

to, and the motions to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 403) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 403

Whereas on Wednesday, December 12, 2007, Boys Town celebrates the 90th anniversary of the date Father Flanagan founded Boys Town to serve hurting children and their families;

Whereas Father Flanagan's legacy, Boys Town, is a beacon of hope to thousands of young people across the Nation;

Whereas in 2006 nearly 450,000 children and families found help through the Boys Town National Hotline, including 34,000 calls from youth where hotline staff intervened to save a life or provide therapeutic counseling, and nearly 1,000,000 more children were assisted through outreach and training programs;

Whereas Boys Town continues to find new ways to bring healing and hope to more children and families;

Whereas new programs at Boys Town seek to increase the number of children assisted and bring resources and expertise to bear on the problems facing our Nation's children; and

Whereas Boys Town's mission is to change the way America cares for children and families by providing and promoting a continuum of care that strengthens them in mind, body, and spirit: Now, therefore, be it

Resolved, That the Senate—

(1) expresses its heartfelt congratulations to the Boys Town family on the historic occasion of its 90th anniversary; and

(2) extends its thanks to the extraordinary Boys Town community for its important work with our Nation's children and families.

REFORMING MUTUAL AID AGREEMENTS FOR THE NATIONAL CAPITAL REGION

Mr. HARKIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 525, S. 1245.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1245) to reform mutual aid agreements for the National Capital Region.

There being no objection, the Senate proceeded to consider the bill.

Mr. HARKIN. Mr. President, I further ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1245) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1245

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

SECTION 1. REFORM OF MUTUAL AID AGREEMENTS FOR THE NATIONAL CAPITAL REGION.

Section 7302 of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 5196 note) is amended—

(1) in subsection (a)—

(A) in paragraph (4), by striking “, including its agents or authorized volunteers,”; and

(B) in paragraph (5), by striking “or town” and all that follows and inserting “town, or other governmental agency, governmental authority, or governmental institution with the power to sue or be sued in its own name, within the National Capital Region.”;

(2) in subsection (b)(1), in the matter preceding subparagraph (A), by striking “, the Washington Metropolitan Area Transit Authority, the Metropolitan Washington Airports Authority, and any other governmental agency or authority”; and

(3) in subsection (d), by striking “or employees” each place that term appears and inserting “, employees, or agents”.

FAIR TREATMENT FOR EXPERIENCED PILOTS ACT

Mr. HARKIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4343 which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4343) to amend title 49, United States Code, to modify age standards for pilots engaged in commercial aviation operations.

There being no objection, the Senate proceeded to consider the bill.

Mr. HARKIN. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4343) was ordered to a third reading, was read the third time, and passed.

SUDAN ACCOUNTABILITY AND DIVESTMENT ACT OF 2007

Mr. HARKIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 458, S. 2271.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2271) to authorize State and local governments to divest assets in companies that conduct business operations in Sudan, to prohibit United States Government contracts with such companies, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. DODD. Mr. President, I want to speak about the Sudan Accountability and Divestment Act of 2007. This bill

was approved unanimously by the Senate Banking, Housing, and Urban Affairs Committee, and I am pleased to report that, in the same bipartisan spirit, it will soon be approved by the full Senate. I am indebted to Ranking Member SHELBY for his tremendous collaboration on this important measure. And I want to recognize Senator DURBIN, as well—few have been stronger leaders of the divestment effort, or fiercer advocates for the people of Darfur.

This bill is aimed at ending the Darfur genocide. I strongly believe that it is our responsibility to help bring that end about—not simply because genocide, everywhere and always, imposes a grave moral obligation on those with the power to stop it, but because many of us share responsibility for this genocide in a much more concrete way.

Consider this hypothetical: One of our 50 States invests its employees' pension funds in a wide range of stocks. Some of those dollars end up supplying capital to a multinational corporation, one of whose subsidiaries operates in Sudan—mining, say, for copper or gold. That firm pays the Sudanese government for mining rights, and in the fullness of time, money that began in America finds its way into the blood-stained coffers of Omar al-Bashir. What could those dollars become at last? A plane dropping fire on a Darfuri village; a knife held to a woman's throat; weapons of murder and rape.

It is a chain of cause and effect in which American money may finally objectively fund genocide—in which Americans may come to pay, through no fault or intention of their own, for crimes they abhor. If responsibility means anything, it exists at every step of that chain. To be sure, it grows heavier at each step; but just as it is certain at the last step, it is present at the first.

That is why those who have recognized their place in that chain and who have resolved to break it deserve our blessing and our support. Twenty-one states have begun to divest from Sudan, and similar work is underway in about 20 more. At least 55 colleges and universities have divested, and efforts are underway at about 50 more. Many large cities, non-profits, and pension and mutual funds have joined this campaign—a campaign that recognizes that our responsibility for Darfur can go beyond speaking out, to actively depriving the Sudanese government and the Janjaweed militia of some of their means of murder. Along with sanctions, Security Council resolutions, and a combined UN/African Union force, divestment is part of a global movement to cut off funding and end, at long last, the Darfur genocide. Even if it succeeds, it will have come more than 450,000 lives too late; but lost time and lost lives should only fire our urgency.

The Accountability and Divestment Act is Congress's latest step to aid this global movement. It helps Americans

to divest from firms whose business props up the Sudanese regime, it gives them the tools to make socially responsible investment decisions, and it ensures that investors who choose to divest will be held harmless for those decisions. The bill has five key provisions.

First, it explicitly authorizes states and localities to divest from companies involved in those economic sectors that, by its own admission, are Khartoum's main sources of foreign investment—petroleum, mining, and power production—along with military production. Investment in these sectors, more than any others, is propping up the Bashir regime and enabling its intransigence.

The divestment standards set by this bill are universal. It allows divestment to take place in a unitary, federally sanctioned manner. That alone should contradict the claim that this bill somehow violates the Constitution's Supremacy Clause by establishing "50 different foreign policies." Moreover, state divestment could hardly be considered unconstitutional when it is explicitly authorized on the federal level. Paul H. Schwartz, legal counsel to the Sudan Divestment Task Force, and former clerk to two Supreme Court Justices, made the case convincingly:

It is only logical that when a bill authorizing state measures touching on foreign affairs becomes federal law, the federal government has expressed a judgment that the measures do not "intrude" into or "interfere" with federal foreign policy, but rather complement that policy.

That is exactly what this legislation does. It outlines a targeted, federal divestment policy and authorizes states and investors to act consistently with that policy if they so choose. In doing so, the bill protects the investors' right to be guided by conscience; it also allows investors to protect themselves from the financial and reputational risks posed by an affiliation with Khartoum.

Second, this bill allows mutual fund and corporate pension fund managers to cut ties, at their discretion, with companies involved in the 4 key sectors. It also offers limited protection from lawsuits for those choosing to divest, while preserving their normal fiduciary duties.

Third, it establishes the sense of Congress that private pension managers are already authorized to divest their public pension funds from businesses in the 4 sectors, in accordance with existing Department of Labor regulations.

Fourth, it requires federal contractors to certify that they do not do business with firms involved in the 4 sectors, and it provides several punitive options, including debarment, if those contractors are found to be lying. The bill does, however, authorize the President to grant contractors a waiver if their operations in Sudan are found to be in the national interest; and it adds an extra level of accountability by mandating that the President report

these exceptions to Congress on a case-by-case basis.

I am aware that some have argued for an additional waiver on the basis of "substantial humanitarian work" in Sudan, but I believe that that criterion would fit within any conception of the national interest, properly understood. In the end, the exposure mandated by the president's case-by-case reports to Congress will be the best deterrent to firms that seek waivers on spurious grounds: They will be exposed to the whole nation and forced to justify their actions to a highly skeptical public.

Fifth, the bill's authorities terminate when the government of Sudan ends its murderous policies and returns to the community of law-abiding nations. The divestment campaign will end when, and only when, Sudan fully accepts the presence of the joint UN/AU peace-keeping force, ceases attacks on civilians, demilitarizes the Janjaweed militia, allows the unfettered delivery of humanitarian relief, and grants the right of return to refugees. Anything short of those targets, divestment must and will continue.

The international divestment campaign exists precisely to pressure Khartoum to meet those goals. It is stunning, Mr. President, that pressure should even be needed to force a sovereign nation to end targeted attacks on civilians. Yet that is the case; that is the radical evil we face.

Even still, some in this administration are urging us to treat Khartoum with kid gloves at this delicate time for peace negotiations, as the Justice Department put it in a letter 2 months ago. That would be the same administration whose Special Envoy to Sudan declared American action on the genocide imminent 11 months ago. That would be the same administration whose president declared the crimes in Darfur "genocide" more than two years ago, and has done next to nothing of substance since.

Ironically, one of those few substantive actions has been to endorse a bill that originated in the Senate, the International Emergency Economic Powers Enhancement Act, which strengthened penalties on companies violating U.S. sanctions. That bill was approved unanimously by the Senate Banking Committee and adopted unanimously by this Congress. That bill, like this one, targets the Khartoum regime's financial supports; that bill, like this one, comes at a "delicate time" for negotiations. As my colleague Senator MENENDEZ asked an official of the State Department at a recent hearing of the Senate Banking Committee:

What is the difference? You have a sanctions regime that you are all enthusiastically pursuing before the peace conference in Tripoli, and yet you are back-pedaling on this effort.

Honestly, I can't see my way through the contradiction. If the administration endorsed tough measures then, it should do the same now, and if it wants

to shirk our responsibility altogether, it should tell us why.

Of course, as the Administration has stalled and insisted that we refrain from approving this critical legislation, talks have broken down. The Tripoli conference that the State Department had been heralding as a great breakthrough at the Banking Committee's October 3rd hearing ended up being canceled.

The truth is that economic pressure has seemed to be the only tool that's proven successful in bringing Khartoum back to the table in the first place. That truth is in keeping with everything the regime has shown us in its 18 years of existence. As John Prendergast, Co-Chair of the ENOUGH Project and former National Security Council and State Department Official, told the Banking Committee during our hearing.

Four times in 18 years, we have been able to change the policies of the Government of Sudan.

In the mid-1990s, Khartoum renounced its support for international terrorist organizations, including al-Qaeda. Why? International pressure and multilateral sanctions from the United States, its allies, and the Security Council.

In the same decade, Sudan ended its support of the slave trade. Why? Again, multilateral sanctions led by the Security Council.

In 2005, the government signed a peace deal with rebels, ending a civil war that had taken 2 million lives. Why? In large part, because of a coordinated divestment campaign and Congress's passage of the Sudan Peace Act, which condemned the government's human rights record.

Just this year, the government acquiesced in the UN/AU peacekeeping force. Why? Largely because of economic pressure from China.

Four times, the international community has brought some measure of control to Khartoum's criminal behavior, and there is one common thread: sustained pressure. As Prendergast put it, the only way to end the genocide is if "multilateral, targeted pressures are increased." Conversely, "the deadly mistake that has been made for Darfur repeatedly during the last 4½ years is to do precisely as the administration proposes now to reduce pressure, to let up."

After all, it makes perfect sense. What do we expect from those capable of presiding over all this blood? What do we expect from killers who, in the words of one survivor, "are happy when they rape they sing when they rape"?

Do we expect them to listen politely to our objections? Do we expect to change their minds?

No. All of our prayers, no matter how fervent, and all of our words, no matter how eloquent, are only noise to them. They do not speak the language of should or ought. They speak the language of must. To the genocidal killers and their sponsors, this bill is one more word in the only language they know.

And given everything we have learned from history and from simple common sense, all the talk of kid gloves would be hysterical—if it weren't infuriating.

Even if some in this administration haven't learned the lesson, I have learned it in my bones. In 1945, my father, Tom Dodd, was called to Nuremberg, Germany, to help lead the prosecution of Nazi war criminals. He wrote my mother that few things were more painful than being away from his family. I learned to walk and talk in his absence. But he also wrote home: "I will never do anything as worthwhile."

What, today, could be more worthwhile? What could be clearer than the duty we owe to the 2.5 million displaced, the orphaned, the raped, the dead themselves? Even if they cannot fathom the chain linking us to the fire falling on their villages, or the knives against their throats, we can; we can see it and choose to break it. Even if we bear only the smallest fraction of responsibility, we can choose to act as if we bore all of it. Measure by measure and step by step and inch by inch, we can choose to push with all our strength against death's machinery until it cracks at last.

Here is another step. I ask my colleagues to take it with me.

Mr. DURBIN. Mr. President, I have regularly come to the Senate floor to speak about the genocide in Darfur.

For 4 long years, the world has watched this tragedy the killing of hundreds of thousands of innocent civilians, the torching of entire villages, rape, torture, and untold human suffering.

More than 3 years have passed since the UN Commission of Inquiry concluded that:

crimes against humanity and war crimes have been committed in Darfur and may be no less serious and heinous than genocide.

Many of us on both sides of the aisle and in the international community have repeatedly called for greater U.S. and global action to stem the humanitarian crisis in Darfur.

President Bush, British Prime Minister Gordon Brown, and UN Secretary General Ban Ki-moon have all called for greater action.

Just this week, a group calling itself the Elders including several Nobel Peace Prize Winners and former heads of state spoke forcefully for action in Darfur.

Despite these efforts, the Sudanese government has continued to show its contempt for its own people and the demands of the global community.

The message was loud and clear earlier this year when the UN Security Council voted to deploy a 26,000 member peacekeeping force to Darfur. This hybrid UN-African Union force will help stem the violence and create an atmosphere in which peace talks can move toward a long-term political agreement.

With the peacekeepers set to begin deployment on January 1, we are once

again witnessing the same old pattern from Khartoum. The Sudanese government is now denying deployment of non-African peacekeepers, despite their acceptance of this new force only a few months ago.

We have waited long enough for this murderous government to take action, to stop slaughtering its own people, to stop thumbing its nose at the international community.

That is why I commend the Senate for its action today to encourage cooperation by the Sudanese government.

Earlier this year, I introduced 2 bills that would have increased economic pressure on the Sudanese regime. Each bill supported state and local divestment efforts, allowing each of us to do our part to end the madness in Darfur by selling investments that help prop up the Sudanese regime.

I am pleased that Senator DODD, as chairman of the Banking Committee, has adopted ideas from these bills into the Sudan Accountability and Divestment Act of 2007. I thank him, as well as Ranking Member SHELBY and others who have worked on this bill especially Senators CORNYN and BROWNBACK, who joined me as lead sponsors of the legislation I had introduced.

I urge my colleagues to support this critically-important legislation, and I look forward to working with the House to send it to the President for his signature as soon as possible.

Mr. REID. Mr. President, I am proud that the Senate will have taken strong action tonight to help stop the genocide in Darfur. I would like to commend Senator DODD for his hard work to get the Sudan Accountability and Divestment Act of 2007 passed. I would also like to congratulate Senator DURBIN who was the lead cosponsor of the first legislation on this issue.

By passing this bill, the Senate is saying clearly to the government of Sudan that the American people do not want to fund genocide. We already have a wide range of sanctions against Sudan, but this bill closed an important loophole by targeting pension plans. The legislation would make sure that the money we put away each month for our retirement does not go to fund companies which support the genocidal regime in Sudan.

The House has already passed similar legislation with an overwhelming, and bipartisan, vote of 418-1. With Senate passage, we will hopefully be able to move quickly to turn this bill into the law of the land.

As we pass this legislation the crisis in Darfur continues, with nearly 2 million people displaced and an estimated 450,000 people killed. The real hope for the people of Darfur is a strong UN-AU peacekeeping force. But President Bashir is once again keeping that force from moving forward, putting a man indicted by the International Criminal Court for war crimes on the committee overseeing these peacekeepers. He also continues to put other roadblocks in front of the peacekeepers, who should be in place and operating by January 1.

This legislation sends a loud and a clear message to the Sudanese regime that they must stop standing in the way of full implementation of the AU-UN peacekeepers. I hope that President Bashir is listening and that we will see that AU-UN force operational by January 1 of next year. The U.S. Senate will be watching, the United Nations will be watching, and the eyes of the world are on President Bashir. We all have a moral obligation to end the genocide, stop the violence, and relieve the suffering of the people of Darfur.

Mr. HARKIN. I ask unanimous consent that the amendment at the desk be considered and agreed to; the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3846) was agreed to, as follows:

On page 5, line 20, insert "parent company," after "subunit,".

On page 7, strike lines 1 through 15.

On page 9, line 18, insert "or" after the semicolon.

On page 9, strike lines 19 through 21.

On page 9, line 22, strike "(G)" and insert "(F)".

On page 10, between lines 8 and 9, insert the following:

(3) APPLICABILITY.—The measure shall not apply to a person that demonstrates to the State or local government that the person does not conduct or have direct investments in business operations described in subsection (d).

(4) SENSE OF CONGRESS ON AVOIDING ERRONEOUS TARGETING.—It is the sense of Congress that a State or local government should not adopt a measure under subsection (b) with respect to a person unless the State or local government has made every effort to avoid erroneously targeting the person and has verified that the person conducts or has direct investments in business operations described in subsection (d).

On page 10, lines 24 and 25, strike "directly or indirectly,".

On page 16, strike lines 9 through 16.

On page 16, line 17, strike "(d)" and insert "(c)".

On page 17, line 3, strike "(e)" and insert "(d)".

On page 17, line 11, strike "(f)" and insert "(e)".

The bill (S. 2271), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2271

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 "Sudan Accountability and Divestment Act of 2007".

SEC. 2. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Financial Services, the Committee on Foreign Affairs, and the

Permanent Select Committee on Intelligence of the House of Representatives.

(2) **BUSINESS OPERATIONS.**—The term “business operations” means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(3) **EXECUTIVE AGENCY.**—The term “executive agency” has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(4) **GOVERNMENT OF SUDAN.**—The term “Government of Sudan”—

(A) means the government in Khartoum, Sudan, which is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan); and

(B) does not include the regional government of southern Sudan.

(5) **MARGINALIZED POPULATIONS OF SUDAN.**—The term “marginalized populations of Sudan” refers to—

(A) adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Public Law 109-344; 50 U.S.C. 1701 note); and

(B) marginalized areas in Northern Sudan described in section 4(9) of such Act.

(6) **MILITARY EQUIPMENT.**—The term “military equipment” means—

(A) weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems or military-grade transport vehicles; or

(B) supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(7) **MINERAL EXTRACTION ACTIVITIES.**—The term “mineral extraction activities” means exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

(8) **OIL-RELATED ACTIVITIES.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “oil-related activities” means—

(i) exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading oil; and

(ii) constructing, maintaining, or operating a pipeline, refinery, or other oilfield infrastructure.

(B) **EXCLUSIONS.**—A person shall not be considered to be involved in an oil-related activity if—

(i) the person is involved in the retail sale of gasoline or related consumer products in Sudan but is not involved in any other activity described in subparagraph (A); or

(ii) the person is involved in leasing, or owns, rights to an oil block in Sudan but is not involved in any other activity described in subparagraph (A).

(9) **PERSON.**—The term “person” means—

(A) a natural person, corporation, company, business association, partnership, society, trust, any other nongovernmental entity, organization, or group;

(B) any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3))); and

(C) any successor, subunit, parent company or subsidiary of any entity described in subparagraph (A) or (B).

(10) **POWER PRODUCTION ACTIVITIES.**—The term “power production activities” means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or other similar entity of the Government of Sudan whose purpose is to facilitate power generation and delivery, including establishing power-generating plants or hydroelectric dams, selling or installing components for the project, or providing service contracts related to the installation or maintenance of the project.

(11) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) **STATE OR LOCAL GOVERNMENT.**—The term “State or local government” includes—

(A) any State and any agency or instrumentality thereof;

(B) any local government within a State, and any agency or instrumentality thereof;

(C) any other governmental instrumentality; and

(D) any public institution of higher education within the meaning of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

SEC. 3. AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO DIVEST FROM CERTAIN COMPANIES DIRECTLY INVESTED IN CERTAIN SUDANESE SECTORS.

(a) **SENSE OF CONGRESS.**—It is the sense of Congress that the United States Government should support the decision of any State or local government to divest from, or to prohibit the investment of assets of the State or local government in, a person that the State or local government determines poses a financial or reputational risk.

(b) **AUTHORITY TO DIVEST.**—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the requirements of subsection (e) to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in, persons that the State or local government determines, using credible information available to the public, are conducting or have direct investments in business operations described in subsection (d).

(c) **NOTICE TO DEPARTMENT OF JUSTICE.**—Not later than 30 days after adopting a measure pursuant to subsection (b), a State or local government shall submit written notice to the Attorney General describing the measure.

(d) **BUSINESS OPERATIONS DESCRIBED.**—

(1) **IN GENERAL.**—Business operations described in this subsection are business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment.

(2) **EXCEPTIONS.**—Business operations described in this subsection do not include business operations that the person conducting the business operations can demonstrate—

(A) are conducted under contract directly and exclusively with the regional government of southern Sudan;

(B) are conducted under a license from the Office of Foreign Assets Control, or are expressly exempted under Federal law from the requirement to be conducted under such a license;

(C) consist of providing goods or services to marginalized populations of Sudan;

(D) consist of providing goods or services to an internationally recognized peace-keeping force or humanitarian organization;

(E) consist of providing goods or services that are used only to promote health or education; or

(F) have been voluntarily suspended.

(e) **REQUIREMENTS.**—Any measure taken by a State or local government under subsection (b) shall meet the following requirements:

(1) **NOTICE.**—The State or local government shall provide written notice and an opportunity to comment in writing to each person to whom a measure is to be applied.

(2) **TIMING.**—The measure shall apply to a person not earlier than the date that is 90 days after the date on which written notice is provided to the person under paragraph (1).

(3) **APPLICABILITY.**—The measure shall not apply to a person that demonstrates to the State or local government that the person does not conduct or have direct investments in business operations described in subsection (d).

(4) **SENSE OF CONGRESS ON AVOIDING ERRONEOUS TARGETING.**—It is the sense of Congress that a State or local government should not adopt a measure under subsection (b) with respect to a person unless the State or local government has made every effort to avoid erroneously targeting the person and has verified that the person conducts or has direct investments in business operations described in subsection (d).

(f) **DEFINITIONS.**—In this section:

(1) **INVESTMENT.**—The “investment” of assets, with respect to a State or local government, includes—

(A) a commitment or contribution of assets;

(B) a loan or other extension of credit of assets; and

(C) the entry into or renewal of a contract for goods or services.

(2) **ASSETS.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “assets” refers to public monies and includes any pension, retirement, annuity, or endowment fund, or similar instrument, that is controlled by a State or local government.

(B) **EXCEPTION.**—The term “assets” does not include employee benefit plans covered by title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(g) **NONPREEMPTION.**—A measure of a State or local government authorized under subsection (b) is not preempted by any Federal law or regulation.

(h) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), this section applies to measures adopted by a State or local government before, on, or after the date of the enactment of this Act.

(2) **NOTICE REQUIREMENTS.**—Subsections (c) and (e) apply to measures adopted by a State or local government on or after the date of the enactment of this Act.

SEC. 4. SAFE HARBOR FOR CHANGES OF INVESTMENT POLICIES BY ASSET MANAGERS.

(a) **IN GENERAL.**—Section 13 of the Investment Company Act of 1940 (15 U.S.C. 80a-13) is amended by adding at the end the following:

“(c) **LIMITATION ON ACTIONS.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser thereof, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information that is available to the public,

conduct or have direct investments in business operations in Sudan described in section 3(d) of the Sudan Accountability and Divestment Act of 2007.

“(2) APPLICABILITY.—

“(A) ACTIONS FOR BREACHES OF FIDUCIARY DUTIES.—Paragraph (1) does not prevent a person from bringing an action based on a breach of a fiduciary duty owed to that person with respect to a divestment or non-investment decision, other than as described in paragraph (1).

“(B) DISCLOSURES.—Paragraph (1) shall not apply to a registered investment company, or any employee, officer, director, or investment adviser thereof, unless the investment company makes disclosures in accordance with regulations prescribed by the Commission.

“(3) PERSON DEFINED.—For purposes of this subsection the term ‘person’ includes the Federal Government and any State or political subdivision of a State.”

(b) SEC REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Securities and Exchange Commission shall prescribe regulations, in the public interest and for the protection of investors, to require disclosure by each registered investment company that divests itself of securities in accordance with section 13(c) of the Investment Company Act of 1940. Such rules shall require the disclosure to be included in the next periodic report filed with the Commission under section 30 of such Act (15 U.S.C. 80a-29) following such divestiture.

SEC. 5. SENSE OF CONGRESS REGARDING CERTAIN ERISA PLAN INVESTMENTS.

It is the sense of Congress that a fiduciary of an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)), may divest plan assets from, or avoid investing plan assets in, any person the fiduciary determines is conducting or has direct investments in business operations in Sudan described in section 3(d) of this Act, without breaching the responsibilities, obligations, or duties imposed upon the fiduciary by section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104), if—

(1) the fiduciary makes such determination using credible information that is available to the public; and

(2) such divestment or avoidance of investment is conducted in accordance with section 2509.94-1 of title 29, Code of Federal Regulations (as in effect on the day before the date of the enactment of this Act).

SEC. 6. PROHIBITION ON UNITED STATES GOVERNMENT CONTRACTS.

(a) CERTIFICATION REQUIREMENT.—The head of each executive agency shall ensure that each contract entered into by such executive agency for the procurement of goods or services includes a clause that requires the contractor to certify to the contracting officer that the contractor does not conduct business operations in Sudan described in section 3(d).

(b) REMEDIES.—

(1) IN GENERAL.—The head of an executive agency may impose remedies as provided in this subsection if the head of the executive agency determines that the contractor has submitted a false certification under subsection (a) after the date the Federal Acquisition Regulation is amended under subsection (e) to implement the requirements of this section.

(2) TERMINATION.—The head of an executive agency may terminate a covered contract upon the determination of a false certification under paragraph (1).

(3) SUSPENSION AND DEBARMENT.—The head of an executive agency may debar or suspend a contractor from eligibility for Federal con-

tracts upon the determination of a false certification under paragraph (1). The debarment period may not exceed 3 years.

(4) INCLUSION ON LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT AND NON-PROCUREMENT PROGRAMS.—The Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the Administrator under part 9 of the Federal Acquisition Regulation issued under section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) each contractor that is debarred, suspended, proposed for debarment or suspension, or declared ineligible by the head of an executive agency on the basis of a determination of a false certification under paragraph (1).

(5) RULE OF CONSTRUCTION.—This section shall not be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a determination of a false certification under paragraph (1).

(c) WAIVER.—

(1) IN GENERAL.—The President may waive the requirement of subsection (a) on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees that it is in the national interest to do so.

(2) REPORTING REQUIREMENT.—Not later than April 15, 2008, and semi-annually thereafter, the Administrator for Federal Procurement Policy shall submit to the appropriate congressional committees a report on waivers granted under paragraph (1).

(d) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.—Not later than 120 days after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation issued pursuant to section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) to provide for the implementation of the requirements of this section.

(e) REPORT.—Not later than one year after the date the Federal Acquisition Regulation is amended under subsection (e) to implement the requirements of this section, the Administrator of General Services, with the assistance of other executive agencies, shall submit to the Office of Management and Budget and the appropriate congressional committees a report on the actions taken under this section.

SEC. 7. SENSE OF CONGRESS ON EFFORTS BY OTHER COUNTRIES.

It is the sense of Congress that the governments of all other countries should adopt measures, similar to those contained in this Act, to publicize the activities of all persons that, through their financial dealings, knowingly or unknowingly enable the Government of Sudan to continue to oppress and commit genocide against people in the Darfur region and other regions of Sudan, and to authorize divestment from, and the avoidance of further investment in, such persons.

SEC. 8. SENSE OF CONGRESS ON PEACEKEEPING EFFORTS IN SUDAN.

It is the sense of Congress that the President should—

(1) continue to work with other members of the international community, including the Permanent Members of the United Nations Security Council, the African Union, the European Union, the Arab League, and the Government of Sudan to facilitate the urgent deployment of a peacekeeping force to Sudan; and

(2) bring before the United Nations Security Council, and call for a vote on, a resolution requiring meaningful multilateral sanc-

tions against the Government of Sudan in response to its acts of genocide against the people of Darfur and its continued refusal to allow the implementation of a peacekeeping force in Sudan.

SEC. 9. SENSE OF CONGRESS ON THE INTERNATIONAL OBLIGATIONS OF THE UNITED STATES.

It is the sense of Congress that nothing in this Act—

(1) conflicts with the international obligations or commitments of the United States; or

(2) affects article VI, clause 2, of the Constitution of the United States.

SEC. 10. REPORTS ON SANCTIONS IN SUPPORT OF PEACE IN DARFUR.

(a) IN GENERAL.—The Secretary of State and the Secretary of the Treasury shall submit to the appropriate congressional committees a report assessing the effectiveness of sanctions imposed with respect to Sudan at the time the Secretary of State and the Secretary of the Treasury submits reports required under—

(1) the Sudan Peace Act (Public Law 107-245; 50 U.S.C. 1701 note);

(2) the Comprehensive Peace in Sudan Act of 2004 (Public Law 108-497; 50 U.S.C. 1701 note); and

(3) the Darfur Peace and Accountability Act of 2006 (Public Law 109-344; 50 U.S.C. 1701 note).

(b) ADDITIONAL REPORT BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall submit to the appropriate congressional committees a report assessing the effectiveness of sanctions imposed with respect to Sudan under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) at the time the President submits the reports required by section 204(c) of such Act (50 U.S.C. 1703(c)) with respect to Executive Order 13,067 (50 U.S.C. 1701 note; relating to blocking property of persons in connection with the conflict in Sudan's region of Darfur).

(c) CONTENTS.—The reports required by subsections (a) and (b) shall include—

(1) a description of each sanction imposed under a law or executive order described in subsection (a) or (b);

(2) the name of the person subject to the sanction, if any; and

(3) whether or not the person subject to the sanction is also subject to sanctions imposed by the United Nations.

SEC. 11. REPEAL OF REPORTING REQUIREMENT.

Section 6305 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110-28; 121 Stat. 172) is repealed.

SEC. 12. TERMINATION.

The provisions of sections 3, 4, 5, 6, and 10 shall terminate 30 days after the date on which the President has certified to Congress that the Government of Sudan has honored its commitments to—

(1) abide by United Nations Security Council Resolution 1769 (2007);

(2) cease attacks on civilians;

(3) demobilize and demilitarize the Janjaweed and associated militias;

(4) grant free and unfettered access for delivery of humanitarian assistance; and

(5) allow for the safe and voluntary return of refugees and internally displaced persons.

HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2007

Mr. HARKIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 516, H.R. 3997.

The PRESIDING OFFICER. The clerk will state the bill by title.