



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

AUG 17 2018

The Honorable Bob Corker
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on the amendment in the nature of a substitute to S. 1158, the "Elie Wiesel Genocide and Atrocities Prevention Act of 2018." As we explain below, the bill raises constitutional concerns.

Two provisions of this bill purport to state the policy of the United States in matters of foreign affairs. Section 3 purports to establish "the policy of the United States" with respect to the prevention of genocide and other atrocities that threaten national and international security. In addition, section 5 of the bill would require the President to transmit to specified congressional committees an annual report that includes "recommendations to ensure shared responsibility by — (A) enhancing multilateral mechanisms for preventing atrocities, including strengthening the role of international organizations and international financial institutions in conflict prevention, mitigation, and response; and (B) strengthening regional organizations" and "the implementation status of the recommendations contained in the previous review required by this section."

To the extent these provisions require or could be read to require the President to adopt a prescribed foreign policy relating to the prevention of genocide and other atrocities, they would interfere with the President's "authority to represent the United States" in foreign affairs "and to pursue its interests outside the borders of the country." *The President's Compliance with the "Timely Notification" Requirement of Section 501(b) of the National Security Act*, 10 Op. O.L.C. 159, 160 (1986), <https://www.justice.gov/file/23891/download>; see also *Common Legislative Encroachments on Executive Branch Authority*, 13 Op. O.L.C. 248, 256 (1989) (it is the President's responsibility to "determine[] and articulate[] the Nation's foreign policy."); *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 414–15 (2003). These provisions should be made precatory

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(e.g., by changing "shall" to "should") or amended to express a sense of Congress. If no changes were made, we would treat them as advisory and non-binding.

Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Prim Escalona".

Prim F. Escalona
Principal Deputy Assistant Attorney General

cc: The Honorable Robert Menendez
Ranking Member