



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 15, 2008
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 5167 – Justice for Victims of Torture and Terrorism Act

(Representative Braley (D-IA) and 37 cosponsors)

While the Administration shares the profound concern reflected in H.R. 5167 for U.S. national claimants, it strongly opposes the counterproductive provisions contained in the bill. H.R. 5167 would threaten the economic security, successful reconstruction, and political progress in Iraq that is critically important to bringing U.S. troops home. The bill would do so by effectively terminating the President's waiver of the application to Iraq of provisions of the National Defense Authorization Act for Fiscal Year 2008, P.L. 110-181, thereby removing Iraq's sovereign immunity and exposing it to potential new liability for billions of dollars in lawsuits seeking compensation for offenses committed by the former Saddam Hussein regime. If H.R. 5167 is presented to the President, he will veto it.

H.R. 5167 raises the same concerns that led the President to veto H.R. 1585 in December 2007. Section 1083 of the prior bill, H.R. 1585, risked imposing staggering liability upon Iraq by reinstating cases once dismissed from court, stripping Iraq of common litigation defenses, and exposing Iraq both to punitive damages and expansive pre-judgment liens. Following the President's veto of H.R. 1585, Congress and the Administration conferred and reached agreement on an amendment to the bill to authorize the President to waive application of section 1083 to Iraq. On January 28, 2008, the President exercised that waiver authority, ensuring that Iraq's economic and political progress could proceed – a common goal of both the Congress and the Administration.

The certification provisions of H.R. 5167 would not be effective to permit the President's existing waiver to continue. Iraq has, and continues to, provide payment for certain claims through the United Nations Compensation Commission -- a circumstance that would preclude the first certification. Furthermore, even if the President could make the second certification, litigation to challenge the President's certification would almost certainly ensue, encumbering Iraq's assets and creating ongoing uncertainty and risk that would be intolerable to Iraq.

The mere risk of enactment of H.R. 5167 would almost certainly result in Iraq taking protective measures, including the precipitous withdrawal of all of its assets from the United States. This is not in the interest of either Iraq or the United States. In addition, this legislation is being considered at a critical time in U.S.-Iraqi relations and therefore must be viewed in light of ongoing negotiations over the scope of protections and authorities for U.S. troops that will apply following the anticipated termination of United Nations Security Council Resolution 1790 on December 31, 2008. H.R. 5167 sends a threatening message to the Iraqis that risks harming the negotiating environment.

The Administration remains committed to working with the Iraqis to ensure fair and just compensation for victims of Saddam-era terrorism. H.R. 5167 is not the way to accelerate that process, however. The proposed bill threatens extraordinary harm upon Iraq, risks damaging U.S. relations with Iraq, and would not assist American victims in receiving compensation. The Administration has, and will continue, discussing these issues with Iraq and the importance of its fairly compensating victims of Saddam-era atrocities.

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