

105TH CONGRESS
1ST SESSION

S. 804

To restrict foreign assistance for countries providing sanctuary to indicted war criminals who are sought for prosecution before the International Criminal Tribunal for the former Yugoslavia.

IN THE SENATE OF THE UNITED STATES

MAY 23, 1997

Mr. LAUTENBERG (for himself, Mr. LEAHY, Mr. LUGAR, Mrs. FEINSTEIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. LIEBERMAN, Mr. D'AMATO, and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To restrict foreign assistance for countries providing sanctuary to indicted war criminals who are sought for prosecution before the International Criminal Tribunal for the former Yugoslavia.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “War Crimes Prosecu-
5 tion Facilitation Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:



1 (1) In May 1993, the United Nations estab-
2 lished the International Criminal Tribunal for the
3 Former Yugoslavia (ICTY).

4 (2) The mandate of the Tribunal is to prosecute
5 “genocide, crimes against humanity, grave breaches
6 of the Geneva Conventions, and violations of the
7 laws and customs of war” committed in the territory
8 of the former Yugoslavia from January 1, 1991,
9 until “a date to be determined after restoration of
10 peace”.

11 (3) Parties to the Dayton Agreement, as well as
12 subsequent agreements, agreed to cooperate fully
13 with the “investigation and prosecution of war
14 crimes and other violations of international humani-
15 tarian law”. All members of the international com-
16 munity are required by the Tribunal Statute to co-
17 operate in “the identification and location of per-
18 sons”, “the arrest or detention of persons”, and
19 “the surrender or the transfer of the accused” to the
20 Tribunal.

21 (4) Although 74 persons are under indictment
22 by the Tribunal, 66 remain at large, including 53
23 Bosnian and Yugoslav Serbs, and 13 Bosnian and
24 Croatian Croats.

1 (5) Credible reports indicate that some of the
2 indicted war criminals are living in areas of Bosnia
3 and Herzegovina that are under the effective control
4 of Croatia or Serbia-Montenegro. Many of the in-
5 dicted war criminals have been sighted living openly
6 and freely in Croatia, the Croat-controlled areas of
7 the Federation of Bosnia and Herzegovina,
8 Republika Srpska, and Serbia-Montenegro.

9 (6) An estimated 2,000,000 persons have been
10 forced from their homes by the war, many of whom
11 remain displaced and unable to return to their
12 homes, in violation of the Dayton Accords, because
13 their homes are in a jurisdiction controlled by a dif-
14 ferent ethnic group.

15 (7) The fighting in Bosnia has ceased for more
16 than a year, and international efforts are now fo-
17 cused on the economic reconstruction and implemen-
18 tation of the civilian aspects of the Dayton Accords.

19 (8) The International Bank for Reconstruction
20 and Development, the European Bank for Recon-
21 struction and Development, the International Mone-
22 tary Fund, and individual donor countries, including
23 the United States, have begun disbursing funds to-
24 ward meeting an identified goal of \$5,100,000,000
25 for reconstruction of Bosnia.

1 **SEC. 3. SENSE OF THE SENATE.**

2 (a) It is the sense of the Senate that—

3 (1) reconciliation in Bosnia and Herzegovina
4 cannot be achieved if indicted war criminals remain
5 at large and refugees and displaced persons are un-
6 able to return to their homes;

7 (2) reconstruction without reconciliation will
8 not be effective in ensuring stability in the long run
9 because absent individual accountability, victimized
10 communities will assign collective responsibility, thus
11 perpetuating the cycle of hatred; and

12 (3) the Government of the United States should
13 ensure that multilateral and bilateral assistance is
14 provided to parties to the Dayton Agreement only if
15 doing so would promote reconciliation as well as re-
16 construction, including the transfer of war criminals
17 to the Tribunal, the return of refugees and displaced
18 persons, and freedom of movement.

19 (b) It is further the sense of the Senate that the Tri-
20 bunal, consistent with its mandate, should continue to in-
21 vestigate and bring indictments against persons who have
22 violated international humanitarian law.

23 **SEC. 4. RESTRICTIONS ON FUNDING.**

24 (a) BILATERAL ASSISTANCE.—

25 (1) IN GENERAL.—No assistance may be pro-
26 vided under the Foreign Assistance Act of 1961 or

1 the Arms Export Control Act for any country de-
2 scribed in subsection (d).

3 (2) APPLICATION TO PRIOR APPROPRIATIONS.—

4 The prohibition on assistance contained in para-
5 graph (1) includes the provision of assistance from
6 funds appropriated prior to the date of enactment of
7 this Act.

8 (b) MULTILATERAL ASSISTANCE.—The Secretary of
9 the Treasury shall instruct the United States executive di-
10 rectors of the international financial institutions to work
11 in opposition to, and vote against, any extension by such
12 institutions of any financial or technical assistance or
13 grants of any kind to any country described in subsection
14 (d).

15 (c) EXCEPTIONS.—

16 (1) IN GENERAL.—Subject to paragraph (2),
17 subsections (a) and (b) shall not apply to the provi-
18 sion of—

19 (A) humanitarian assistance;

20 (B) democratization assistance; or

21 (C) assistance for physical infrastructure
22 projects involving activities in both a sanctioned
23 country and nonsanctioned contiguous coun-
24 tries, if the nonsanctioned countries are the pri-
25 mary beneficiaries.

1 (2) FURTHER LIMITATIONS.—Notwithstanding
2 paragraph (1)—

3 (A) no assistance may be made available
4 under the Foreign Assistance Act of 1961 or
5 the Arms Export Control Act for a program,
6 project, or activity in any country described in
7 subsection (d) in which an indicted war criminal
8 has any financial or material interest or
9 through any organization in which the indicted
10 individual is affiliated; and

11 (B) no assistance (other than emergency
12 food or medical assistance or demining assist-
13 ance) may be made available under the Foreign
14 Assistance Act of 1961 or the Arms Export
15 Control Act to any program, project, or activity
16 in any area in any country described in sub-
17 section (d) in which local authorities are not
18 complying with the provisions of Article IX and
19 Annex 4, Article II of the Dayton Agreement
20 relating to war crimes and the Tribunal, or
21 with the provisions of Annex 7 of the Dayton
22 Agreement relating to the rights of refugees
23 and displaced persons to return to their homes
24 of origin.

1 (d) SANCTIONED COUNTRIES.—A country described
2 in this section is a country the authorities of which fail
3 to apprehend and transfer to the Tribunal all persons in
4 territory that is under their effective control who have
5 been indicted by the Tribunal.

6 (e) WAIVER.—

7 (1) AUTHORITY.—The President may waive the
8 application of subsection (a) or subsection (b) with
9 respect to a country if the President determines and
10 certifies to the appropriate committees of Congress
11 within six months after the date of enactment of this
12 Act that a majority of the indicted persons who are
13 within territory that is under the effective control of
14 the country have been arrested and transferred to
15 the Tribunal.

16 (2) PERIOD OF EFFECTIVENESS.—Any waiver
17 made pursuant to this subsection shall be effective
18 for a period of six months.

19 (f) TERMINATION OF SANCTIONS.—The sanctions
20 imposed pursuant to subsection (a) or subsection (b) with
21 respect to a country shall cease to apply only if the Presi-
22 dent determines and certifies to Congress that the authori-
23 ties of that country have apprehended and transferred to
24 the Tribunal all persons in territory that is under their
25 effective control who have been indicted by the Tribunal.

1 **SEC. 5. DEFINITIONS.**

2 As used in this Act:

3 (1) COUNTRY.—The term “country” shall not
4 include the state of Bosnia and Herzegovina, and
5 the provisions of this Act shall be applied separately
6 to its constituent entities of Republika Srpska and
7 the Federation of Bosnia and Herzegovina.

8 (2) DAYTON AGREEMENT.—The term “Dayton
9 Agreement” means the General Framework Agree-
10 ment for Peace in Bosnia and Herzegovina, together
11 with annexes relating thereto, done at Dayton, No-
12 vember 10 through 16, 1995.

13 (3) DEMOCRATIZATION ASSISTANCE.—The term
14 “democratization assistance” includes electoral as-
15 sistance and assistance used in establishing the in-
16 stitutions of a democratic and civil society.

17 (4) HUMANITARIAN ASSISTANCE.—The term
18 “humanitarian assistance” includes disaster and
19 food assistance and assistance for demining, refu-
20 gees, housing, education, health care, and other so-
21 cial services.

22 (5) TRIBUNAL.—The term “Tribunal” means
23 the International Criminal Tribunal for the Former
24 Yugoslavia.

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