

FREEDOM FROM RELIGIOUS PERSECUTION ACT OF 1998

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MAY 8, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ARCHER, from the Committee on Ways and Means,  
submitted the following

REPORT

[To accompany H.R. 2431]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2431) to establish an Office of Religious Persecution Monitoring, to provide for the imposition of sanctions against countries engaged in a pattern of religious persecution, and for other purposes, having considered the same, report an amendment, but without recommendation on the bill as amended.

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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 “Freedom From Religious Persecution Act of 1998”.

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—The Congress makes the following findings:

(1) Governments have a primary responsibility to promote, encourage, and protect respect for the fundamental and internationally recognized right to freedom of religion.

(2)(A) Since its inception, the United States Government has rested upon certain founding principles. One of those principles is that all people have the inalienable right to worship freely, which demands that religion be protected from unnecessary government intervention. The Founding Fathers of the United States incorporated that principle in the Declaration of Independence, which states that mankind has the inalienable right to “life, liberty, and the pursuit of happiness”, and in the United States Constitution, the first amendment to which states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”. Therefore, in accordance with this belief in the inalienable right of freedom of religion for all people, as expressed by the Declaration of Independence, and the belief that religion should be protected from government interference, as expressed by the United States Constitution, the Congress opposes international religious persecution and believes that the policies of the United States Government and its relations with foreign governments should be consistent with the commitment to this principle.

(B) Numerous international agreements and covenants also identify mankind’s inherent right to freedom of religion. These include the following:

(i) Article 18 of the Universal Declaration of Human Rights states that “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”.

(ii) Article 18 of the Covenant on Civil and Political Rights declares that “Everyone shall have the right to freedom of thought, conscience, and religion . . .” and further delineates the privileges under this right.

(iii) The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief, adopted by the United Nations General Assembly on November 25, 1981, declares that “religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life . . .” and that “freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination”.

(iv) The Concluding Document of the Third Follow-Up Meeting of the Organization for Security and Cooperation in Europe commits states to “ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief”.

(3) Persecution of religious believers, particularly Roman Catholic and evangelical Protestant Christians, in Communist countries persists and in some cases is increasing.

(4) In many countries and regions thereof, governments dominated by extremist movements persecute non-Muslims and religious converts from Islam using means such as “blasphemy” and “apostasy” laws, and such movements seek to corrupt a historically tolerant Islamic faith and culture through the persecution of Baha’is, Christians, and other religious minorities.

(5) The extremist Government of Sudan is waging a self-described religious war against Christians, other non-Muslims, and moderate Muslims by using torture, starvation, enslavement, and murder.

(6) In Tibet, where Tibetan Buddhism is inextricably linked to the Tibetan identity, the Government of the People’s Republic of China has intensified its control over the Tibetan people by interfering in the selection of the Panchen Lama, propagandizing against the religious authority of the Dalai Lama, restricting religious study and traditional religious practices, and increasing the persecution of monks and nuns.

(7) In Xinjiang Autonomous Region of China, formerly the independent republic of East Turkistan, where the Muslim religion is inextricably linked to the dominant Uyghur culture, the Government of the People’s Republic of China has intensified its control over the Uyghur people by systematically repressing

religious authority, restricting religious study and traditional practices, destroying mosques, and increasing the persecution of religious clergy and practitioners.

(8) In countries around the world, Christians, Jews, Muslims, Hindus, and other religious believers continue to be persecuted on account of their religious beliefs, practices, and affiliations.

(9) The 104th Congress recognized the facts set forth in this section and stated clearly the sense of the Senate and the House of Representatives regarding these matters in approving—

(A) House Resolution 515, expressing the sense of the House of Representatives with respect to the persecution of Christians worldwide;

(B) S. Con. Res. 71, expressing the sense of the Senate with respect to the persecution of Christians worldwide;

(C) H. Con. Res. 102, concerning the emancipation of the Iranian Baha'i community; and

(D) section 1303 of H.R. 1561, the Foreign Relations Authorization Act, Fiscal Years 1996 and 1997.

(10) The Department of State, in a report to Congress filed pursuant to House Report 104-863, accompanying the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104-208) set forth strong evidence that widespread and ongoing religious persecution is occurring in a number of countries around the world.

(b) PURPOSE.—It is the purpose of this Act to reduce and eliminate the widespread and ongoing religious persecution taking place throughout the world today.

### SEC. 3. DEFINITIONS.

As used in this Act:

(1) DIRECTOR.—The term “Director” means the Director of the Office of Religious Persecution Monitoring established under section 5.

(2) LEGISLATIVE DAY.—The term “legislative day” means a day on which both Houses of Congress are in session.

(3) PERSECUTED COMMUNITY.—The term “persecuted community” means any religious group or denomination whose members have been found to be subject to category 1 or category 2 persecution in the latest annual report submitted under section 6(a) or in any interim report submitted thereafter under section 6(c) before the next annual report.

(4) PERSECUTION FACILITATING PRODUCTS.—The term “persecution facilitating products” means those crime control, detection, torture, and electroshock instruments and equipment (as determined under section 6(n) of the Export Administration Act of 1979) that are directly and substantially used or intended for use in carrying out acts of persecution described in paragraphs (5) and (6).

(5) CATEGORY 1 PERSECUTION.—The term “category 1 persecution” means widespread and ongoing persecution of persons on account of their religious beliefs or practices, or membership in or affiliation with a religion or religious group or denomination, whether officially recognized or otherwise, when such persecution—

(A) includes abduction, enslavement, killing, imprisonment, forced mass relocation, rape, crucifixion or other forms of torture, or the systematic imposition of fines or penalties which have the purpose and effect of destroying the economic existence of persons on whom they are imposed; and

(B) is conducted with the involvement or support of government officials or agents, or pursuant to official government policy.

(6) CATEGORY 2 PERSECUTION.—The term “category 2 persecution” means widespread and ongoing persecution of persons on account of their religious beliefs or practices, or membership in or affiliation with a religion or religious group or denomination, whether officially recognized or otherwise, when such persecution—

(A) includes abduction, enslavement, killing, imprisonment, forced mass relocation, rape, crucifixion or other forms of torture, or the systematic imposition of fines or penalties which have the purpose and effect of destroying the economic existence of persons on whom they are imposed; and

(B) is not conducted with the involvement or support of government officials or agents, or pursuant to official government policy, but which the government fails to undertake serious and sustained efforts to eliminate, being able to do so.

(7) RESPONSIBLE ENTITIES.—The term “responsible entities” means the specific government units, as narrowly defined as practicable, which directly carry out the acts of persecution described in paragraphs (5) and (6).

(8) SANCTIONED COUNTRY.—The term “sanctioned country” means a country on which sanctions have been imposed under section 7.

(9) UNITED STATES ASSISTANCE.—The term “United States assistance” means—

(A) any assistance under the Foreign Assistance Act of 1961 (including programs under title IV of chapter 2 of part I of that Act, relating to the Overseas Private Investment Corporation), other than—

- (i) assistance under chapter 8 of part I of that Act;
- (ii) any other narcotics-related assistance under part I of that Act or under chapter 4 or 5 of part II of that Act, but any such assistance provided under this clause shall be subject to the prior notification procedures applicable to reprogrammings pursuant to section 634A of that Act;
- (iii) disaster relief assistance, including any assistance under chapter 9 of part I of that Act;
- (iv) antiterrorism assistance under chapter 8 of part II of that Act;
- (v) assistance which involves the provision of food (including monetization of food) or medicine;
- (vi) assistance for refugees; and
- (vii) humanitarian and other development assistance in support of programs of nongovernmental organizations under chapters 1 and 10 of that Act;

(B) sales, or financing on any terms, under the Arms Export Control Act, other than sales or financing provided for narcotics-related purposes following notification in accordance with the prior notification procedures applicable to reprogrammings pursuant to section 634A of the Foreign Assistance Act of 1961; and

(C) financing under the Export-Import Bank Act of 1945.

(10) UNITED STATES PERSON.—The term “United States person” means—

(A) any United States citizen or alien lawfully admitted for permanent residence into the United States; and

(B) any corporation, partnership, or other entity organized under the laws of the United States or of any State, the District of Columbia, or any territory or possession of the United States.

#### SEC. 4. APPLICATION AND SCOPE.

The responsibility of the Secretary of State under section 5(g) to determine whether category 1 or category 2 persecution exists, and to identify persons and communities that are subject to such persecution, extends to—

(1) all foreign countries in which alleged violations of religious freedom have been set forth in the latest annual report of the Department of State on human rights under sections 116(d) and 502(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)); and

(2) such other foreign countries in which, either as a result of referral by an independent human rights group or nongovernmental organization in accordance with section 5(e)(2) or otherwise, the Director has reason to believe category 1 or category 2 persecution may exist.

#### SEC. 5. OFFICE OF RELIGIOUS PERSECUTION MONITORING.

(a) ESTABLISHMENT.—There shall be established in the Department of State the Office of Religious Persecution Monitoring (hereafter in this Act referred to as the “Office”).

(b) APPOINTMENT.—The head of the Office shall be a Director who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(c) REMOVAL.—The Director shall serve at the pleasure of the President.

(d) BARRED FROM OTHER FEDERAL POSITIONS.—No person shall serve as Director while serving in any other position in the Federal Government.

(e) RESPONSIBILITIES OF DIRECTOR.—The Director shall do the following:

(1) Consider information regarding the facts and circumstances of violations of religious freedom presented in the annual reports of the Department of State on human rights under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)).

(2) Make findings of fact on violations of religious freedom based on information—

(A) considered under paragraph (1); or

(B) presented by independent human rights groups, nongovernmental organizations, or other interested parties, at any stage of the process provided in this Act.

When appropriate, the Director may hold public hearings subject to notice at which such groups, organizations, or other interested parties can present testimony and evidence of acts of persecution occurring in countries being examined by the Office.

(3) On the basis of information and findings of fact described in paragraphs (1) and (2), make recommendations to the Secretary of State for consideration by the Secretary in making determinations of countries in which there is category 1 or category 2 persecution under subsection (g), identify the responsible entities within such countries, and prepare and submit the annual report described in section 6.

(4) Maintain the lists of persecution facilitating products, and the responsible entities within countries determined to be engaged in persecution described in paragraph (3), revising the lists in accordance with section 6(c) as additional information becomes available. These lists shall be published in the Federal Register.

(5) In consultation with the Secretary of State, make policy recommendations to the President regarding the policies of the United States Government toward governments which are determined to be engaged in religious persecution.

(6) Report directly to the President and the Secretary of State, and coordinate with the appropriate officials of the Department of State, the Department of Justice, the Department of Commerce, and the Department of the Treasury, to ensure that the provisions of this Act are fully and effectively implemented.

(f) ADMINISTRATIVE MATTERS.—

(1) PERSONNEL.—The Director may appoint such personnel as may be necessary to carry out the functions of the Office.

(2) SERVICES OF OTHER AGENCIES.—The Director may use the personnel, services, and facilities of any other department or agency, on a reimbursable basis, in carrying out the functions of the Office.

(g) RESPONSIBILITIES OF THE SECRETARY OF STATE.—The Secretary of State, in time for inclusion in the annual report described in subsections (a) and (b) of section 6, shall determine with respect to each country described in section 4 whether there is category 1 or category 2 persecution, and shall include in each such determination the communities against which such persecution is directed. Any determination in any interim report described in subsection (c) of section 6 that there is category 1 or category 2 persecution in a country shall be made by the Secretary of State.

**SEC. 6. REPORTS TO CONGRESS.**

(a) ANNUAL REPORTS.—Not later than April 30 of each year, the Director shall submit to the Committees on Foreign Relations, the Judiciary, Appropriations, and Banking, Housing, and Urban Affairs of the Senate and to the Committees on International Relations, the Judiciary, Appropriations, and Banking and Financial Services of the House of Representatives a report described in subsection (b).

(b) CONTENTS OF ANNUAL REPORT.—The annual report of the Director shall include the following:

(1) DETERMINATION OF RELIGIOUS PERSECUTION.—A copy of the determinations of the Secretary of State pursuant to subsection (g) of section 5.

(2) IDENTIFICATION OF PERSECUTION FACILITATING PRODUCTS.—With respect to each country in which the Secretary of State has determined that there is either category 1 or category 2 persecution, the Director, in consultation with the Secretary of Commerce, shall identify and list the items on the list established under section 6(n) of the Export Administration Act of 1979 that are directly and substantially used or intended for use in carrying out acts of religious persecution in such country.

(3) IDENTIFICATION OF RESPONSIBLE ENTITIES.—With respect to each country in which the Secretary of State has determined that there is category 1 persecution, the Director shall identify and list the responsible entities within that country that are engaged in such persecution. Such entities shall be defined as narrowly as possible.

(4) OTHER REPORTS.—The Director shall include the reports submitted to the Director by the Attorney General under section 9 and by the Secretary of State under section 10.

(c) INTERIM REPORTS.—The Director may submit interim reports to the Congress containing such matters as the Director considers necessary, including revisions to the lists issued under paragraphs (2) and (3) of subsection (b). The Director shall submit an interim report in the case of a determination by the Secretary of State

under section 5(g), other than in an annual report of the Director, that category 1 or category 2 persecution exists, or in the case of a determination by the Secretary of State under section 11(a) that neither category 1 or category 2 persecution exists.

(d) PERSECUTION IN REGIONS OF A COUNTRY.—In determining whether category 1 or category 2 persecution exists in a country, the Secretary of State shall include such persecution that is limited to one or more regions within the country, and shall indicate such regions in the reports described in this section.

#### SEC. 7. SANCTIONS.

##### (a) PROHIBITION ON EXPORTS RELATING TO RELIGIOUS PERSECUTION.—

(1) ACTIONS BY RESPONSIBLE DEPARTMENTS AND AGENCIES.—With respect to any country in which—

(A) the Secretary of State finds the occurrence of category 1 persecution, the Director shall so notify the relevant United States departments and agencies, and such departments and agencies shall—

(i) prohibit all exports to the responsible entities identified in the lists issued under subsections (b)(3) and (c) of section 6; and

(ii) prohibit the export to such country of the persecution facilitating products identified in the lists issued under subsections (b)(2) and (c) of section 6; or

(B) the Secretary of State finds the occurrence of category 2 persecution, the Director shall so notify the relevant United States departments and agencies, and such departments and agencies shall prohibit the export to such country of the persecution facilitating products identified in the lists issued under subsections (b)(2) and (c) of section 6.

(2) PROHIBITIONS ON U.S. PERSONS.—(A) With respect to any country in which the Secretary of State finds the occurrence of category 1 persecution, no United States person may—

(i) export any item to the responsible entities identified in the lists issued under subsections (b)(3) and (c) of section 6; and

(ii) export to that country any persecution facilitating products identified in the lists issued under subsections (b)(2) and (c) of section 6.

(B) With respect to any country in which the Secretary of State finds the occurrence of category 2 persecution, no United States person may export to that country any persecution facilitating products identified in the lists issued under subsections (b)(2) and (c) of section 6.

(3) PENALTIES.—Any person who knowingly violates the provisions of paragraph (2) shall be subject to the penalties set forth in subsections (a) and (b)(1) of section 16 of the Trading With the Enemy Act (50 U.S.C. App. 16 (a) and (b)(1)) for violations under that Act.

(4) EFFECTIVE DATE OF PROHIBITIONS.—The prohibitions on exports under paragraphs (1) and (2) shall take effect with respect to a country 90 days after the date on which—

(A) the country is identified in a report of the Director under section 6 as a country in which category 1 or category 2 persecution exists,

(B) responsible entities are identified in that country in a list issued under subsection (b)(3) or (c) of section 6, or

(C) persecution facilitating products are identified in a list issued under subsection (b)(2) or (c) of section 6, as the case may be.

##### (b) UNITED STATES ASSISTANCE.—

(1) CATEGORY 1 PERSECUTION.—No United States assistance may be provided to the government of any country which the Secretary of State determines is engaged in category 1 persecution, effective 90 days after the date on which the Director submits the report in which the determination is included.

(2) CATEGORY 2 PERSECUTION.—No United States assistance may be provided to the government of any country in which the Secretary of State determines that there is category 2 persecution, effective 1 year after the date on which the Director submits the report in which the determination is included, if the Secretary of State, in the next annual report of the Director under section 6, determines that the country is engaged in category 1 persecution or that category 2 persecution exists in that country.

##### (c) MULTILATERAL ASSISTANCE.—

(1) CATEGORY 1 PERSECUTION.—With respect to any country which the Secretary of State determines is engaged in category 1 persecution, the President shall instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and use his or her best efforts to deny, any loan or other utilization of the funds of their

respective institutions to that country (other than for humanitarian assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit on the government of that country), effective 90 days after the Director submits the report in which the determination is included.

(2) **CATEGORY 2 PERSECUTION.**—With respect to any country in which the Secretary of State determines there is category 2 persecution, the President shall instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and use his or her best efforts to deny, any loan or other utilization of the funds of their respective institutions to that country (other than for humanitarian assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit on the government of that country), effective 1 year after the date on which the Director submits the report in which the determination is included, if the Secretary of State, in the next annual report of the Director under section 6, determines that the country is engaged in category 1 persecution or that category 2 persecution exists in that country.

(3) **REPORTS TO CONGRESS.**—If a country described in paragraph (1) or (2) is granted a loan or other utilization of funds notwithstanding the objection of the United States under this subsection, the Secretary of the Treasury shall report to the Congress on the efforts made to deny loans or other utilization of funds to that country, and shall include in the report specific and explicit recommendations designed to ensure that such loans or other utilization of funds are denied to that country in the future.

(4) **DEFINITION.**—As used in this subsection, the term “multilateral development bank” means any of the multilateral development banks as defined in section 1701(c)(4) of the International Financial Institutions Act (22 U.S.C. 262r(c)(4)).

(d) **DENIAL OF VISAS.**—No consular officer shall issue a visa to, and the Attorney General shall exclude from the United States, any alien who the Director determines carried out or directed the carrying out of any act of category 1 or category 2 persecution.

(e) **RELATIONSHIP TO OTHER PROVISIONS.**—The effective dates of the sanctions provided in this section are subject to sections 8 and 11.

(f) **DULY AUTHORIZED INTELLIGENCE ACTIVITIES.**—The prohibitions and restrictions of this section shall not apply to the conduct of duly authorized intelligence activities of the United States Government.

(g) **EFFECT ON EXISTING CONTRACTS.**—The imposition of sanctions under this section shall not affect any contract that is entered into by the Overseas Private Investment Corporation before the sanctions are imposed, is in force on the date on which the sanctions are imposed, and is enforceable in a court of law on such date.

(h) **EFFECT OF WAIVERS.**—Any sanction under this section shall not take effect during the period after the President has notified the Congress of a waiver of that sanction under section 8 and before the waiver has taken effect under that section.

#### **SEC. 8. WAIVER OF SANCTIONS.**

(a) **WAIVER AUTHORITY.**—Subject to subsection (b), the President may waive the imposition of any sanction against a country under section 7 for periods of not more than 12 months each, if the President, for each waiver—

(1) determines—

(A) that the national security interests of the United States justify such a waiver; or

(B) that such a waiver will substantially promote the purposes of this Act as set forth in section 2; and

(2) provides to the Committees on Foreign Relations, Finance, the Judiciary, and Appropriations of the Senate and to the Committees on International Relations, the Judiciary, and Appropriations of the House of Representatives a written notification of the President’s intention to waive any such sanction.

The notification shall contain an explanation of the reasons why the President considers the waiver to be necessary, the type and amount of goods, services, or assistance to be provided pursuant to the waiver, and the period of time during which such a waiver will be effective. When the President considers it appropriate, the explanation under the preceding sentence, or any part of the explanation, may be submitted in classified form.

(b) **ADDITIONAL INFORMATION.**—In the case of a waiver under subsection (a)(1)(B), the notification shall contain a detailed statement of the facts particular to the country subject to the waiver which justifies the President’s determination, and of

the alternative measures the President intends to implement in order to achieve the objectives of this Act.

(c) TAKING EFFECT OF WAIVER.—

(1) IN GENERAL.—Subject to paragraph (2), a waiver under subsection (a) shall take effect 45 days after its submission to the Congress, or on the day after the 15th legislative day after such submission, whichever is later.

(2) IN EMERGENCY CONDITIONS.—The President may waive the imposition of sanctions against a country under subsection (b) or (c) of section 7 to take effect immediately if the President, in the written notification of intention to waive the sanctions, certifies that emergency conditions exist that make an immediate waiver necessary.

(d) SENSE OF CONGRESS.—It is the sense of Congress that in order to achieve the objectives of this Act, the waiver authority provided in this section should be used only in extraordinary circumstances.

**SEC. 9. MODIFICATION OF IMMIGRATION POLICY.**

(a) CREDIBLE FEAR OF PERSECUTION DEFINED.—Section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)) (as amended by section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; Public Law 104–208; 110 Stat. 3009–582) is amended by adding at the end the following:

“Any alien who can credibly claim membership in a persecuted community found to be subject to category 1 or category 2 religious persecution in the most recent annual report sent by the Director of the Office of Religious Persecution Monitoring to the Congress under section 6 of the Freedom From Religious Persecution Act of 1997 shall be considered to have a credible fear of persecution within the meaning of the preceding sentence.”

(b) TRAINING FOR CERTAIN IMMIGRATION OFFICERS.—Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) (as amended by section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; Public Law 104–208; 110 Stat. 3009–579) is amended by adding at the end the following:

“(d) TRAINING ON RELIGIOUS PERSECUTION.—The Attorney General shall establish and operate a program to provide to immigration officers performing functions under subsection (b), or section 207 or 208, training on religious persecution, including training on—

“(1) the fundamental components of the right to freedom of religion;

“(2) the variation in beliefs of religious groups; and

“(3) the governmental and nongovernmental methods used in violation of the right to freedom of religion.”

(c) ASYLUM.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) (as amended by section 604 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; Public Law 104–208; 110 Stat. 3009–690) is amended by adding at the end the following:

“(e) SPECIAL RULES FOR RELIGIOUS PERSECUTION CLAIMS.—

“(1) PROCEDURES UPON DENIAL.—

“(A) IN GENERAL.—In any case in which the Service denies or refers to an immigration judge an asylum application filed by an alien described in the second sentence of section 235(b)(1)(B)(v), or any case in which an immigration judge denies such an application on the ground that the alien is not a refugee within the meaning of section 101(a)(42)(A), the Service shall provide the alien with the following:

“(i) A written statement containing the reasons for the denial, which shall be supported by references to—

“(I) the most recent annual report sent by the Director of the Office of Religious Persecution Monitoring to the Congress under section 6 of the Freedom From Religious Persecution Act of 1997; and

“(II) either—

“(aa) the most recent country report on human rights practices issued by the Secretary of State; or

“(bb) any other report issued by the Secretary of State concerning conditions in the country of which the alien is a national (or, in the case of an alien having no nationality, the country of the alien’s last habitual residence).

“(ii) A copy of any assessment sheet prepared by an asylum officer for a supervisory asylum officer with respect to the application.

“(iii) A list of any publicly available materials relied upon by an asylum officer as a basis for denying the application.



“(iv) A copy of any materials relied upon by an asylum officer as a basis for denying the application that are not available to the public, except Federal agency records that are exempt from disclosure under section 552(b) of title 5, United States Code.

“(B) CREDIBILITY IN ISSUE.—In any case described in subparagraph (A) in which the denial is based, in whole or in part, on credibility grounds, the Service shall also provide the alien with the following:

“(i) The statements by the applicant, or other evidence, that were found not to be credible.

“(ii) A statement certifying that the applicant was provided an opportunity to respond to the Service’s position on the credibility issue.

“(iii) A brief summary of such response, if any was made.

“(iv) An explanation of how the negative determination on the credibility issue relates to the applicant’s religious persecution claim.

“(2) EFFECT IN SUBSEQUENT PROCEEDINGS.—

“(A) USE AT OPTION OF APPLICANT.—Any material provided to an alien under paragraph (1) shall be considered part of the official record pertaining to the alien’s asylum application solely at the option of the alien.

“(B) NO EFFECT ON REVIEW.—The provision of any material under paragraph (1) to an alien shall not be construed to alter any standard of review otherwise applicable in any administrative or judicial adjudication concerning the alien’s asylum application.

“(3) DUTY TO SUBMIT REPORT ON RELIGIOUS PERSECUTION.—In any judicial or administrative proceeding in which the Service opposes granting asylum to an alien described in the second sentence of section 235(b)(1)(B)(v), the Service shall submit to the court or administrative adjudicator a copy of the most recent annual report submitted to the Congress by the Director of the Office of Religious Persecution Monitoring under section 6 of the Freedom From Religious Persecution Act of 1997, and any interim reports issued by such Director after such annual report.”.

(d) ANNUAL REPORT.—Not later than January 1 of each year, the Attorney General shall submit to the Director an annual report that includes the following:

(1) With respect to the year that is the subject of the report, the number of applicants for asylum or refugee status whose applications were based, in whole or in part, on religious persecution.

(2) In the case of such applications, the number that were proposed to be denied, and the number that were finally denied.

(3) In the case of such applications, the number that were granted.

(4) A description of developments with respect to the adjudication of applications for asylum or refugee status filed by an alien who claims to be a member of a persecuted community that the Director found to be subject to category 1 or category 2 religious persecution in the most recent annual report submitted to the Congress under section 6.

(5) With respect to the year that is the subject of the report, a description of training on religious persecution provided under section 235(d) of the Immigration and Nationality Act (as added by subsection (b)) to immigration officers performing functions under section 235(b) of such Act, or adjudicating applications under section 207 or 208 of such Act, including a list of speakers and materials used in such training and the number of officers who received such training.

(e) ADMISSION PRIORITY.—For purposes of section 207(a)(3) of the Immigration and Nationality Act, an individual who is a member of a persecuted community that the Director found to be subject to category 1 or category 2 religious persecution in the most recent annual report submitted to the Congress under section 6, and is determined by the Attorney General to be a refugee within the meaning of section 101(a)(42)(A) of the Immigration and Nationality Act, shall be considered a refugee of special humanitarian concern to the United States. In carrying out such section, such an individual shall be given priority status at least as high as that given to any member of any other specific group of refugees of special concern to the United States.

(f) NO EFFECT ON OTHERS’ RIGHTS.—Nothing in this section, or any amendment made by this section, shall be construed to deny any applicant for asylum or refugee status (including any applicant who is not a member of a persecuted community but whose claim is based on religious persecution) any right, privilege, protection, or eligibility otherwise provided by law.

(g) NO DISPLACEMENT OF OTHER REFUGEES.—Refugees admitted to the United States as a result of the procedures set forth in this section shall not displace other

refugees in need of resettlement who would otherwise have been admitted in accordance with existing law and procedures.

(h) PERIOD FOR PUBLIC COMMENT AND REVIEW.—Section 207(d) of the Immigration and Nationality Act is amended by adding at the end the following:

“(4)(A) Notwithstanding any other provision of law, prior to each annual determination regarding refugee admissions under this subsection, there shall be a period of public review and comment, particularly by appropriate nongovernmental organizations, churches, and other religious communities and organizations, and the general public.

“(B) Nothing in this paragraph may be construed to apply subchapter II of chapter 5 of title 5, United States Code, to the period of review and comment referred to in subparagraph (A).”.

**SEC. 10. STATE DEPARTMENT HUMAN RIGHTS REPORTS.**

(a) ANNUAL HUMAN RIGHTS REPORT.—In preparing the annual reports of the State Department on human rights under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)), the Secretary of State shall, in the section on religious freedom—

(1) consider the facts and circumstances of the violation of the right to freedom of religion presented by independent human rights groups and nongovernmental organizations;

(2) report on the extent of the violations of the right to freedom of religion, specifically including whether the violations arise from governmental or nongovernmental sources, and whether the violations are encouraged by the government or whether the government fails to exercise satisfactory efforts to control such violations;

(3) report on whether freedom of religion violations occur on a nationwide, regional, or local level; and

(4) identify whether the violations are focused on an entire religion or on certain denominations or sects.

(b) TRAINING.—The Secretary of State shall—

(1) institute programs to provide training for chiefs of mission as well as Department of State officials having reporting responsibilities regarding the freedom of religion, which shall include training on—

(A) the fundamental components of the right to freedom of religion, the variation in beliefs of religious groups, and the governmental and nongovernmental methods used in the violation of the right to freedom of religion; and

(B) the identification of independent human rights groups and nongovernmental organizations with expertise in the matters described in subparagraph (A); and

(2) submit to the Director, not later than January 1 of each year, a report describing all training provided to Department of State officials with respect to religious persecution during the preceding 1-year period, including a list of instructors and materials used in such training and the number and rank of individuals who received such training.

**SEC. 11. TERMINATION OF SANCTIONS.**

(a) TERMINATION.—The sanctions described in section 7 shall cease to apply with respect to a sanctioned country 45 days, or the day after the 15th legislative day, whichever is later, after the Director, in an annual report described in section 6(b), does not include a determination by the Secretary of State that the sanctioned country is among those in which category 1 or category 2 persecution continues to exist, or in an interim report under section 6(c), includes a determination by the Secretary of State that neither category 1 nor category 2 persecution exists in such country.

(b) WITHDRAWAL OF FINDING.—Any determination of the Secretary of State under section 5(g) may be withdrawn before taking effect if the Secretary makes a written determination, on the basis of a preponderance of the evidence, that the country substantially eliminated any category 1 or category 2 persecution that existed in that country. The Director shall submit to the Congress each determination under this subsection.

**SEC. 12. SANCTIONS AGAINST SUDAN.**

(a) EXTENSION OF SANCTIONS UNDER EXISTING LAW.—Any sanction imposed on Sudan because of a determination that the government of that country has provided support for acts of international terrorism, including—

(1) export controls imposed pursuant to the Export Administration Act of 1979;

(2) prohibitions on transfers of munitions under section 40 of the Arms Export Control Act;

(3) the prohibition on assistance under section 620A of the Foreign Assistance Act of 1961;

(4) section 2327(b) of title 10, United States Code;

(5) section 6 of the Bretton Woods Agreements Act Amendments, 1978 (22 U.S.C. 286e–11); and

(6) section 527 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (as contained in Public Law 105–118);

shall continue in effect after the enactment of this Act until the Secretary of State determines that Sudan has substantially eliminated religious persecution in that country, or the determination that the government of that country has provided support for acts of international terrorism is no longer in effect, whichever occurs later.

(b) ADDITIONAL SANCTIONS ON SUDAN.—Effective 90 days after the date of the enactment of this Act, the following sanctions (to the extent not covered under subsection (a)) shall apply with respect to Sudan:

(1) PROHIBITION ON FINANCIAL TRANSACTIONS WITH GOVERNMENT OF SUDAN.—

(A) OFFENSE.—Any United States person who knowingly engages in any financial transaction, including any loan or other extension of credit, directly or indirectly, with the Government of Sudan shall be fined in accordance with title 18, United States Code, or imprisoned for not more than 10 years, or both.

(B) DEFINITIONS.—As used in this paragraph:

(i) FINANCIAL TRANSACTION.—The term “financial transaction” has the meaning given that term in section 1956(c)(4) of title 18, United States Code.

(ii) UNITED STATES PERSON.—The term “United States person” means—

(I) any United States citizen or national;

(II) any alien lawfully admitted into the United States for permanent residence;

(III) any juridical person organized under the laws of the United States; and

(IV) any person in the United States.

(2) PROHIBITIONS ON UNITED STATES EXPORTS TO SUDAN.—

(A) PROHIBITION ON COMPUTER EXPORTS.—No computers, computer software, or goods or technology intended to manufacture or service computers may be exported to or for use of the Government of Sudan.

(B) REGULATIONS OF THE SECRETARY OF COMMERCE.—The Secretary of Commerce may prescribe such regulations as may be necessary to carry out subparagraph (A).

(C) PENALTIES.—Any person who violates this paragraph shall be subject to the penalties provided in section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410) for violations under that Act.

(3) PROHIBITION ON NEW INVESTMENT IN SUDAN.—

(A) PROHIBITION.—No United States person may, directly or through another person, make any new investment in Sudan that is not prohibited by paragraph (1).

(B) REGULATIONS.—The Secretary of Commerce may prescribe such regulations as may be necessary to carry out subparagraph (A).

(C) PENALTIES.—Any person who violates this paragraph shall be subject to the penalties provided in section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410) for violations under that Act.

(4) AVIATION RIGHTS.—

(A) AIR TRANSPORTATION RIGHTS.—The Secretary of Transportation shall prohibit any aircraft of a foreign air carrier owned or controlled, directly or indirectly, by the Government of Sudan or operating pursuant to a contract with the Government of Sudan from engaging in air transportation with respect to the United States, except that such aircraft shall be allowed to land in the event of an emergency for which the safety of an aircraft’s crew or passengers is threatened.

(B) TAKEOFFS AND LANDINGS.—The Secretary of Transportation shall prohibit the takeoff and landing in Sudan of any aircraft by an air carrier owned, directly or indirectly, or controlled by a United States person, except that such aircraft shall be allowed to land in the event of an emergency for which the safety of an aircraft’s crew or passengers is threatened, or for humanitarian purposes.

(C) TERMINATION OF AIR SERVICE AGREEMENTS.—To carry out subparagraphs (A) and (B), the Secretary of State shall terminate any agreement between the Government of Sudan and the Government of the United States relating to air services between their respective territories.

(D) DEFINITIONS.—For purposes of this paragraph, the terms “aircraft”, “air transportation”, and “foreign air carrier” have the meanings given those terms in section 40102 of title 49, United States Code.

(5) PROHIBITION ON PROMOTION OF UNITED STATES TOURISM.—None of the funds appropriated or otherwise made available by any provision of law may be available to promote United States tourism in Sudan.

(6) GOVERNMENT OF SUDAN BANK ACCOUNTS.—

(A) PROHIBITION.—A United States depository institution may not accept, receive, or hold a deposit account from the Government of Sudan, except for such accounts which may be authorized by the President for diplomatic or consular purposes.

(B) ANNUAL REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress on the nature and extent of assets held in the United States by the Government of Sudan.

(C) DEFINITION.—For purposes of this paragraph, the term “depository institution” has the meaning given that term in section 19(b)(1) of the Act of December 23, 1913 (12 U.S.C. 461(b)(1)).

(7) PROHIBITION ON UNITED STATES GOVERNMENT PROCUREMENT FROM SUDAN.—

(A) PROHIBITION.—No department, agency, or any other entity of the United States Government may enter into a contract for the procurement of goods or services from parastatal organizations of Sudan, except for items necessary for diplomatic or consular purposes.

(B) DEFINITION.—As used in this paragraph, the term “parastatal organization of Sudan” means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of Sudan.

(8) PROHIBITION ON UNITED STATES APPROPRIATIONS FOR USE AS INVESTMENTS IN OR TRADE SUBSIDIES FOR SUDAN.—None of the funds appropriated or otherwise made available by any provision of law may be available for any new investment in, or any subsidy for trade with, Sudan, including funding for trade missions in Sudan and for participation in exhibitions and trade fairs in Sudan.

(9) PROHIBITION ON COOPERATION WITH ARMED FORCES OF SUDAN.—No agency or entity of the United States may engage in any form of cooperation, direct or indirect, with the armed forces of Sudan, except for activities which are reasonably necessary to facilitate the collection of necessary intelligence. Each such activity shall be considered as significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947 (50 U.S.C. 413).

(10) PROHIBITION ON COOPERATION WITH INTELLIGENCE SERVICES OF SUDAN.—

(A) SANCTION.—No agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of Sudan, except for activities which are reasonably designed to facilitate the collection of necessary intelligence.

(B) POLICY.—It is the policy of the United States that no agency or entity of the United States involved in intelligence activities may provide any intelligence information to the Government of Sudan which pertains to any internal group within Sudan. Any change in such policy or any provision of intelligence information contrary to this policy shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947 (50 U.S.C. 413).

The sanctions described in this subsection shall apply until the Secretary of State determines that Sudan has substantially eliminated religious persecution in that country.

(c) MULTILATERAL EFFORTS TO END RELIGIOUS PERSECUTION IN SUDAN.—

(1) EFFORTS TO OBTAIN MULTILATERAL MEASURES AGAINST SUDAN.—It is the policy of the United States to seek an international agreement with the other industrialized democracies to bring about an end to religious persecution by the Government of Sudan. The net economic effect of such international agreement should be measurably greater than the net economic effect of the other measures imposed by this section.

(2) COMMENCEMENT OF NEGOTIATIONS TO INITIATE MULTILATERAL SANCTIONS AGAINST SUDAN.—It is the sense of the Congress that the President or, at his direction, the Secretary of State should convene an international conference of the industrialized democracies in order to reach an international agreement to bring about an end to religious persecution in Sudan. The international con-

ference should begin promptly and should be concluded not later than 180 days after the date of the enactment of this Act.

(3) **PRESIDENTIAL REPORT.**—Not less than 210 days after the date of the enactment of this Act, the President shall submit to the Congress a report containing—

(A) a description of efforts by the United States to negotiate multilateral measures to bring about an end to religious persecution in Sudan; and

(B) a detailed description of economic and other measures adopted by the other industrialized countries to bring about an end to religious persecution in Sudan, including an assessment of the stringency with which such measures are enforced by those countries.

(4) **CONFORMITY OF UNITED STATES MEASURES TO INTERNATIONAL AGREEMENT.**—If the President successfully concludes an international agreement described in paragraph (2), the President may, after such agreement enters into force with respect to the United States, adjust, modify, or otherwise amend the measures imposed under any provision of this section to conform with such agreement.

(5) **PROCEDURES FOR AGREEMENT TO ENTER INTO FORCE.**—Each agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if—

(A) the President, not less than 30 days before the day on which the President enters into such agreement, notifies the House of Representatives and the Senate of the President's intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(B) after entering into the agreement, the President transmits to the House of Representatives and to the Senate a document containing a copy of the final text of such agreement, together with—

(i) a description of any administrative action proposed to implement such agreement and an explanation as to how the proposed administrative action would change or affect existing law; and

(ii) a statement of the President's reasons regarding—

(I) how the agreement serves the interest of United States foreign policy; and

(II) why the proposed administrative action is required or appropriate to carry out the agreement; and

(C) a joint resolution approving such agreement has been enacted, in accordance with section 8066(c) of the Department of Defense Appropriations Act, 1985 (as contained in Public Law 98-473 (98 Stat. 1936)), within 30 days of transmittal of such document to the Congress.

For purposes of applying such section 8066(c), any reference in such section to “joint resolution”, “resolution”, or “resolution described in paragraph (1)” shall be deemed to refer to a joint resolution described in subparagraph (C) of this paragraph.

(6) **UNITED NATIONS SECURITY COUNCIL IMPOSITION OF SAME MEASURES AGAINST SUDAN.**—It is the sense of the Congress that the President should instruct the Permanent Representative of the United States to the United Nations to propose that the United Nations Security Council, pursuant to Article 41 of the United Nations Charter, impose measures against Sudan of the same type as are imposed by this section.

(d) **ADDITIONAL MEASURES AND REPORTS; RECOMMENDATIONS OF THE PRESIDENT.**—

(1) **UNITED STATES POLICY TO END RELIGIOUS PERSECUTION.**—It shall be the policy of the United States to impose additional measures against the Government of Sudan if its policy of religious persecution has not ended on or before December 25, 1998.

(2) **REPORT TO CONGRESS.**—The Director shall prepare and transmit to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate on or before February 1, 1999, and every 12 months thereafter, a report containing a determination by the Secretary of State of whether the policy of religious persecution by the Government of Sudan has ended.

(3) **RECOMMENDATION FOR IMPOSITION OF ADDITIONAL MEASURES.**—If the Secretary of State determines that the policy of religious persecution by the Government of Sudan has not ended, the President shall prepare and transmit to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate on or before March 1, 1999, and every 12 months thereafter, a report setting forth such recommendations for such ad-

ditional measures and actions against the Government of Sudan as will end that government's policy of religious persecution.

(e) DEFINITIONS.—As used in this section:

(1) GOVERNMENT OF SUDAN.—The term “Government of Sudan” includes any agency or instrumentality of the Government of Sudan.

(2) NEW INVESTMENT IN SUDAN.—The term “new investment in Sudan”—

(A) means—

- (i) a commitment or contribution of funds or other assets, or
- (ii) a loan or other extension of credit,

that is made on or after the effective date of this subsection; and

(B) does not include—

- (i) the reinvestment of profits generated by a controlled Sudanese entity into that same controlled Sudanese entity, or the investment of such profits in a Sudanese entity;
- (ii) contributions of money or other assets where such contributions are necessary to enable a controlled Sudanese entity to operate in an economically sound manner, without expanding its operations; or
- (iii) the ownership or control of a share or interest in a Sudanese entity or a controlled Sudanese entity or a debt or equity security issued by the Government of Sudan or a Sudanese entity before the date of the enactment of this Act, or the transfer or acquisition of such a share or interest, or debt or equity security, if any such transfer or acquisition does not result in a payment, contribution of funds or assets, or credit to a Sudanese entity, a controlled Sudanese entity, or the Government of Sudan.

(3) CONTROLLED SUDANESE ENTITY.—The term “controlled Sudanese entity” means—

(A) a corporation, partnership, or other business association or entity organized in Sudan and owned or controlled, directly or indirectly, by a United States person; or

(B) a branch, office, agency, or sole proprietorship in Sudan of a United States person.

(4) SUDANESE ENTITY.—The term “Sudanese entity” means—

(A) a corporation, partnership, or other business association or entity organized in Sudan; or

(B) a branch, office, agency, or sole proprietorship in Sudan of a person that resides or is organized outside Sudan.

(5) SUDAN.—The term “Sudan” means any area controlled by the Government of Sudan or by any entity allied with the Government of Sudan, and does not include any area in which effective control is exercised by an entity engaged in active resistance to the Government of Sudan.

(f) WAIVER AUTHORITY.—The President may waive the imposition of any sanction against Sudan under paragraph (2) or (8) of subsection (b) of this section for periods of not more than 12 months each, if the President, for each waiver—

(1) determines that the national security interests of the United States justify such a waiver; and

(2) provides to the Committees on Foreign Relations, Finance, the Judiciary, and Appropriations of the Senate and to the Committees on International Relations, the Judiciary, and Appropriations of the House of Representatives a written notification of the President's intention to waive any such sanction.

The notification shall contain an explanation of the reasons why the President considers the waiver to be necessary, the type and amount of goods, services, or assistance to be provided pursuant to the waiver, and the period of time during which such a waiver will be effective. When the President considers it appropriate, the explanation under the preceding sentence, or any part of the explanation, may be submitted in classified form.

(g) DULY AUTHORIZED INTELLIGENCE ACTIVITIES.—The prohibitions and restrictions contained in paragraphs (1), (2), (3), and (7) of subsection (b) shall not apply to the conduct of duly authorized intelligence activities of the United States Government.

#### SEC. 13. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsections (b) and (c), this Act and the amendments made by this Act shall take effect 120 days after the date of the enactment of this Act.

(b) APPOINTMENT OF DIRECTOR.—The Director shall be appointed not later than 60 days after the date of the enactment of this Act.

(c) REGULATIONS.—Each Federal department or agency responsible for carrying out any of the sanctions under section 7 shall issue all necessary regulations to carry out such sanctions within 120 days after the date of the enactment of this Act.

## I. INTRODUCTION

### A. PURPOSE AND SUMMARY

H.R. 2431, the “Freedom From Religious Persecution Act of 1998,” as introduced, was referred to the Committee on International Relations and sequentially referred to the Committees on Ways and Means, the Judiciary, Banking, and Rules, for a period of time ending not later than May 8, 1998. The stated purpose of H.R. 2431 is to reduce and eliminate religious persecution taking place throughout the world. Section 12 of the bill imposes additional sanctions on Sudan.

As reported by the Committee on International Relations, the bill contains one provision relating to the Internal Revenue Code and several provisions relating to import sanctions against Sudan that fall within the jurisdiction of the Committee on Ways and Means.

### B. BACKGROUND

As reported by the Committee on International Relations, H.R. 2431 would establish an Office of Religious Persecution Monitoring in the Department of State headed by an Office Director. The bill would charge the Office Director with reporting on violations of religious freedom presented in the State Department’s annual Human Rights Report and with making findings of fact relating to violations of religious freedom based on information presented by the Department of State, independent human rights groups, non-governmental organizations, and other interested parties.

Section 4 of the bill would require the Secretary of State to make annual determinations whether or not “category 1 or category 2 persecution” exists in each foreign country that is either: (a) a foreign country in which alleged violations of religious freedom have been described in the latest State Department Human Rights Report; or (b) a foreign country in which the Office Director has reason to believe that category 1 or category 2 persecution may exist.

The bill would define a “Category 1 persecution” as widespread and ongoing persecution of persons because of their religious beliefs or practices or membership in or affiliation with a religion or religious denomination when such persecution includes: abduction, enslavement, killing, imprisonment, forced mass relocation, rape, crucifixion or other forms of torture, or the systematic imposition of fines or penalties that have the purpose and effect of destroying the economic existence of persons on whom they are imposed, and (2) is conducted with the involvement or the support of government officials or its agents or as part of official government policy.

“Category 2 persecution” would have the same elements as category 1 persecution, except it would not be conducted with the involvement or support of government officials or agents, or pursuant to official government policy, but in circumstances where the government, being able to undertake serious and sustained efforts to eliminate the persecution, fails to do so.

Countries subject to these determinations would be subject to various trade sanctions including: denial of U.S. foreign assistance, denial of visas, and prohibitions on exports and on U.S. support for multilateral development bank assistance. The bill would also provide preferential immigration treatment for aliens claiming to be victims of religious persecution, as opposed to other human rights abuses. The bill would not include import sanctions against religious persecution.

Sanctions in the bill would be automatic. Depending on whether the country is classified as a category 1 or category 2 country, the sanctions would be effective 90 days after enactment and one year after enactment, respectively. The President may waive sanctions only if he determines and certifies to Congress that such a waiver is justified by the national security interests of the United States, or that such a waiver will substantially promote the purposes of the Act. The waiver would not permit the President to take into account foreign policy considerations other than religious persecution or national security interests. Waivers would be for one year only and must be country specific.

Section 12 would provide that the sanctions currently in place against Sudan because of Sudan's designation as a state sponsor of terrorism would remain in place until the government of Sudan has substantially eliminated religious persecution, or until that government is no longer designated as a state sponsor of terrorism, whichever is later. In addition, the bill would impose statutory sanctions on Sudan including: a prohibition on exports to and imports from Sudan, a prohibition on financial transactions with the government of Sudan, a prohibition on new investment in Sudan, a prohibition on flights to and from Sudan, a prohibition on the promotion of U.S. tourism in Sudan, a prohibition on U.S. depository institutions holding deposits from the government of Sudan, and a prohibition on U.S. government procurement from Sudan. The bill would also urge the President to pursue multilateral measures against Sudan.

The President would be able to waive the prohibition on exports of computers to Sudan and the prohibition of appropriations for any trade subsidy, if he determined that the national security interests of the U.S. justify such a waiver and notified Congress of his intent to waive these sanctions. Other sanctions, including those imposed under section 12, would not be subject to waiver.

Finally, section 13 of the bill contains an exception from sanctions for the importation of gum arabic from Sudan.

### C. LEGISLATIVE HISTORY

H.R. 2431, the "Freedom From Religious Persecution Act of 1998," was introduced by Rep. Wolf on September 8, 1997 and referred to the Committee on International Relations, and in addition, to the Committees on Ways and Means, the Judiciary, Banking and Rules. On March 24, 1998, the Committee on International Relations ordered H.R. 2431 favorably reported. (See H. Rept. 105-480, Part 1.)

On October 23, 1997 the Subcommittee on Trade held a hearing on the use and effect of unilateral trade sanctions. Testimony was received from the Administration and private sector witnesses. On



March 26, 1998 the Subcommittee on Trade requested written public comment on H.R. 3465, a bill to provide for an exemption of gum arabic from Executive Order 13067, which was introduced by Mr. Menendez on March 16, 1998. No submissions were received in response to this notice.

On May 6, 1998, the Committee on Ways and Means met to consider H.R. 2431 and approved by voice vote an amendment in the nature of a substitute which was offered by Chairman Archer. The amendment struck all provisions within the jurisdiction of the Committee on Ways and Means from the bill. The Committee ordered H.R. 2431 reported without recommendation by voice vote.

## **II. EXPLANATION OF PROVISIONS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS**

### **A. DENIAL OF FOREIGN TAX CREDITS**

#### *Present law*

Section 901(j) of the Internal Revenue Code of 1986 (the "Code") denies a foreign tax credit for taxes paid to certain proscribed countries that meet designated criteria, including a foreign country such as Sudan which has been designated by the Secretary of State as providing support for acts of international terrorism.

#### *Explanation of provision*

The bill as reported from the Ways and Means Committee deletes section 12(a)(7) of the bill as reported from the International Relations Committee, which had included section 901(j) of the Code among certain sanctions imposed on Sudan that are required to remain in effect after enactment of the Act until: (1) the Secretary of State determines that Sudan has substantially eliminated religious persecution, or (2) the determination that Sudan has provided support for acts of international terrorism is no longer in effect, whichever occurs later. That provision effectively would have expanded section 901(j) to deny foreign tax credits for taxes paid to Sudan in certain cases in which Sudan does not substantially eliminate religious persecution, but has ceased supporting acts of international terrorism. The bill did not amend the Code to reflect this expansion of section 901(j) in the case of Sudan. As amended by this Committee, the bill has no effect on section 901(j).

#### *Reasons for change*

The Committee determined that it was appropriate to strike provisions of the bill as reported from the International Relations Committee which were within the jurisdiction of the Ways and Means Committee.

### **B. PROHIBITION ON IMPORTS FROM SUDAN (SEC. 12(B)(2))**

#### *Present law*

Because the Secretary of State has designated Sudan as a state sponsor of terrorism, numerous laws, such as the Anti-terrorism and Effective Death Penalty Act (P.L. 104-208) and the Arms Export Control Act, constrain trade and bilateral assistance between the United States and Sudan. In addition, Executive Order 13067

of November 4, 1997, imposed a comprehensive trade and investment embargo on Sudan under the International Emergency Economic Powers Act. Major economic sanctions covered by the Executive Order include a ban on: (1) all imports into the United States of any goods or services of Sudanese origin; (2) all financial transactions; (3) all exports and reexports to Sudan; and (4) U.S. depository institutions accepting, receiving, or holding deposit accounts for the Government of Sudan.

Under E.O. 13067, the President, and by delegation the Secretary of the Treasury, has discretion to issue regulations and licenses to implement the Sudan embargo.

*Explanation of provision*

The bill as reported by the Committee on Ways and Means strikes section 12(b)(2), which would have prohibited the importation into the United States of any article which is grown, produced, manufactured by, marketed, or otherwise exported by the Government of Sudan. Under the bill as reported by the Committee on Ways and Means, the President's current ability to lift or modify the current ban on imports from Sudan at his discretion by Executive Order would remain unchanged.

*Reason for change*

In light of the comprehensive embargo in effect pursuant to Executive Order 13067, the Committee believes a statutory import ban is unnecessary at this time. The Committee's view is that a statutorily imposed import ban would undermine the President's ability to respond effectively to a changed government or circumstances in Sudan in the future.

A number of the economic sanctions included in H.R. 2431, as reported by the Committee on International Relations, are covered under the embargo imposed by Executive Order 13067, and in some cases, the prohibitions in the Executive Order are wider than those that would have been imposed by the bill. Specifically, the import prohibition proposed in the International Relations bill, which would have affected only articles exported by the government of Sudan, would have been narrower than the import ban imposed under the Executive Order, which prohibits the import of any Sudanese-origin goods and services. The statutory ban, however, would not have permitted any licensing of individual transactions as under the Executive Order.

C. EXCEPTION FOR THE IMPORTATION OF CERTAIN AGRICULTURAL PRODUCTS (SEC. 13)

*Present law*

The President has exercised his authority under the International Emergency Economic Powers Act to issue licenses under Executive Order 13067 in order to allow the importation of several shipments of gum arabic that were under contract at the time the embargo was imposed.

*Explanation of provision*

The bill as reported by the Committee on Ways and Means strikes section 13 which would have provided that no provision of law may restrict the importation of gum arabic from Sudan during a calendar year if, during the preceding calendar year, a supply of that commodity in unprocessed form from other countries of equal quality to that cultivated in Sudan is not available in sufficient supply to meet United States requirements.

*Reason for change*

The Committee notes that the President has executive authority under the International Emergency Economic Powers Act and the Executive Order to lift the ban on imports of gum arabic entirely, or on a case by case basis, if such action is in the national interest. The effect of the Committee's amendment is to restore the status quo with respect to imports of gum arabic.

**III. VOTE OF THE COMMITTEE IN REPORTING THE BILL**

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made concerning the votes of the Committee on Ways and Means in its consideration of the bill H.R. 2431:

## MOTION TO REPORT THE BILL

The bill, H.R. 2431, as amended, was ordered reported, without recommendation, by voice vote, with a quorum present.

**IV. BUDGET EFFECTS OF THE BILL****A. COMMITTEE ESTIMATES OF BUDGETARY EFFECT**

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill H.R. 2431, as reported: The Committee agrees with the cost estimate furnished by the Congressional Budget Office set forth below.

**B. BUDGET AUTHORITY AND TAX EXPENDITURES**

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the bill as reported by the Committee on Ways and Means, which strikes all provisions within the Committee's jurisdiction, contains no new tax expenditures or change in revenues, but does contain new direct spending attributable to immigration examinations in the base bill.

**C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE**

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office (CBO), the following report prepared by CBO is provided:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, May 8, 1998.

Hon. BILL ARCHER,  
 Chairman, Committee on Ways and Means,  
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2431, the Freedom From Religious Persecution Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Joseph C. Whitehill and Mark Grabowicz.

Sincerely,

PAUL VAN DE WATER  
 (For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*H.R. 2431—Freedom From Religious Persecution Act of 1998*

Summary: H.R. 2431 would create an Office of Religious Persecution Monitoring to monitor and to report on violations of religious freedom throughout the world. The bill would impose restrictions on trade or aid, deny visas, and levy sanctions on countries that are found to support or tolerate religious persecution. In particular, the bill would impose additional sanctions on Sudan. Finally, the bill would make certain changes to policies governing the admission of refugees and those seeking asylum into the United States.

H.R. 2431 would affect direct spending, and thus pay-as-you-go procedures would apply. The bill would impose additional costs on the Immigration and Naturalization Service (INS) by requiring it to increase documentation for certain cases in which it denies an application for asylum or refers the case to an immigration judge. CBO estimates that such costs would total about \$5 million a year. We expect that these costs would be paid from a budget account funded by user fees and would therefore constitute direct spending. In addition, the changes in policies governing asylees and refugees could affect direct spending in certain benefit programs, but CBO does not expect that such costs would be significant.

The bill would also increase discretionary spending, assuming the appropriation of the necessary funds. Based on information from the Department of State, CBO estimates that the Office of Religious Persecution Monitoring would cost about \$600,000 a year.

H.R. 2431 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would not have a significant impact on the budgets of state, local, or tribal governments. The bill would impose new private-sector mandates, as defined by UMRA, but CBO cannot determine whether the total costs of mandates resulting from sanctions against countries that engage in religious persecution would exceed the statutory threshold set by UMRA (\$100 million in 1996, adjusted annually for inflation) in any one year.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2431 is shown in the following table. The costs

of this bill would fall within budget functions 150 (international affairs) and 750 (administration of justice).

|  | By fiscal years, in millions of dollars— |      |      |      |      |      |
|--|--|------|------|------|------|------|
|  | 1998                                     | 1999 | 2000 | 2001 | 2002 | 2003 |
| DIRECT SPENDING  |  |      |      |      |      |      |
| Spending Under Current Law for Immigration Examinations: |  |      |      |      |      |      |
| Estimated Budget Authority .....                         | 750                                      | 800  | 750  | 750  | 750  | 750  |
| Estimated Outlays .....                                  | 750                                      | 800  | 750  | 750  | 750  | 750  |
| Proposed Changes:  |  |      |      |      |      |      |
| Estimated Budget Authority .....                         | 0  | 5    | 5    | 5    | 5    | 5    |
| Estimated Outlays .....                                  | 0  | 5    | 5    | 5    | 5    | 5    |
| Spending Under H.R. 2431 for Immigration Examinations:   |  |      |      |      |      |      |
| Estimated Budget Authority .....                         | 750                                      | 805  | 755  | 755  | 755  | 755  |
| Estimated Outlays .....                                  | 750                                      | 805  | 755  | 755  | 755  | 755  |
| SPENDING SUBJECT TO APPROPRIATION                        |  |      |      |      |      |      |
| Estimated Authorization Level .....                      | 0  | 1    | 1    | 1    | 1    | 1    |
| Estimated Outlays .....                                  | 0  | 1    | 1    | 1    | 1    | 1    |

Basis of estimate: The estimate assumes enactment of H.R. 2431 by September 30, 1998, and subsequent appropriation of the estimated authorizations.

#### *Direct spending*

H.R. 2431 would require the INS to increase documentation for certain cases in which it denies an application for asylum or refers the case of an immigration judge. Based on information from the General Accounting Office and the INS, CBO estimates that the costs to the INS would be about \$5 million a year. We anticipate that the additional outlays would be paid from an account funded by user fees charged by the agency and would be classified as direct spending. It is possible that the INS eventually could offset this increase in spending by raising its adjudication fees, but CBO has no basis for predicting when or if any changes in fees would occur.

H.R. 2431 would also make certain changes to policies governing the admission of refugees and asylees into the United States. These changes could potentially affect direct spending for certain benefit programs (notably Supplemental Security Income, Food Stamps, and Medicaid) because many such individuals collect benefits under those programs, but CBO does not expect that these costs would be significant.

Under current law, applicants who can demonstrate a well-founded fear of persecution on account of religion (or race, nationality, membership in a particular social group, or political opinion) already qualify for asylee or refugee status. The Department of State, which monitors the human rights situation around the world, has developed profiles of the varieties of religious persecution prevalent in various countries, and those profiles are used by the Department of Justice in adjudicating claims of asylum. Applicants for refugee or asylee status from countries such as Sudan and Iraq already have a very high probability of being granted admission into the United States. H.R. 2431 would continue to require that applicants establish a well-founded fear of persecution and

would not grant automatic admission to anyone who merely asserts such claim on the basis of religion.

The bill would, however, exempt certain people who claim religious persecution from the expedited removal procedures that now apply to other aliens who arrive without proper documents and would make it more arduous for the government to document its denial of such claims during subsequent adjudications. It would also provide for a period of public review and comment on the proposed ceiling for the next year's refugee admissions, a ceiling that is now set by the President after consultation with key Congressional committees. Those procedural changes raise the possibility that the bill would lead the government to admit more refugees or grant more claims for asylum. After consulting with the Department of Justice and the Department of State, CBO concludes that the number of additional people granted refugee or asylee status is likely to be quite small.

*Spending subject to appropriation*

The bill would require the creation of an Office of Religious Persecution Monitoring within the Department of State. Based on information provided by the department, CBO estimates that operating the office would require about five personnel, including the director, and would cost \$600,000 per year.

CBO estimates that the restrictions on foreign assistance required by the bill would not have a significant budgetary impact. The United States provides little assistance to the governments of countries suspected of supporting or tolerating religious persecution. In addition, the bill provides for many exemptions and waivers.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 specifies procedures for legislation affecting direct spending and receipts. Because the bill would result in additional direct spending by the INS, these pay-as-you-go procedures would apply. The following table shows the projected changes in direct spending for fiscal years 1998 through 2008. For purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

|                           | By fiscal years, in millions of dollars— |      |      |      |      |      |      |      |      |      |      |  |
|---------------------------|--|------|------|------|------|------|------|------|------|------|------|--|
|                           | 1998                                     | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |  |
| Changes in outlays .....  | 0  | 5    | 5    | 5    | 5    | 5    | 5    | 5    | 5    | 5    | 5    |  |
| Changes in receipts ..... | Not applicable                           |      |      |      |      |      |      |      |      |      |      |  |

Estimated impact on State, local, and tribal governments: H.R. 2431 contains no intergovernmental mandates as defined in UMRA and would not have a significant impact on the budget of state, local, or tribal governments.

Estimated impact on the private sector: H.R. 2431 would impose new private-sector mandates, as defined by UMRA, on U.S. exporters who sell to countries identified as engaging in religious persecution. In addition, the bill would extend mandates that currently prohibit nearly all economic relations with Sudan. Because the precise prohibitions against exports relating to religious persecution

would be determined at a later date, CBO cannot estimate whether the direct costs of mandates in the bill would exceed the statutory threshold established in UMRA.

Section 7 would prohibit exports to identified responsible entities within a country that has been determined to carry out religious persecution and exports of products that facilitate persecution, depending on the specific findings of the Secretary of State. Because we have no basis for predicting what the Secretary's findings would be, CBO cannot estimate the direct costs to the private-sector of these provisions.

Section 12 would extend current sanctions against Sudan. Because existing sanctions ban virtually all economic relations with Sudan, CBO estimates that the provisions of this section would not impose significant additional cost on private-sector entities.

Previous CBO estimate: On April 1, 1998, CBO prepared an estimate for H.R. 2431 as ordered reported by the House Committee on International Relations. This estimate reflects the amendments to the sanctions on Sudan made by the House Committee on Ways and Means and incorporates additional information on the cost to the INS of the proposed changes to immigration policy.

Estimate prepared by: Impact on the Federal Budget: Joseph Whitehill prepared the estimate of costs to the State Department; Kathy Ruffing prepared the estimate of the impacts on entitlement programs; and Mark Grabowicz prepared the estimate of costs to the Department of Justice.

Impact on State, Local, and Tribal Governments: Pepper Santalucia.

Impact on the Private Sector: Elliot Schwartz.

Impact on Revenues: Hester Grippando.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

## **V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE**

### **A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS**

With respect to subdivision (A) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee concludes that the actions taken in this legislation are appropriate given its oversight of international trade matters.

### **B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT**

With respect to subdivision (D) of clause 2(1)(4) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in H.R. 2431.

**C. CONSTITUTIONAL AUTHORITY STATEMENT**

With respect to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for \* \* \* the general Welfare of the United States \* \* \*), and the 16th amendment to the Constitution.

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

The bill was referred to this committee for consideration of such provisions of the bill as fall within the jurisdiction of this committee pursuant to clause 1(s) of Rule X of the Rules of the House of Representatives. The changes made to existing law by the amendment reported by the Committee on International Relations are shown in the report filed by that committee (Rept. 105-480, Part 1).

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