

Application of the Leahy Laws to Israel

SPONSOR: Mr. John Heermans and the Rev. Craig Smith

RESOLVED, That the 186th Convention of the Diocese of Vermont request the Office of the Presiding Bishop of the Episcopal Church and the Vermont congressional delegation to urge the United States Departments of State and Defense to apply the Leahy Laws to Israel.

EXPLANATION:

Since its founding in 1948, Israel has received nearly \$125 billion in aid from the US; the current rate amounts to over \$10 million a day.

The Leahy Laws, or Leahy Amendments, are U.S. human rights laws that prohibit the U.S. Department of State and Department of Defense from providing military assistance to foreign security force units that engage in “gross violations of human rights” (GVHR). The laws are named after their principal sponsor, Senator Patrick Leahy (D-Vermont). A recent State Department fact sheet on the Leahy Laws notes that, “The U.S. government considers torture, extrajudicial killing, enforced disappearance, and rape under color of law as GVHR when implementing the Leahy law. Incidents are examined on a fact-specific basis.” [The text of the fact sheet is below.]

On May 15, 2018, The Center for Constitutional Rights joined a coalition of Palestinian and U.S.-based human rights groups in submitting a letter to U.S. Secretary of State Pompeo demanding that the State Department investigate Israel’s use of lethal force against Palestinians in Gaza, and halt any further assistance to Israeli military units involved in the shootings. [Excerpts from the letter are below.]

The focus of the letter was the demonstrations leading up to May 15, Nakba Day, which marked 70 years since more than 750,000 Palestinians were forcibly displaced from their homes. It notes that human rights organizations documented that since the protests began, the Israeli military killed 103 people and injured almost 7000 others, including children, paramedics, journalists, and people with disabilities. Over 3,500 people were reportedly shot with live fire.

On Nakba day itself, Israel reportedly killed 57 protesters and injured over 2000 more, while they demonstrated against the Trump administration’s decision to move the U.S. embassy to Jerusalem, stressed their internationally recognized right of return to their homes, and demanded an end to the 11-year closure of Gaza. The letter notes that Israeli military units were likely using U.S.-made Remington M24 sniper rifles to fire on Palestinian protesters.

“Investigate Israel’s Use of Lethal Force in Gaza and Halt Foreign Assistance to Israeli Military Units”

May 15, 2018, letter to Secretary of State Michael Pompeo (concluding paragraphs)

From the Center for Constitutional Rights, Amnesty International, and 5 other groups

“Since March 30, 2018, Palestinians in Gaza have been engaged in popular protests leading up to the commemoration of the “Nakba” today, which will mark 70 years since the mass expulsion of 750,000 Palestinians in 1948 from their homes. The protesters have been expressing their right to return, as well as demanding an end to the land, air, and sea blockade on the Gaza Strip which began almost eleven years ago in 2007. Those killed and the more than 7000 injured so far include children, paramedics, journalists, and people with disabilities. Nearly 3,500 people have reportedly been shot with live fire thus far.

“The U.S. provided Israel with more than \$3 billion in military aid in 2017, making it the largest recipient of U.S. foreign military assistance. Human rights organisations have documented that the Israeli military has used the U.S.-made Remington M24 sniper rifle to fire on protesters in Gaza. U.S. law requires that foreign military assistance not be provided to any military units responsible for gross human rights violations, which includes extrajudicial killings. There is ample credible information that these killings in Gaza by Israeli forces constitute extrajudicial killings. Moreover, except in extraordinary circumstances, sec. 502B(a)(2) of the Foreign Assistance Act bars security assistance to any government that engages in a consistent pattern of gross violations of internationally recognized human rights.

“The undersigned organisations demand that the U.S. government investigate Israel’s use of lethal force against protesters in Gaza since March 30, 2018, and withhold foreign military assistance to any units for which there is credible information that they have been involved. Furthermore, in order to ensure the adequate implementation of U.S. law, the U.S. State Department should require the U.S. Embassy as well as the Israeli Government to track and publicise which military units receive U.S. financial and other forms of aid.

Fact Sheet

U.S. Department of State

Bureau of Democracy, Human Rights, and Labor

March 9, 2018

1. What are Leahy laws?

- The term “Leahy law” refers to two statutory provisions prohibiting the U.S. Government from using funds for assistance to units of foreign security forces where there is credible information implicating that unit in the commission of gross violations of human rights (GVHR). One statutory provision applies to the State Department and the other applies to the Department of Defense. The State Department Leahy law was made permanent under section 620M of the Foreign Assistance Act of 1961, 22 U.S.C. 2378d. The U.S. government considers torture, extrajudicial killing, enforced disappearance, and rape under color of law as GVHRs when implementing the Leahy law. Incidents are examined on a fact-specific basis. The State Department Leahy law includes an exception permitting resumption of assistance to a unit if the Secretary of State determines and reports to Congress that the government of the country is taking effective steps to bring the responsible members of the security forces unit to justice.
- The DoD Leahy law is similar to the State Leahy law. Since 1999, Congress included the DoD Leahy law in its annual appropriations act. The DoD Leahy law is now permanent

in Section 362 of Title 10 of the U.S. Code. It requires that DoD-appropriated funds may not be used for any training, equipment, or other assistance for a foreign security force unit if the Secretary of Defense has credible information that such unit has committed a GVHR. The law allows for two exceptions to this restriction. The first in cases where the Secretary of Defense (after consultation with the Secretary of State) determines that the government of that country has taken all necessary corrective steps. This first exception is also known as “remediation.” A second exception exists if U.S. equipment or other assistance is necessary to assist in disaster relief operations or other humanitarian or national security emergencies.

- The National Defense Authorization Act for FY2015 authorizes DoD to conduct training to promote respect for the rule of law and human rights, including for otherwise Leahy-ineligible units under certain circumstances. This training may be conducted with the concurrence of the Secretary of State and is withheld from any individual of a unit when there is credible information that such individual has committed GVHR (or has commanded a unit that has committed a GVHR).

2. How is the law implemented?

- In cases where an entire unit is designated to receive assistance, the Department of State vets the unit and the unit’s commander. When an individual security force member is nominated for U.S. assistance, the Department vets that individual as well as his or her unit. Vetting begins in the unit’s home country, where the U.S. embassy conducts consular, political, and other security and human rights checks. Most often, an additional review is conducted by analysts at the Department of State in Washington, D.C. The State Department evaluates and assesses available information about the human rights records of the unit and the individual, reviewing a full spectrum of open source and classified records.
- When assessing whether information is credible, the following factors should be considered weighing both the credibility of a source and the veracity of an allegation:
 - Past accuracy and reliability of the reporting source as well as original source, if known;
 - How the source obtained the information (e.g., personal knowledge obtained by a witness, witness interviews collected by a non-governmental organization (NGO), descriptions collected from government records, etc.);
 - Known political agenda of a source (both reporting source and/or original source, if known) which might lead to bias in reporting;
 - Corroborative information to confirm part or all of the allegation;
 - Information that contradicts part or all of the allegation;
 - History of unit and known patterns of abuse/professional behavior;
 - Level of detail of the GVHR allegation, including detail in identification of the GVHR, perpetrator (or link to an operational unit), and victim.

3. Can assistance be reinstated to units previously found ineligible for assistance?

- Yes. Consistent with the exception under both Leahy laws, the Departments of State and Defense have adopted a joint policy on remediation that outlines a process for resuming DoD- and State-funded assistance to foreign security force units that are ineligible for assistance under the Leahy laws. This can occur when the Secretaries of Defense and State determine that the government of that country has taken, or is taking, effective measures to bring those responsible to justice. Such measures may include impartial and

thorough investigations; credible judicial or administrative adjudications; and appropriate and proportional sentencing.