Public Law 101-222
101st Congress

An Act

Dec. 12, 1989
[H.R. 91]

To prohibit exports of military equipment to countries supporting international terrorism, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Anti-Terrorism and Arms Export Amendments Act of 1989.
22 USC 2151 note.

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Anti-Terrorism and Arms Export Amendments Act of 1989".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Prohibition on arms transactions with countries supporting terrorism.
Sec. 3. Considerations in issuance of arms export licenses and in arms sales.
Sec. 4. Exports to countries supporting terrorism.
Sec. 5. Prohibition on assistance to countries supporting international terrorism.
Sec. 6. Designation of items on the munitions list.
Sec. 7. Quarterly reports on third country transfers and on DOD transfers to other agencies.
Sec. 8. Special authorities.
Sec. 9. Hostage Act.
Sec. 10. Self-defense in accordance with international law.

SEC. 2. PROHIBITION ON ARMS TRANSACTIONS WITH COUNTRIES SUPPORTING TERRORISM.

(a) PROHIBITION.—Section 40 of the Arms Export Control Act (22 U.S.C. 2780) is amended to read as follows:

"SEC. 40. TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

"(a) PROHIBITED TRANSACTIONS BY THE UNITED STATES GOVERNMENT.—The following transactions by the United States Government are prohibited:

"(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government—

"(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d), and

"(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

"(2) Providing credits, guarantees, or other financial assistance under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)), with respect to the acquisition of any munitions item by a country described in subsection (d). In implementing this para-

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graph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of State makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

"(3) Consenting under section 3(a) of this Act, under section 505(a) of the Foreign Assistance Act of 1961, under the regulations issued to carry out section 38 of this Act, or under any other law (except as provided in subsection (h)), to any transfer of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall withdraw any such consent which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been transferred to such country.

"(4) Providing any license or other approval under section 38 of this Act for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country.

"(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken—

"(A) by any department, agency, or other instrumentality of the Government,

"(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

"(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

"(b) PROHIBITED TRANSACTIONS BY UNITED STATES PERSONS.—

"(1) IN GENERAL.—A United States person may not take any of the following actions:

"(A) Exporting any munitions item to any country described in subsection (d).

"(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d).

"(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not

the government of or a person in a country described in subsection (d) if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d).

"(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d), or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

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"(2) LIABILITY FOR ACTIONS OF FOREIGN SUBSIDIARIES, ETC.—A United States person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue) takes an action described in paragraph (1) outside the United States.

"(3) APPLICABILITY TO ACTIONS OUTSIDE THE UNITED STATES.—Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (l)(3)(A) or (B). To the extent provided in regulations issued under subsection (l)(3)(D), paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United States by a person designated as a United States person in those regulations.

"(c) TRANSFERS TO GOVERNMENTS AND PERSONS COVERED.—This section applies with respect to—

"(1) the acquisition of munitions items by the government of a country described in subsection (d); and

"(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d), except to the extent that subparagraph (D) of subsection (b)(1) provides otherwise.

"(d) COUNTRIES COVERED BY PROHIBITION.—The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism.

Federal Register, publication.

"(e) PUBLICATION OF DETERMINATIONS.—Each determination of the Secretary of State under subsection (d) shall be published in the Federal Register.

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"(f) RESCISSION.—A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

"(1) before the proposed rescission would take effect, a report certifying that—

"(A) there has been a fundamental change in the leadership and policies of the government of the country concerned;

"(B) that government is not supporting acts of international terrorism; and

"(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

"(2) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

"(A) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

"(B) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

"(g) WAIVER.—The President may waive the prohibitions contained in this section with respect to a specific transaction if—

"(1) the President determines that the transaction is essential to the national security interests of the United States; and

"(2) not less than 15 days prior to the proposed transaction, the President—

"(A) consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

"(B) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing— Reports.

"(i) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

"(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

"(iii) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

"(iv) the date on which the proposed transaction is expected to occur; and

"(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report. Public information. Classified information.

"(h) EXEMPTION FOR TRANSACTIONS SUBJECT TO NATIONAL SECURITY ACT REPORTING REQUIREMENTS.—The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

"(i) RELATION TO OTHER LAWS.—

"(1) IN GENERAL.—With regard to munitions items controlled pursuant to this Act, the provisions of this section shall apply notwithstanding any other provision of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)).

"(2) SECTION 614(a) WAIVER AUTHORITY.—If the authority of section 614(a) of the Foreign Assistance Act of 1961 is used to permit a transaction under that Act or the Arms Export Control Act which is otherwise prohibited by this section, the written

policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

"(j) CRIMINAL PENALTY.—Any person who willfully violates this section shall be fined for each violation not more than $1,000,000, imprisoned not more than 10 years, or both.

"(k) CIVIL PENALTIES; ENFORCEMENT.—In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979 (subject to the same terms and conditions as are applicable to such powers under that Act), except that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed $500,000.

"(l) DEFINITIONS.—As used in this section—

"(1) the term 'munitions item' means any item enumerated on the United States Munitions list (without regard to whether the item is imported into or exported from the United States);

"(2) the term 'United States', when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States; and

"(3) the term 'United States person' means—

"(A) any citizen or permanent resident alien of the United States;

"(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

"(C) any other person with respect to that person's actions while in the United States; and

"(D) to the extent provided in regulations issued by the Secretary of State, any person that is not described in subparagraph (A), (B), or (C) but—

"(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

"(ii) is otherwise subject to the jurisdiction of the United States,

with respect to that person's actions while outside the United States.".

(b) CONFORMING AMENDMENT.—Section 3(f) of the Arms Export Control Act (22 U.S.C. 2753(f)) is repealed.

SEC. 3. CONSIDERATIONS IN ISSUANCE OF ARMS EXPORT LICENSES AND IN ARMS SALES.

(a) EXPORT LICENSES.—Section 38(a)(2) of the Arms Export Control Act (22 U.S.C. 2778) is amended by inserting "support international terrorism," after "arms race,".

(b) ARMS SALES.—Section 36(b)(1)(D) of that Act (22 U.S.C. 2776(b)(1)(D)) is amended—

(1) by redesignating clauses (ii) through (iv) as clauses (iii) through (v), respectively; and

(2) by inserting the following new clause (ii) after clause (i):
"(ii) support international terrorism;".

SEC. 4. EXPORTS TO COUNTRIES SUPPORTING TERRORISM.

Section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App 2405(j)) is amended to read as follows:

"(j) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—(1) A validated license shall be required for the export of goods or technology to a country if the Secretary of State has made the following determinations:

"(A) The government of such country has repeatedly provided support for acts of international terrorism.

"(B) The export of such goods or technology could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

"(2) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license required by paragraph (1).

"(3) Each determination of the Secretary of State under paragraph (1)(A), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.

Federal Register, publication.

"(4) A determination made by the Secretary of State under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate—

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"(A) before the proposed rescission would take effect, a report certifying that—

"(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

"(ii) that government is not supporting acts of international terrorism; and

"(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

"(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

"(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

"(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.".

SEC. 5. PROHIBITION ON ASSISTANCE TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.

Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) is amended to read as follows:

"SEC. 620A. PROHIBITION ON ASSISTANCE TO GOVERNMENTS SUPPORTING INTERNATIONAL TERRORISM.

"(a) PROHIBITION.—The United States shall not provide any assistance under this Act, the Agricultural Trade Development and Assistance Act of 1954, the Peace Corps Act, or the Export-Import Bank Act of 1945 to any country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism.

Federal Register, publication.

"(b) PUBLICATION OF DETERMINATIONS.—Each determination of the Secretary of State under subsection (a), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.

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"(c) RESCISSION.—A determination made by the Secretary of State under subsection (a) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

"(1) before the proposed rescission would take effect, a report certifying that—

"(A) there has been a fundamental change in the leadership and policies of the government of the country concerned;

"(B) that government is not supporting acts of international terrorism; and

"(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

"(2) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

"(A) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

"(B) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

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"(d) WAIVER.—Assistance prohibited by subsection (a) may be provided to a country described in that subsection if—

"(1) the President determines that national security interests or humanitarian reasons justify a waiver of subsection (a), except that humanitarian reasons may not be used to justify assistance under part II of this Act (including chapter 4, chapter 6, and chapter 8), or the Export-Import Bank Act of 1945; and

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"(2) at least 15 days before the waiver takes effect, the President consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate regarding the proposed waiver and submits a report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate containing—

"(A) the name of the recipient country;

"(B) a description of the national security interests or humanitarian reasons which require the waiver;

"(C) the type and amount of and the justification for the assistance to be provided pursuant to the waiver; and

"(D) the period of time during which such waiver will be effective.

The waiver authority granted in this subsection may not be used to provide any assistance under the Foreign Assistance Act of 1961 which is also prohibited by section 40 of the Arms Export Control Act.".

SEC. 6. DESIGNATION OF ITEMS ON THE MUNITIONS LIST.

Section 38 of the Arms Export Control Act (22 U.S.C. 2278) is amended by adding at the end the following: 22 USC 2778.

"(h) The designation by the President (or by an official to whom the President's functions under subsection (a) have been duly delegated), in regulations issued under this section, of items as defense articles or defense services for purposes of this section shall not be subject to judicial review.".

SEC. 7. QUARTERLY REPORTS ON THIRD COUNTRY TRANSFERS AND ON DOD TRANSFERS TO OTHER AGENCIES.

(a) QUARTERLY REPORTS.—Section 36(a) of the Arms Export Control Act (22 U.S.C. 2776(a)) is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon; and

(3) by inserting after paragraph (9) the following:

"(10) a listing of the consents to third-party transfers of defense articles or defense services which were granted, during the quarter for which such report is submitted, for purposes of section 3(a)(2) of this Act, the regulations issued under section 38 of this Act, or section 505(a)(1)(B) of the Foreign Assistance Act of 1961, if the value (in terms of original acquisition cost) of the defense articles or defense services to be transferred is $1,000,000 or more; and

"(11) a listing of all munitions items (as defined in section 40(l)(1)) which were sold, leased, or otherwise transferred by the Department of Defense to any other department, agency, or other entity of the United States Government during the quarter for which such report is submitted (including the name of the recipient Government entity and a discussion of what that entity will do with those munitions items) if—

"(A) the value of the munitions items was $250,000 or more; or

"(B) the value of all munitions items transferred to that Government department, agency, or other entity during that quarter was $250,000 or more;

excluding munitions items transferred (i) for disposition or use solely within the United States, or (ii) for use in connection with intelligence activities subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).".

(b) CLASSIFICATION OF REPORTS.—That section is amended in the parenthetical clause in the text preceding paragraph (1) by inserting ", and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum" after "(b)(1) of this section".

SEC. 8. SPECIAL AUTHORITIES.

The second sentence of section 614(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(c)) is amended to read as follows: "The President of U.S.

President shall fully inform the chairman and ranking minority member of the Committee on Foreign Affairs of the House of Representatives and the chairman and ranking minority member of the Committee on Foreign Relations of the Senate of each use of funds under this subsection prior to the use of such funds.".

SEC. 9. HOSTAGE ACT.

Section 2001 of the Revised Statutes of the United States (22 U.S.C. 1732) is amended by inserting "and not otherwise prohibited by law" after "acts of war".

22 USC 2371 note.

SEC. 10. SELF-DEFENSE IN ACCORDANCE WITH INTERNATIONAL LAW.

The use by any government of armed force in the exercise of individual or collective self-defense in accordance with applicable international agreements and customary international law shall not be considered an act of international terrorism for purposes of the amendments made by this Act.

Approved December 12, 1989.

LEGISLATIVE HISTORY—H.R. 91 (S. 347):

HOUSE REPORTS: No. 101-296 (Comm. on Foreign Affairs).
SENATE REPORTS: No. 101-173 accompanying S. 347 (Comm. on Foreign Relations).
CONGRESSIONAL RECORD, Vol. 135 (1989):
Oct. 23, considered and passed House.
Nov. 21, considered and passed Senate, amended. House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 25 (1989):
Dec. 12, Presidential statement.