

A LEGISLATIVE PROPOSAL

MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

A LEGISLATIVE PROPOSAL TO IMPLEMENT THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS AND THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM



OCTOBER 29, 2001.—Message and accompanying papers referred to the Committee on the Judiciary and ordered to be printed.

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*To the Congress of the United States:*

Enclosed for the consideration of the Congress is a legislative proposal to implement the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. Also enclosed is a detailed explanation of the bill's provisions.

Title I of the bill is entitled the "Terrorist Bombings Convention Implementation Act of 2001." It would implement the International Convention for the Suppression of Terrorist Bombings, which was signed by the United States on January 12, 1998, and which was transmitted to the Senate for its advice and consent to ratification on September 8, 1999. In essence, the Convention imposes binding legal obligations upon State Parties either to submit for prosecution or to extradite any person within their jurisdiction who unlawfully and intentionally delivers, places, discharges, or detonates an explosive or other lethal device in, into, or against a place of public use, a State or government facility, a public transportation system, or an infrastructure facility. A State Party is subject to these obligations without regard to the place where the alleged act covered by the Convention took place. Twenty-eight States are currently party to the Convention, which entered into force internationally on May 23, 2001.

Title II of the bill is entitled the "Suppression of the Financing of Terrorism Convention Implementation Act of 2001." It would implement the International Convention for the Suppression of the Financing of Terrorism, which was signed by the United States on January 10, 2000, and which was transmitted to the Senate for its advice and consent to ratification on October 12, 2000. The Convention imposes binding legal obligations upon State Parties either to submit for prosecution or to extradite any person within their jurisdiction who unlawfully and wilfully provides or collects funds with the intention that they should be used to carry out various terrorist activities. A State Party is subject to these obligations without regard to the place where the alleged act covered by the Convention took place. The Convention is not yet in force internationally, but will enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval, or accession with the Secretary General of the United Nations.

I urge the prompt and favorable consideration of this proposal.

GEORGE W. BUSH.

THE WHITE HOUSE, October 25, 2001.

**A BILL**

To implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use; and implement the International Convention for the Suppression of the Financing of Terrorism to combat terrorism and defend the Nation against terrorist acts; 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. CONSTRUCTION; SEVERABILITY.**

Any provision of this act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to the other, dissimilar circumstances.

**TITLE I—SUPPRESSION OF TERRORIST BOMBINGS.****SEC. 101. SHORT TITLE.**

This title may be cited as “The Terrorist Bombings Convention Implementation Act of 2001.”

**SEC. 102. BOMBING STATUTE.**

(a) Chapter 113B of title 18, United States Code, relating to terrorism, is amended by adding at the end thereof the following new section:

**“2332f. Bombings of places of public use, government facilities, public transportation systems**

**and infrastructure facilities**

**“(a) OFFENSES.—**

“(1) In general.—Whoever unlawfully delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility—

“(A) with the intent to cause death or serious bodily injury, or

“(B) with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss, shall be punished as prescribed in subsection (c).

“(2) Attempts and conspiracies.— Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (c).

“(b) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) if—

“(1) the offense takes place in the United States and—

“(A) the offense is committed against another State or a government facility of such State, including its embassy or other diplomatic or consular premises of that State;

“(B) the offense is committed in an attempt to compel another State or the United States to do or abstain from doing any act;

“(C) at the time the offense is committed, it is committed—

“(i) on board a vessel flying the flag of another State;

“(ii) on board an aircraft which is registered under the laws of another State; or

“(iii) on board an aircraft which is operated by the government of another State;

“(D) a perpetrator is found outside the United States;

“(E) a perpetrator is a national of another state or a stateless person; or

“(F) a victim is a national of another state or a stateless person.

“(2) the offense takes place outside the United States and—

“(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

“(B) a victim is a national of the United States;

“(C) a perpetrator is found in the United States;

“(D) the offense is committed in an attempt to compel the United States to do or abstain from doing any act;

“(E) the offense is committed against a State or government facility of the United States, including an embassy or other diplomatic or consular premises of the United States;

“(F) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed; or

“(G) the offense is committed on board an aircraft which is operated by the United States.

“(c) PENALTIES.—Whoever violates this section shall be imprisoned for any term of years or for life, and if death results from the violation, shall be punished by death or imprisoned for any term of years or for life.

“(d) EXEMPTIONS TO JURISDICTION.—This section does not apply to—

“(1) the activities of armed forces during an armed conflict, as those terms are understood under the law of war, which are governed by that law,

“(2) activities undertaken by military forces of a State in the exercise of their official duties; or

“(3) offenses committed within the United States, where the alleged offender and the victims are United States citizens and the alleged offender is found in the United States, or where jurisdiction is predicated solely on the nationality of the victims or the alleged offender and the offense has no substantial effect on interstate or foreign commerce.

“(e) DEFINITIONS.—As used in this section, the term—

“(1) ‘serious bodily injury’ has the meaning given that term in section 1365(g)(3) of this title;

“(2) ‘national of the United States’ has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

“(3) ‘State or government facility’ includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

“(4) ‘intergovernmental organization’ includes international organization (as defined in section 1116(b)(5) of this title);

“(5) ‘infrastructure facility’ means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications;

“(6) ‘place of public use’ means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public;

“(7) ‘public transportation system’ means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo;

“(8) ‘explosive’ has the meaning given in section 844(j) of this title insofar that it is designed, or has the capability, to cause death, serious bodily injury or substantial material damage;

“(9) ‘other lethal device’ means any weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial damage to property through the release, dissemination, or impact of toxic chemicals, biological agents or toxins (as those terms are defined in section 178 of this title) or radiation or radioactive material;

“(10) ‘military forces of a State’ means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defense or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility;

“(11) ‘armed conflict’ does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature; and

“(12) ‘State’ has the same meaning as that term has under international law, and includes all political subdivisions thereof.”

(b) The analysis for chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following:

“2332f. Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities.”

(c) Nothing contained in this section is intended to affect the applicability of any other Federal or State law which might pertain to the underlying conduct.

**SEC. 103. ANCILLARY MEASURES.**

(a) WIRETAP PREDICATE.—Section 2516(1)(c) of title 18, United States Code, is amended by inserting “section 2332f (relating to bombing of public places and facilities),” before “section 1992 (relating to wrecking trains)”.

(b) STATUTE OF LIMITATIONS EXTENSION.—Section 3286 of title 18, United States Code, is amended by inserting “section 2332f (bombing of public places and facilities),” before “or section 2340A (torture)”.

(c) MONEY LAUNDERING PREDICATE.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting “section 2332f (relating to bombing of public places and facilities),” after “section 2332b (relating to international terrorist acts transcending national boundaries),”.

(d) PROVIDING MATERIAL SUPPORT TO TERRORISTS PREDICATE.—Section 2339A of title 18, United States Code, is amended by inserting “2332f,” before “or 2340A”.

(e) RICO PREDICATE.—Section 1961(1)(B) of title 18, United States Code, is amended by inserting “section 2332f (relating to bombing of public places and facilities),” before “sections 2341-2346 (relating to trafficking in contraband cigarettes)”.

(f) FEDERAL CRIME OF TERRORISM.—Section 2332b(g)(5)(B) of title 18, United States Code, is amended by—

- (1) inserting “229 (relating to prohibited activities involving chemical weapons)” after “175 (relating to biological weapons),”;
- (2) striking “2332c,”; and
- (3) inserting “2332f (relating to bombing of public places and facilities),” after “2332b (relating to acts of terrorism transcending national boundaries),”.

**SEC. 104. EFFECTIVE DATE.**

Sections 102 and 103 of this title shall become effective on the date that the International Convention for the Suppression of Terrorist Bombings enters into force for the United States.

**TITLE II—SUPPRESSION OF THE FINANCING OF TERRORISM.**

**SEC. 201. SHORT TITLE.**

This title may be cited as “The Suppression of the Financing of Terrorism Convention Implementation Act of 2001.”

**SEC. 202. TERRORISM FINANCING STATUTE.**

(a) Chapter 113B of title 18, United States Code, relating to terrorism, is amended by adding at the end thereof the following new section:

**“2339c. Prohibitions Against the Financing of Terrorism**

“(a) OFFENSES.—

“(1) IN GENERAL.—Whoever, in a circumstance described in subsection (c), by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out—

“(A) an act which constitutes an offense within the scope of a treaty specified in subsection (e)(7), as implemented by the United States, or

“(B) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act,

shall be punished as prescribed in subsection (d)(1).

“(2) ATTEMPTS AND CONSPIRACIES.—Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(1).

“(3) RELATIONSHIP TO PREDICATE ACT.—For an act to constitute an offense set forth in this subsection, it shall not be necessary that the funds were actually used to carry out a predicate act.

“(b) CONCEALMENT.—

“(1) Whoever, in the United States, or outside the United States and a national of the United States or a legal entity organized under the laws of the United States (including any of its states, district, commonwealths, territories, or possessions), knowingly conceals or disguises the nature, the location, the source, or the ownership or control of any material

support or resources provided in violation of section 2339B of this chapter, or of any funds provided or collected in violation of subsection (a) or any proceeds of such funds, shall be punished as prescribed in subsection (d)(2).

“(2) ATTEMPTS AND CONSPIRACIES.— Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(2).

“(c) JURISDICTION.—There is jurisdiction over the offenses in subsection (a) in the following circumstances—

“(1) the offense takes place in the United States and—

“(A) a perpetrator was a national of another State or a stateless person;

“(B) on board a vessel flying the flag of another State or an aircraft which is registered under the laws of another State at the time the offense is committed;

“(C) on board an aircraft which is operated by the government of another State;

“(D) a perpetrator is found outside the United States;

“(E) was directed towards or resulted in the carrying out of a predicate act against—

“(i) a national of another State; or

“(ii) another State or a government facility of such State, including its embassy or other diplomatic or consular premises of that State;

“(F) was directed towards or resulted in the carrying out of a predicate act committed in an attempt to compel another State or international organization to do or abstain from doing any act; or

“(G) was directed towards or resulted in the carrying out of a predicate act—

“(i) outside the United States; or

“(ii) within the United States, and either the offense or the predicate act was conducted in, or the results thereof affected, interstate or foreign commerce;

“(2) the offense takes place outside the United States and—

“(A) a perpetrator is a national of the United States or is a stateless person whose habitual residence is in the United States;

“(B) a perpetrator is found in the United States; or

“(C) was directed towards or resulted in the carrying out of a predicate act against—

“(i) any property that is owned, leased, or used by the United States or by any department or agency of the United States, including an embassy or other diplomatic or consular premises of the United States;

“(ii) any person or property within the United States;

“(iii) any national of the United States or the property of such national; or

“(iv) any property of any legal entity organized under the laws of the United States, including any of its states, district, commonwealths, territories, or possessions;

“(3) the offense is committed on board a vessel flying the flag of the United States or an aircraft which is registered under the laws of the United States at the time the offense is committed;

“(4) the offense is committed on board an aircraft which is operated by the United States; or

“(5) the offense was directed towards or resulted in the carrying out of a predicate act committed in an attempt to compel the United States to do or abstain from doing any act.

“(d) PENALTIES.—

“(1) Whoever violates subsection (a) shall be fined under this title, imprisoned for not more 20 years, or both.

“(2) Whoever violates subsection (b) shall be fined under this title, imprisoned for not more 10 years, or both.

“(e) DEFINITIONS.—As used in this section, the term—

“(1) ‘funds’ means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit;

“(2) ‘government facility’ means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a government, the legislature or the judiciary or by officials or employees of a State or any other public

authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties;

“(3) ‘proceeds’ means any funds derived from or obtained, directly or indirectly, through the commission of an offense set forth in subsection (a);

“(4) ‘provides’ includes, but is not limited to, giving, donating, and transmitting;

“(5) ‘collects’ includes, but is not limited to, raising and receiving;

“(6) ‘predicate act’ means any act referred to in paragraph (A) or (B) of subsection (a)(1);

“(7) ‘treaty’ means the—

“(A) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

“(B) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

“(C) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973;

“(D) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;

“(E) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980;

“(F) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the

Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988;

“(G) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988;

“(H) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988;

or

“(I) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;

“(8) ‘intergovernmental organization’ includes international organizations;

“(9) ‘international organization’ has the same meaning as in section 1116(b)(5) of this title;

“(10) ‘armed conflict’ does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

“(11) ‘serious bodily injury’ has the same meaning as in section 1365(g)(3) of this title;

“(12) ‘national of the United States’ has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

“(13) ‘State’ has the same meaning as that term has under international law, and includes all political subdivisions thereof.

“(f) CIVIL PENALTY.—In addition to any other criminal, civil, or administrative liability or penalty, any legal entity located within the United States or organized under the laws of the United

States, including any of the laws of its states, district, commonwealths, territories, or possessions, shall be liable to the United States for the sum of at least \$10,000, if a person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in subsection (a).".

(b) The analysis for chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following:

"2339C. Prohibitions against the financing of terrorism.".

(c) Nothing contained in this section is intended to affect the scope or applicability of any other Federal or state law.

#### **SEC. 203. ANCILLARY MEASURES**

(a) WIRETAP PREDICATE.—Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 2339A (relating to providing material support to terrorists), section 2339B (relating to providing material support or resources to designated foreign terrorist organizations), section 2339C (relating to financing of terrorism)," before "section 1992 (relating to wrecking trains)".

(B) STATUTE OF LIMITATIONS EXTENSION.—Section 3286 of title 18, United States Code, is amended by inserting "section 2339A (relating to providing material support to terrorists), section 2339B (relating to providing material support or resources to designated foreign terrorist organizations), section 2339C (relating to financing of terrorism)," before "or section 2340A (torture)".

(c) MONEY LAUNDERING PREDICATE.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "or section 2339A (relating to providing material support to terrorists)" and

inserting “section 2339A (relating to providing material support to terrorists), section 2339B (relating to providing material support or resources to designated foreign terrorist organizations), section 2339C (relating to financing of terrorism)”.

(d) RICO PREDICATE.—Section 1961(1)(B) of title 18, United States Code, is amended by inserting “section 2339A (relating to providing material support to terrorists), section 2339B (relating to providing material support or resources to designated foreign terrorist organizations), section 2339C (relating to financing of terrorism),” before “sections 2341-2346 (relating to trafficking in contraband cigarettes)”.

(e) FEDERAL CRIME OF TERRORISM.—Section 2332b(g)(5)(B) of title 18, United States Code, is amended by inserting “2339C (relating to financing of terrorism),” before “or 2340A (relating to torture)”.

(f) FORFEITURE OF FUNDS, PROCEEDS, AND INSTRUMENTALITIES.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end thereof the following new subparagraph:

“(G) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of section 2339C of this title.”.

**SEC. 204. EFFECTIVE DATE.**

Except for the provisions of section 2339C(c)(1)(D) and (2)(B) of title 18, United States Code, which shall become effective on the date that the International Convention for the Suppression of the Financing of Terrorism enters into force for the United States, and for the provisions of section 2339C(e)(7)(I) of title 18, United States Code, which shall become effective on the date that the

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International Convention for the Suppression of Terrorist Bombing enters into force for the United States, all other provisions of Sections 202 and 203 of this title shall be effective upon enactment.

## ANTI-TERRORISM CONVENTIONS IMPLEMENTATION

### SECTION-BY-SECTION ANALYSIS

#### **TITLE I Suppression of Terrorist Bombings**

Title I of this bill implements the International Convention for the Suppression of Terrorist Bombings which was signed by the United States on January 12, 1998, and was transmitted to the Senate for its advice and consent to ratification on September 8, 1999. Twenty-eight States are currently party to the Convention, which entered into force internationally May 23, 2001. The Convention requires State Parties to combat terrorism by criminalizing certain attacks on public places committed with explosives or other lethal devices, including biological, chemical and radiological devices. The Convention also requires that State Parties criminalize conspiracy and attempts to undertake such terrorist attacks.

##### **Section 101. Short Title**

Section 101 of Title I provides that, on enactment, the Title may be cited as "The Terrorist Bombings Convention Implementation Act of 2001."

##### **Section 102. Bombing Statute**

Section 102(a) of Title I adds a new section, 18 U.S.C. § 2332f, to the federal terrorism statutes (i.e., Chapter 113B of title 18 of the United States Code) entitled "Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities," which makes terrorist acts covered by the Convention a crime. New section 2332f contains 5 subsections (§ 2332f(a)-(e)) which are described below.

Subsection 2332f(a) makes it a crime to unlawfully deliver, place, discharge or detonate an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility with intent to cause death or serious bodily injury, or with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss. Conspiracy and attempts to commit these crimes are also criminalized. This provision implements Article 2, paragraphs 1, 2 and 3 of the Convention. It should be noted that Section 2339A of title 18, United States Code, which is amended by section 103(d) of Title I, also addresses the provision of material support for such offenses.

The inclusion of the term "unlawfully" in Subsection 2332f(a), and mirrored in Article 2 of the Convention defining the offenses, is intended to embody what would be considered under U.S. law as common law defenses. For purposes of Subsection 2332f(a), whether a person acts "unlawfully" will depend on whether he is acting within the scope of authority recognized under and consistent with existing U.S. law, which reflects international law principles, such as self

defense or lawful use of force by police authorities. This language is not to be construed as permitting the assertion, as a defense to prosecution under Section 2332f, that a person purportedly acted under authority conveyed by any particular foreign government or official. Clearly such a construction, which would exempt State-sponsored terrorism, would be at odds with the purpose of the Convention and this implementing legislation.

With respect to the provision regarding the delivery, placing, discharging or detonating of an explosive or lethal device with the intent to cause extensive destruction of the described place, facility or system, it is sufficient if the intent is to significantly damage such a place, facility or system. Further, for the purpose of Subsection 2332f(a), when determining whether the act resulted in, or was likely to result in major economic loss, the physical damage to the targeted facility may be considered, as well as other types of economic loss including, but not limited to, the monetary loss or other adverse effects resulting from the interruption of its activities. The adverse effects on non-targeted entities and individuals, the economy and the government may also be considered in this determination.

Subsection 2332f(b) delineates the jurisdictional bases for the covered offenses and includes jurisdiction over perpetrators of offenses abroad who are subsequently found within the United States. This provision implements a crucial element of the Convention which requires all State Parties to either extradite or prosecute perpetrators of offenses covered by the Convention (Article 8(1)) who are found within the jurisdiction of a State Party. While current federal or state criminal laws encompass all the activity prohibited by the Convention which occurs within the United States, Subsection (b)(1) ensures federal jurisdiction where there is a unique federal interest, *e.g.*, a foreign government is the victim of the crime or the offense is committed in an attempt to compel the United States to do or abstain from doing any act.

Subsection 2332f(c) delineates the penalties for committing the covered crimes, to wit, a term of years or life, and, if death results from the violation, punishment by death or imprisonment for any term of years or life.

Subsection 2332f(d) delineates certain exemptions to jurisdiction as set forth in the Convention. The subsection exempts from jurisdiction activities of armed forces during an armed conflict, as those terms are understood under the law of war, which are governed by that law, and activities undertaken by military forces of a State in the exercise of their official duties. The Congress expects that courts, when interpreting and applying section 2332f(d), will defer to the views of the Executive Branch on whether the activities at issue were conducted by armed forces during an armed conflict, as those terms are understood under the law of war, or whether the activities at issue were undertaken by military forces of a State in the exercise of their official duties. See, *e.g.*, *The Three Friends*, 166 U.S. 1, 63 (1887). As Commander-in-Chief and Chief Executive of the nation, the President is the sole organ of the nation in its foreign affairs, and has the constitutional authority to interpret international law on behalf of the nation. *United States v. Curtiss-Wright Export Corp.*, 299 US 304 (1936).

Subsection 2332f(e) contains definitions of twelve terms that are used in the new law. Six of those definitions (“State or government facility”, “infrastructure facility,” “place of public use,” “public transportation system,” “other lethal device,” and “military forces of a State”) are the same definitions used in the Convention. Four additional definitions (“serious bodily injury,” “explosive,” “national of the United States,” and “intergovernmental organization”) are definitions which already exist in other U.S. statutes. One of those definitions (“armed conflict”) is defined consistent with an international instrument relating to the law of war, and a U.S. Understanding to the Convention which is recommended to be made at the time of U.S. ratification. The final term, “State,” has the same meaning as that term has under international law.

Section 102(b) amends the analysis for chapter 113B of title 18, United States Code, by inserting therein the caption for the new Section 2332f. Section 102(c) reflects that new Section 2332f supplements existing federal and state laws and does not affect or supplant any of them.

#### **Section 103 Ancillary Measures**

Section 103 of Title I, which is not required by the Convention but will assist in federal enforcement, adds the new 18 U.S.C. § 2332f to six existing provisions of law. Section 2332f is made a predicate under the wiretap statute (18 U.S.C. § 2516(1)(c)) and the money laundering statute (18 U.S.C. § 1956(c)(7)(D)). In addition, section 2332f is made a predicate under the statute relating to the provision of material support to terrorists (18 U.S.C. § 2339A) and under the Racketeer Influenced and Corrupt Organizations (RICO) statute (18 U.S.C. § 1961(1)(B)). Section 2332f is also added to 18 U.S.C. § 3286 to provide for an eight year statute of limitations for those violations not capital in nature. Lastly, section 2332f is added to those offenses defined as a “Federal crime of terrorism” under 18 U.S.C. § 2332b(g)(5). (Section 229 relating to prohibited activities involving chemical weapons is also added and its predecessor, former section 2332c of title 18, United States Code, is deleted from the definition because section 2332c has been repealed.)

#### **Section 104 Effective Date**

Finally, since one of Title I’s purposes is to implement the Convention, Section 104 provides that the Title will not become effective until the Convention enters into force for the United States.

#### **Title II Suppression of the Financing of Terrorism**

Title II of this bill implements the International Convention for the Suppression of the Financing of Terrorism which was signed by the United States on January 10, 2000, and was transmitted to the Senate for its advice and consent to ratification on October 12, 2000. The Convention is not yet in force internationally, but will enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations. Once in force, the Convention requires State

Parties to combat terrorism by criminalizing certain financial transactions made in furtherance of various terrorist activities. The Convention will also require that State Parties criminalize conspiracy and attempts to undertake such financing.

**Section 201 Short Title**

Section 201 of Title II provides that, on enactment, the Title may be cited as "The Suppression of Financing of Terrorism Convention Implementation Act of 2001."

**Section 202 Terrorism Financing Statute**

Section 202(a) of Title II adds a new section, 18 U.S.C. § 2339C, to the federal terrorism statutes (i.e., Chapter 113B of title 18 of the United States Code) entitled "Prohibitions against the financing of terrorism," which makes financial acts covered by the Convention a crime. New Section 2339C contains 6 subsections (§ 2339C(a)-(f)) which are described below.

Subsection 2339C(a) makes it a crime to directly or indirectly, unlawfully and willfully provide or collect funds with the intention that such funds be used, or with the knowledge that such funds are to be used, in full or in part, in order to carry out an act which constitutes an offense within the scope of certain terrorism treaties, as implemented by the United States, or any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act. The term "unlawfully" is intended to embody common law defenses. Conspiracy and attempts to commit these crimes are also criminalized. The term "willfully" means voluntary or intentional. Subsection 2339C(a)(3) states, as contained in Article 2, paragraph 3, of the Convention, that a violation of Section 2339C(a) does not require that the funds which are provided or collected actually be used to carry out an act referred to in subparagraph (A) or (B) of subsection 2339C(a)(1). Section 2339C(a) implements Article 2, paragraphs 1, 3, 4 and 5 of the Convention. The Congress expects that courts, when interpreting and applying section 2339C(a)(1)(B), will defer to the views of the Executive Branch on whether the activities at issue were conducted by armed forces during an armed conflict, as those terms are understood under the law of war, or whether the activities at issue were undertaken by military forces of a State in the exercise of their official duties. See, e.g., *The Three Friends*, 166 U.S. 1, 63 (1887). As Commander-in-Chief and Chief Executive of the nation, the President is the sole organ of the nation in its foreign affairs, and has the constitutional authority to interpret international law on behalf of the nation. *United States v. Curtiss-Wright Export Corp.*, 299 US 304 (1936).

Subsection 2339C(b) creates an offense for concealing or disguising the nature, the location, the source, or the ownership or control of any funds or proceeds provided or collected under Section 2339C, as well as any material support or resources provided under Section 2339B, by any person or legal entity within the United States and by any United States national or legal entity

created under U.S. law anywhere in the world. This provision goes beyond what was required by the Convention, but would enhance the ability of U.S. law enforcement authorities to combat the supply of financing to terrorists and their organizations.

Subsection 2339C(c) delineates the jurisdictional bases for the covered offenses under Section 2339C(a) and includes jurisdiction over perpetrators of offenses abroad who are subsequently found within the United States. This provision implements a crucial element of the Convention which requires all State Parties to either extradite or prosecute perpetrators of offenses covered by the Convention (Article 10) who are found within the territory of a State Party. The structure of this provision is designed to accommodate the structure of the Convention. Article 7 of the Convention sets forth both mandatory and permissive bases of jurisdiction, from which Article 3 excludes certain offenses that lack an international nexus. Some sections, however, such as, for example, Subsection 2339(C)(c), go beyond the jurisdictional bases required or expressly permitted under Article 7, paragraphs 1 and 2, of the Convention, as limited by Article 3, where expanded jurisdiction is desirable from a policy perspective and is consistent with the Constitution.

Subsection 2332f(d)(1) delineates the penalties for committing the covered crimes under Subsection 2339C(a), to wit, a fine under title 18, United States Code, imprisonment for not more than 20 years, or both. This penalty is consistent with those under current law relating to money laundering offenses. See 18 U.S.C. § 1956. Subsection 2332f(d)(2) delineates the penalties for committing the covered crimes under Subsection 2339C(b), to wit, a fine under title 18, United States Code, imprisonment for not more than 10 years, or both.

Subsection 2339C(e) contains thirteen definitions of terms that are used in the new law. Two of those definitions ("government facility," and "proceeds") are the same definitions used in the Convention. The definition for "funds" is identical to that contained in the Convention with the exception that coins and currency are expressly mentioned as money is certainly a type of funds obviously contemplated by the Convention. The definitions for "provides" and "collects" reflect the broad scope of the Convention. The definition for "predicate acts" specifies the activity for which the funds were being provided or collected. These are the acts referred to in subparagraphs (A) or (B) of Section 2339C(a)(1). The definition of "treaty" sets forth the nine international conventions dealing with counterterrorism found in the Annex to the Convention. In construing the scope of these treaties, the court is to look to the description or definition of the treaty's provisions as reflected in United States law without regard to the particular jurisdictional provision in the implementing law. The term "intergovernmental organization," which is used in the Convention, is specifically defined to make clear that it contains within its ambit existing international organizations. The definitions for "international organization," "serious bodily injury," and "national of the United States" incorporate definitions for those terms which already exist in other U.S. statutes. One of the definitions ("armed conflict") is defined consistent with international instruments relating to the law of war. The final term, "State," has the same meaning as that term has under international law.

Subsection 2339C(f) creates a civil penalty of at least \$10,000 payable to the United States, against any legal entity in the United States, or organized under the laws of the United States, including any of its states, district, commonwealths, territories, or possessions, if any person responsible for the management or control of that legal entity has, in that capacity, committed an offense set forth in Subsection 2339C(a). There does not have to be a conviction of such person under Subsection 2339C(a) to impose the civil penalty against the legal entity. In determining the size of the penalty, the court should consider the legal entity's net worth, the volume of business it transacts, its ability to pay, the amount of the transaction involved in the Subsection 2339C(a) offense, and the nature of the predicate act. This civil penalty is in addition to any other criminal, civil, or administrative liability or penalty allowable under United States law. Subsection 2339C(f) fulfills Article 5 of the Convention.

Section 202(b) amends the analysis for chapter 113B of title 18, United States Code, by inserting therein the caption for the new Section 2339C. Section 202(c) reflects that new Section 2339C supplements existing federal and state laws and does not affect or supplant any of them.

#### **Section 203 Ancillary Measures**

Section 203 of Title II adds the new 18 U.S.C. § 2339C to five existing provisions of law. It also adds current 18 U.S.C. §§ 2339A (relating to providing material support to terrorists) and 2339B (relating to providing material support or resources to designated foreign terrorist organizations), if not already included, to these five provisions. Sections 2339A, 2339B, and 2339C are made predicates under the wiretap statute (18 U.S.C. § 2516(1)(c)). Sections 2339B and 2339C are made predicates under the money laundering statute (18 U.S.C. § 1956(c)(7)(D)). In addition, Sections 2339A, 2339B, and 2339C are made predicates under the Racketeer Influenced and Corrupt Organizations (RICO) statute (18 U.S.C. § 1961(1)(B)). Sections 2339A, 2339B, and 2339C are also added to 18 U.S.C. § 3286 to provide for an eight year statute of limitations for those violations. Lastly, Section 2339C is added to those offenses defined as a "Federal crime of terrorism" under 18 U.S.C. § 2332b(g)(5).

Pursuant to Article 8, paragraph 2, of the Convention, Section 981(a)(1) of title 18, United States Code, is amended to permit the civil forfeiture of any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of the new Section 2339C. Criminal forfeiture of any such property flows from the provisions of 28 U.S.C. § 2461(c).

#### **Section 204 Effective Date**

Finally, Section 204 provides that those provisions of the Act for which under the Constitution the commerce, foreign relations, or other power (including those international treaties in force to which the United States is already a party) permit their immediate enactment, shall become effective upon enactment. However, three provisions will not become effective until the convention upon which they are based enters into force for the United States. The three

situations are where the predicate act is one specified under Section 2339C(d)(7)(I) of title 18, United States Code, which is based upon the International Convention for the Suppression of Terrorist Bombings, and the "found outside the United States" and "found in the United States" jurisdictional provisions under Section 2339C(c)(1)(D) and (2)(B), respectively, of title 18, United States Code, which are based upon the International Convention for the Suppression of the Financing of Terrorism.