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2D SESSION

S. 3257

To impose sanctions on foreign persons responsible for serious violations of international law regarding the protection of civilians during armed conflict, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 24, 2018

Mr. CRUZ (for himself, Mr. DONNELLY, Mr. CORNYN, Mr. BLUMENTHAL, Mr. SCOTT, Mr. MARKEY, Mr. RUBIO, and Mr. PERDUE) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To impose sanctions on foreign persons responsible for serious violations of international law regarding the protection of civilians during armed conflict, and for other purposes.

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 “Sanction Terrorist Op-
5 erations Using Human Shields Act of 2018” or the
6 “STOP Using Human Shields Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The international law of armed conflict pro-
4 hibits, during any armed conflict—

5 (A) the exploitation of the presence or
6 movement of civilians in an effort to impede at-
7 tack on or otherwise shield lawful targets;

8 (B) exposing prisoners of war, other de-
9 tainees, the wounded and sick, or other individ-
10 uals subject to special protection under inter-
11 national law, to unnecessary risks resulting
12 from the conduct of hostilities;

13 (C) using such persons to impede attack
14 on or otherwise shield lawful targets; and

15 (D) deliberately causing the injury or
16 death of such persons.

17 (2) Violating these prohibitions regarding civil-
18 ians and other specially protected persons is known
19 as the use of “human shields” and is a serious viola-
20 tion of international law subjecting those responsible
21 to individual criminal liability.

22 (3) The international law of armed conflict also
23 prohibits exposing property subject to special protec-
24 tion under international law to unnecessary risks re-
25 sulting from the conduct of hostilities, including a
26 prohibition against using such property to impede

1 attack on or otherwise shield lawful targets from at-
2 tack or to deliberately cause destruction of such
3 property. Such use of specially protected property is
4 a serious violation of international law, subjecting
5 those responsible to individual criminal responsi-
6 bility.

7 (4) Every party to an armed conflict is prohib-
8 ited under international law from using human
9 shields in an attempt to cause law-abiding armed
10 forces to forgo attacks on otherwise lawful targets.

11 (5) When law-abiding armed forces do attack in
12 such situations, the party using human shields fre-
13 quently hopes to discredit the law-abiding opponent
14 by blaming the opponent for civilian casualties,
15 which are in fact attributable to the unlawful use of
16 human shields.

17 (6) Terrorist groups routinely use human
18 shields to force law-abiding opponents to conduct at-
19 tacks in circumstances where civilian casualties be-
20 come unavoidable. While this unlawful tactic in no
21 way absolves an attacking force from its obligations
22 to do everything feasible to mitigate the risk of such
23 casualties, such illegal tactics inevitably influence the
24 efficacy of feasible precautions.

1 (7) In accordance with the proportionality rule,
2 an assessment of the legality of attack indicates that
3 these terrorist groups bear responsibility for such
4 casualties when such attack is otherwise legally per-
5 missible.

6 (8) Hizballah, designated by the Secretary of
7 State as a foreign terrorist organization, has repeat-
8 edly used human shields. Throughout its 2006 con-
9 flict with Israel, Hizballah forces purposefully used
10 civilians in an effort to shield themselves against at-
11 tacks by Israeli forces, including by storing weapons
12 inside civilian homes and launching attacks from fir-
13 ing positions in areas of dense civilian population,
14 often in or near homes, schools, mosques or hos-
15 pitals, in order to shield such positions from attack.

16 (9) Hizballah has since rearmed and built up
17 an arsenal of some 150,000 rockets and missiles, in
18 addition to other destabilizing weapons, provided by
19 the Iranian and Syrian governments. These weap-
20 ons, as well as Hizballah command posts, logistics
21 depots, and other vital military assets, are often con-
22 cealed in Shiite villages in southern Lebanon, fre-
23 quently within or near homes, hospitals, schools, and
24 mosques.

1 (10) Hamas, also designated by the Secretary
2 of State as a foreign terrorist organization, has also
3 repeatedly used human shields. Hamas routinely and
4 purposefully uses civilians and the civilian popu-
5 lation to shield military assets from attack, including
6 by launching attacks from firing positions in areas
7 of dense civilian population, often in or near schools,
8 mosques, or hospitals, in order to shield such posi-
9 tions from attack.

10 (11) Other unlawful Hamas tactics include dis-
11 couraging Palestinian civilians from heeding Israeli
12 warnings, instructing Palestinian civilians to remain
13 in their homes, and encouraging or forcing Pales-
14 tinian civilians to gather on the roofs of their homes
15 to act as human shields. In June 2017 and again in
16 October 2017, the United Nations Relief and Works
17 Agency announced that it had discovered Hamas
18 tunnels under its schools in the Gaza Strip.

19 (12) On December 10, 2014, the 113th Con-
20 gress unanimously adopted H. Con. Res. 107, a bi-
21 cameral and bipartisan resolution in which Congress
22 “strongly condemns the use of innocent civilians as
23 human shields”, “calls on the international commu-
24 nity to recognize and condemn Hamas’ use of
25 human shields”, “places responsibility for the rocket

1 attacks against Israel on Hamas and other terrorist
2 organizations, such as Palestine Islamic Jihad”, and
3 “supports the sovereign right of the Government of
4 Israel to defend its territory and its citizens from
5 Hamas’ rocket attacks, kidnapping attempts, and
6 the use of tunnels and other means to carry out at-
7 tacks against Israel”.

8 (13) In addition to Hizballah and Hamas, other
9 groups designated by the Secretary of State as for-
10 eign terrorist organizations, including the Islamic
11 State, Palestinian Islamic Jihad, Boko Haram, Al-
12 Shabaab, and al Qai’da, have repeatedly used similar
13 human shield tactics in violation of international
14 law.

15 (14) The international community has routinely
16 failed to hold terrorist organizations and their per-
17 sonnel accountable for the use of human shields. In
18 addition, unlike many state actors, there is no indi-
19 cation that terrorist organizations possess the capa-
20 bility or the will to investigate and prosecute their
21 members for the use of human shields (or indeed
22 any other war crimes). Instead, many terrorist orga-
23 nizations routinely use human shields as a deliberate
24 tactic during armed conflict, reflecting a complete

1 disregard for the obligations established by inter-
2 national law to mitigate the risk to civilians.

3 (15) Absent appropriate and consistent inter-
4 national, national, and public condemnation and en-
5 forcement of the prohibitions against using human
6 shields, terrorist organizations will likely continue to
7 engage in such criminal exploitation of civilians dur-
8 ing armed conflicts.

9 **SEC. 3. STATEMENT OF POLICY.**

10 It shall be the policy of the United States to—

11 (1) officially and publicly condemn terrorist or-
12 ganizations and others that violate the international
13 law of armed conflict by exploiting civilians, other
14 persons specially protected by international law, or
15 specially protected property, in order to impede at-
16 tack on or otherwise shield lawful targets from at-
17 tack, deliberately cause injury or death to civilians
18 or other specially protected persons, or destroy spe-
19 cially protected property; and

20 (2) take effective action against those know-
21 ingly engaging in, encouraging, supporting, ordering,
22 controlling, directing, facilitating, enabling, or other-
23 wise being complicit in such violations of inter-
24 national law or attempts to commit such violations.

1 **SEC. 4. UNITED NATIONS SECURITY COUNCIL.**

2 The President should direct the United States Per-
3 manent Representative to the United Nations to use the
4 voice, vote, and influence of the United States at the
5 United Nations Security Council to secure support for a
6 resolution that would—

7 (1) emphasize that the law of armed conflict
8 imposes an obligation on all parties to any armed
9 conflict, including non-state organized armed groups,
10 of compliance;

11 (2) condemn the use of human shields and rein-
12 force that such use is a violation of international
13 law;

14 (3) impose multilateral sanctions against ter-
15 rorist organizations for the use of human shields;

16 (4) require member states of the United Na-
17 tions to take specific steps to prevent the use of
18 human shields and impose consequences on those
19 who use, attempt to use, or encourage or support
20 the use of human shields;

21 (5) require organizations and agencies of the
22 United Nations to track and report the use of
23 human shields in monitored conflicts; and

24 (6) specify steps to prevent, and consequences
25 for, the use of United Nations personnel or facilities
26 as human shields.

1 **SEC. 5. SANCTIONS ON FOREIGN PERSONS RESPONSIBLE**
2 **FOR SERIOUS VIOLATIONS OF INTER-**
3 **NATIONAL LAW REGARDING THE PROTEC-**
4 **TION OF CIVILIANS DURING ARMED CON-**
5 **FLICT.**

6 (a) IN GENERAL.—The President shall impose the
7 sanctions described in subsection (c) with respect to each
8 person on the list required under subsection (b).

9 (b) LIST.—

10 (1) IN GENERAL.—Not later than 180 days
11 after the date of the enactment of this Act, the
12 President shall transmit to the appropriate congress-
13 sional committees a list of the following:

14 (A) Each foreign person that the President
15 determines, based on credible evidence—

16 (i) is a member of a group designated
17 by the Secretary of State as a foreign ter-
18 rorist organization pursuant to section 219
19 of the Immigration and Nationality Act (8
20 U.S.C. 1189), including Hamas or
21 Hizballah, or is acting on behalf of such a
22 group; and

23 (ii) knowingly encouraged, ordered,
24 controlled, or otherwise directed or was
25 complicit in, any attempt to use civilians or
26 other persons specially protected by inter-

1 national law, or property specially pro-
2 tected by international law, to shield lawful
3 targets from attack or to deliberately cause
4 casualties to civilians or other specially
5 protected persons or destruction to spe-
6 cially protected property.

7 (B) Each foreign person, or each agency or
8 instrumentality of a foreign state, that the
9 President determines has knowingly, on or after
10 the date of the enactment of this Act—

11 (i) encouraged, supported, ordered,
12 controlled, directed, or significantly facili-
13 tated, directly or indirectly, or otherwise
14 been complicit in any act described in sub-
15 paragraph (A)(ii) by a person listed pursu-
16 ant to such subparagraph; or

17 (ii) attempted to encourage, support,
18 order, control, direct, significantly facili-
19 tate, or otherwise be complicit in any such
20 act by any person so listed.

21 (2) UPDATES.—The President shall transmit to
22 the appropriate congressional committees an update
23 of the list required under paragraph (1) as new in-
24 formation becomes available.

1 (c) SANCTIONS DESCRIBED.—The sanctions de-
2 scribed in this subsection are the following:

3 (1) BLOCKING OF PROPERTY.—The President
4 shall exercise all of the powers granted to the Presi-
5 dent under the International Emergency Economic
6 Powers Act (50 U.S.C. 1701 et seq.) to the extent
7 necessary to block and prohibit all transactions in
8 property and interests in property of a foreign per-
9 son or agency or instrumentality of a foreign state
10 on the list required by subsection (b) if such prop-
11 erty or interests in property are in the United
12 States, come within the United States, or are or
13 come within the possession or control of a United
14 States person.

15 (2) ALIENS INELIGIBLE FOR VISAS, ADMISSION,
16 OR PAROLE.—

17 (A) VISAS, ADMISSION, OR PAROLE.—An
18 alien who the Secretary of State or the Sec-
19 retary of Homeland Security (or a designee of
20 either such Secretary) determines is a foreign
21 person on the list required under subsection (b)
22 is—

23 (i) inadmissible to the United States;

1 (ii) ineligible to receive a visa or other
2 documentation to enter the United States;
3 and

4 (iii) otherwise ineligible to be admitted
5 or paroled into the United States or to re-
6 ceive any other benefit under the Immigra-
7 tion and Nationality Act (8 U.S.C. 1101 et
8 seq.).

9 (B) CURRENT VISAS REVOKED.—

10 (i) IN GENERAL.—Any visa or other
11 documentation issued to an alien who is a
12 foreign person on the list required under
13 subsection (b), regardless of when such
14 visa or other documentation was issued,
15 shall be revoked and such alien shall be de-
16 nied admission to the United States.

17 (ii) EFFECT OF REVOCATION.—A rev-
18 ocation under clause (i)—

19 (I) shall take effect immediately;
20 and

21 (II) shall automatically cancel
22 any other valid visa or documentation
23 that is in the possession of the alien
24 who is the subject of such revocation.

1 (C) EXCEPTION TO COMPLY WITH UNITED
2 NATIONS HEADQUARTERS AGREEMENT.—The
3 sanctions under this paragraph shall not be im-
4 posed on an individual if admitting such indi-
5 vidual to the United States is necessary to per-
6 mit the United States to comply with the
7 Agreement regarding the Headquarters of the
8 United Nations, signed at Lake Success June
9 26, 1947, and entered into force November 21,
10 1947, between the United Nations and the
11 United States, or with other applicable inter-
12 national agreements.

13 (d) WAIVER.—The President may, on a case-by-case
14 basis, waive the application of a sanction under this sec-
15 tion with respect to a person or an agency or instrumen-
16 tality of a foreign state for periods not longer than 180
17 days if the President certifies to the appropriate congres-
18 sional committees that such waiver is in the national secu-
19 rity interest of the United States.

20 (e) PENALTIES.—The penalties provided for in sub-
21 sections (b) and (c) of section 206 of the International
22 Emergency Economic Powers Act (50 U.S.C. 1705) shall
23 apply to any person that violates, attempts to violate, con-
24 spires to violate, or causes a violation of any regulation
25 promulgated to carry out this section to the same extent

1 that such penalties apply to a person that commits an un-
2 lawful act described in section 206(a) of such Act.

3 (f) REGULATIONS.—

4 (1) IN GENERAL.—The President may exercise
5 all authorities provided to the President under sec-
6 tions 203 and 205 of the International Emergency
7 Economic Powers Act (50 U.S.C. 1702 and 1704)
8 for purposes of carrying out this section.

9 (2) ISSUANCE OF REGULATIONS.—Not later
10 than 180 days after the date of the enactment of
11 this Act, the President shall prescribe such regula-
12 tions as may be necessary to implement this section.

13 (g) RULE OF CONSTRUCTION.—Nothing in this sec-
14 tion may be construed—

15 (1) to limit the authorities of the President pur-
16 suant to the International Emergency Economic
17 Powers Act (50 U.S.C. 1701 et seq.) or any other
18 relevant provision of law; or

19 (2) to apply with respect to any activity subject
20 to the reporting requirements under title V of the
21 National Security Act of 1947 (50 U.S.C. 3091 et
22 seq.), or to any authorized intelligence activities of
23 the United States.

1 **SEC. 6. RULE OF CONSTRUCTION.**

2 Nothing in this Act shall be construed as an author-
3 ization of the use of force.

4 **SEC. 7. DEFINITIONS.**

5 In this Act:

6 (1) ADMITTED; ALIEN.—The terms “admitted”
7 and “alien” have the meanings given such terms in
8 section 101 of the Immigration and Nationality Act
9 (8 U.S.C. 1101).

10 (2) AGENCY OR INSTRUMENTALITY OF A FOR-
11 EIGN STATE.—The term “agency or instrumentality
12 of a foreign state” has the meaning given such term
13 in section 1603(b) of title 28, United States Code.

14 (3) APPROPRIATE CONGRESSIONAL COMMIT-
15 TEES.—The term “appropriate congressional com-
16 mittees” means—

17 (A) the Committee on Financial Services,
18 the Committee on Ways and Means, and the
19 Committee on Foreign Affairs of the House of
20 Representatives; and

21 (B) the Committee on Banking, Housing,
22 and Urban Affairs and the Committee on For-
23 eign Relations of the Senate.

24 (4) FOREIGN PERSON.—The term “foreign per-
25 son” has the meaning given such term in section

1 594.304 of title 31, Code of Federal Regulations, as
2 in effect on the date of the enactment of this Act.

3 (5) UNITED STATES PERSON.—The term
4 “United States person” has the meaning given such
5 term in section 594.315 of title 31, Code of Federal
6 Regulations, as in effect on the date of the enact-
7 ment of this Act.

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