

110TH CONGRESS
1ST SESSION

H. R. 2254

To amend title 18, United States Code, to establish the transfer of any nuclear weapon, device, material, or technology to terrorists as a crime against humanity.

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 2007

Mr. SCHIFF (for himself, Mr. THORNBERRY, and Mr. COHEN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 18, United States Code, to establish the transfer of any nuclear weapon, device, material, or technology to terrorists as a crime against humanity.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ending Nuclear Traf-
5 ficking Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) A single, simple nuclear weapon detonated
2 in the heart of an American city would kill 100,000
3 people instantly, and seriously injure tens of thou-
4 sands more. A significant portion of the city would
5 probably become permanently uninhabitable, with lit-
6 tle chance of a successful cleanup.

7 (2) Making such a weapon would not be dif-
8 ficult, by modern technological standards, given 25
9 to 35 pounds of highly enriched uranium.

10 (3) Since the development of the first nuclear
11 weapons, countries around the world have recognized
12 the unique risk that nuclear weapons pose to peace
13 and security.

14 (4) The first treaty limiting the use of nuclear
15 technology was the Limited Test Ban Treaty of
16 1963, which banned the testing of nuclear weapons
17 in the atmosphere, in outer space, and under water.
18 Since that time, many treaties to limit the use and
19 proliferation of nuclear weapons have been signed.

20 (5) Perhaps the most important of these trea-
21 ties is the Treaty on the Non-Proliferation of Nu-
22 clear Weapons, which restricts almost all of the 188
23 nations that are signatories from developing nuclear
24 weapons. As part of their obligation under the Trea-
25 ty on the Non-Proliferation of Nuclear Weapons,

1 153 countries have reached safeguards agreements
2 with the International Atomic Energy Agency that
3 require a comprehensive system for accounting for
4 nuclear materials and intrusive inspections of their
5 nuclear facilities.

6 (6) These treaties and safeguards agreements
7 reflect the worldwide understanding that nuclear
8 materials in the wrong hands pose a direct threat to
9 peace and prosperity.

10 (7) Chapter VII of the United Nations Charter,
11 Article 39 states the following: “The Security Coun-
12 cil shall determine the existence of any threat to the
13 peace, breach of the peace, or act of aggression and
14 shall make recommendations, or decide what meas-
15 ures shall be taken in accordance with Articles 41
16 and 42, to maintain or restore international peace
17 and security.”

18 (8) In 2004, the United Nations Security Coun-
19 cil unanimously adopted Resolution 1540, binding on
20 all members of the United Nations, which stated in
21 part the following:

22 “The Security Council, . . . Acting under Chapter
23 VII of the Charter of the United Nations, . . .

24 “2. Decides also that all States, in accord-
25 ance with their national procedures, shall adopt

1 and enforce appropriate effective laws which
2 prohibit any non-State actor to manufacture,
3 acquire, possess, develop, transport, transfer or
4 use nuclear, chemical or biological weapons and
5 their means of delivery, in particular for ter-
6 rorist purposes, as well as attempts to engage
7 in any of the foregoing activities, participate in
8 them as an accomplice, assist or finance them;

9 “3. Decides also that all States shall take
10 and enforce effective measures to establish do-
11 mestic controls to prevent the proliferation of
12 nuclear, chemical, or biological weapons and
13 their means of delivery, including by estab-
14 lishing appropriate controls over related mate-
15 rials and to this end shall: . . .

16 “(d) Establish, develop, review and
17 maintain appropriate effective national ex-
18 port and trans-shipment controls over such
19 items, including appropriate laws and reg-
20 ulations to control export, transit, trans-
21 shipment and re-export and controls on
22 providing funds and services related to
23 such export and trans-shipment such as fi-
24 nancing, and transporting that would con-
25 tribute to proliferation, as well as estab-

1 lishing end-user controls; and establishing
2 and enforcing appropriate criminal or civil
3 penalties for violations of such export con-
4 trol laws and regulations;”.

5 (9) Resolution 1540 reflects the general under-
6 standing of the members of the United Nations that
7 the illicit transfer of nuclear weapons and related
8 materials is a “threat to the peace”.

9 **SEC. 3. STATEMENT OF POLICY REGARDING CRIMES**
10 **AGAINST HUMANITY.**

11 It is the policy of the United States that the transfer
12 of a nuclear weapon or device or of nuclear material or
13 technology with reason to believe that the weapon or de-
14 vice, or a weapon or device made using the transferred
15 material or technology, may be used for terrorist purposes,
16 is a crime against humanity and that individuals are liable
17 for such acts under customary international criminal law.

18 **SEC. 4. CRIMINAL OFFENSE.**

19 (a) OFFENSE.—Chapter 113B of title 18, United
20 States Code, is amended by adding at the end the fol-
21 lowing new section:

22 **“§ 2332i. Transfer of nuclear weapons, devices, mate-**
23 **rial, or technology**

24 “(a) UNLAWFUL CONDUCT.—

1 “(1) IN GENERAL.—It shall be unlawful for any
2 person to knowingly transfer to any organization or
3 person described in paragraph (2)—

4 “(A) any weapon that is designed or in-
5 tended to release radiation or radioactivity at a
6 level dangerous to human life, or that uses a
7 nuclear reaction in order to create an explosion;

8 “(B) any device or other object that is ca-
9 pable of endangering, and is designed or in-
10 tended to endanger, human life through the re-
11 lease of radiation or radioactivity;

12 “(C) any nuclear material or nuclear by-
13 product material; or

14 “(D) any sensitive nuclear technology.

15 “(2) ORGANIZATIONS AND PERSONS DE-
16 SCRIBED.—The organizations and persons referred
17 to in paragraph (1) are—

18 “(A) any organization designated by the
19 Secretary of State under section 219(a)(1) of
20 the Immigration and Nationality Act as a for-
21 eign terrorist organization; and

22 “(B) any other person, if the transferor
23 knew or had reasonable grounds to believe that
24 the weapon, device, material, or technology
25 transferred would be used in preparation for, or

1 in carrying out, a Federal crime of terrorism or
2 an act of international terrorism, whether or
3 not such a crime or act occurs.

4 “(3) EFFECT ON INTERNATIONAL LAW.—Noth-
5 ing in this section shall be construed to apply with
6 respect to activities undertaken by the military
7 forces of a country in the exercise of their official
8 duties, to the extent that such activities are con-
9 sistent with the principles of international law.

10 “(b) JURISDICTION.—Conduct prohibited by sub-
11 section (a) is within the jurisdiction of the United States
12 if—

13 “(1) the offense occurs in or affects interstate
14 or foreign commerce;

15 “(2) the offense occurs outside of the United
16 States and is committed by a national of the United
17 States;

18 “(3) the offense occurs outside of the United
19 States and the recipient of the weapon, device, mate-
20 rial, or technology that is the subject of the offense
21 has at any time conspired, attempted, or threatened
22 to commit a Federal crime of terrorism or an act of
23 international terrorism against the United States
24 Government, any property of the United States, a

1 United States national, or an instrumentality of the
2 interstate or foreign commerce of the United States;

3 “(4) a financial institution or other person
4 doing business in the United States, or any other fi-
5 nancial institution or other person that is under the
6 control of an entity organized under the laws of the
7 United States, provides funds or any form of financ-
8 ing in furtherance of the offense; or

9 “(5) an offender aids or abets any person over
10 whom jurisdiction exists under this subsection in
11 committing an offense under this section or con-
12 spires with any person over whom jurisdiction exists
13 under this subsection to commit an offense under
14 this section.

15 “(c) CRIMINAL PENALTIES.—

16 “(1) IN GENERAL.—Any person who violates, or
17 attempts or conspires to violate, subsection (a) shall
18 be fined not more than \$2,000,000 and imprisoned
19 for a term of not less than 25 years or for life.

20 “(2) SPECIAL CIRCUMSTANCES.—If the death
21 of another results from the use of the weapon, de-
22 vice, material, or technology that is the subject of
23 the person’s violation of subsection (a), the person
24 shall be fined not more than \$2,000,000 and pun-
25 ished by imprisonment for life.

1 “(d) DEFINITIONS.—For purposes of this section—

2 “(1) an institution or person is under the ‘con-
3 trol’ of another entity if that other entity owns a
4 majority of the equity interest in that institution or
5 person;

6 “(2) the term ‘Federal crime of terrorism’ has
7 the meaning given that term in section 2332b(g)(5);

8 “(3) the term ‘international terrorism’ has the
9 meaning given that term in section 2331(1);

10 “(4) the terms ‘nuclear material’ and ‘nuclear
11 byproduct material’ have the meanings given those
12 terms in section 831(f) of this title; and

13 “(5)(A) the term ‘sensitive nuclear technology’
14 means any information (including information incor-
15 porated in a production facility or utilization facility
16 or important component part thereof) which is not
17 available to the public and which is important to the
18 design, construction, fabrication, operation or main-
19 tenance of a uranium enrichment or nuclear fuel re-
20 processing facility or a facility for the production of
21 heavy water; and

22 “(B) the terms ‘production facility’ and ‘utiliza-
23 tion facility’ have the meanings given those terms in
24 section 11 of the Atomic Energy Act of 1954 (42
25 U.S.C. 2014).”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for chapter 113B of title 18, United States Code,
3 is amended by adding at the end the following new item:

“2332i. Transfer of nuclear weapons, devices, material, or technology.”.

4 **SEC. 5. INTERNATIONAL ORGANIZATIONS AND BILATERAL**
5 **AND MULTILATERAL FORA.**

6 (a) UNITED NATIONS.—The Secretary of State shall
7 direct the Permanent Representative of the United States
8 to the United Nations to seek the adoption in the General
9 Assembly of a resolution recognizing that the transfer of
10 a nuclear weapon or device, material, or technology, with
11 reason to believe that the weapon or device, or a weapon
12 or device made using the transferred material or tech-
13 nology, may be used for terrorist purposes, is a crime
14 against humanity.

15 (b) BILATERAL AND MULTILATERAL FORA.—The
16 Secretary of State shall direct the representatives of the
17 United States to bilateral and multilateral fora to urge
18 their foreign counterparts to seek the enactment in their
19 home countries of national laws recognizing that the
20 transfer of a nuclear weapon or device, material, or tech-
21 nology, with reason to believe that the weapon or device,
22 or a weapon or device made using the transferred material
23 or technology, may be used for terrorist purposes, is a
24 crime against humanity.

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