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State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief

Dianne E. Rennack

Specialist in Foreign Policy Legislation

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Summary

Cuba, Iran, Sudan, and Syria are identified by the U.S. government as countries with governments that support acts of international terrorism. As the 114th Congress is sworn in and begins its first session, U.S. foreign policy and national security policies toward Cuba, Iran, and North Korea are in a state of close scrutiny, with an eye to easing sanctions, including removing Cuba and Iran from the terrorist lists, and with an eye to returning North Korea to the same lists. While it is the President's authority to designate, and remove from designation, terrorist states, Congress is likely to weigh in as the reviews proceed.

This brief report provides information on legislation that authorizes the designation of any foreign government as a state sponsor of acts of international terrorism. It addresses the statutes and how they each define acts of international terrorism; establish a list to limit or prohibit aid or trade; provide for systematic removal of a foreign government from a list, including timeline and reporting requirements; authorize the President to waive restrictions on a listed foreign government; and provide (or do not provide) Congress with a means to block a delisting. It closes with a summary of delisting in the past.

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Introduction

In the waning days of 2014, and at the close of the 113th Congress, multiple developments affecting U.S. foreign policy set the stage for possible dynamic debate between President Barack Obama and his Administration and the 114th Congress.

Iran. In November, State Department negotiators, in concert with the European Union and others, extended nuclear dismantlement negotiations with the government of Iran. If a full and final agreement is reached, the President will face the challenge of removing a broad range of economic sanctions on Iran that could include a review of its activities that designate the government of Iran as a state sponsor of acts of international terrorism. Members of Congress have raised the possibility that it would consider drafting legislation to keep sanctions in place or conditionally reimpose restrictions that had been eased if negotiations faltered.¹

Cuba. In December, the President announced he would proceed over the coming months to reestablish diplomatic relations with Cuba and ease those diplomatic and economic restrictions he could, while anticipating Congress could engage in a review of sanctions codified in permanent law. At the same time, the President announced that the State Department had begun a review of Cuba's designation on the state sponsors of terrorism list.² On April 14, 2015, the President sent a message to Congress to certify that “the Government of Cuba has not provided any support for international terrorism during the preceding 6-month period; and ... has provided assurances that it will not support acts of international terrorism in the future.” This meets the requirements of the statutes that form the terrorist lists; Cuba's designation could be removed in 45 calendar days (May 29, 2015).

North Korea. Also in December, the Administration attributed a cyberattack of Sony Pictures to North Korea, reinvigorating a debate Congress has sustained since 2008, when President George W. Bush removed the terrorism designation from that state's government as part of multinational negotiations to disable and dismantle North Korea's nuclear weapons program.³

This brief report provides information on legislation that authorizes the designation of any foreign government as a state sponsor of acts of international terrorism. It addresses the statutes and how they each define acts of international terrorism; establish a list to limit or prohibit aid or trade; provide for systematic removal of a foreign government from a list, including timeline and reporting requirements; authorize the President to waive restrictions on a listed foreign government; and provide (or do not provide) Congress with a means to block a delisting. It closes with a summary of delisting in the past.

¹ CRS Report R43333, *Iran: Interim Nuclear Agreement and Talks on a Comprehensive Accord*, by Kenneth Katzman, Paul K. Kerr, and Mary Beth D. Nikitin; CRS Report R43311, *Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions*, by Dianne E. Rennack; and CRS Report RS20871, *Iran Sanctions*, by Kenneth Katzman.

² CRS Report R43888, *Cuba Sanctions: Legislative Restrictions Limiting the Normalization of Relations*, by Dianne E. Rennack and Mark P. Sullivan.

³ CRS Report R41438, *North Korea: Legislative Basis for U.S. Economic Sanctions*, by Dianne E. Rennack; CRS Report R41259, *North Korea: U.S. Relations, Nuclear Diplomacy, and Internal Situation*, by Emma Chanlett-Avery and Ian E. Rinehart; and CRS Report R43865, *North Korea: Back on the State Sponsors of Terrorism List?*, by Mark E. Manyin et al..

Background

Three statutes authorize the Secretary of State to designate a foreign government for repeatedly providing support for acts of international terrorism, and to curtail aid or trade to that country as a result:

- Section 620A of the Foreign Assistance Act of 1961 (FAA'61; P.L. 87-195; 22 U.S.C. 2371), as amended, prohibits most aid under the act, the Food for Peace Act, Peace Corps Act, or the Export-Import Bank Act of 1945;⁴
- Section 40 of the Arms Export Control Act (AECA; P.L. 90-629; 22 U.S.C. 2780), as amended, prohibits exports, credits, guarantees, other financial assistance, export licensing overseen by the State Department, and general eligibility related to providing munitions under the act, the Foreign Assistance Act of 1961, or any other related law; and
- Section 6(j) of the Export Administration Act of 1979 (EAA'79; P.L. 96-72; 50 U.S.C. App. 2405(j)), as amended,⁵ requires validated export licenses (with an implied presumption of denial) for trade in goods or technology that are controlled by the Department of Commerce for national security or foreign policy reasons.

Congress has substantively amended each of these statutes over time, incrementally building the definitions, notifications, rescission processes, and explicit congressional role. Indeed, none of the first iterations of these statutes had anything that would constitute a construction of a list. Though Section 40, AECA, as enacted in 1986, restricted U.S. munitions exports based on decisions of the Secretary of State pursuant to Section 6(j), EAA'79, to limit export licenses, today's three lists are linked more by the similarity in definitions and processes.⁶

⁴ Under Section 1621 of the International Financial Institutions Act (P.L. 95-118; 22 U.S.C. 262p-4q), if a country is listed under Section 620A of the FAA'61 or 6(j) of the EAA'79, the United States must oppose membership in and financial assistance from international financial institutions such as the World Bank, Asian Development Bank, and the International Monetary Fund.

⁵ The EAA'79 is expired but continued by Executive Order 13222 (August 17, 2001; 66 F.R. 44025), as provided under the authorities of the National Emergencies Act (P.L. 94-412; 50 U.S.C. 1601) and International Emergency Economic Powers Act (P.L. 95-223; 50 U.S.C. 1702).

⁶ Section 40, AECA, added by Section 509 of the Diplomatic Security and Antiterrorism Act of 1986 (P.L. 99-399; 100 Stat. 874), read as follows:

“Sec. 40. Exports to Countries Supporting Act of International Terrorism.

“(a) PROHIBITION.—Except as provided in subsection (b), items on the United States Munitions List may not be exported to any country which the Secretary of State has determined for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), has repeatedly provided support for acts of international terrorism.

“(b) WAIVER.—The President may waive the prohibition contained in subsection (a) in the case of a particular export if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver.”

Definitions

Of the three statutes that authorize the listing of any foreign government designated as a state sponsor of acts of international terrorism, only the AECA identifies objectionable activities as part of the definition. While that act does not define the overarching term “international terrorism,” it states that the term includes—

... all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups, willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material, or willingly aid or abet the efforts of an individual or group to use, develop, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons.⁷

The EAA’79, on the other hand, defines the term “repeatedly provided support for acts of international terrorism” to include “the recurring use of any part of the territory of the country as a sanctuary for terrorists or terrorist organizations.” It further defines a country’s territory as “the land, waters, and airspace of the country” and defines “sanctuary” as the territory of a country that is used by a terrorist or terrorist organization to carry out terrorist activities, including training, financing, and recruitment; or as a transit point; and the government of which expressly consents to, or with knowledge, allows, tolerates, or disregards such use of its territory. The other two acts have no such language.

None of the three Acts define the core term “international terrorism.” Section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (P.L. 100-204; 22 U.S.C. 2656f), as amended, however, provides the following in the context of requiring the Secretary of State to report annually to Congress on foreign countries supporting international terrorism:

(d) DEFINITIONS.—As used in this section—(1) the term “international terrorism” means terrorism involving citizens or the territory of more than 1 country;(2) the term “terrorism” means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents;(3) the term “terrorist group” means any group practicing, or which has significant subgroups which practice, international terrorism;(4) the terms “territory” and “territory of the country” mean the land, waters, and airspace of the country; and(5) the terms “terrorist sanctuary” and “sanctuary” mean an area in the territory of the country—

(A) that is used by a terrorist or terrorist organization—(i) to carry out terrorist activities, including training, fundraising, financing, and recruitment; or

(ii) as a transit point; and

(B) the government of which expressly consents to, or with knowledge, allows, tolerates, or disregards such use of its territory and is not subject to a determination under—(i) section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A));(ii) section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)); or

(iii) section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).

⁷ Section 40(d), AECA.

Removal from the Lists: Statutory Requirements

Each of the three statutes has some unique aspects to its construction, but all three have in common two possible paths for removing a foreign government from designation. The first possible option is that the President certifies and reports to Congress 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.⁸

In the case of the EAA'79, the President notifies the Speaker of the House, Chairperson of the House Committee on Banking, Housing, and Urban Affairs, and Chairperson of the Senate Committee on Foreign Relations that such changes have occurred. The FAA'61 and AECA require the President to notify only the Speaker and the Foreign Relations Committee Chairperson. The concept central to this first option—a fundamental change in the leadership and policies of the government of the country concerned—has, in the past, been interpreted to mean a change in outlook of the same leader and has not required a change in personnel.

The second possible option the statutes offer is that the President, 45 days before a rescission takes effect, certifies to congressional leadership (as identified in the first option) that—

- (i) the government concerned has not provided any support for acts of 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.⁹

There is no reporting requirement to notify Congress that the clock has started ticking on the six-month period of changed behavior of the designated government. In past instances of delisting a foreign government, the Secretary of State has published a notice that the designation is under review, but the law does not require this advance notice beyond the 45-day requirement prior to issuing a rescission.

Presidential Waiver Authority

Each of the three statutes authorizes the President to waive its restrictive application, case-by-case, by consulting with and reporting to Congress.

The EAA'79 allows for validated export licenses to be issued to a designated government, provided the Secretaries of Commerce and State notify the House Committees on Foreign Affairs, and Banking, Housing and Urban Affairs, and the Senate Committee on Foreign Relations 30 days in advance of each license issuance. The notification requires a detailed report on the goods

⁸ Section 6(j)(4)(A)(i)-(iii), Export Administration Act of 1979; §40(f)(1)(A)(i)-(iii), Arms Export Control Act; and §620A(c)(1)(A)-(C), Foreign Assistance Act of 1961. In each act, the language is identical.

⁹ Section 6(j)(4)(B)(i)-(ii), Export Administration Act of 1979; §40(f)(1)(B)(i)-(ii), Arms Export Control Act; and §620A(c)(2)(A)-(B), Foreign Assistance Act of 1961. In each act, the language is identical.

or services intended to be exported, including “the reasons why the proposed export or transfer is in the national interest of the United States.”¹⁰

The AECA authorizes the President to waive the restrictions under the act (related to providing of munitions) with respect to a specific transaction if he determines the transaction is “essential to the national security interests of the United States.” The President is required to (1) consult with the Committees on Foreign Affairs and Foreign Relations 15 days in advance of any such decision, and (2) submit a detailed report on the transaction, including “the reasons why the proposed transaction is essential to the national security interests of the United States,” to the Speaker of the House and Chairperson of the Senate Committee on Foreign Relations.

The FAA⁶¹ authorizes the President to waive restrictions on some aid to a designated foreign government if he “determines that national security interests or humanitarian reasons justify a waiver”; he consults with the Committees on Foreign Affairs and Foreign Relations 15 days in advance of any such waiver; and submits a detailed report on the national security interests or humanitarian reasons that require such a waiver to the Speaker of the House and Chairperson of the Senate Committee on Foreign Relations. It is possible, too, that current restrictions on foreign aid to a designated foreign government could be, in effect, waived by enacting language in annual appropriations that provides assistance “notwithstanding any other provision of law”—a strategy oft-used by Congress.

Congress’s Options Stated in Current Statute

Of the three statutes that authorize the designation of a foreign government as a state sponsor of acts of international terrorism, only the AECA states an explicit legislative mechanism for Congress to block a delisting. Section 40(f)(2) of that act provides—

(2)(A) No rescission under paragraph (1)(B) of a determination under subsection (d) may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows: “That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on _____ is hereby prohibited.”, the blank to be completed with the appropriate date.

(B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives [with an expedited procedure process] in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in P.L. 98-473),¹¹ except that references in such paragraphs to the Committees on Appropriations of the

¹⁰ Section 6(j)(2) and (6), EAA’79.

¹¹ Section 8066 of the Department of Defense Appropriations Act (title VIII of the Continuing Appropriations, 1985; P.L. 98-473; 98 Stat. 1837 at 1935), placed restrictions on fiscal year 1985 funds made available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities, which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual. Subsec. (b) of that section allowed for the lifting of the prohibition (1) if the President reported on certain criteria; and (2) if a joint resolution approving assistance for military or paramilitary operations in Nicaragua were to be enacted.

In particular subsec. (c), paras. (1) and (3) through (7), provided the following expedited procedure process [para. (1) included here because of repeated references to it throughout paras. (3) through (7)]:

“(c)(1) For the purpose of subsection (b)(2), ‘joint resolution’ means only a joint resolution introduced after the (continued...)

House of Representatives and the Senate shall be deemed to be references to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, respectively.

(...continued)

date on which the report of the President under subsection (b)(1) is received by the Congress, the matter after the resolving clause of which is as follows: ‘That the Congress approved the obligation and expenditure of funds available for fiscal year 1985 for supporting, directly or indirectly, military or paramilitary operations in Nicaragua.’

* * * * *

“(3) A resolution described in paragraph (1) introduced in the House of Representatives shall be referred to the Committee on Appropriations of the House of Representatives. A resolution described in paragraph (1) introduced in the Senate shall be referred to the Committee on Appropriations of the Senate. Such a resolution may not be reported before the eighth day after its introduction.

“(4) If the committee to which is referred a resolution described in paragraph (1) has not reported such resolution (or an identical resolution) at the end of fifteen calendar days after its introduction, such committee shall be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

“(5)(A) When the committee to which a resolution is referred has reported, or has been deemed to be discharged (under paragraph (4)) from further consideration of, a resolution described in paragraph (1), notwithstanding any rule or precedent of the Senate, including Rule 22, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

“(B) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

“(C) Immediately following the conclusion of the debate on a resolution described in paragraph (1), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

“(D) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in paragraph (1) shall be decided without debate.

“(6) If, before the passage by the Senate of a resolution of the Senate described in paragraph (1), the Senate receives from the House of Representatives a resolution described in paragraph (1), then the following procedures shall apply:

“(A) The resolution of the House of Representatives shall not be referred to a committee.

“(B) With respect to a resolution described in paragraph (1) of the Senate—

“(i) the procedure in the Senate shall be the same as if no resolution had been received from the House; but

“(ii) the vote on final passage shall be on the resolution of the House.

“(C) Upon disposition of the resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

“(7) If the Senate receives from the House of Representatives a resolution described in paragraph (1) after the Senate has disposed of a Senate originated resolution, the action of the Senate with regard to the disposition of the Senate originated resolution shall be deemed to be the action of the Senate with regard to the House originated resolution.”

Recent History of Removing Designations

Over the years, the Secretary of State and President have exercised their authorities to remove four foreign governments, on five separate occasions, from the terrorism lists. South Yemen was removed in 1990 when it ceased to exist as a sovereign state, as it merged with North Yemen. Iraq was removed from the list in 1982, relisted in 1990, and removed again in 2004.

Libya was removed on May 12, 2006. Congress did not seek to exercise the blocking procedure made available in the AECA. After the delisting, however, the Senate considered and adopted S.Res. 504 (Lautenberg), and the House introduced but did not consider H.Res. 838 (Ferguson) to express a sense of the respective body that the “President should not accept the credentials of any representative of the Government of Libya” unless the United States received assurances that (language taken from S.Res. 504):

(1) it remains an important priority for further improvement in the relations between the United States and Libya that the Government of Libya make a good faith effort to resolve all outstanding claims of United States victims of terrorism sponsored or supported by Libya;

(2) it is in the best interests of the long-term relationship between the United States and Libya that final payment be made to the families of the victims of the attack on Pan Am Flight 103; and

(3) the President should not accept the credentials of any representative of the Government of Libya without the expressed understanding that the Government of Libya will continue to work in good faith to resolve outstanding cases of United States victims of terrorism sponsored or supported by Libya, including the settlement of cases arising from the Pan Am Flight 103 and LaBelle Discotheque bombings.

North Korea was removed in June 26, 2008. Prior to the delisting, the Senate introduced but did not enact S.Res. 399 (Brownback), which would have required the Bush Administration to certify that the North Korean government had met certain benchmarks before sanctions were removed, including matters related to weapons proliferation, harboring terrorists, counterfeiting U.S. currency, trafficking in narcotics, abduction of citizens of Japan and South Korea, and resolution of outstanding South Korean prisoner-of-war questions remaining from the 1950s conflict. The House introduced but did not enact H.R. 3650 (Ros-Lehtinen; see §3), and H.R. 6420 (Sherman), to raise similar congressional concerns.

Author Contact Information

Dianne E. Rennack
Specialist in Foreign Policy Legislation
drennack@crs.loc.gov, 7-7608