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Enforcement of Leahy Laws: Case Study of Israel and the U.S. Commitment to Human Rights



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Abstract

The Leahy Laws, named after Senator Patrick Leahy, prohibit U.S. funds for assistance to foreign security forces involved in gross violations of human rights (GVHR), such as torture and extrajudicial killings. Codified under Titles 10 and 22 of the U.S. Code, the laws are enforced separately by the Department of State and the Department of Defense, each with unique provisions and exceptions. This policy memo examines the challenges and inconsistencies in the implementation of the Leahy Laws, particularly in the context of U.S. aid to Israel. Despite reports of alleged human rights abuses by Israeli units, including the **Netzah Yehuda Battalion**, enforcement remains limited. This inconsistency undermines the credibility of the Leahy Laws as a tool for promoting human rights and reveals the tension between legal mandates and political considerations. The memo explores the current **implementation, challenges and issues**, and **potential policy reforms** of the Leahy Laws in order to better understand their effectiveness when attempting to uphold human rights objectives.

Introduction

The “Leahy Laws” forbid the United States to provide assistance to foreign security forces if and when there is credible evidence that the unit has engaged in a “gross violation of human rights” (GVHR). The Leahy Law, named after Senator Patrick Leahy (D-VT), traces its roots back to appropriations provisions introduced in the 1990s that aimed to restrict the U.S. from offering assistance to foreign governments known for their poor human rights records (Congressional Research Service, 2024). The Leahy Laws were made permanent under law in Title 22 and Title 10 of the U.S. Code (U.S.C. 2378d). The laws prohibit the U.S. Department of State (DOS) and Defense (DOD) from funding foreign units that have committed GVHR like torture, extrajudicial killing, enforced disappearance, and rape (U.S. Department of State, 2021).



DOS vs DOD Provisions

To fully understand the Leahy Laws, it is crucial to recognize that one provision of the laws applies to the State Department while the other provision only applies to the Department of Defense. While these provisions are similar and both prohibit assistance to foreign security force units in cases of gross violations of human rights, the distinction is significant because it establishes unique scopes and responsibilities for each department within their respective jurisdictions.

Department of State



Broader Scope

- Applies to all forms of security assistance funded through State Department programs.
- Includes aid to foreign military and police forces (e.g., training, equipment, and other support).

Vetting Responsibility

- Responsible for vetting foreign security forces to ensure they have not committed gross human rights violations.

Exception for Active Justice

- The prohibition on assistance can be bypassed if a foreign government is actively prosecuting violators of human rights (Congressional Research Service, 2024).

Programs Covered

- Covers programs under the State Department's purview, such as Foreign Military Financing (FMF) and International Narcotics Control and Law Enforcement (INCLE).

Focus on Human Rights Violations

- Prohibits assistance if violations are found unless the country demonstrates efforts to bring perpetrators to justice.

Department of Defense



Narrower Scope

- Primarily applies to operational military support, such as military training, joint operations, and exercises.

Operational Exceptions

- The law may be waived under "extraordinary circumstances," allowing assistance to continue after consultation with the Secretary of State.
- Provides additional exceptions for humanitarian or security emergencies (Congressional Research Service, 2024).

Focus on U.S. Military Operations

- Applies to U.S. military operations, particularly in regions where U.S. forces are engaged in counterterrorism or security partnerships.

Specific to Pentagon-Led Support

- Covers only operational military support, not broader security assistance.

Human Rights Violations

- Similar to the State Department provision, prohibits assistance if gross human rights violations are found, but with more flexibility in emergencies.

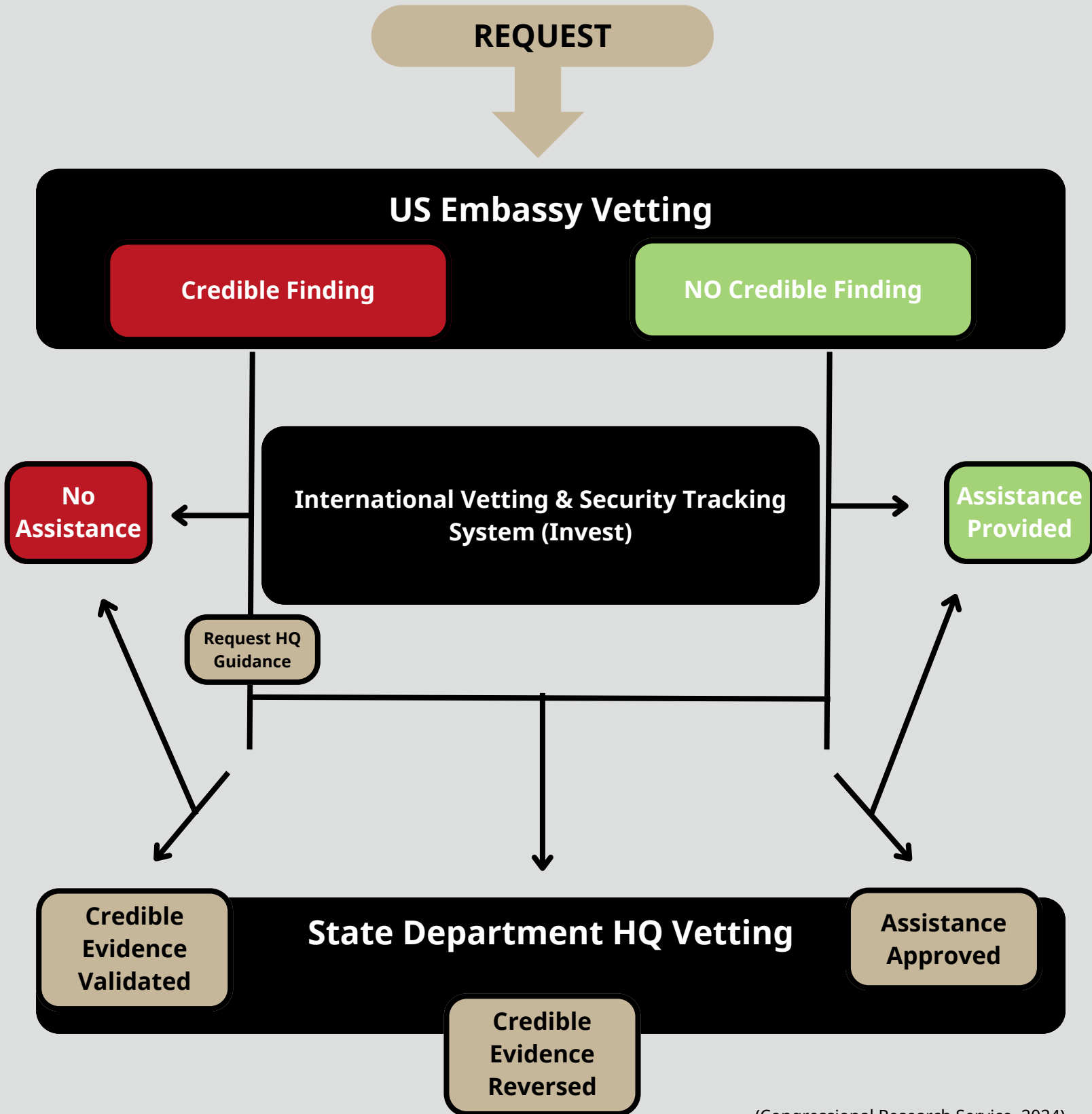
How Is The Law Implemented?

→ If and when an individual unit or entire unit has been selected to receive U.S. assistance, the US State Department must **vet the unit and its commander**. The vetting process begins at the U.S. embassy in the unit's home country where **"consular, political, and other security and human rights checks"** are completed. Then, Department of State analysts conduct an **additional review** to assess historical records of human rights and potential human rights violations (U.S. Department of State. (2021).

→ **The Department of State, 2021 highlights seven factors to consider when determining if information is credible**

1. Accuracy and reliability of sources
2. How the information by obtained by the source
3. Political agenda as it pertains to bias
4. Evidence-based information to confirm allegation(s)
5. Evidence that disputes some or all aspects of the claim
6. Prior history including documented patterns of misconduct or professional conduct
7. Detail in the GVHR allegation and the victim

LEAHY VETTING PROCESS



Challenges & Issues

ISRAEL LEAHY VETTING FORUM

EXCEPTIONAL TREATMENT:

- The vetting process is unique to Israel, creating a complex and time-consuming vetting procedure that doesn't exist for any other country. This exceptional treatment has led to accusations of inconsistent application of the Leahy Law (Harb, 2024).

HIGH THRESHOLD FOR INELIGIBILITY

CHALLENGES:

- Human rights abuses are often hidden, poorly documented, or covered up (Welsh, 2000).

GOVERNMENT ACCOUNTABILITY:

- Some countries lack transparency or will to investigate abuses (Welsh, 2000)

BUREAUCRATIC INEFFICIENCIES

STRONG INTENT, WEAK ENFORCEMENT

- Geopolitical interests (e.g., strategic alliances, national security) create bias in how the law is enforced and applied

HIGH STANDARDS AND SLOW PROCESSES

- It is difficult to gather clear and convincing evidence of human rights violations in conflict zones. The investigation, documentation, and decision-making processes are slow and bureaucratic.

Challenges & Issues Cont.

→ Evolution and Oversight

Over time, the Leahy Law has strengthened its oversight mechanisms. Codified under Section 362 of U.S.C. Title 10, the DoD version applies broadly to military assistance, including training, equipment, and operational support, aiming to uphold human rights by leveraging U.S. foreign aid. However, its application faces criticism, particularly regarding U.S. aid to Israel. Despite \$3.3 billion in annual aid and the creation of the Israel Leahy Vetting Forum (ILVF) in 2020 to ensure compliance, as of 2024, no Israeli units have been deemed ineligible, despite reports of violations by units like the IDF's Netzah Yehuda Battalion.

→ Selective Enforcement and Political Considerations

Critics, including Senator Leahy, argue that excluding Israel from the Leahy Law undermines its credibility as a human rights tool. Incidents like unlawful killings by the Netzah Yehuda Battalion have not led to reprimands or aid restrictions. While the Biden administration has emphasized human rights in arms transfer policies, concerns remain that Israel's strategic importance overrides the law's intent. A State Department investigation into potential violations has yet to yield results, fueling claims of selective enforcement and a lack of political will to fully implement the law (Harb, 2024).

→ Balancing Human Rights and Strategic Interests

The Leahy Law is a key tool in the U.S. human rights framework, but its inconsistent application, especially with allies like Israel, exposes significant challenges. Unique review processes and reluctance to enforce accountability reflect the complex interplay of legal standards, political interests, and foreign policy. This inconsistency leaves the law's promise to prevent U.S. aid from supporting human rights abuses unfulfilled in some cases, fueling debate about its effectiveness in U.S. foreign policy.

Inconsistent Application and Implementation



1. Dual Provisions

Dual Provisions:

The Leahy Laws are applied differently by the State Department and the Department of Defense (DoD) due to differences in exception language:

- State Department: Requires "effective steps to bring the responsible members to justice."
- DoD: Allows exceptions if "all necessary corrective steps have been taken" (United States Government Accountability Office, 2013).
- Impact: These differences lead to varying standards for resuming assistance to flagged units.



2. Global Consistency

Special Consideration

- The Israel Leahy Vetting Form grants Israel 90 days to respond to abuse-related inquiries, a policy not extended to other countries (Harb, 2024)
 - Controversy: This exception raises questions about equity and consistency in how the U.S. applies the Leahy Laws globally.



3. Implementation Challenges

Complex Vetting Process:

- Each U.S. embassy has unique procedures, causing uneven application of the laws.
- Delays occur due to bureaucratic processes, incomplete information, and technical issues (Aftergood, 2014).
- Interagency Disagreements: Disputes between the DoD and the State Department over vetting outcomes and corrective actions further complicate implementation.
- Impact: These inefficiencies can hinder the timely delivery of assistance to foreign security forces.

Policy Options

→ Option 1

- **Maintain Current Implementation**

- The Leahy Law aims to prevent U.S. military aid from supporting foreign units involved in gross human rights violations but faces significant challenges. Its decentralized vetting system, involving multiple agencies, leads to **inconsistent enforcement and limited oversight**. Additionally, the law's narrow focus on specific units allows senior commanders to avoid accountability, reducing its overall deterrent effect.

→ Option 2

- **Strengthen Enforcement and Oversight**

- Strengthening enforcement and oversight could improve its effectiveness. Creating a centralized vetting database, requiring public reporting, and expanding the law to include command responsibility would address key weaknesses. Collaboration with **human rights** organizations and establishing remediation pathways for non-compliant units could further incentivize adherence to human rights standards.

→ Option 3

- **Revise and Update the Law**

- Revisions to the law are also necessary to close loopholes and clarify language. Defining "**Gross Human Rights Violations**" more clearly and using existing frameworks like the Department of Defense's civilian harm models would ensure consistent application. Recent amendments, such as closing the **Non-Traceable Assistance loophole**, require full implementation. Independent monitoring and greater Congressional involvement would enhance transparency and accountability, ensuring U.S. aid aligns with ethical standards.

One Case of Humanitarian Aid

- The United Nations (UN) has criticized Israel for **failing to meet a 30 day deadline** put in place by the U.S. to boost aid to Gaza. U.S. Secretary of State, Anthony Blinken warned when establishing this deadline that the repercussions of not meeting the deadline **would result in a reduction of American military aid to Israel** (Bateman & Gritten, 2024). According to the UN, the aid reaching Gaza is at its **lowest level** since the first month of the war, causing likelihood of famine (Donnison, 2024).

US Secretary of State Antony Blinken said Israel needed to allow a minimum of



aid trucks entered Gaza in Oct 2024--
the lowest number since Oct 2023

Using UN data from (Donnison, 2024)

The United Nations (UN) Perspective:

- Aid is getting into Gaza, but not enough. Aid levels are inadequate as individuals in Gaza are facing hunger and food scarcity.
- Believes it is Israel's responsibility to facilitate aid transportation into Gaza due to dangerous military operations (Donnison, 2024).

Israeli Perspective:

- Blinken's demands have been met and new crossings have opened
- Aid is ready to be distributed, but accuses aid agencies aren't distributing properly and aid trucks are being looted by armed men (Donnison, 2024).

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