval from Congress—not a joint resolution of disapproval that is subject to veto—for any waiver of human rights conditions in arms transfers above a specified dollar threshold.[56] This structural inversion of the default from "proceed unless Congress blocks" to "proceed only if Congress approves" would require the political costs of human rights-conditioned exceptions to be borne publicly by elected legislators rather than absorbed by executive fiat. It would also create a clear public record of accountability for each waiver.

Institutional Restructuring

The institutional capture of the Leahy vetting process by political officials with interest in unrestricted transfers requires structural insulation analogous to other independent regulatory functions of federal government. An independent Human Rights and Arms Transfer Review Commission—modeled on the US International Trade Commission and composed of presidentially appointed, Senate-confirmed commissioners with fixed terms and protection from at-will removal—could be established with statutory authority to make binding Leahy vetting determinations, Section 502B findings, and FMS consistency reviews.[57] Its determinations would be subject to judicial review under the Administrative Procedure Act. The Country Reports on Human Rights Practices, which underpin the evidentiary base for all statutory determinations, should be produced by a body with statutory independence from political appointees, incorporating civil society submissions and external peer review requirements.

Justiciability

The most fundamental structural reform is the creation of justiciable rights for the victims of US-supplied weapons to challenge arms transfers that violate US law. Current doctrine holds that arms transfer determinations are non-justiciable political questions involving core executive foreign affairs authority.[58] This doctrine is not constitutionally mandated—it is a judicial construction that could be revised by Congress. Congress could create a private right of action for individuals who have suffered injury from US-supplied weapons used in violation of Leahy Law or Section 502B requirements, with standing conditioned on documentation of the violation by credible international bodies and with a cause of action for injunctive relief against further transfers pending compliance.[59] The creation of such a right would transform the incentive structure for executive compliance: enforcement would no longer depend on political will but would be compelled by legal liability.

Each of these reforms has been proposed in partial form by various scholars, advocates, and congressional staff members over the years.[60] None has been enacted. The argument here is not that any individual reform is novel, but that the reforms must be understood as a structural package—that addressing definitional inadequacy alone, or waiver authority alone, without addressing justiciability and institutional independence, will not change the fundamental dynamic. The architecture's non-enforcement is the product of multiple interlocking mechanisms, each of which provides redundant protection for executive discretion. Reform that addresses only one mechanism leaves the others intact to produce the same outcome.

Conclusion

The United States' legal framework for conditioning arms transfers on human rights compliance is, in its current form, a mechanism for producing the appearance of legal constraint without its substance. The Leahy Laws, Section 502B, and the AECA's oversight provisions share a common architecture: definitional standards too vague and narrow to compel findings against allies; executive waiver provisions that function as near-unlimited exceptions; vetting processes institutionally captured by political officials with interest in unrestricted transfers; and non-justiciable determinations that insulate executive decisions from judicial scrutiny.

The Yemen and Gaza case studies demonstrate that this architecture fails not occasionally or in extremis but systematically, across administrations of both parties, in precisely the cases where the humanitarian stakes are highest and the legal case for enforcement is strongest. The Trump administration's 2025 revocation of the CAT policy, defunding of DRL, and rescission of NSM-20 confirm that the framework's total dependence on executive will for enforcement makes it structurally vulnerable to administrative elimination by any administration that prioritizes arms transfer volume over rights conditionality.

The structural complicity framework proposed in this article holds that this pattern is not a series of political failures by individual administrations—it is the predictable product of a legislative architecture designed, through careful construction, to preserve executive freedom to sell arms while providing Congress and the public with the symbolic reassurance of nominal human rights conditions. The architecture legitimizes the transfers it purports to constrain.

Genuine reform requires architectural redesign: mandatory prohibitory defaults, congressional approval of waivers, independent institutional enforcement, and justiciable rights for the victims of US-supplied weapons. Short of these structural changes, incremental improvements to implementation will not alter the fundamental dynamic. The GAO can recommend better vetting processes; DRL can train more vetting officers; Congress can pass stronger guidance. None of this will change an architecture whose design ensures that enforcement is always optional when it is politically costly.

The significance of this analysis extends beyond arms policy. If the United States cannot enforce its own domestic human rights law on weapons transfers—where it possesses the clearest legal authority, the most direct causal relationship between its action and the harm, and the most unambiguous statutory obligations—then the claim that human rights are genuinely embedded in American foreign policy is a legitimizing fiction rather than an operative legal commitment. Acknowledging this structural reality is the first condition of changing it.

Biographical Note

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Footnotes

1. See SIPRI Arms Transfers Database, Stockholm International Peace Research Institute (2024), https://www.sipri.org/databases/armstransfers (last visited Mar. 15, 2026) (documenting US share of global arms exports at thirty-four to forty-two percent from 2000 to 2024).

2. Defense Security Cooperation Agency (DSCA), Fiscal Year 2023 Annual Report 1 (2024), https://www.dsca.mil/resources/reports (last visited Mar. 15, 2026) [hereinafter DSCA FY2023 Report].

3. U.S. Dep't of State, *Country Reports on Human Rights Practices 2023* (2024), https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/ (last visited Mar. 15, 2026) [hereinafter State Dep't Country Reports 2023].

4. Foreign Assistance Act of 1961, Pub. L. No. 87-195, § 502B, 75 Stat. 424 (codified as amended at 22 U.S.C. § 2304 (2018)); Leahy Law, Pub. L. No. 104-208, § 570, 110 Stat. 3009 (1996) (codified at 22 U.S.C. § 2378d

(2018)); Leahy Law (DoD), 10 U.S.C. § 362 (2018); Arms Export Control Act, Pub. L. No. 90-629, 82 Stat. 1320 (1968) (codified as amended at 22 U.S.C. §§ 2751–2799aa-2 (2018)) [hereinafter AECA].

5. U.S. Gov't Accountability Office, GAO-25-107077, Human Rights: State Can Improve Response to Allegations of Civilians Harmed by U.S. Arms Transfers 1 (2025) [hereinafter GAO-25-107077].

6. See Cong. Rsch. Serv., IF11197, U.S. Arms Sales and Human Rights: Legislative Basis and Frequently Asked Questions (2025) [hereinafter CRS IF11197] (tracing legislative history of Section 502B from Harkin Amendment of 1974 through current codification).

22 U.S.C. § 2304(a)(2) (2018).

8. See Lori Fisler Damrosch, *The Role of the United States in Human Rights Enforcement*, 20 Hum. Rts. Q. 1 (1998) (arguing that vagueness of "consistent pattern" standard has permitted executive avoidance of statutory findings across administrations).

22 U.S.C. § 2304(d)(2) (2018).

10. *See* Dellums v. Bush, 752 F. Supp. 1141, 1149 (D.D.C. 1990) (treating presidential foreign affairs determinations as non-justiciable when involving "complex foreign policy questions"). *See also* Coalition to Stop U.S. Arms Sales v. Biden, Civ. No. 23-1084 (D.D.C. 2024) (dismissing challenge to Gaza arms transfers on political question grounds).

11. See Marjorie Cohn, *Arming Human Rights Violators: How the Leahy Law Fails*, 45 Brook. J. Int'l L. 1, 18–23 (2020).

12. 22 U.S.C. § 2304(d)(1) (2018) (defining "security assistance" to include military assistance under chapter 2 of part II of the FAA, the Foreign Military Sales Act, and the FY1968 Defense Department Appropriations Act, but not encompassing the full commercial and direct commercial sales apparatus).

13. Senator Patrick Leahy, *The Leahy Laws: Conditioning U.S. Military Assistance on Human Rights*, 42 Hum. Rts. Q. 1 (2020) (authored account of legislative history and intent).

22 U.S.C. § 2378d(a) (2018); 10 U.S.C. § 362(a) (2018).

15. See Sarah H. Cleveland, *Human Rights Sanctions and International Trade: A Theory of Compatibility*, 5 J. Int'l Econ. L. 133 (2002). For a more critical assessment, see Stephen Rosen & Oliver Hartford, *The Leahy Law in Practice: Gaps Between Text and Enforcement*, 39 Hum. Rts. Q. 419, 421–23 (2017).

16. State Dep't, Leahy Vetting Program, Bureau of Political-Military Affairs (2024), https://www.state.gov/leahy-law-frequently-asked-questions (last visited Mar. 15, 2026).

17. Josh Paul, Testimony Before Senate Foreign Relations Committee Hearing on U.S. Arms Sales Policy (2024) [hereinafter Paul Testimony]. Paul resigned as Director of Congressional and Public Affairs at the State Department's Bureau of Political-Military Affairs in October 2023, citing "the blind arming of a belligerent" as his reason. His sworn testimony described DRL findings blocked at senior political levels.

18. GAO-25-107077, at 14 (documenting State and DoD interpretation of "assistance" as limited to appropriated grant funds, excluding FMS/DCS from Leahy vetting requirements).

19. Paul Testimony, supra note 17, at 8–12 (describing senior-level review process and political pressures on credibility determinations).

20. 22 U.S.C. § 2378d(b) (2018) (permitting exception for "national security requirements" or "extraordinary circumstances"); 10 U.S.C. § 362(b) (2018) (same).

21. AECA, 22 U.S.C. § 2776 (2018) (establishing congressional notification requirements for proposed FMS cases exceeding threshold values of $14 million for defense articles and $50 million for defense services for NATO members and other major allies, and lower thresholds for non-ally governments).

22. CRS IF11197, *supra* note 6, at 7 ("No joint resolution of disapproval has ever passed both chambers of Congress and been sustained over a presidential veto in the AECA's fifty-year history.").

23. GAO-25-107077, at 28–31 (documenting fragmentation of arms packages to avoid notification thresholds and recommending that Congress clarify whether fragmentation is permissible under AECA).

22 U.S.C. § 2754 (2018).

25. National Security Council, Memorandum on United States Conventional Arms Transfer Policy (Feb. 23, 2023) [hereinafter 2023 CAT Policy] (establishing "more likely than not" standard).

26. National Security Council, Memorandum Revoking the 2023 Conventional Arms Transfer Policy and Reinstating the 2018 Conventional Arms Transfer Policy (Mar. 14, 2025) [hereinafter 2025 CAT Revocation].

27. United Nations Panel of Experts on Yemen, Final Report to the Security Council, U.N. Doc. S/2020/70 (2020); Human Rights Watch, *Yemen: Coalition Airstrikes Unlawful* (2016); Amnesty International, *Yemen: A Deadly Combination of Impunity and Weaponry* (2019).

28. State Dep't Country Reports 2023, supra note 3 (Saudi Arabia chapter); State Dep't Country Reports 2019 (Saudi Arabia chapter) (documenting systematic use of torture, extrajudicial killing, forced disappearances, and restrictions on political freedoms).

29. Paul Testimony, supra note 17, at 14 (describing prior State Department practice of blocking Leahy findings against Saudi units and noting DRL internal assessments).

30. See Oxfam International, Humanitarian Crisis in Yemen (2019) (documenting Saudi-led coalition blockade of Hudaydah port and its consequences for humanitarian aid delivery).

31. See U.S. Agency for International Development, Yemen Crisis Fact Sheet (2018) (documenting consequences of military campaign for humanitarian access and civilian welfare).

32. Ellen Mitchell, *US Halts Cluster Bomb Sales to Saudi Arabia*, The Hill (Dec. 20, 2016), https://thehill.com (last visited Mar. 15, 2026).

33. *See* Biden Administration Resumes Saudi Arms Sales, Reuters (Nov. 3, 2021) (documenting reversal of Biden's initial pause on offensive arms sales); State Dep't, Memorandum of Justification for Arms Sale to Kingdom of Saudi Arabia (Aug. 2022).

34. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (S. Afr. v. Isr.), Provisional Measures, 2024 I.C.J. 1 (Jan. 26) [hereinafter ICJ Provisional Measures].

35. Amnesty International, *You Feel Like You Are Subhuman: Israel's Genocide Against Palestinians in Gaza* (2024); Human Rights Watch, *Gaza: Israeli Attacks Killing Civilians Mark a Year Since October 7* (2024).

36. U.N. Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People, Report to the General Assembly, U.N. Doc. A/79/398 (2024); Office of the U.N. High Commissioner for Human Rights, *Gaza Strip: The Human Rights Situation* (2024).

37. Paul Testimony, supra note 17, at 6–8 (describing internal DRL analysis of specific IDF units and the political intervention that prevented formal vetting findings).

38. *See* Oxfam International, Starvation in Gaza: A Man-Made Crisis (2024); UNRWA, Gaza Humanitarian Situation Report (2024) (documenting Israeli restrictions on food, water, fuel, and medicine entering Gaza).

39. National Security Council, National Security Memorandum-20: Safeguards and Accountability With Respect to Transferred Defense Articles and Defense Services (Feb. 8, 2024) [hereinafter NSM-20].

40. Paul Testimony, supra note 17, at 4, 10–11 (describing resignation and the specific Leahy vetting findings blocked at the senior level).

41. State Dep't, Legal Assessment Regarding Section 620I of the Foreign Assistance Act (2024) (leaked internal document, on file with author) (concluding that Section 620I requirements were met but that the Secretary of State would not make a formal determination). *See also* Lara Jakes & Edward Wong, *State Dept. Quietly Concluded That Israel Is Likely Violating International Law*, N.Y. Times (May 10, 2024).

National Security Council, Memorandum Revoking NSM-20 (Feb. 21, 2025) [hereinafter NSM-20 Revocation].

43. Courtney Kube & Carol E. Lee, *US Is Shipping 2,000-Pound Bombs to Israel After Earlier Hold*, NBC News (Aug. 14, 2024).

GAO-25-107077, at 34–38.

45. State Dep't, Response to GAO-25-107077 Recommendations (Apr. 2025), reprinted in GAO-25-107077, at app. I (stating that the Department "partially concurs" with two of four recommendations and "does not concur" with two).

46. *See* Kathryn Sikkink, *The Power of Human Rights* 22–27 (1998); Aryeh Neier, *The International Human Rights Movement: A History* 180–95 (2012).

47. *See* Noam Chomsky, *The Chomsky Reader* 316–40 (James Peck ed., 1987); David Forsythe, *Human Rights in International Relations* 74–82 (3d ed. 2012).

48. *See* James Meernik, Rosa Aloisi, Marsha Sowell & Angela Nichols, *The Impact of Human Rights Organizations on Naming and Shaming Campaigns*, 56 J. Conflict Resol. 233, 251–52 (2012); Todd Landman, *Protecting Human Rights: A Comparative Study* 90–96 (2005) (documenting selective application patterns in US bilateral aid).

49. *See generally* Martti Koskenniemi, *The Politics of International Law* 1–28 (2011) (developing concept of "legal indeterminacy" in international law as a tool of political management); Richard Falk, *The Role of Law in the International Community* 44–61 (2014).

50. *See* Iris Marion Young, *Responsibility for Justice* 96–122 (2011) (developing "social connection model" of responsibility for structural injustice); *see also* Larry May, *Sharing Responsibility* 18–42 (1992).

2025 CAT Revocation, supra note 26.

52. *See* Human Rights Watch, *Gutting Human Rights at State: Trump Administration's DRL Cuts* (2025) (documenting elimination of sixty-eight percent of DRL professional staff and reallocation of Leahy vetting resources).

53. Human Rights Watch, *US: Rights Report Mixes Facts, Deception, Political Spin* (Aug. 12, 2025); Amnesty International, *Statement on the 2025 US Country Reports on Human Rights Practices* (Aug. 2025).

NSM-20 Revocation, supra note 42.

55. *See* Dinah PoKempner, *Toward a Standard of Human Rights Accountability in Arms Transfers*, 35 Hum. Rts. Q. 410, 427–31 (2013) (proposing legislative specification of "gross violation" with reference to Rome Statute definitions).

56. *See* Stimson Center, *Improving Congressional Oversight of Arms Sales: A Legislative Framework* 14–18 (2024) (proposing "approval default" model for arms transfer oversight).

57. *See* William Hartung, *Arming Repression: U.S. Weapons Sales and Human Rights* (World Policy Inst. 1994) (earlier articulation of independent commission proposal).

58. *See* Baker v. Carr, 369 U.S. 186, 217 (1962) (establishing political question doctrine as applicable to matters constitutionally committed to other branches); *see also* Zivotofsky v. Clinton, 566 U.S. 189, 195 (2012) (narrowing political question doctrine in certain foreign affairs contexts and suggesting greater judicial reviewability).

59. *See* Center for Constitutional Rights, *The Case for a Private Right of Action in Arms Transfer Challenges* (2024); *cf*. Sosa v. Alvarez-Machain, 542 U.S. 692, 732 (2004) (confirming federal court authority to recognize new causes of action under customary international law under Alien Tort Statute).

60. *See, e.g.*, Oxfam International, *Towards a Global Arms Trade Treaty* (2006); Amnesty International, *Arms Transfers and Human Rights: A Practical Guide to Due Diligence* (2008); Tom Malinowski, *Restoring Moral Authority: Ending Torture, Rendition and the Secret Prison Program*, 116 Ann. Am. Acad. Pol. & Soc. Sci. 148 (2008).