

Identifying Loopholes in the Fight against Terrorism

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Brief Analysis

Last week's Washington Post highlighted a major loophole in U.S. anti-terrorism sanctions: an exemption to the 1996 Anti-Terrorism Act that specifically authorizes U.S. financial transactions with Sudan and Syria, two countries officially designated as state sponsors of terrorism. However, this loophole is just one of several avenues through which U.S. government funds and private investment can legally flow into Middle Eastern terrorist states Iran, Iraq, Libya, Sudan and Syria and terrorist organizations.

Indirect Aid: Though State Department spokesman Nicholas Burns said last week that Sudan and Syria are ineligible "for any kind of United States economic assistance," legislative prohibitions against indirect aid to terrorist states have been waived by the President every year since 1987. This waiver allows U.S. funds to be used in a variety of international aid projects in designated Middle Eastern terrorist states, from underwriting the United Nations Relief and Works Agency operations in Syria to International Monetary Fund structural adjustment initiatives in Sudan. Last month, for example, the World Bank overrode U.S. objections and earmarked \$600 million for projects in Iran, for which there is no prohibition against the use of U.S. contributions to the Bank.

Caspian Sea Oil Swaps with Iran: Another major exemption in the anti-terrorism sanctions allows for U.S. companies to participate in market-based swaps of crude oil from the Caspian Sea area with Iranian crude oil in support of energy projects in Azerbaijan, Kazakhstan, and Turkmenistan. Through this exemption, Kazakhstan was able to negotiate a deal with the National Iranian Oil Company to export oil from a U.S.-Kazakh joint venture via Iran. The deal provided for the joint venture called "Tengizchevroil" which is 50 percent owned by Chevron Corporation and 25 percent owned by Mobil Corporation to start delivering 40,000 barrels a day of crude, rising to 120,000 barrels a day over 10 years. According to the Middle East Economic Digest (MEED), this deal allows the Iranians to charge transit and other fees which may amount to \$100 million in earnings a year, in addition to Iran's savings in not having to transport its own oil northward from its southern fields.

Limited Trade with Iraq: Iraq has also gained access to U.S. capital with the passage of United Nations Security Council resolution 986 and the subsequent lifting of UN restrictions on select oil-related transactions. Pursuant to new sections added to the U.S. government's Iraqi Sanctions Regulations, Americans are authorized to enter into executory contracts with the Government of Iraq for the purchase of Iraqi-origin petroleum and petroleum products, the sale of essential parts and equipment for the Kirkuk-Yumurtalik pipeline system, and the sale of humanitarian goods. Under this authority, the first two tankers to transport oil from Iraq legally since the Gulf War were American. According to a MEED report, U.S. corporations already authorized to do business with Iraq under the "986 exception" are: Coastal Corporation (for a contract for 60,000 barrels/per for six months, valued at approximately \$200 million); Bayoil Corporation (for a contract for 30,000 b/d for six months, valued at approximately \$100 million); Mobil Corporation (for a contract for 20,000 b/d for three months, valued at approximately \$33 million); and Texaco Corporation (for a contract for 10,000 b/d for six months, valued at approximately \$33 million).

Trade and Investment in Syria: Unlike the situation with Iran, Iraq and Libya, there is no comprehensive U.S. Trade ban on Syria. According to the Journal of Commerce, U.S. exports to Syria reached \$223 million last year with \$68

million of those goods comprised of controlled commodities that required Commerce Department approval for their export. This \$68 million figure is up twenty-fold from the \$3.3 million in controlled commodities that were approved for export to Syria in 1991. There is also no bar to American private investment in Syria. This has allowed, for example, Al-Furat Petroleum Company, a joint venture between the Syrian Petroleum Company and three foreign partners, including the U.S.-based Pecten Corporation, to produce two-thirds of Syria's total crude oil output of 600,000 b/d, worth approximately \$13 million a day. Just last month, Westinghouse Electric Corporation bid \$530 million to build a 600-MW power station in Syria. A further wrinkle is that there are no terrorism-related aid or trade restrictions at all against hapless Lebanon, a Syrian satellite, other than the ban on travel by U.S. citizens hardly a restraint on the operations of terrorist groups within Lebanese territory.

Loophole for Iranian Assets: Even when business is conducted illegally with terrorist states, an anomaly in the anti-terrorism sanctions exists in that not every designated terrorist state is subject to having their assets seized or frozen. The Office of Foreign Assets Control of the U.S. Department of Treasury only has the authority to block or freeze the assets of Iraq, Libya and "Specially Designated Terrorists" (individuals and organizations not under the jurisdiction of a designated terrorist state). Because financial transactions to and from two terrorist states, Sudan and Syria, are generally permitted, the fact that the U.S. government lacks the authority to freeze their assets is not all that surprising. However, financial transactions and trade are generally prohibited with Iran, yet no blocking authority exists to freeze the assets of the Islamic Republic. This could be significant: in just the last three years, more than \$50 million in Libyan assets have been frozen.

'Legitimate' Activities of Terrorist Groups: In 1995, President Clinton issued an executive order intended to sever any connection between U.S. residents and acts of Middle Eastern terrorism. The executive order allows the U.S. government to freeze the assets of twelve Middle Eastern terrorist groups opposed to the Arab-Israeli peace process, as well as eighteen specific individuals. It also prohibits financial transactions between U.S. nationals and the named terrorist organizations. However, this ban on financial transactions with terrorist organizations and individuals does not apply to terrorist states. Moreover, the ban contains an exception for transactions that pertain to the as-yet undefined "legitimate" activities of terrorist organizations and individuals. So far, however, this apparent exception to the executive order has not been tested.

Front Companies: In those cases where there are especially tight prohibitions against doing business with terrorist states, those restrictions normally apply only to transactions with companies or entities "owned or controlled by or acting on or on behalf of" a terrorist government, not with the much larger number of companies or entities in which a terrorist state has an interest. In modern, sophisticated transactions, however, a terrorist state may only have a small interest in a given company or entity to use that company for its own purposes. But unless 50 percent of the ownership of the company in question is held by a terrorist government, it is not automatically subject to anti-terrorism sanctions.

Conclusion: Some of these loopholes exist for a reason (e.g., to avoid disadvantaging U.S. companies vis-a-vis foreign competitors or to provide incentive for Syrian moderation in the peace process); other loopholes simply emerge from the patchwork quilt of piecemeal sanctions regulations that have been applied over time to different countries for different purposes. However, regardless of their origin, these exceptions, licenses and waivers offer worrisome opportunities for terrorist-supporting states and terrorist organizations to circumvent the intent of U.S. law. Given the high profile accorded to fighting terrorism by the Clinton Administration, closing these loopholes needs to be an urgent priority.

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