

GENOCIDE ACCOUNTABILITY ACT OF 2007

DECEMBER 4, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2489]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2489) to amend section 1091 of title 18, United States Code, to allow the prosecution of genocide in appropriate circumstances, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

|   | Page |
|---|------|
| Purpose and Summary .....                                   | 1    |
| Background and Need for the Legislation .....               | 2    |
| Hearings .....  | 3    |
| Committee Consideration .....                               | 3    |
| Committee Votes .....                                       | 3    |
| Committee Oversight Findings .....                          | 4    |
| New Budget Authority and Tax Expenditures .....             | 4    |
| Congressional Budget Office Cost Estimate .....             | 4    |
| Performance Goals and Objectives .....                      | 5    |
| Constitutional Authority Statement .....                    | 5    |
| Advisory on Earmarks .....                                  | 5    |
| Section-by-Section Analysis .....                           | 5    |
| Changes in Existing Law Made by the Bill, as Reported ..... | 6    |

PURPOSE AND SUMMARY

H.R. 2489, the “Genocide Accountability Act of 2007,” strengthens the ability of the United States to prosecute perpetrators of genocide by amending title 18 of the United States Code to establish Federal criminal jurisdiction over the crime of genocide, wherever the crime is committed. The Act would close a procedural loop-

hole in current law that does not permit the United States Department of Justice to prosecute non-Americans in United States courts for genocide committed abroad.

#### BACKGROUND AND NEED FOR THE LEGISLATION

In 1948, the United Nations General Assembly adopted the “Convention on the Prevention and Punishment of the Crime of Genocide.”<sup>1</sup> As its title suggests, the treaty imposes two core obligations on participating states. First, state parties must undertake efforts to prevent genocide. Second, state parties must commit to punish genocide as well as certain related acts, such as attempting to commit genocide.<sup>2</sup> While the Genocide Convention requires state parties to do all they can to prevent genocide within their own borders, the states’ duty to prevent genocide does not stop at their own borders. Wherever genocide occurs, it engages other nations’ responsibility to act. Simply put, the Genocide Convention charges State parties to take effective action to prevent genocide or, when prevention has failed, to bring its murderous violence to a swift and certain end.<sup>3</sup>

The United Nations’ passage of the Convention Against Torture in 1984 and the Convention on Enforced Disappearances in 2006 created new requirements for nations, in addition to those outlined in the Genocide Convention.<sup>4</sup> The new obligations ask that member nations exercise jurisdiction over any individuals suspected of committing acts of genocide, in cases where the crime is committed: “(1) in their territory; (2) by one of their nationals; (3) against one of their nationals; or (4) outside their territory when the alleged perpetrator is in their territory and he or she is not extradited for trial to another State or transferred to an international tribunal.” In response to the new conditions, several nations subsequently altered their genocide laws to reflect the Convention changes. As revised, their laws more effectively permit prosecution of many alleged perpetrators of genocide who previously used those nations as safe havens.

The United States was the first Nation to sign the Genocide Convention in 1948. While the crime of genocide has been recognized as part of international law by the United States for nearly sixty years, it was not until 1987 that the “Proxmire Act” was enacted to bring our Nation’s law into conformity with the Genocide Convention.<sup>5</sup> When read together with other provisions of the Federal criminal code concerning conspiracy and complicity, the Proxmire Act addresses the explicit obligations set forth in the Genocide Convention concerning prosecution of genocide and related criminal acts in United States courts. In addition, the Proxmire Act makes it a Federal crime for a United States national to commit genocide anywhere.<sup>6</sup>

<sup>1</sup>International Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, 280 [hereinafter Genocide Convention].

<sup>2</sup>See *id.* at art. I.

<sup>3</sup>See *id.* at art. VIII; see also *Genocide and the Rule of Law: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 110th Cong. (2007) (testimony of Diane Orentlicher).

<sup>4</sup>See Torture Convention Implementation, 18 U.S.C. §§ 2340–2340B; International Convention for the Protection of All Persons from Enforced Disappearance 2006, GA Res. 61/177, Dec. 20, 2006, A/RES/61/177; 14 IHRR 582 (2007).

<sup>5</sup>Genocide Convention Implementation Act of 1987, 18 U.S.C. §§ 1091–1093.

<sup>6</sup>*Id.*

Because current U.S. law lacks an extraterritorial jurisdiction clause for genocide, the Justice Department may not indict an individual for genocide committed outside the United States, even if the victim is an American citizen, unless the perpetrator is a United States national. Instead, the Department of Justice has to use other tools to pursue perpetrators of genocide.<sup>7</sup>

The use of extraterritorial jurisdiction provisions within our criminal code is not uncommon. There are criminal law provisions concerning torture,<sup>8</sup> providing material support to terrorists,<sup>9</sup> prohibiting the financing of terrorism,<sup>10</sup> and a host of other crimes that apply to perpetrators found in the United States, even if they are not United States nationals and did not commit their crimes in the United States. This legislation provides for similar extraterritorial jurisdiction for crimes of genocide.

On July 22, 2004, the House of Representatives passed H. Con. Res. 467, which recognized genocide as then occurring in the Darfur region of Sudan. As Congress considers this legislation, the genocide in Darfur is an ongoing crime. This legislation will strengthen the reach of U.S. laws to prosecute any individuals found in our Nation who have taken part in such acts of genocide, in Darfur or anywhere else.

#### HEARINGS

The Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on H.R. 2489 on October 23, 2007. Testimony was received from Eli Rosenbaum, Director, Office of Special Investigations, Criminal Division, United States Department of Justice; Diane F. Orentlicher, Professor, Washington College of Law, American University; Jerry Fowler, Director, Committee on Conscience, United States Holocaust Memorial Museum; and Gayle Smith, Senior Fellow, Center for American Progress.

#### COMMITTEE CONSIDERATION

On November 1, 2007, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered the bill, H.R. 2489, favorably reported by voice vote, a quorum being present. On November 7, 2007, the Committee met in open session and ordered the bill, H.R. 2489, favorably reported by voice vote, a quorum being present.

#### COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 2489.

<sup>7</sup>The Justice Department can use its resources to deport or deny entry to human rights violators, extradite war criminals to their home countries (often through the Immigration and Nationality Act, but only if the United States has an extradition treaty with the nation), and prosecute individuals for offenses such as visa fraud, unlawful procurement of naturalization, and making false statements.

<sup>8</sup>18 U.S.C. § 2340A.

<sup>9</sup>18 U.S.C. § 2339B.

<sup>10</sup>*Id.*

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities 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.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2489, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 9, 2007.*

Hon. JOHN CONYERS, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2489, the "Genocide Accountability Act of 2007."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

PETER R. ORSZAG,  
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.  
Ranking Member

*H.R. 2489—Genocide Accountability Act of 2007.*

CBO estimates that implementing H.R. 2489 would have no significant cost to the federal government. Enacting the bill could affect direct spending and revenues, but CBO estimates that any such effects would not be significant.

H.R. 2489 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

H.R. 2489 would broaden the coverage of current laws against genocide. The bill would establish federal jurisdiction over those crimes wherever they occur (existing law covers incidents within the United States). As a result, under the bill the government would be able to pursue cases that it otherwise would not be able to prosecute. We expect that H.R. 2489 would apply to a relatively

small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 2489 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases affected.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2489 is intended to strengthen the ability of the United States to prosecute perpetrators of genocide who are found in the United States.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8, clause 18 of the Constitution.

#### ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2489 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

#### SECTION-BY-SECTION ANALYSIS

*Sec. 1. Short Title.* This section sets forth the short title of the bill as the “Genocide Accountability Act of 2007.”

*Sec. 2. Genocide.* This section, while leaving unchanged the elements of the crime of genocide, applicable punishments under current law, and any defenses available to those charged, makes technical amendments to section 1091(d) of title 18 of the United States Code to clarify and extend its jurisdictional reach.

Section 1091(d)(1), covering genocidal acts committed in the United States, is amended to clarify that it applies whether those acts are committed completely or only partially in the United States. Section 1091(d)(2), unchanged, covers alleged offenders who are United States nationals. New section 1091(d)(3) covers alleged offenders who are aliens lawfully admitted for permanent residence in the United States. New section 1091(d)(4) covers alleged offenders who are stateless individuals whose habitual residence is in the United States. And new section 1091(d)(5) covers alleged offenders physically present in the United States after the alleged genocidal act occurred. Paragraphs (2)-(5) apply regardless of where the genocidal act was committed.

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

In compliance with clause 3(e) 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 italics, existing law in which no change is proposed is shown in roman):

**SECTION 1091 OF TITLE 18, UNITED STATES CODE****§ 1091. Genocide**

(a) \* \* \*

\* \* \* \* \*

**[(d) REQUIRED CIRCUMSTANCE FOR OFFENSES.—**The circumstance referred to in subsections (a) and (c) is that—

- [(1) the offense is committed within the United States; or  
 [(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).]**

*(d) REQUIRED CIRCUMSTANCE FOR OFFENSES.—*The circumstance referred to in subsections (a) and (c) is that—

*(1) the offense is committed in whole or in part within the United States;*

*(2) the alleged offender is a national of the United States (as that term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101));*

*(3) the alleged offender is an alien lawfully admitted for permanent residence in the United States (as that term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101));*

*(4) the alleged offender is a stateless person whose habitual residence is in the United States; or*

*(5) after the conduct required for the offense occurs, the alleged offender is brought into, or found in, the United States, even if that conduct occurred outside the United States.*