

IN THE UNITED STATES SENATE

[Date]

XXXX introduced the following bill; which was referred to the Committee on Foreign Relations.

A BILL

To permit persons subject to the jurisdiction of the United States to engage in speech and communications aimed at promoting peace and human security and to allow humanitarian organizations to enter into transactions with certain sanctioned foreign persons that are customary, necessary, and incidental in order to provide services to prevent or alleviate the suffering of civilian populations, and for other purposes.

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

SECTION. 1 SHORT TITLE

This Act may be cited as the “Humanitarian Assistance and Peacebuilding Protection Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The number of people affected by armed conflict and humanitarian crises has almost doubled over the past decade. According to UNHCR, 52 million civilians are currently displaced by war and violent conflict worldwide, the largest number since World War II.

(2) At the same time, terrorist threats and violent extremism are on the rise with new and emboldened violent groups recruiting vulnerable populations where weak or absent governments cannot or do not choose to protect and provide services to civilian populations.

(3) In pursuit of eliminating aid in any form to terrorist organizations, Executive Orders issued under the authority of the International Emergency Economic Powers Act have routinely cancelled statutory protections for humanitarian operations in areas controlled by such organizations (203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) Furthermore, the prohibitions contained in such Executive Orders discourage and, in some instances, effectively prohibit donors from contributing to aid efforts for an entire geographic areas within which a FTO operates.

(4) Because of laws prohibiting activities that may directly or indirectly support terrorist organizations, a general or specific license issued by the Department of the Treasury’s Office of Foreign Assets Control (OFAC) is often needed to enable United States humanitarian or

peacebuilding organizations to legally provide assistance in areas of a country controlled by a US-designated foreign terrorist organization (FTO), particularly with respect to activities that require interactions or dealings with such FTO.

(5) In situations in which no general license has been issued, U.S. humanitarian organizations often must obtain permission from the Department of the Treasury's Office of Foreign Assets Control (OFAC) before they can legally operate in areas controlled by a U.S.-designated foreign terrorist organization (FTO), particularly with respect to activities that require minimal interactions or dealings with such FTO. This "licensing" process is lengthy, standards are unclear, and it can cause significant delays in crisis situations.

6) The humanitarian response to the 2011–2012 famine in East Africa exemplified this challenge. The 2011 drought, part of a persistent weather trend in the region, was exacerbated by stagnating agricultural development and unsustainable forms of livelihood. In Somalia, the hardest hit country in the region, the terrorist group al-Shabaab at times obstructed the delivery of humanitarian assistance and directly threatened aid agencies in areas under its control. Thus, the famine was a foreseeable and, with unimpeded delivery of aid, a preventable event. However, due to legal restrictions on aid organizations, much of needed assistance was not provided. It is estimated that four million Somalis were affected by the drought and famine in the region and several million remain vulnerable to this day. According to a May 2013 report commissioned by USAID and the United Nations Food and Agriculture Organization the Somalia famine resulted in 258,000 deaths between October 2010 and April 2012. More than half of those deaths were children under the age of five. The report noted that legal restrictions on aid agencies contributed to the high death rate.

(7) When humanitarian organizations are unable to access vulnerable civilians, communities are potentially more vulnerable to manipulation or recruitment by terrorist and extremist organizations. When crises occur in terrorist-controlled areas, humanitarian presence becomes even more vital. If humanitarian organizations are forced to withdraw from such areas, so as to legally protect themselves from domestic counterterrorism sanctions, the U.S. is in effect serving terrorist interests by forcing civilians to rely on local terrorist organizations. However, if domestic legal obstacles are removed, humanitarian aid organizations will be able to provide aid to the most vulnerable communities, thus, strengthening U.S. reputation abroad.

(8) Humanitarian organizations have developed robust area-specific due diligence policies to monitor the activities of local partners and manage the risk of aid diversion. When working with local partners and vendors overseas, humanitarian organizations conduct in-depth reviews of recipient organizations. Such policies ensure that aid reaches its intended recipients even in the most difficult circumstances.

(9) The criminal prohibition on material support of terrorism in the Antiterrorism and Effective Death Penalty Act (18 USC 2339B) restricts both free speech and communications aimed at reducing violent conflict and protecting civilians and humanitarian operations when dealings with listed groups are necessary to access civilian populations in need.

(10) In the 2010 case *Holder v. Humanitarian Law Project*, the Supreme Court ruled that Congress has the authority to permit or restrict communications with FTOs in the form of

technical advice, training or services that are aimed at preventing, reducing or resolving conflict. However, history shows that peacebuilding programs have been successful in turning terrorist groups away from violence and have achieved notable successes, as seen in the Good Friday Agreement in Northern Ireland and South Africa’s negotiations to end apartheid. Under current U.S. law, it would be illegal for a U.S. peacebuilding organization to participate in or support such efforts.

(11) It is vital that U.S. counterterrorism efforts be effective while avoiding unintended consequences that further human suffering, exacerbate conflict or further propel vulnerable populations into extremist movements. The Financial Action Task Force, an international anti-terrorist financing and anti-money laundering standard setting body, of which the U.S. is a leading member, has said that nonprofit organizations “play an important role in preventing the causes of radical ideology from taking root and are, therefore, potential allies in the fight against terrorism.” The body warns that “laws and regulations should not disrupt or discourage legitimate charitable activities.”

SEC. 3. SENSE OF CONGRESS

It is the sense of Congress that nonprofit organizations contribute to human security through their work to provide humanitarian assistance to civilian populations and to prevent or end armed conflict. U.S. law should provide an enabling environment for such good works.

SEC. 4. AMENDMENTS TO SECTION 203 OF THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT

(a) ACCESS TO CIVILIAN POPULATIONS

(1) IN GENERAL.—Section 203 of the International Emergency Economic Powers Act (50 12 U.S.C. 1702) is amended –

(A) in subsection (b)(2)

(i) by inserting after “to relieve human suffering” the following: “including donations to foreign persons subject to sanctions under this Act in order to achieve such purposes,”; and

(ii) by striking “or” at the end;

(B) by re-designating subsection (c) as subsection (d); and

(C) by inserting after subsection (b) the following:

“(c) ACCESS TO CIVILIAN POPULATIONS.—

“(1) IN GENERAL.—The authority granted to the President by this section does not include the authority to further restrict, by regulation or otherwise, directly or indirectly—

“(A) transactions, by a person subject to the jurisdiction of the United States, with a foreign person that is subject to sanctions under this Act that are customary, necessary, and incidental to the donation or provision of goods or services, as defined in (C) of this section, by the person subject to the jurisdiction of the United States or its foreign representatives to civilian populations to prevent or alleviate the suffering of such civilian populations, if:

“(i) the person subject to the jurisdiction of the United States has acted in good faith without intent to further the aims or objectives of the foreign person and has used its best efforts to minimize any such transactions; ‘

(a) Best efforts are those that minimize necessary and incidental transactions with designated entities and requires nongovernmental organizations to have robust due diligence in place and do everything in their power to avoid transactions with designated entities, so they are taken only as a last resort. Each assessment of effort is fact-specific and cannot be defined in terms of a fixed formula.

(b) The term “necessary and incidental transactions includes standard transactions that are generally applicable to the conduct of programs for humanitarian, peacebuilding and similar purposes and that are required to accomplish the primary purpose, including but not limited to:

(i) Transactions such as standard fees for electricity to state controlled utilities, uniformly applicable employment taxes, standard import duties, registration fees, visa fees, and similar items.

(ii) Where a designated entity or Foreign Terrorist Organization (FTO) is acting as the de-facto governmental authority transactions that are customary in this context and charged to all (not targeted specifically to aid) are payable.

(iii) Customary, necessary and incidental transactions do not include large payments specifically for humanitarian access to civilian populations.

“(ii) the goods or services provided to the civilian population—

“(I) are limited to articles such as food, clothing, and medicine; and

(II) are not capable of being used to carry out any terrorist activity (as defined in section 4 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 6 1182(a)(3)(B)(iii)));

(iv) the person subject to the jurisdiction of the United States-

“(I) prior to, or not later than 10 business days after, the first instance of entering into any transaction described in this subparagraph, provides to the Secretary of State initial notice summarizing the nature and extent of its operations in connection with providing such goods or services; and

“(II) at least once each year during which the person enters into any transaction described in this subparagraph, provides to the Secretary of State subsequent notice summarizing the nature and extent of its operations in connection with donating or providing such goods or services; and

“(iv) the person, including any director, officer, or employee of the person, is not the subject of or directly named in any publicly available debarment, suspension, or Executive order that prohibits receipt of funding from the United States Government;

“(B) engaging in any speech or communication with a foreign person that is subject to sanctions under this Act to prevent or alleviate the suffering of a civilian population, including speech or communication to reduce or eliminate the frequency and severity of violent conflict and reducing its impact on the civilian populations.

“(2) RULE OF CONSTRUCTION.—Nothing contained in paragraph (1) shall be construed to

(a) authorize the President to prohibit the export of standard, commercially-available goods or services, including communications equipment, software and computers, that are necessary to carry out operations related to the provision of goods or services to prevent or alleviate the suffering of civilian populations that are under the control of a foreign person subject to sanctions under this Act.”

(b) limit the authority of the Attorney General pursuant to 18 USC 2339B(c) to initiate civil action in federal district court seeking an injunction if it appears that any person is engaged in, or is about to engage in, any act that constitutes a violation of the prohibition on material support of terrorism.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect on the date of enactment of this Act and apply with respect to transactions described in section 203(c)(1) of the International Emergency Economic Powers Act, as added by paragraph (1), entered into on or after such date of enactment.

(b) ADVISORY COUNCIL TO PREVENT AND ALLEVIATE HUMAN SUFFERING IN AREAS UNDER THE CONTROL OF CERTAIN SANCTIONED FOREIGN PERSONS.—Section 203 of the International Emergency Economic Powers Act (50 U.S.C.1702), as amended by subsection (a) of this section, is further amended by adding at the end the following:

“(e) ADVISORY COUNCIL TO PREVENT AND RESPOND TO HUMAN SUFFERING IN AREAS AFFECTED BY CERTAIN SANCTIONED FOREIGN PERSONS.—

“(1) ESTABLISHMENT.—No later than 90 days after the date of enactment of the Humanitarian Assistance Facilitation Act of 2013, the Secretary of State shall, in consultation with the Attorney General, Secretary of Defense, Secretary of the Treasury and the Secretary of Commerce, establish an Advisory Council on United States Policy Related to 25 Non-Governmental Activities to Prevent and respond to Human Suffering in Areas Affected By Certain Sanctioned Foreign Persons (hereafter in this subsection referred to as the ‘Advisory Council’). ‘

‘(2) MEMBERSHIP.—The Advisory Council shall be composed of not less than 15 members appointed by the Secretary of State from among individuals who are experts in the fields of peace-building, humanitarian aid in areas of armed conflict, representatives from organizations directly involved in the delivery of aid in areas of armed conflict, and other experts with relevant expertise as determined by the Secretary of State.

“(3) DUTIES.—The Advisory Council shall “(A) review existing laws, regulations, Executive orders, and administrative actions regulating or prohibiting, directly or indirectly, 18 peacebuilding activities and the provision of humanitarian aid and development assistance in areas under the control of foreign persons that are subject to sanctions under United States law; “(B) conduct additional research and study as necessary on the subjects of counterterrorism and security measures in relation to the delivery of humanitarian aid and development assistance; “(C) report to the Secretary of State on its findings; and “(D) make recommendations to the Secretary of State and other officials described in paragraph (1) (as appropriate) on the most efficient and effective means of limiting diversion of humanitarian aid and development assistance while also

preserving the impartiality of humanitarian aid and development assistance and the ability of humanitarian organizations to prevent and relieve human suffering of civilian populations.

“(4) TERMINATION.—Section 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) (relating to termination of advisory committees) shall not apply to the Advisory Council.”.

SEC. 5. AMENDMENTS TO SECTION 2339B OF TITLE 18, UNITED STATES CODE.

(a) DEFINITION OF MATERIAL SUPPORT OR RESOURCES.— Section 2339B(g)(4) of title 18, United States Code, is amended by adding at the end before the semi-colon the following: “, except that such term does not include engaging in speech or communication with a terrorist organization to prevent or alleviate the suffering of a civilian population, including speech or communication to reduce or eliminate the frequency and severity of violent conflict and reducing its impact on the civilian population”.

(b) ACCESS TO CIVILIAN POPULATIONS - Section 2339B(j) of title 18, United States Code, is amended—

(1) by striking “No person” and inserting the following:

“(1) IN GENERAL.—No person”; and

(2) by adding at the end the following:

“(2) ACCESS TO CIVILIAN POPULATIONS.—No person may be prosecuted under this section in connection with knowingly providing ‘material support or resources’ to a foreign terrorist organization, or attempting or conspiring to do so, if— ‘

‘(A) the material support or resources consists only of transactions that are customary, necessary, and incidental to the donation or provision of goods or services by persons who are not controlled by the foreign terrorist organization to civilian populations, if—

“(i) the goods or services are limited articles such as food, clothing, and intended to be used to relieve human suffering; and

“(ii) the goods or services are not capable of being used to carry out any terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii)));

“(B) the person, in donating or providing such goods or services to the civilian population, acts in good faith without intent to further the aims or objectives of the foreign terrorist organization and uses its best efforts to minimize any transaction with a foreign terrorist organization;

“(i) the person subject to the jurisdiction of the United States has acted in good faith without intent to further the aims or objectives of the foreign person and has used its best efforts to minimize any such transactions; ‘

(a) Best efforts are those that minimize necessary and incidental transactions with designated entities and requires nongovernmental organizations to have robust due diligence in place and do everything in their power to avoid transactions with designated entities, so they are taken only as a last resort. Each assessment of effort is fact-specific and cannot be defined in terms of a fixed formula.

(b) The term “necessary and incidental transactions includes standard transactions that are generally applicable to the conduct of programs for humanitarian, peacebuilding and similar purposes and that are required to accomplish the primary purpose, including but not limited to:

(i) Transactions such as standard fees for electricity to state controlled utilities, uniformly applicable employment taxes, standard import duties, registration fees, visa fees, and similar items.

(ii) Where a designated entity or Foreign Terrorist Organization (FTO) is acting as the de-facto governmental authority transactions that are customary in this context and charged to all (not targeted specifically to aid) are payable.

(iii) Customary, necessary and incidental transactions do not include large payments specifically for humanitarian access to civilian populations.

“(C) the person—

“(i) prior to, or not later than 10 business days after, the first instance of entering into any transaction described in subparagraph (A), provides to the Secretary of State notice summarizing the nature and extent of its operations in connection with providing such goods or services; and

“(ii) at least once each year during which the person enters into any transaction described in subparagraph (A), provides to the Secretary of

State notice summarizing the nature and extent of its operations in connection with providing such goods or services; and ‘

‘(D) the person donating or providing such goods or services, including any director, officer, or employee of the person is not the subject of or directly named in any publicly available debarment, suspension, or Executive order that prohibits receipt of funding from the Federal Government.’’.

(3) **RULE OF CONSTRUCTION.**—Nothing contained in paragraph (1) shall be construed to limit the authority of the Attorney General pursuant to 18 USC 2339B(c) to initiate civil action in federal district court seeking an injunction if it appears that any person is engaged in, or is about to engage in, any act that constitutes a violation of the prohibition on material support of terrorism.

(4) **EFFECTIVE DATE.**—The amendments made by paragraphs (1) and (2) take effect on the date of enactment of this Act and apply with respect to transactions described in section 2339B(j)(2) of title 18, United States Code, as added by paragraph (2), entered into on or after such date of enactment.