

PROHIBITION ON FINANCIAL TRANSACTIONS WITH  
COUNTRIES SUPPORTING TERRORISM ACT OF 1997

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JUNE 21, 1997.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. McCOLLUM, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 748]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 748) to amend the prohibition of title 18, United States Code, against financial transactions with terrorists, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Prohibition on Financial Transactions With Countries Supporting Terrorism Act of 1997”.

**SEC. 2. FINANCIAL TRANSACTIONS WITH TERRORISTS.**

Section 2332d of title 18, United States Code, (relating to financial transactions) is amended—

(1) in subsection (a)—

(A) by striking “Except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, whoever” and inserting “Whoever”; and

(B) by inserting “of 1979” after “Export Administration Act”; and

(2) in subsection (b)(1), by inserting after “1956(c)(4)” the following: “, except that such term does not include any transaction ordinarily incident to—

“(A) routine diplomatic relations among countries;

“(B) an official act by a representative of, or an act which is authorized by and conducted on behalf of, the United States Government;

“(C) the broadcasting or reporting of news by organizations regularly engaged in such activity; or

“(D) the provision of assistance intended to relieve human suffering;

“(E) the receipt of emergency medical services;

“(F) any postal, telegraphic, or other personal communication which does not involve a transfer of anything of value;

“(G) the protection of intellectual property rights of any United States person;

“(H) the performance of any contract or agreement that was entered into before June 12, 1997, but not those renewed after such date;

“(I) the provision of hospitality or transportation services; or

“(J) the payment of a claim to any United States person”.

#### SEC. 3. REPORT ON EFFECTS OF ENACTMENT.

Beginning not later than one year after the date of enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of State, shall issue an annual report to Congress on—

- (1) the impact of this prohibition on United States businesses; and
- (2) any means by which a negative impact might be ameliorated.

#### PURPOSE AND SUMMARY

H.R. 748, the “Prohibition on Financial Transactions With Countries Supporting Terrorism Act of 1997,” expands section 321 of the “Antiterrorism and Effective Death Penalty Act of 1996” by eliminating overly permissive regulations promulgated by the Administration last year and the authority to issue such regulations in the future. It establishes, in place of the regulations, specific exceptions to the prohibition, created by section 321, on engaging in financial transactions with countries that have been designated as sponsors of terrorism.

The effect of section 321 is to prohibit financial support of U.S. persons by terrorist countries and all financial transactions by U.S. persons with these countries, regardless of where these transactions take place. The provision also authorizes the Department of the Treasury, in consultation with the State Department, to make specific exceptions to the ban through regulations.

In August of 1996, the Treasury Department published regulations in relation to section 321 which essentially reversed the effect of the new prohibition. The regulations permit all financial transactions with terrorist list governments, except for transactions otherwise prohibited by law or which pose a risk of furthering domestic terrorism. The regulations prohibit U.S. persons from receiving unlicensed donations and from engaging in financial transactions with respect to which the U.S. person knows or has reasonable cause to believe that the financial transaction poses a risk of furthering terrorist acts in the United States.

H.R. 748 strips the executive branch of its authority to issue regulations exempting transactions from the prohibition. It establishes instead a legislative exception only for specified transactions. The list of permitted activities, and transactions incident thereto, include: routine diplomatic relations among countries; official acts by representatives of the U.S. government; news reporting; humanitarian assistance; emergency medical services; postal and telephone services; the protection of intellectual property rights; hospitality or transportation services; the fulfillment of existing contracts; and payments of a claim to U.S. persons.

#### BACKGROUND AND NEED FOR THE LEGISLATION

On April 24, 1996, President Clinton signed the “Antiterrorism and Effective Death Penalty Act of 1996” (Pub. L. 104–132). This comprehensive legislation included reforms to the federal death

penalty laws, provided additional rights to crime victims, and increased penalties for crimes of terrorism against the United States.

The forces of militant extremism in the Middle East and Africa are among the greatest international dangers currently facing America and its allies. The deadly threat posed by international terrorists in this region of the world must not be underestimated. Yet, confronting this threat and other terrorist threats around the globe means confronting the countries which provide desperately needed support to these groups.

A handful of pariah states—Cuba, Libya, North Korea, Iran, Iraq, Syria and Sudan—have been designated by the State Department, pursuant to section 6(j) of the Export Administration Act, as terrorist sponsoring countries or “Terrorism List Governments.” No one should discount the significance of this designation. Without the support of these countries, terrorists would literally not have a home, much less the active assistance of government officials.

With regard to Sudan specifically, United Nations Ambassador Richardson recently described this country as follows: “The Sudanese Government destabilizes its neighbors, supports terrorists, commits human rights abuses against its own citizens, and pursues civil war in the south.” Clearly, the training and support of terrorists occurring in Sudan are major contributors to the untold human suffering caused by religious extremists in this region of the world.

There should be no higher priority for the United States in the battle against terrorism than the elimination of foreign government support for terrorists. This is why section 321 of the “Antiterrorism and Effective Death Penalty Act of 1996” is a vital tool in this battle.

*Section 321 of the Antiterrorism Act (18 U.S.C. §2332d)*

Section 321, which prohibits financial transactions between U.S. persons and countries which have been designated as supporters of terrorism, was drafted with a dual purpose in mind. First, it prohibits financial support from terrorist countries to U.S. persons, thus attempting to prevent the long-arm of terrorism from reaching the shores of the United States through domestic entities. Second, and more broadly, it prohibits all financial transactions by U.S. persons with these countries, regardless of where these transactions take place. The obvious goal of this language is to cut off terrorist sponsoring governments from the economic benefit of doing business with U.S. companies. Since five of the seven terrorism list governments are already subject to economic sanctions as a result of executive order, the immediate impact of the ban related to Sudan and Syria.

In response to administration concerns that the prohibition could have unintended consequences, language was included in section 321 which permitted the Secretary of the Treasury to issue regulations establishing some exceptions to the prohibition. This broad authority was mostly intended to cover routine diplomatic and consular relations. In implementing section 321, the Treasury Department, through its Office of Foreign Assets Control, issued the “Terrorism List Governments Sanctions Regulations,” 31 CFR Part 596. Under these regulations, any U.S. person may conduct financial transactions with a terrorist list country, unless the person “knows

\* \* \* or has reasonable cause to believe that the transfer poses a risk of furthering terrorist acts in the United States.” This broad exception captures a much wider range of activities than was originally intended.

*31 CFR Part 596*

In August of last year, the Treasury Department published its regulations in relation to section 321 which effectively eliminated the new prohibition. These regulations permit all financial transactions with Sudan and Syria, other than those which pose a risk of furthering domestic terrorism. The regulations prohibit U.S. persons from receiving unlicensed donations and from engaging in financial transactions with respect to which the United States person knows or has reasonable cause to believe that the financial transaction poses a risk of furthering terrorist acts in the United States.

In the view of the original sponsors of section 321, the regulatory authority provided in the provision should not have been exercised in this manner. This “business as usual” policy represents a step backwards in the effort to pressure Syria and Sudan, as well as the other five countries, from severing their ties to terrorist groups.

*H.R. 748*

H.R. 748 is intended to close the loophole created by the regulations and to prohibit transactions other than those that are specifically authorized in statute. The bill strips the executive branch of the authority to issue regulations exempting transactions from the prohibition. It establishes instead a list of legislative exceptions for transactions ordinarily incident to a variety of activities.

HEARINGS

The Committee’s Subcommittee on Crime held one (1) day of hearings on H.R. 748. Testimony was received from six (6) witnesses, representing the Departments of Treasury and State, World Vision Relief and Development, ITT Sheraton, Crescent Investment Management, L.P., and the Washington Institute for Near East Policy.

COMMITTEE CONSIDERATION

On June 12, 1997, the Subcommittee on Crime met in open session and ordered reported the bill H.R. 748, as amended, by voice vote, a quorum being present. On June 18, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 748, with amendment, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activi-

ties under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the bill will have no significant impact on the federal budget for fiscal years 1997–2002. There will not be any significant costs incurred in carrying out H.R. 748.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section states that this Act may be cited as the “Prohibition on Financial Transactions With Countries Supporting Terrorism Act of 1997.”

##### *Sec. 2. Financial transactions with terrorists*

This section amends § 2332d of title 18, United States Code, by striking the language “Except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, whoever” and inserting “Whoever.” This change removes the broad authority currently enjoyed by the Departments of State and Treasury to exempt individuals or corporations from the prohibition on financial transactions with terrorist list countries.

Subsection (2) of this section lists specific exceptions to the ban on financial transactions with terrorist countries. This section states that a financial transaction, “does not include any transaction ordinarily incident to—” (A) routine diplomatic relations among countries; (B) official acts by representatives of, or acts which are authorized by and conducted on behalf of, the United States Government; (C) the broadcasting or reporting of news by organizations regularly engaged in such activity; (D) the provision of assistance intended to relieve human suffering; (E) the receipt of emergency medical services; (F) any postal, telegraphic, or other personal communication which does not involve a transfer of anything of value; (G) the protection of intellectual property rights of

any United States person; (H) the performance of any contract or agreement that was entered into before June 12, 1997, but not those renewed after such date; (I) the provision of hospitality or transportation services; or (J) the payment of a claim to any United States person.

The Committee intends by the words "ordinarily incident to" to exclude from the prohibition any financial transaction that is necessarily connected to or arising from the performance of a particular activity authorized by this legislation. Such transactions include fees and travel related expenses. For example, a U.S. government employee conducting official business in a terrorist list country may incur expenses relating to air travel, living expenses, and miscellaneous fees that are unavoidably connected to the government of that country. Similarly, those involved in the delivery of humanitarian assistance or news reporting may engage in such transactions if they are related to the permitted activity. Also, any filing fees required in connection with the making of a legal claim would not be prohibited. Some incidental transactions, such as the purchase of postage stamps or the use of a telephone, are specifically exempted by the legislation.

With regard to the exception for broadcasting or reporting of news, the Committee notes that this applies only to those whose occupation is associated with journalism, including editing and technical services. This exception is not intended to allow any person to engage in a business transaction with a terrorist list country so long as such person reports on his experiences.

The Committee expects that a manager's amendment will be adopted by the full House when it gives consideration to H.R. 748. This amendment will allow the purchase of humanitarian assistance. The Committee intends to allow for the transfer of humanitarian assistance, which may be donated to, or purchased by, the recipient. This assistance may include medical services, supplies and equipment. While the Committee intends to permit this assistance to be provided both with or without charge to the person or entity receiving the assistance, this paragraph would not permit the entity providing such assistance under this section to engage in other related commercial activities such as advertising or manufacturing health care products in the terrorist state.

Paragraph (H) relating to the performance of any contract or agreement entered into before June 12, 1997, is intended to protect those contracts that were established prior to the formal consideration of this legislation. If a party has an option to renew a contract sometime after June 12, 1997, such renewal should not be considered as a continuation of the original contract and would not be included in the exception in section 321. This is true even if the party gave consideration for such option to renew.

#### AGENCY VIEWS

There were no agency views received on H.R. 748 other than testimony that was submitted at the hearing held on June 10, 1997.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SECTION 2332d OF TITLE 18, UNITED STATES CODE****§ 2332d. Financial transactions**

(a) OFFENSE.—[Except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, whoever] *Whoever*, being a United States person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405) as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under this title, imprisoned for not more than 10 years, or both.

(b) DEFINITIONS.—As used in this section—

(1) the term “financial transaction” has the same meaning as in section 1956(c)(4), *except that such term does not include any transaction ordinarily incident to—*

(A) *routine diplomatic relations among countries;*

(B) *an official act by a representative of, or an act which is authorized by and conducted on behalf of, the United States Government;*

(C) *the broadcasting or reporting of news by organizations regularly engaged in such activity; or*

(D) *the provision of assistance intended to relieve human suffering;*

(E) *the receipt of emergency medical services;*

(F) *any postal, telegraphic, or other personal communication which does not involve a transfer of anything of value;*

(G) *the protection of intellectual property rights of any United States person;*

(H) *the performance of any contract or agreement that was entered into before June 12, 1997, but not those renewed after such date;*

(I) *the provision of hospitality or transportation services;*

*or*

(J) *the payment of a claim to any United States person;*

and

(2) the term “United States person” means any—

(A) United States citizen or national;

(B) permanent resident alien;

(C) juridical person organized under the laws of the United States; or

(D) any person in the United States.