

XIII. Closing the Loophole on Hizballah's Funding

A. Introduction

The Hizballah International Financing Prevention Act of 2015 (Act) restricts Hizballah's¹ ability to fund its criminal activities by preventing it from doing business with international financial institutions.² Before this bill was enacted in December 2015, the United States did not sanction foreign institutions for doing business with Hizballah, a loophole meaning that only banks registered in the United States were subject to restrictions and sanctions.³ This Act exemplifies the United States' policy to "utilize all available diplomatic, legislative, and executive avenues to combat the global criminal activities of Hizballah as a means to block that organization's ability to fund its global terrorist activities."⁴

The practical effect of this Act is that it forces foreign banks using the United States financial system to ensure they do not provide

¹ Hizballah is a Shiite group designated by the United States as a Foreign Terrorist Organization. It was founded in Lebanon in 1982 and has since carried out attacks around the globe. *See e.g., Hizballah*, NAT'L COUNTERTERRORISM CTR., <http://www.nctc.gov/site/groups/hizballah.html> [<https://perma.cc/9SK5-KTPQ>] ("Formed in 1982 in response to the Israeli invasion of Lebanon, Hizballah (the "Party of God"), a Lebanon-based Shia terrorist group, advocates Shia empowerment globally. Hizballah has been involved in numerous anti-US terrorist attacks, including the suicide truck bombings of the US Embassy in Beirut in April 1983, the US Marine barracks in Beirut in October 1983, and the US Embassy annex in Beirut in September 1984, as well as the hijacking of TWA 847 in 1985 and the Khobar Towers attack in Saudi Arabia in 1996."); *Foreign Terrorist Organizations*, U.S. DEP'T OF ST., <http://www.state.gov/j/ct/rls/other/des/123085.htm> [<https://perma.cc/G5FE-UCC8>].

² Hizballah International Financing Prevention Act of 2015, H.R. 2297, 114th Cong. (2015).

³ *Id.*; Yonah Jeremy Bob, *US Imposes Stiffer Penalties for Financing Hezbollah*, JER. POST (June 27, 2014), <http://www.jpost.com/International/US-House-panel-okays-expanded-Hezbollah-sanctions-360791> [<https://perma.cc/8WVS-GBE3>] ("[T]he bill provides the administration with tools to target and sanction foreign banks that conduct business with Hezbollah and its enablers, and not just domestic banks. In contrast, current law prevents American financial institutions only from dealing with Hezbollah. The ultimate effect of the prohibition is simply to drive Hezbollah into the arms of non-US financial institutions.").

⁴ H.R. 2297.

financial services to Hizballah—a difficult process for banks because Hizballah often utilizes front companies that appear unassociated with Hizballah when conducting financial transactions.⁵

This article details the Act’s new requirements, and how they fit into the larger context of the fight against global terror. Part B of this article explains how the Hizballah International Financing Prevention Act of 2015 works to close the foreign banking loophole. Part C examines the effect that compliance with sanctions against Hizballah has had on banks. Part D discusses the impact the Hizballah International Financing Prevention Act of 2015 has on Hizballah’s financial health. Part E introduces Iran’s history of funding Hizballah and its potential to influence the Act’s overall impact on Hizballah’s financial health. Part F examines Hizballah’s financial health before the Iran nuclear agreement and the impact of Hizballah’s activities in Syria. Lastly, Part G looks at how the 2015 nuclear agreement affected Hizballah’s financial health.

B. The Hizballah International Financing Prevention Act Closed the Regulatory Loophole

The Act demonstrates America’s commitment to “take strong action” in order to “counter the activities of Hizballah operatives and supporters, wherever they are located.”⁶ The Act calls for sanctions for any foreign financial institution that:

(A) knowingly facilitates a significant transaction or transactions for Hizballah; (B) knowingly facilitates a significant transaction or transactions of a person identified on the list of specially designated nationals and blocked persons . . . and the property and interests in property of which are blocked . . . for acting on behalf of or at the direction of, or being owned or

⁵ Samuel Rubinfeld, *Foreign Banks in Spotlight Amid U.S. Fight Against Hezbollah*, WALL ST. J. (Jan. 4, 2016), blogs.wsj.com/riskandcompliance/2016/01/04/foreign-banks-in-spotlight-amid-u-s-fight-against-hezbollah/ [https://perma.cc/X98Y-T75Q].

⁶ Press Release, The White House, Statement by the Press Sec’y on the Hizballah Int’l Financing Prevention Act of 2015 (Dec. 18, 2015), *available at* <https://www.whitehouse.gov/the-press-office/2015/12/18/statement-press-secretary-hizballah-international-financing-prevention> [https://perma.cc/R73-PUWZ].

controlled by, Hizballah; (C) knowingly engages in money laundering to carry out an activity described in subparagraph (A) or (B); or (D) knowingly facilitates a significant transaction or transactions or provides significant financial services to carry out an activity described in subparagraph (A), (B), or (C).⁷

This effectively closed the regulatory loophole that only prohibited domestic banks from dealing with Hizballah, thereby excluding foreign banks from the threat of American sanctions.⁸ Foreign banking institutions will be forced to sever all financial ties with Hizballah in order to maintain access to the U.S. financial network.⁹ While the White House praised the increased scope of the financial sanctions, Hizballah called them “open confrontation” and stated they would not “retreat, forgive or surrender.”¹⁰

C. The Effect of Hizballah Sanctions on Banks

The Act expands the class of financial institutions subject to sanctions for doing business with Hizballah from just domestic banks to now also include foreign institutions.¹¹ This has placed a diligence burden on international financial institutions to ensure that they are not inadvertently transacting with Hizballah.¹² This obligation presents a challenge because Hizballah uses front companies and agents to conduct financial transactions and launder money, making it hard for banks to know they are actually doing business with Hizballah.¹³ The Act sanctions foreign financial institutions that “knowingly facilitate[] a transaction for Hizballah” or “knowingly facilitate[] a significant

⁷ H.R. 2297.

⁸ Rubinfeld, *supra* note 5.

⁹ *New Law Forces International Banks to Blacklist Hezbollah or Face U.S. Sanctions*, TOWER (Jan. 4, 2016), <http://www.thetower.org/2774-new-law-forces-international-banks-to-blacklist-hezbollah-or-face-u-s-sanctions/>.

¹⁰ Press Release, *supra* note 6 (expressing White House support for the passage of the Act); Sam Dagher, *Hezbollah Leader Vows Retaliation for Militant's Death*, WALL ST. J. (Dec. 21, 2015), <http://www.wsj.com/articles/hezbollah-leader-vows-retaliation-for-militants-death-1450734276> [<https://perma.cc/5T2T-JNWC>].

¹¹ *See* H.R. 2297.

¹² *See* Rubinfeld, *supra* note 5.

¹³ *See id.*

transaction” with an individual or entity on the SDN List.¹⁴ The SDN List is published by the Treasury Department and lists “individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries” as well as agents acting on behalf of certain individuals and groups (including Foreign Terrorist Organizations like Hizballah), “under programs that are not country-specific.”¹⁵

Lebanese banks are especially vulnerable to the costs of this newly required diligence because of Hizballah’s influence in Lebanon,¹⁶ the economic slowdown in the region due to the Syria conflict, and the recent downgrade in Lebanon’s long-term credit outlook.¹⁷ Because of this, Lebanese bank employees are using “extreme caution” in order to avoid making their employers liable for potential sanctions, and the Lebanese financial institutions are “err[ing] on the safe side instead of showing any leniency.”¹⁸ The threat of United States sanctions is not hypothetical; the United States has taken serious action against Lebanese financial institutions in 2011 and 2015 due to their transactions with Hizballah.¹⁹

¹⁴ H.R. 2297 §102.

¹⁵ *Specially Designated Nationals List (SDN)*, U.S. DEPT. OF THE TREASURY RES. CTR. (Feb. 13, 2016, 8:32 PM), <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> [<https://perma.cc/XDP6-DXZA>]; see *Foreign Terrorist Organizations*, *supra* note 1.

¹⁶ See *Hizballah*, *supra* note 1 (“Hizballah has participated in the Lebanese Government since 1992.”).

¹⁷ *Lebanon Credit Rating*, TRADING ECON., (Feb. 13, 7:45 PM), <http://www.tradingeconomics.com/lebanon/rating> [<https://perma.cc/PCH6-8VJ2>] (stating Lebanon’s credit rating is B-/negative, B2/negative and B/negative in the S&P, Moody’s, and Fitch ratings); Sami Nader, *Lebanon’s Banks to Pay Price of Sanctions on Hezbollah*, AL-MONITOR (Jan. 14, 2016), <http://www.al-monitor.com/pulse/originals/2016/01/lebanon-banks-us-sanctions-hezbollah-economy.html> [<https://perma.cc/PH4B-47H6>].

¹⁸ Jean Aziz, *How Lebanese Banks are Handling US Sanctions on Hezbollah*, AL-MONITOR (Jan. 12, 2016), <http://www.al-monitor.com/pulse/originals/2016/01/us-sanctions-lebanon-banks-hezbollah.html> [<https://perma.cc/H9T6-A6J2>].

¹⁹ See *id.* (“This is especially true given previous cases that led to significant banking crises. In 2011, US authorities accused the Lebanese Canadian Bank, a Lebanese bank, of being involved in a money-laundering operation with individuals close to Hezbollah. Consequently, the bank was liquidated and closed. . . . [I]n June 2015 with another Lebanese bank — the Middle East and Africa Bank. The US government accused bank administrators of dealing with terrorists; the Central Bank of Lebanon had to intervene and change the bank’s administration.”).

D. The Act's Impact upon Hizballah's Financial Health

The Act is newly implemented so its effectiveness has yet to be proven. Some experts predict the Act will have a hard time crippling Hizballah's financial network for a few reasons. First, Hizballah does not use American currency, so its financial health is largely free from dependence on US capital.²⁰ Second, and perhaps most critically, Hizballah also uses front names and agents for conducting its financial transactions which obscures its financial dealings and still leaves global financial institutions vulnerable to unintended transactions with its affiliated entities.²¹ The Act sanctions banks for both facilitating transactions with Hizballah and for "knowingly facilitat[ing] a significant transaction" with an individual or entity on the SDN List.²² To avoid its dealings falling within the scope of prohibited activity under the Act, Hizballah avoids conducting financial transactions using its own name and instead uses front companies and agents not on the official SDN List, allowing Hizballah to conduct financial transactions without drawing the attention of U.S. regulators.²³ Hizballah agents not on the SDN List are essential to Hizballah's financial health, and are used to launder money gained from criminal activities, including distributing narcotics, gemstones, and weapons.²⁴

²⁰ Aziz, *supra* note 18.

²¹ *Id.*

²² H.R. 2297 §102.

²³ Nader, *supra* note 17.

²⁴ *U.S. Treasury Imposes Sanctions on Hezbollah Money-Laundering Network*, TOWER (Jan. 29, 2016), <http://www.thetower.org/2884-u-s-treasury-imposes-sanctions-on-hezbollah-money-laundering-network/> [<https://perma.cc/A8K7-JJ3V>] ("Hizballah needs individuals like Mohamad Nouredine and Hamdi Zaher El Dine to launder criminal proceeds for use in terrorism and political destabilization,' Adam J. Szubin, Acting Under Secretary for Terrorism and Financial Intelligence said in a statement. 'We will continue to target this vulnerability, and expose and disrupt such enablers of terrorism wherever we find them.'"); Oren Kessler & Rupert Sutton, *Hezbollah Threatened by Iran's Financial Woes*, WORLD AFFAIRS, <http://www.worldaffairsjournal.org/article/hezbollah-threatened-iran%E2%80%99s-financial-woes> [<https://perma.cc/8DM6-9H4B>] ("Hezbollah also operates a global network of criminal and narcotics rings. In West Africa, it has made millions trading in blood diamonds and arms. In Colombia, its members have been convicted of cocaine trafficking, and in the lawless border areas between Argentina, Brazil, and Paraguay it runs smuggling networks transporting marijuana and tobacco. In the US, officials

“Hizballah relies upon their accomplices in the business community to place, manage, and launder its terrorist funds” because they can operate under the radar in the United States.²⁵

E. Hizballah has Received Substantial Funding from Iran

The Act’s long-term effect on Hizballah’s overall financial health will be impacted by the amount of funding Iran continues to give to Hizballah.²⁶ Hizballah is very reliant upon Iran to fund its efforts fighting in Syria as well as funding the schools and hospitals it controls.²⁷ Experts estimate that Iran has given Hizballah approximately 100 to 200 million dollars every year for the last decade plus advanced weaponry including rockets and logistical support, and has helped establish training camps where Hizballah and other terrorist groups received missile and anti-aircraft rocket training.²⁸ The leader of Hizballah’s political party in Lebanon acknowledges that Hizballah receives Iranian funding, but that the funds are used only for “health care, education and support of war widows.”²⁹

have uncovered a multimillion-dollar Hezbollah-run smuggling ring dealing in drugs and cigarettes. As less money comes in from Iran, Hezbollah will likely have to turn to these illicit operations even more to make up the shortfall.”).

²⁵ Press Release, U.S. Dep’t of the Treasury, Treasury Sanctions Hizballah Financier and His Company (Jan. 7, 2016), *available at* <https://www.treasury.gov/press-center/press-releases/Pages/jl0317.aspx> [<https://perma.cc/GE7U-CE3H>].

²⁶ See Nicholas Blanford, *How Oil Price Slump is Putting a Squeeze on Hezbollah, Iran's Shiite Ally*, CHRISTIAN SCI. MONITOR (Jan. 4, 2015), <http://www.csmonitor.com/World/Middle-East/2015/0104/How-oil-price-slump-is-putting-a-squeeze-on-Hezbollah-Iran-s-Shiite-ally> [<https://perma.cc/M5QY-D25L>].

²⁷ *Id.*; Scott Wilson, *Lebanese Wary of a Rising Hezbollah*, WASH. POST (Dec. 20, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A12336-2004Dec19.html> [<https://perma.cc/84B7-GRL7>].

²⁸ Matthew Levitt, *Hezbollah Finances: Funding the Party of God*, WASH. INST. FOR NEAR EAST POL’Y (Feb. 2005), <http://www.washingtoninstitute.org/policy-analysis/view/hezbollah-finances-funding-the-party-of-god> [<https://perma.cc/QA2P-8SFC>].

²⁹ Wilson, *supra* note 27.

F. Hizballah's Financial Health and the Impact of its Actions in Syria

Before the Iran nuclear agreement in 2015, Hizballah was in poor financial health because of the large costs of Hizballah's activities in Syria supporting Bashar al-Assad,³⁰ sanctions from the United States, and the reduction of monetary aid from Iran due to falling oil prices which had cut into Iran's oil profits.³¹ Additionally, Lebanon, where Hizballah is primarily based,³² is currently experiencing an economic slowdown.³³

A main driver of Hizballah's expenses is its current efforts in Syria.³⁴ Although Hizballah is active in many countries, their Syrian

³⁰ Bashar al-Assad is the current President of Syria, presiding since 2000 upon the death of his father, who ruled Syria since 1971. President Assad has been criticized in the international community for some of his government's actions and has been fighting a civil war for the past several years. *Bashar al-Assad*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/biography/Bashar-al-Assad> [https://perma.cc/Q7T4-HUW5]; *A Wasted Decade: Human Rights in Syria during Bashar al-Asad's First Ten Years in Power*, HUMAN RIGHTS WATCH, <https://www.hrw.org/report/2010/07/16/wasted-decade/human-rights-syria-during-bashar-al-asads-first-ten-years-power> [https://perma.cc/V7C6-LXP9].

³¹ Matthew Levitt, *The Crackdown on Hezbollah's Financing Network*, WALL ST. J. (Jan. 27, 2016, 2:09 PM), <http://blogs.wsj.com/washwire/2016/01/27/the-crackdown-on-hezbollahs-financing-network/> [https://perma.cc/9LLU-25ZT].

³² Jonathan Masters & Zachary Laub, *Hezbollah (a.k.a. Hizbollah, Hizbu'llah)*, COUNCIL ON FOREIGN RELATIONS, <http://www.cfr.org/Lebanon/hezbollah-k-hizbollah-hizbullah/p9155> [https://perma.cc/85KF-E4KU].

³³ Nader, *supra* note 17 ("This puts Lebanese banks under further pressure when they are already facing the repercussions of a slowdown in the Lebanese economy and the effects of regional crises on political and economic stability. This situation recently prompted some international rating agencies, such as Standard & Poor's, to affirm Lebanon's sovereign credit rating at "B-/B" and downgrade its long-range outlook from "stable" to "negative."); *Lebanon Credit Rating*, *supra* note 17 (indicating Lebanon's credit rating is negative and a B-/B).

³⁴ See Bassem Mroue, *Hezbollah Recruiting Push Comes Amid Deeper Role in Syria*, ASSOCIATED PRESS, (Dec. 18, 2015, 3:46 PM), <http://bigstory.ap.org/article/de8588cd81244ed58a7dd12e32ee18e2/hezbollah-recruiting-push-covers-its-deeper-role-syria> [https://perma.cc/RSP9-VH9R] ("Hezbollah has been conducting a large recruitment drive, a sign of how the

activities are important because approximately “3,000 Hizballah fighters are in Syria, roughly 15% of the group’s main fighting force.”³⁵ Hizballah’s forces have helped Bashar al-Assad stay in power, with Hizballah’s military units being integrated into the Syrian army.³⁶ Integrated Hizballah fighters have acted as advisers to the less experienced Syrian and Iraqi fighters, and trained both Syrian military and pro-government Syrian militia members.³⁷ Hizballah has also “conduct[ed] operations on behalf of the Syrian regime.”³⁸ When questioned on whether Hizballah is fighting in Syria’s civil war, Syrian President Bashar al-Assad says their assistance was officially requested, as is Syria’s right.³⁹

G. The Effect of the 2015 Nuclear Agreement on Hizballah’s Financial Health

war in Syria has become perhaps the most intense conflict the group has waged. Its losses in Syria — now more than 1,000 killed — are approaching the toll incurred by the group in 18 years of fighting the Israeli occupation of south Lebanon in the 1980s and 1990s. . . . About 3,000 Hezbollah fighters are in Syria, roughly 15 percent of the group’s main fighting force”); Levitt, *supra* note 31.

³⁵ Mroue, *supra* note 34.

³⁶ Levitt, *supra* note 28 (“According to press reports from 2002, Syria has actually integrated elements of Hezbollah’s military units into the Syrian army in Lebanon and, in a sharp break from the caution exercised by his father, Bashar al Assad supplied Hezbollah with heavy arms”). *See generally* Masters & Laub, *supra* note 32 (detailing the extent of the actions and impacts of Hizballah forces in Syria).

³⁷ Marissa Sullivan, *Hezbollah in Syria*, 19 INST. FOR THE STUDY OF WAR, 4-5 (2014), http://www.understandingwar.org/sites/default/files/Hezbollah_Sullivan_FINAL.pdf [<https://perma.cc/6897-SCQY>].

³⁸ *Id.* (“Hezbollah fighters have also led units comprised of Iraqi Shi’a militants, especially in Damascus. Often, Hezbollah forces are far better trained, disciplined, and experienced than their Syrian or Iraqi counterparts. Hezbollah fighters improve combat effectiveness when partnered with less-capable Syrian units. . . . Hezbollah has moved beyond training and defensive missions and now conducts offensive operations on behalf of the Syrian regime.”).

³⁹ *Assad Defends Presence of Hezbollah Fighters in Syria*, AL JAZEERA, <http://www.aljazeera.com/news/2015/08/assad-defends-presence-hezbollah-fighters-syria-150825203254106.html> [<https://perma.cc/A843-6JCE>].

Hizballah's financial health was poor,⁴⁰ but improved in 2015 due to an influx in funding after Iran signed the recent nuclear agreement, which eliminated sanctions imposed on Iran by the international community.⁴¹ The nuclear agreement restricted Iran's uranium enrichment and centrifuge manufacturing, along with other restrictions and conditions, in exchange for the lifting of international Iranian sanctions.⁴² Iran increased Hizballah's funding after signing the Nuclear Agreement, not waiting until the sanctions were actually lifted, which required Iran to physically implement the agreed upon changes.⁴³ "Tehran's belief that . . . billions of dollars will flow into the country in the coming years as a result of sanctions relief has led to a decision to boost the cash flow," money that has reportedly been used by Hizballah to purchase previously unobtainable "advanced weapons" and other "advanced technologies."⁴⁴

⁴⁰ See Blanford, *supra* note 26 ("As Iran tightens its belt, Hezbollah has had to impose salary cuts on personnel, defer payments to suppliers and reduce monthly stipends to its political allies in Lebanon, according to a wide range of political and diplomatic sources in Beirut, including friends and foes of the powerful Shiite party. . . . But the belt-tightening underlines just how reliant Hezbollah is on Iranian largesse to pay its ever increasing army of fighters, as well as to bankroll its massive social welfare network of schools and hospitals upon which much of its Shiite support base depends."); Levitt, *supra* note 31.

⁴¹ Joint Comprehensive Plan of Action, Jul. 14, 2015 (details UN, United States, and European sanctions to be eliminated under this agreement as well as Iran's nuclear obligations); Avi Issacharoff, *Boosted by Nuke Deal, Iran Ups Funding to Hezbollah, Hamas*, TIMES OF ISR. (Sept. 21, 2015), <http://www.timesofisrael.com/boosted-by-nuke-deal-iran-ups-funding-to-hezbollah-hamas/> [<https://perma.cc/A5QQ-6KYL>] ("Since the deal was signed, Iran has significantly increased its financial support for two of the largest terror groups in the region that have become political players, Hamas and Hezbollah. In the years before the deal was signed, the crippling sanctions limited this support, which had significantly diminished along with Iran's economy.").

⁴² Joint Comprehensive Plan of Action, *supra* note 41.

⁴³ See *id.* at 16; Issacharoff, *supra* note 41 ("But the Islamic Republic is not waiting for a green light from Amano or the international community, and is working under the assumption that the sanctions will be lifted. . . . Since the deal was signed, Iran has significantly increased its financial support . . .").

⁴⁴ Issacharoff, *supra* note 41 ("This support, for example, has enabled Hezbollah to obtain highly developed new armaments, including advanced technologies that many militaries around the world would envy. . . . It is evidently the growing Iranian financial support that is enabling the Lebanese

H. Conclusion

The Act restricts Hizballah's ability to do business with foreign financial institutions in order to block Hizballah's ability to fund its global terrorist activities.⁴⁵ The Act effectively closes the regulatory loophole, meaning that foreign financial institutions must now ensure that they do not "knowingly facilitate[] a significant transaction or transactions for Hizballah" or one of Hizballah's agents or front companies on the SDN List,⁴⁶ thereby imposing a diligence burden on financial institutions that wish to utilize the United States financial system.⁴⁷

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Shiite militia to purchase advanced weapons, including ones that were hitherto outside of its reach.").

⁴⁵ See H.R. 2297.

⁴⁶ *Id.*

⁴⁷ Rubinfeld, *supra* note 5.

⁴⁸ Student, Boston University School of Law (J.D. 2017).