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# COMBATING INTERNATIONAL AND DOMESTIC TERRORISM

GOVERNMENT

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## HEARING

BEFORE THE

## COMMITTEE ON FOREIGN RELATIONS

## UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

### S. 2236

TO EFFECT CERTAIN REORGANIZATION OF THE FEDERAL  
GOVERNMENT TO STRENGTHEN FEDERAL PROGRAMS AND  
POLICIES FOR COMBATING INTERNATIONAL AND DOMESTIC  
TERRORISM

JUNE 8, 1978

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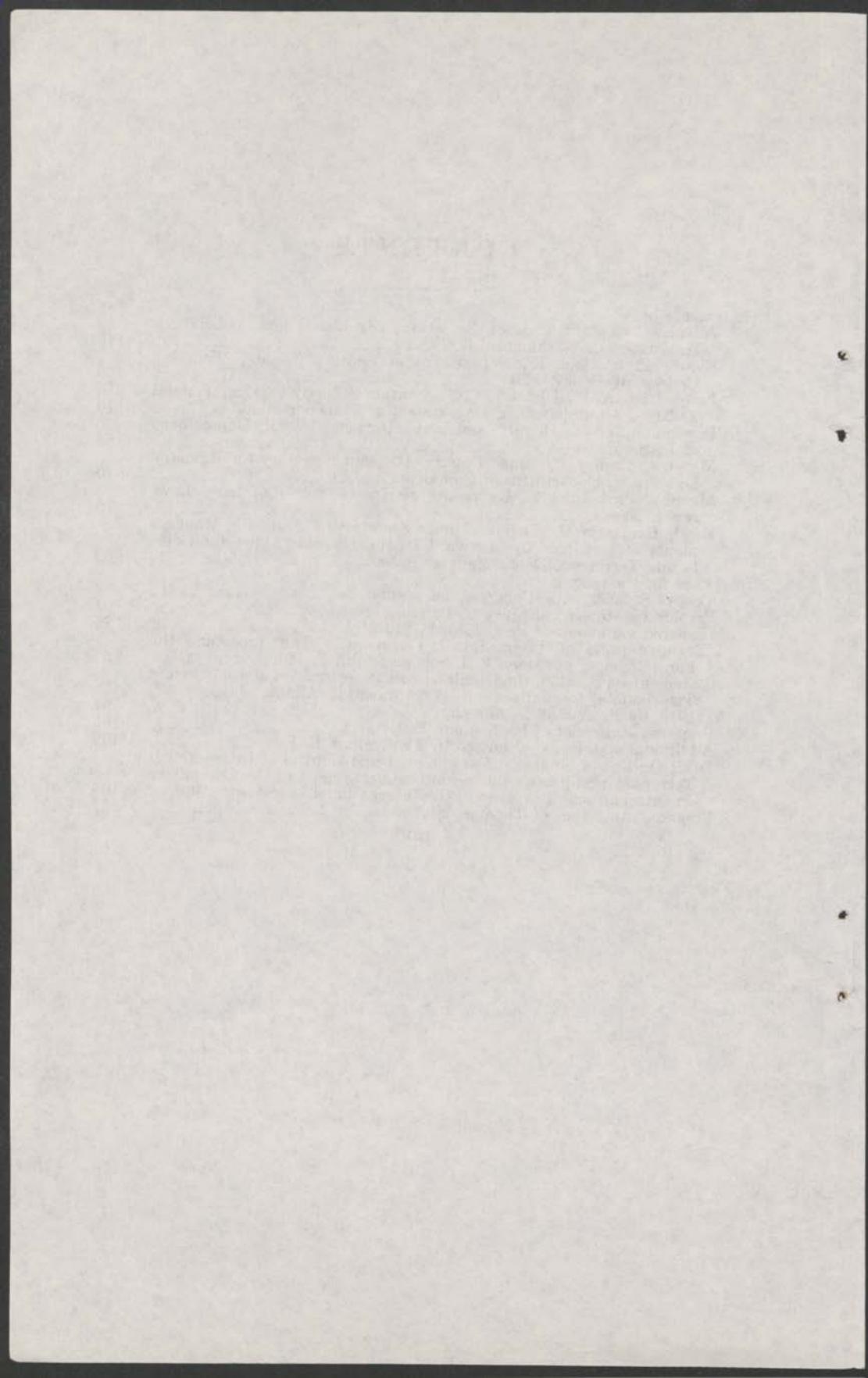
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## COMBATING INTERNATIONAL AND DOMESTIC TERRORISM

THURSDAY, JUNE 8, 1978

UNITED STATES SENATE,  
COMMITTEE ON FOREIGN RELATIONS,  
*Washington, D.C.*

The committee met, pursuant to recess, at 10:56 a.m., in room 4221, Dirksen Senate Office Building, Hon. John Glenn [presiding].

Present: Senators Glenn and Griffin.

Senator GLENN. The meeting will be in order.

### OPENING STATEMENT

The Committee on Foreign Relations will now hear testimony on S. 2236 in open session. The committee will hear from a panel composed of representatives from the executive branch and a second panel of experts in the area of combating international terrorism.

Terrorism is growing throughout the world and the increase in terrorist acts poses a great danger to our national interests and is a serious hindrance to world peace. The committee hopes that its consideration of this bill will result in effective legislation to control the growth of international terrorism.

Fortunately, we in the United States have not experienced the degree of international terrorism that has been directed at Western Europe, the Middle East, and Africa. However, our national interests are closely tied to these areas. Terrorism against our Western European allies threatens the effectiveness of the NATO alliance. In the Middle East and Africa, terrorism directed against moderate leaders reduces the chances of peaceful solutions.

Although the United States has not been the major target of international terrorism in the past, as we seek to bring about peaceful solutions to world problems, the chances that we may become targeted certainly increase.

S. 2236 represents a major initiative toward combating terrorism. [The text of S. 2236 follows:]

95TH CONGRESS  
2D SESSION

# S. 2236

[Report No. 95-908]

## IN THE SENATE OF THE UNITED STATES

OCTOBER 25 (legislative day, OCTOBER 21), 1977

Mr. RIBICOFF (for himself, Mr. JAVITS, Mr. PERCY, Mr. BENTSEN, Mr. CASE, Mr. CHILES, Mr. DOLE, Mr. DURKIN, Mr. EAGLETON, Mr. GARN, Mr. GLENN, Mr. GRIFFIN, Mr. MARK O. HATFIELD, Mr. HEINZ, Mr. HELMS, Mrs. HUMPHREY, Mr. JACKSON, Mr. MATHIAS, Mr. MATSUNAGA, Mr. MCCLELLAN, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MELCHER, Mr. METCALF, Mr. METZENBAUM, Mr. MORGAN, Mr. MOYNIHAN, Mr. NUNN, Mr. RANDOLPH, Mr. SARBANES, Mr. SASSER, Mr. SCHMITT, Mr. SCHWEIKER, Mr. STAFFORD, Mr. STEVENS, and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs and if and when reported to be referred jointly by unanimous consent to the Committees on Commerce, Science, and Transportation and Foreign Relations for not to exceed thirty days

DECEMBER 7, 1977

Referred to the Committee on Governmental Affairs and if and when reported to be referred by unanimous consent jointly to the Committees on Commerce, Science, and Transportation and Foreign Relations for not to exceed thirty days, with further instructions that when reported by those two committees, it then be referred to the Select Committee on Intelligence under the provisions of S. Res. 400 (94th Cong. 2d Sess.)

MAY 23 (legislative day, MAY 17), 1978

Reported by Mr. RIBICOFF, with an amendment, and an amendment to the title  
[Strike out all after the enacting clause and insert the part printed in italic]

MAY 23 (legislative day, MAY 17), 1978

Referred jointly to the Committees on Commerce, Science, and Transportation and Foreign Relations, pursuant to previous order, through June 22, 1978

## A BILL

To effect certain reorganization of the Federal Government to strengthen Federal programs and policies for combating international and domestic terrorism.

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. This Act may be cited as the "Omnibus~~  
4 ~~Antiterrorism Act of 1977".~~

5 ~~SEC. 2. TABLE OF CONTENTS.—~~



1 ~~perative. Further, the Congress finds that a Council for~~  
2 ~~Combating Terrorism (hereinafter referred to as "Council")~~  
3 ~~must be established in the Executive Office of the President~~  
4 ~~to assure consistency in the management of such policy, to~~  
5 ~~assure an efficient response to emergency and crisis situa-~~  
6 ~~tions, and to press for international sanctions against con-~~  
7 ~~victed terrorists. Further, the Congress finds and declares it~~  
8 ~~necessary to provide for an Assistant Secretary of State and~~  
9 ~~an Assistant Attorney General to assure high-level attention~~  
10 ~~to activities to combat terrorism in the United States De-~~  
11 ~~partment of State and United States Department of Justice.~~  
12 ~~Further, the Congress finds and declares that economic sanc-~~  
13 ~~tions should be directed at countries which harbor, aid, abet,~~  
14 ~~or assist terrorists.~~

15 ~~DECLARATION OF PURPOSES~~

16 ~~SEC. 4. The Congress therefore declares that the estab-~~  
17 ~~lishment of a Council for Combating Terrorism and the as-~~  
18 ~~signment of a high priority to antiterrorist policy is in the~~  
19 ~~public interest to promote the welfare of American citizens~~  
20 ~~by assuring coordinated and effective administration of Fed-~~  
21 ~~eral programs and policies for combating terrorism. It is~~  
22 ~~the purpose of this Act—~~

23 ~~(a) to establish in the Executive Office of the Pres-~~  
24 ~~ident a permanent Council for Combating Terrorism;~~

25 ~~(b) to establish in the Department of State a Bu-~~  
26 ~~reau, headed by an Assistant Secretary, to coordinate~~

1       ~~the responsibilities of that Department for combating~~  
2       ~~international terrorism;~~

3             ~~(e) to establish in the Department of Justice an~~  
4       ~~Office, headed by an Assistant Attorney General, to~~  
5       ~~coordinate the responsibilities of that Department for~~  
6       ~~combating terrorism;~~

7             ~~(d) to bring together in the new offices the responsi-~~  
8       ~~bility for coordinated management of all of the antiter-~~  
9       ~~rorist policies and programs;~~

10            ~~(e) to provide an appropriate organizational frame-~~  
11       ~~work for the implementation of such programs;~~

12            ~~(f) to provide for effective permanent mechanisms~~  
13       ~~for development and implementation of a comprehensive~~  
14       ~~national antiterrorist policy;~~

15            ~~(g) to assure coordinated and effective research in~~  
16       ~~antiterrorist measures;~~

17            ~~(h) to improve the effectiveness of the information-~~  
18       ~~gathering system regarding terrorist acts and results;~~

19            ~~(i) to establish effective sanctions against those~~  
20       ~~countries which harbor, aid, or abet international~~  
21       ~~terrorists;~~

22            ~~(j) to coordinate and supervise the implementa-~~  
23       ~~tion of United States policy with respect to international~~  
24       ~~acts of terrorism;~~





1 ~~real protection of United States personnel and installa-~~  
2 ~~tions abroad, and foreign diplomats and diplomatic in-~~  
3 ~~stallations in the United States;~~

4 ~~(e) evaluate all such programs and activities and,~~  
5 ~~where necessary, recommend methods for increasing the~~  
6 ~~effectiveness of their implementation; and~~

7 ~~(f) make recommendations to the Director of the~~  
8 ~~Office of Management and Budget concerning proposed~~  
9 ~~funding of such programs.~~

10 ~~COUNCIL MEMBERSHIP~~

11 ~~SEC. 103. The Council shall consist of the following~~  
12 ~~individuals:~~

13 ~~(1) the Assistant to the President for National~~  
14 ~~Security Affairs;~~

15 ~~(2) the Secretary of State;~~

16 ~~(3) the Secretary of the Treasury;~~

17 ~~(4) the Secretary of Defense;~~

18 ~~(5) the Attorney General;~~

19 ~~(6) the Secretary of Transportation;~~

20 ~~(7) the United States Ambassador to the United~~  
21 ~~Nations;~~

22 ~~(8) the Director of Central Intelligence;~~

23 ~~(9) the Assistant to the President for Domestic~~  
24 ~~Affairs;~~

1           ~~(10) the Director of the Federal Bureau of In-~~  
2           ~~vestigation;~~  
3           ~~or their delegates, and any additional members which the~~  
4           ~~Assistant to the President for National Security Affairs may~~  
5           ~~determine are necessary.~~

6                           ~~REPORT ON TERRORIST ENTERPRISES~~

7           ~~SEC. 104. (a) In the event of an act of terrorism which~~  
8           ~~affects or involves citizens of the United States, the Presi-~~  
9           ~~dent shall submit to Congress an unclassified report regard-~~  
10           ~~ing such act of terrorism within forty-five days following the~~  
11           ~~commencement of such act.~~

12           ~~(b) Such report shall include, but not be limited to,~~  
13           ~~the following information—~~

14                   ~~(1) the identity of any individual, entity, group,~~  
15                   ~~and/or organization responsible for, or implicated in, the~~  
16                   ~~commission of such act;~~

17                   ~~(2) the identity of any country responsible for, or~~  
18                   ~~which may have willfully contributed to, aided, abetted,~~  
19                   ~~facilitated, or assisted the planning, execution, or com-~~  
20                   ~~mission of such act, or which grants safe haven or sanc-~~  
21                   ~~tuary from prosecution to the perpetrators of such act;~~

22                   ~~(3) a description of the activities, actions, and~~  
23                   ~~involvement of each individual, entity, group, organiza-~~  
24                   ~~tion, and country described in paragraphs (1) and (2);~~

25                   ~~(4) the names of any countries the President has~~

1     ~~added to the List of Countries Aiding Terrorist Enter-~~  
2     ~~prises (LOCATE) established pursuant to section 105,~~  
3     ~~and the reasons for the inclusion of each country on~~  
4     ~~the List; and~~

5             ~~(5) if any country described in paragraph (2) is~~  
6     ~~not already on the List of Countries Aiding Terrorist~~  
7     ~~Enterprises (LOCATE) established pursuant to sec-~~  
8     ~~tion 105 and is not described in paragraph (4), the~~  
9     ~~reasons that country has not been added to the List.~~

10     ~~(c) When the disclosure of information required in sec-~~  
11     ~~tion 104 (a) would directly threaten the safety of an inform-~~  
12     ~~ant or confidential source or seriously compromise a covert~~  
13     ~~information gathering program or source of information, the~~  
14     ~~information may be withheld from the unclassified report.~~  
15     ~~Such information shall instead be reported in classified form~~  
16     ~~to the Senate and House Intelligence Committees.~~

17     ~~LIST OF COUNTRIES AIDING TERRORIST ENTERPRISES~~

18     ~~SEC. 105. (a) Within sixty days after enactment of~~  
19     ~~this Act the President shall prepare and submit to Congress~~  
20     ~~a List of Countries Aiding Terrorist Enterprises (LOCATE).~~

21     ~~(b) The LOCATE shall contain names of countries~~  
22     ~~which have been found to have willfully contributed to, aided,~~  
23     ~~abetted, facilitated, or assisted in the planning, execution,~~  
24     ~~or commission of any act of terrorism which affects or in-~~  
25     ~~volves citizens of the United States, or which grants safe~~

1 ~~haven or sanctuary from prosecution to the perpetrators of~~  
2 ~~such act, and the reasons for inclusion of each country on~~  
3 ~~the list.~~

4       (c) ~~After the submission of the first LOCATE (required~~  
5 ~~by subsection (a)), the development of the LOCATE shall~~  
6 ~~be based on information submitted to Congress as required~~  
7 ~~by section 104 of this Act.~~

8       (d) ~~At the time the report required by section 104 is~~  
9 ~~submitted to Congress, the President, based upon the informa-~~  
10 ~~tion in the report, shall add the names of any countries to~~  
11 ~~the LOCATE which he finds to have willfully contributed to,~~  
12 ~~aided, abetted, facilitated, or assisted in the planning, execu-~~  
13 ~~tion, or commission of any act of terrorism or which grants~~  
14 ~~safe haven or sanctuary from prosecution to the perpetrators~~  
15 ~~of any such act which affects or involves citizens of the~~  
16 ~~United States.~~

17       (e) ~~Within thirty days after the submission of the report~~  
18 ~~required by section 104, either House of Congress may pass~~  
19 ~~a resolution adding the name of a country to the LOCATE~~  
20 ~~which that House of Congress believes willfully contributed~~  
21 ~~to, aided, abetted, facilitated, or assisted in the planning,~~  
22 ~~execution, or commission of an act of terrorism (described~~  
23 ~~in the report) which affects or involves citizens of the United~~  
24 ~~States or which grants safe haven or sanctuary from prose-~~  
25 ~~cution to the perpetrators of such act. The name of that~~

1 country shall be added to the LOCATE thirty days after  
2 the approval of such a resolution unless prior to that time  
3 the other House of Congress passes a resolution disapprov-  
4 ing the addition of that country's name to the LOCATE.

5 (f) The LOCATE shall be reviewed periodically by  
6 the President. After a country has been on the List for a  
7 period of at least one year, the President may submit to  
8 Congress "A Request of Removal," which shall constitute  
9 a request to remove that country's name from the list. Such  
10 a request shall be accompanied by the reasons for such  
11 request.

12 (g) The name of a country contained in "A Request  
13 of Removal" shall be removed from the LOCATE thirty  
14 days after the submission of that Request to the Congress  
15 unless either House of Congress by resolution disapproves  
16 that Request.

17 ~~SANCTIONS AGAINST COUNTRIES AIDING TERRORIST~~  
18 ~~ENTERPRISES~~

19 ~~SEC. 106. (a) Within thirty days of the listing of any~~  
20 ~~country on the List (LOCATE), the President shall impose~~  
21 ~~sanctions against each such country including, but not~~  
22 ~~limited to—~~

23 (1) ~~issuance of a declaration that the country is~~  
24 ~~"dangerous for United States citizens to travel to or re-~~  
25 ~~side in";~~

1           ~~(2) suspension of all direct commercial air service~~  
2           ~~between the country and the United States, including all~~  
3           ~~direct flights by the country's own carriers, third party~~  
4           ~~carriers, and United States carriers;~~

5           ~~(3) suspension of all indirect flights between the~~  
6           ~~country and the United States by both the country's own~~  
7           ~~carriers and United States carriers;~~

8           ~~(4) refusal of admittance into the United States~~  
9           ~~to any person who has traveled to or through a country~~  
10           ~~on the LOCATE, unless (i) his passport contains a~~  
11           ~~visa issued by a third country in the third country and~~  
12           ~~(ii) such visa was issued after the date of his departure~~  
13           ~~from the country on the List;~~

14           ~~(5) refusal of permission to permit the deplaning of~~  
15           ~~baggage belonging to a person who has traveled to or~~  
16           ~~through a country on the LOCATE unless the baggage~~  
17           ~~subsequently has been thoroughly examined in a third~~  
18           ~~country not on the LOCATE;~~

19           ~~(6) refusal of permission for the landing of any~~  
20           ~~plane if it has landed in any country on the LOCATE~~  
21           ~~unless the plane subsequently has been serviced and~~  
22           ~~thoroughly inspected in a third country not on the~~  
23           ~~LOCATE;~~

24           ~~(7) inspection of all freight and mail that has come~~  
25           ~~from or passed through a country on the LOCATE;~~

1           ~~(8) refusal to grant new export licenses for the~~  
2           ~~sale or transfer of items contained on the United States~~  
3           ~~Munitions List to any country on the LOCATE, includ-~~  
4           ~~ing government-to-government and commercial transac-~~  
5           ~~tions; and~~

6           ~~(9) the refusal to grant new export licenses for the~~  
7           ~~sale or transfer of any nuclear equipment, materials or~~  
8           ~~technology to any country on the LOCATE.~~

9           ~~(b) Within thirty days after a country is added to~~  
10          ~~the List (LOCATE), the President shall consider the im-~~  
11          ~~position of sanctions (in addition to those automatically im-~~  
12          ~~posed by subsection (a)) against any country on the~~  
13          ~~LOCATE, including but not limited to suspension or cur-~~  
14          ~~tailment of trade, and suspension or curtailment of the ship-~~  
15          ~~ment of spare or replacement parts and training, in connec-~~  
16          ~~tion with military and commercial purchases.~~

17                   ~~LIST OF DANGEROUS FOREIGN AIRPORTS~~

18          ~~SEC. 107. (a) The President is required to prepare and~~  
19          ~~submit to Congress, one hundred and eighty days after enact-~~  
20          ~~ment of this Act, a List of Dangerous Foreign Airports.~~

21          ~~(b) An airport shall be considered dangerous and,~~  
22          ~~therefore, included on the List of Dangerous Foreign Air-~~  
23          ~~ports, if the airport is not as safe as an airport which meets~~  
24          ~~the minimum United States safety criteria as established by~~  
25          ~~title 49, United States Code.~~

1       ~~(e) The List of Dangerous Foreign Airports shall in-~~  
2 ~~clude, but not be limited to, the following:~~

3             ~~(1) a list of airports, country by country, which~~  
4 ~~are found to be dangerous pursuant to subsection (b);~~

5             ~~(2) a description of the safety and security defi-~~  
6 ~~ciencies of each airport on the list.~~

7       ~~(d) The List of Dangerous Foreign Airports shall be~~  
8 ~~open for public inspection.~~

9       ~~(e) Whenever the President finds that a foreign coun-~~  
10 ~~try has purposely obstructed the collection of information~~  
11 ~~required to be gathered pursuant to this section, he shall~~  
12 ~~submit such information to the Congress at the time of the~~  
13 ~~submission of the List of Dangerous Foreign Airports, and~~  
14 ~~shall add the name of that country to the list.~~

15       ~~(f) The President shall periodically review and revise~~  
16 ~~the List of Dangerous Foreign Airports.~~

17       ~~SANCTIONS AGAINST DANGEROUS FOREIGN AIRPORTS~~

18       ~~SEC. 108. Within thirty days of the listing of any air-~~  
19 ~~port on the List of Dangerous Foreign Airports, the Presi-~~  
20 ~~dent shall impose sanctions against each airport including,~~  
21 ~~but not limited to—~~

22             ~~(1) suspension of all direct commercial air service~~  
23 ~~between that airport and the United States, including~~  
24 ~~all direct flights by the country's own carriers, third~~  
25 ~~party carriers, and United States carriers;~~

1           ~~(2) suspension of all indirect flights between that~~  
2           ~~airport and the United States by both the carriers of the~~  
3           ~~country in which the airport is located and United States~~  
4           ~~carriers; and~~

5           ~~(3) refusal of permission for the landing of any~~  
6           ~~plane if it has landed in that airport unless the plane~~  
7           ~~subsequently has been serviced and thoroughly inspected~~  
8           ~~at any airport not on the list of dangerous airports.~~

9           ~~TRANSFER OF EXISTING FUNCTIONS AND PROPERTY~~

10          ~~SEC. 109. There are hereby transferred to and vested~~  
11          ~~in the Council all functions and authorities, personnel, prop-~~  
12          ~~erty, and records vested in the Cabinet Committee to Com-~~  
13          ~~bat Terrorism, and its working group.~~

14                   ~~TITLE II—REORGANIZATION OF THE~~  
15                           ~~DEPARTMENT OF STATE~~

16                           ~~ESTABLISHMENT OF BUREAU FOR COMBATING~~  
17                                   ~~INTERNATIONAL TERRORISM~~

18          ~~SEC. 201. (a) There is hereby established in the De-~~  
19          ~~partment of State a Bureau for Combating International~~  
20          ~~Terrorism (hereinafter referred to as the "Bureau"), which~~  
21          ~~shall be headed by an Assistant Secretary of State, appointed~~  
22          ~~by the President, by and with the advice and consent of the~~  
23          ~~Senate.~~

24          ~~(b) Section 5315 (22) of title 5, United States Code,~~

1 is amended by striking out "(11)" and inserting in lieu  
2 thereof "(12)".

3 ~~BUREAU FUNCTIONS~~

4 ~~SEC. 202. The Bureau shall—~~

5 ~~(a) coordinate, supervise, and insure the efficient~~  
6 ~~management, implementation, and development of all~~  
7 ~~antiterrorist policies, programs, and activities of the De-~~  
8 ~~partment of State;~~

9 ~~(b) work closely with the Council to Combat Ter-~~  
10 ~~rorism, in assisting that Council in the performance of~~  
11 ~~its functions; and~~

12 ~~(c) assist the President in the implementation of~~  
13 ~~section 203 and the other provisions of this Act.~~

14 ~~PRIORITIES FOR NEGOTIATION OF INTERNATIONAL~~  
15 ~~AGREEMENTS~~

16 ~~SEC. 203. (a) The President is hereby urged to seek~~  
17 ~~international agreement to assure more effective international~~  
18 ~~cooperation in combating terrorism.~~

19 ~~(b) High priority in the negotiation of such agree-~~  
20 ~~ments should be given to agreements which include, but~~  
21 ~~which need not be limited to the following:~~

22 ~~(1) establishment of a permanent international~~  
23 ~~working group, including subgroups on topics such as~~  
24 ~~law enforcement, intelligence sharing, and crisis man-~~

1 ~~agement, which would combat international terrorism~~  
2 ~~by—~~

3 ~~(A) promoting international cooperation among~~  
4 ~~countries; and~~

5 ~~(B) developing new methods, procedures, and~~  
6 ~~standards to combat international terrorism;~~

7 ~~(2) establishment of sanctions to assure compli-~~  
8 ~~ance with—~~

9 ~~(A) the Convention for the Suppression of Un-~~  
10 ~~lawful Seizure of Aircraft (the Hague, December~~  
11 ~~16, 1970);~~

12 ~~(B) the Convention for the Suppression of Un-~~  
13 ~~lawful Acts Against the Safety of Civil Aviation~~  
14 ~~(Montreal, September 23, 1971); and~~

15 ~~(C) the Convention on the Prevention and~~  
16 ~~Punishment of Crimes Against Internationally Pro-~~  
17 ~~TECTED Persons, Including Diplomatic Agents (New~~  
18 ~~York, December 14, 1973);~~

19 ~~(3) establishment of international legal require-~~  
20 ~~ments to prohibit and punish the act of taking hostages,~~  
21 ~~and~~

22 ~~(4) the strengthening of nuclear nonproliferation~~  
23 ~~efforts by—~~

24 ~~(A) the establishment of physical security~~

1 standards for nuclear materials and facilities, includ-  
2 ing international shipments;

3 (B) the incorporation of standards developed  
4 in subparagraph (A) into New Agreements for Co-  
5 operation;

6 (C) the establishment of an information ex-  
7 change system between signatory nations involving  
8 technical, administrative, and intelligence informa-  
9 tion relating to physical security; and

10 (D) the establishment of guidelines by an inter-  
11 national agency or organization for contingency  
12 plans for action by signatory nations in the event  
13 of theft of nuclear materials.

14 ~~IMPLEMENTATION OF MONTREAL CONVENTION~~

15 ~~SEC. 204. The President shall develop standards and~~  
16 ~~programs to insure the full implementation of the provisions~~  
17 ~~of the Convention for the Suppression of Unlawful Acts~~  
18 ~~Against the Safety of Civil Aviation (Montreal, September~~  
19 ~~23, 1971).~~

20 ~~DEFENSE SALES TO INDIVIDUALS, GROUPS~~

21 ~~SEC. 205. (a) No sale, credit, or guarantee shall be~~  
22 ~~made or extended or shall any export license be issued by~~  
23 ~~the United States with respect to any defense article or~~  
24 ~~defense service for any individual, group, or organization~~  
25 ~~without the specific prior approval of the President.~~

1       ~~(b) No such sale, credit, guarantee, or license may be~~  
 2 ~~made, extended, or issued, as the case may be, with respect~~  
 3 ~~to any defense article or service for any country unless such~~  
 4 ~~country shall have agreed not to transfer title to, or posses-~~  
 5 ~~sion of, such defense article or defense service to any other~~  
 6 ~~individual, group, or organization.~~

7                   ~~UNITED STATES MUNITIONS LIST~~

8       ~~SEC. 206. The President shall include the names of all~~  
 9 ~~types of explosives on the United States Munitions List (22~~  
 10 ~~U.S.C. 2278).~~

11                   ~~TRANSFER OF EXISTING FUNCTIONS AND PROPERTY~~

12       ~~SEC. 207. There are hereby transferred to and vested in~~  
 13 ~~the Bureau all functions and authorities, personnel, property,~~  
 14 ~~and records now vested in the present Office for Combating~~  
 15 ~~International Terrorism established by the Secretary of~~  
 16 ~~State.~~

17                   ~~TITLE III REORGANIZATION OF THE~~

18                   ~~DEPARTMENT OF JUSTICE~~

19                   ~~ESTABLISHMENT OF OFFICE FOR COMBATING TERRORISM~~

20       ~~SEC. 301. (a) There is hereby established in the De-~~  
 21 ~~partment of Justice an Office for Combating Terrorism, which~~  
 22 ~~shall be headed by an Assistant Attorney General, appointed~~  
 23 ~~by the President, by and with the advice and consent of the~~  
 24 ~~Senate.~~

25       ~~(b) Section 5315 (19) of title 5, United States Code,~~

1 is amended by striking out "(9)" and by inserting in lieu  
2 thereof "(10)".

### 3 OFFICE FUNCTIONS

4 SEC. 302. The Office shall—

5 (a) ~~coordinate, supervise, and insure the efficient~~  
6 ~~management, implementation, and development of all~~  
7 ~~antiterrorist policies, programs, and activities of the~~  
8 ~~Department of Justice; and~~

9 (b) ~~work closely with the Council to Combat Ter-~~  
10 ~~rorism, in assisting that Council in the performance of~~  
11 ~~its functions.~~

### 12 EXTENSION OF EXISTING SAFETY AND SECURITY MEASURES

13 SEC. 303. The President shall ~~extend existing safety~~  
14 ~~and security requirements of title 49, United States Code, to~~  
15 ~~supplemental means of air transportation, foreign or domestic,~~  
16 ~~including the charter operations of regularly scheduled air~~  
17 ~~lines, commuter services regulated by Civil Aeronautics~~  
18 ~~Board, and other regularly scheduled interstate or intra-~~  
19 ~~state passenger operations; and to any airport in the United~~  
20 ~~States serving aircraft subject to the above provisions.~~

### 21 MANDATORY USE OF EXPLOSIVE TAGGANTS

22 SEC. 304. No explosive may be imported, manufactured,  
23 or exported unless such explosive contains identification and  
24 detection taggants. Such taggants must identify the source

1 ~~and time of manufacture of that explosive, regardless of~~  
2 ~~whether such explosive has been detonated and permit the~~  
3 ~~detection of concealed explosives.~~

4     ~~The President shall issue regulations to implement this~~  
5 ~~provision to the maximum extent possible under existing~~  
6 ~~technology so that the taggants will provide maximum as-~~  
7 ~~sistance to law enforcement agencies in locating, identifying,~~  
8 ~~and prosecuting individuals illegally utilizing such explo-~~  
9 ~~sives. The President shall periodically review and revise the~~  
10 ~~regulations to take into account improvements in taggant~~  
11 ~~technology.~~

#### 12     ~~TITLE IV—AIRCRAFT SABOTAGE AND PIRACY~~

##### 13                     ~~AIRCRAFT SABOTAGE~~

14     ~~SEC. 401. (a) Section 31 of title 18, United States~~  
15 ~~Code, is amended—~~

16             ~~(a) by striking out "Civil Aeronautics Act of~~  
17             ~~1938" and inserting in lieu thereof the words "Federal~~  
18             ~~Aviation Act of 1958"; and~~

19             ~~(b) by adding at the end of the first paragraph~~  
20             ~~thereof the following two paragraphs:~~

21             ~~"'In flight' means any time from the moment all the~~  
22 ~~external doors of an aircraft are closed following embarka-~~  
23 ~~tion until the moment when any such door is opened for~~  
24 ~~disembarkation. In the case of a forced landing the flight~~

1 shall be deemed to continue until competent authorities take  
2 over the responsibility for the aircraft and the persons and  
3 property aboard.

4 ~~“‘In service’ means any time from the beginning of~~  
5 ~~preflight preparation of the aircraft by ground personnel or~~  
6 ~~by the crew for a specific flight until twenty-four hours~~  
7 ~~after any landing; the period of service shall, in any event,~~  
8 ~~extend for the entire period during which the aircraft is in~~  
9 ~~flight.”~~

10 (b) Section 32, title 18, United States Code, is amended  
11 to read as follows:

12 ~~“§ 32. Destruction of aircraft or aircraft facilities~~

13 ~~“Whoever willfully sets fire to, damages, destroys, dis-~~  
14 ~~ables, or interferes with the operation of, or makes unsuitable~~  
15 ~~for use any civil aircraft used, operated, or employed in inter-~~  
16 ~~state, overseas, or foreign air commerce, or willfully places~~  
17 ~~a destructive substance in, upon, or in proximity to any such~~  
18 ~~aircraft which is likely to damage, destroy, or disable any~~  
19 ~~such aircraft, or any part or other material used, or intended~~  
20 ~~to be used, in connection with the operation of such aircraft,~~  
21 ~~or willfully sets fire to, damages, destroys, or disables any air~~  
22 ~~navigation facility, or interferes with the operation of such air~~  
23 ~~navigation facility, if any such act is likely to endanger the~~  
24 ~~safety of any such aircraft in flight; or~~

25 ~~“Whoever, with intent to damage, destroy, or disable any~~

1 such aircraft, willfully sets fire to, damages, destroys, or  
2 disables or places a destructive substance in, upon, or in the  
3 proximity of any appliance, structure, ramp, landing area,  
4 property, machine, or apparatus, or any facility, or other  
5 material used, or intended to be used, in connection with the  
6 operation, maintenance, or loading or unloading or storage  
7 of any such aircraft or any cargo carried or intended to be  
8 carried on any such aircraft; or

9 "Whoever willfully performs an act of violence against or  
10 incapacitates any passenger or member of the crew of any  
11 such aircraft if such act of violence or incapacitation is likely  
12 to endanger the safety of such aircraft in service; or

13 "Whoever communicates information, which he knows  
14 to be false, thereby endangering the safety of any such air-  
15 craft while in flight; or

16 "Whoever willfully attempts to do any of the aforesaid  
17 acts shall be fined not more than \$10,000 or imprisoned  
18 not more than twenty years, or both."

19 (c) Chapter 2, title 18, United States Code, is amended  
20 by adding immediately after section 32 the following:

21 "**§ 32A. Offenses in violation of the Convention for the**  
22 **Suppression of Unlawful Acts Against the**  
23 **Safety of Civil Aviation**

24 "(a) Whoever commits an offense as defined in subsec-  
25 tion (b), against or on board an aircraft registered in a coun-

1 try other than the United States and is afterward found in  
2 the United States—

3 shall be fined not more than \$10,000 or imprisoned not  
4 more than twenty years, or both.

5 “(b) For purposes of this section, a person commits an  
6 ‘offense’ when he willfully—

7 “(1) performs an act of violence against a person on  
8 board an aircraft in flight if such act is likely to endanger  
9 the safety of such aircraft; or

10 “(2) destroys an aircraft in service or causes dam-  
11 age to such an aircraft which renders such aircraft in-  
12 capable of flight or which is likely to endanger the safety  
13 in flight of such aircraft; or

14 “(3) places or causes to be placed on an aircraft in  
15 service, by any means whatsoever, a device or substance  
16 which is likely to destroy such aircraft, or to cause such  
17 damage as to render such aircraft incapable of flight,  
18 or to cause such damage as is likely to endanger the  
19 safety in flight of such aircraft; or

20 “(4) attempts to commit, or is an accomplice of a  
21 person who commits or attempts to commit, an offense  
22 under this subsection.”

23 (d) The analysis of chapter 2 of title 18, United States

1 Code, is amended by inserting between items 32 and 33  
2 the following new item:

~~“32A. Offense in violation of the Convention for the Suppression of  
Unlawful Acts Against the Safety of Civil Aviation.”~~

3 ~~(e) Section 101 (31) (d) of the Federal Aviation Act~~  
4 ~~of 1958, as amended, is amended as follows:~~

5 ~~(a) by striking out “or” at the end of subclause (i);~~

6 ~~(b) by striking out “and” at the end of subclause~~

7 ~~(ii) and inserting in lieu thereof “or”; and~~

8 ~~(c) by adding at the end thereof the following:~~

9 ~~“(iii) regarding which an offense as defined in~~  
10 ~~subsections (d) and (e) of the first section of article~~  
11 ~~1 of the Convention for the Suppression of Un-~~  
12 ~~lawful Acts Against the Safety of Civil Aviation,~~  
13 ~~done at Montreal on September 23, 1971, is com-~~  
14 ~~mitted, if such aircraft lands in the United States~~  
15 ~~with an alleged offender on board; and”.~~

16 ~~(f) Section 902 (k) of the Federal Aviation Act of~~  
17 ~~1958, as amended, is further amended by adding at the end~~  
18 ~~thereof the following:~~

19 ~~“(3) Whoever while aboard an aircraft in the~~  
20 ~~special aircraft jurisdiction of the United States commits~~  
21 ~~an act which would be an offense under section 32 of~~

1 title 18, United States Code, shall be punished as pro-  
2 vided therein.”

3 (g) Chapter 2 of title 18, United States Code, is  
4 amended by adding at the end thereof the following new  
5 section:

6 “§ 36. Imparting or conveying threats

7 “Whoever imparts or conveys, or causes to be imparted  
8 or conveyed, any threat to do an act which would be a felony  
9 punishable under section 32 or 33 of this chapter or section  
10 1992 of chapter 97 or section 2275 of chapter 111 of this  
11 title with an apparent determination and will to carry the  
12 threat into execution, shall be fined not more than \$5,000  
13 or imprisoned not more than five years, or both.”

14 (h) The analysis of chapter 2 of title 18, United States  
15 Code, is amended by adding at the end thereof the following  
16 new item:

“26. Imparting or conveying threats.”

17 AIRCRAFT PIRACY

18 SEC. 402. (a) Section 901 of the Federal Aviation Act  
19 of 1958 is amended by adding at the end thereof the follow-  
20 ing new subsections:

21 “(e) Whoever imparts or conveys, or causes to be im-  
22 parted or conveyed, false information, knowing the in-  
23 formation to be false, concerning an attempt or alleged at-  
24 tempt being made or to be made, to do any act which would

1 ~~be a crime prohibited by subsection (i), (j), (k), or (l)~~  
2 ~~of section 902, shall be subject to a civil penalty of not more~~  
3 ~~than \$1,000 which shall be recoverable in a civil proceed-~~  
4 ~~ing brought in the name of the United States.~~

5 ~~“(d) Except for law enforcement officers of any mu-~~  
6 ~~nicipal or State government, or the Federal Government,~~  
7 ~~who are authorized or required within their official capacities~~  
8 ~~to carry arms, or except for other persons who may be so~~  
9 ~~authorized, under regulations issued by the Administrator,~~  
10 ~~whoever, while aboard, or while attempting to board, any~~  
11 ~~aircraft in, or intended for operation in, air transportation~~  
12 ~~or intrastate air transportation, has on or about his person~~  
13 ~~or his property a concealed deadly or dangerous weapon,~~  
14 ~~which is, or would be, accessible to such person in flight~~  
15 ~~shall be subject to a civil penalty of not more than \$1,000~~  
16 ~~which shall be recoverable in a civil proceeding brought in~~  
17 ~~the name of the United States.”-~~

18 (b) ~~Subsection (a) of section 1395 of title 28, United~~  
19 ~~States Code, is amended by inserting before the period at~~  
20 ~~the end of such subsection a comma and the following: “and~~  
21 ~~in any proceeding to recover a civil penalty under section~~  
22 ~~35 (a) of title 18, United States Code, or sections 901 (e)~~  
23 ~~or (d) of the Federal Aviation Act of 1958, all process~~  
24 ~~against any defendant or witness, otherwise not authorized~~  
25 ~~under the Federal Rules of Civil Procedure, may be served~~

1 in any judicial district of the United States upon an ex parte  
2 order for good cause shown",

3 (c) Section 902 (m) of the Federal Aviation Act of  
4 1958 is amended to read as follows:

5 ~~"FALSE INFORMATION AND THREATS~~

6 ~~"(m) (1) Whoever willfully and maliciously, or with~~  
7 ~~reckless disregard for the safety of human life, imparts or~~  
8 ~~conveys, or causes to be imparted or conveyed, false informa-~~  
9 ~~tion knowing the information to be false, concerning an~~  
10 ~~attempt or alleged attempt being made or to be made, to do~~  
11 ~~any act which would be a felony punishable under subsection~~  
12 ~~(i), (j), or (l) (2) of this section, shall be fined not more~~  
13 ~~than \$5,000 or imprisoned not more than five years, or both.~~

14 ~~"(2) Whoever imparts or conveys, or causes to be~~  
15 ~~imparted or conveyed, any threat to do an act which would~~  
16 ~~be a felony punishable under subsection (i), (j), or (l) (2)~~  
17 ~~of this section, with an apparent determination and will to~~  
18 ~~carry the threat into execution, shall be fined not more than~~  
19 ~~\$5,000 or imprisoned not more than five years, or both."~~

20 (d) ~~The analysis of section 902 (m) of the Federal~~  
21 ~~Aviation Act of 1958 is amended by adding "and threats"~~  
22 ~~immediately after "information".~~

1 (e) Section 903 (b) (1) of the Federal Aviation Act of  
2 1958 is amended by striking out "Such" at the beginning of  
3 the second sentence and inserting in lieu thereof "Except  
4 with respect to civil penalties under section 901 (e) and (d)  
5 of this title, such".

6 SECTION 1. *This Act shall be known as An Act to*  
7 *Combat International Terrorism.*

8 STATEMENT OF FINDINGS AND PURPOSE

9 SEC. 2. (a) *The Congress hereby finds that—*

10 (1) *innocent persons have been killed, injured, and*  
11 *victimized, human rights violated, property destroyed*  
12 *and damaged, and international commerce obstructed as*  
13 *a result of terrorist acts;*

14 (2) *such acts represent an intolerable attack against*  
15 *the fundamental right to life and security of all peoples*  
16 *of the world;*

17 (3) *such acts constitute a threat to the orderly and*  
18 *civilized functions of the international community;*

19 (4) *certain nations exhibit a pattern of support for*  
20 *international terrorist acts; and*

21 (5) *certain international airports fail to maintain*  
22 *consistently effective security measures.*

- 1     *(b) It is therefore the purpose of the Act to—*
- 2             *(1) strengthen Federal capabilities in policy and*  
3     *planning, coordination, intelligence, and response ca-*  
4     *pability and enlist the cooperation of all other nations*  
5     *and national and international organizations in initia-*  
6     *tives to counter terrorist acts more effectively throughout*  
7     *the world, while safeguarding democratic values;*
- 8             *(2) promote appropriate action by the United States*  
9     *and other governments in order to combat international*  
10    *terrorism; and*
- 11            *(3) provide public notice to persons traveling in*  
12    *international air commerce of deficient security programs*  
13    *and facilities at certain foreign airports.)*

14                                    DEFINITIONS

15     *SEC. 3. For the purposes of this Act, the following*  
16    *definitions are established:*

17     *(a) "International terrorism" includes any act desig-*  
18    *nated as an offense or crime under—*

19             *(1) the Convention for the Suppression of Unlaw-*  
20    *ful Seizure of Aircraft (done at The Hague, December*  
21    *16, 1970);*

22             *(2) the Convention for the Suppression of Unlaw-*  
23    *ful Acts Against the Safety of Civil Aviation (done*  
24    *at Montreal, September 23, 1971); and*

1           (3) *the Convention on the Prevention and Punish-*  
2 *ment of Crimes Against Internationally Protected Per-*  
3 *sons, including Diplomatic Agents (adopted by the*  
4 *General Assembly of the United Nations at New York,*  
5 *December 14, 1973); or*

6           (4) *any other unlawful act which results in the*  
7 *death, bodily harm, or forcible deprivation of liberty*  
8 *to any person, or in the violent destruction of property,*  
9 *or an attempt or credible threat to commit any such act,*  
10 *if the act, threat, or attempt is committed or takes effect—*

11           (A) *outside the territory of a state of which*  
12 *the alleged offender is a national; or*

13           (B) *outside the territory of the state against*  
14 *which the act is directed; or*

15           (C) *within the territory of the state against*  
16 *which the act is directed and the alleged offender*  
17 *knows or has reason to know that a person against*  
18 *whom the act is directed is not a national of that*  
19 *state, or*

20           (D) *within the territory of any state when*  
21 *found to have been supported by a foreign state as*  
22 *defined in section 3(b), irrespective of the national-*  
23 *ity of the alleged offender:*

24           *Provided, That the act of international terrorism is—*

1           (i) *intended to damage or threaten the inter-*  
2           *ests of or obtain concessions from a state or an*  
3           *international organization; and*

4           (ii) *not committed in the course of military or*  
5           *paramilitary operations directed essentially against*  
6           *military forces or military targets of a state or an*  
7           *organized armed group.*

8           (b) *"State support of international terrorism" shall*  
9           *consist of any of the following acts when committed delib-*  
10          *erately by a state:*

11           (1) *furnishing arms, explosives, or lethal substances*  
12          *to individuals, groups, or organizations with the likeli-*  
13          *hood that they will be used in the commission of any act*  
14          *of international terrorism;*

15           (2) *planning, directing, providing training for, or*  
16          *assisting in the execution of any act of international*  
17          *terrorism;*

18           (3) *providing direct financial support for the com-*  
19          *mission of any act of international terrorism;*

20           (4) *providing diplomatic facilities intended to aid*  
21          *or abet the commission of any act of international terror-*  
22          *ism; or*

23           (5) *allowing the use of its territory as a sanctuary*  
24          *from extradition or prosecution for any act of interna-*  
25          *tional terrorism.*

1        *REPORT ON ACTS OF INTERNATIONAL TERRORISM*

2        *SEC. 4. (a) Six months after the date of enactment of*  
3 *this Act and every six months thereafter, the Secretary of*  
4 *State shall transmit to the President pro tempore of the*  
5 *Senate and the Speaker of the House of Representatives*  
6 *a report on those incidents he determines to be acts of inter-*  
7 *national terrorism pursuant to section 3 of this Act: Pro-*  
8 *vided, however, That any such incident which affects or in-*  
9 *volves citizens or significant interests or property of the*  
10 *United States shall be reported to Congress not later than*  
11 *thirty days after the occurrence of such an incident.*

12        *(b) Such report shall include, but not be limited to, the*  
13 *following information:*

14            *(1) a description of the incident and of the involve-*  
15 *ment and identity of each individual, entity, group, or*  
16 *organization involved in such incident;*

17            *(2) the identity of any government providing state*  
18 *support for such acts of international terrorism, and*  
19 *a statement setting forth the exact nature and extent of*  
20 *such government's involvement;*

21            *(3) a description of the actions of any government*  
22 *which assisted in bringing about a positive termination*  
23 *of the incident;*

24            *(4) a description of the response of the United States*  
25 *Government to such incident.*

1       (c) Nothing in this section is intended to require the  
2 public disclosure of information which is properly classified  
3 under criteria established by Executive order, or is otherwise  
4 protected by law. Such information shall be provided to the  
5 President pro tempore of the Senate and the Speaker of the  
6 House of Representatives in a written classified report. In  
7 such case, an unclassified summary of such information shall  
8 be prepared and submitted to the President pro tempore of the  
9 Senate and the Speaker of the House of Representatives.

10       (d) Nothing in this section is intended to require dis-  
11 closure of investigatory records compiled for law enforcement  
12 purposes specifically protected by section 522(C)(b)(7) of  
13 title 5, United States Code.

14 LIST OF STATES SUPPORTING INTERNATIONAL TERRORISM

15       SEC. 5. (a) Six months after the date of enactment of  
16 this Act and every six months thereafter, the President shall  
17 consider which, if any, states have demonstrated a pattern of  
18 support for acts of international terrorism. If the President  
19 determines that any states have so acted, he shall submit a  
20 list of states supporting international terrorism to the Pres-  
21 ident pro tempore of the Senate and the Speaker of the House  
22 of Representatives, and set forth his reasons for listing  
23 any such states. If the President determines that no states  
24 have undertaken such acts, he shall report the same with a  
25 detailed explanation.

1       (b) Such list shall also identify any states against which  
2 sanctions have been applied pursuant to section 6 of this Act,  
3 and any other initiatives of the United States with respect to  
4 such states.

5       (c) Nothing in this section is intended to require the pub-  
6 lic disclosure of information which is properly classified  
7 under criteria established by Executive order, or is otherwise  
8 protected by law. Such information shall be provided to the  
9 President pro tempore of the Senate and the Speaker of the  
10 House of Representatives in a written classified report. In  
11 such case, an unclassified summary of such information shall  
12 be prepared and submitted to the President pro tempore of the  
13 Senate and the Speaker of the House of Representatives.

14       (d) Nothing in this section is intended to require dis-  
15 closure of investigatory records compiled for law enforce-  
16 ment purposes specifically protected by section 522(C)(b)  
17 (7) of title 5, United States Code.

18       (e)(1) The list shall be reviewed periodically by the  
19 President. The President may propose to Congress a request  
20 for removal of any state from the list. Such request shall be  
21 accompanied by the reasons therefor.

22       (2) A state requested by the President to be deleted from  
23 the list shall be removed from the list thirty days after the  
24 submission of that request to the Congress unless Congress by  
25 concurrent resolution disapproves that request.

1 *PRESIDENTIAL AUTHORITY TO COMBAT INTERNATIONAL*  
2 *TERRORIST ACTS*

3 *SEC. 6. (a) When a foreign government is listed pur-*  
4 *suant to section 5 of this Act, the President shall—*

5 *(1) provide no assistance under the Foreign As-*  
6 *sistance Act of 1961, or*

7 *(2) not authorize any sale, or extend any credit or*  
8 *guaranty, with respect to any defense article or service*  
9 *as defined by section 47 of the Arms Export Control Act,*  
10 *or*

11 *(3) approve no export license for the export of com-*  
12 *modities or technical data which has a potential military*  
13 *application or which would otherwise enable a foreign*  
14 *government to support acts of international terrorism, or*

15 *(4) extend no duty-free treatment under title V of*  
16 *the Trade Act of 1974.*

17 *(b) If the President finds that the interests of national*  
18 *security so require, he may suspend the applicability of any*  
19 *part of the prohibitions listed in subsection (a) of this section*  
20 *in such case. He shall report his reasons therefor in writing*  
21 *to the President pro tempore of the Senate, and the Speaker*  
22 *of the House of Representatives and those prohibitions shall*  
23 *not apply.*

24 *(c) In devising initiatives to combat international ter-*  
25 *rorist actions and to reduce state support for such actions, the*

1 *President shall take such other measures available to him as*  
2 *he deems appropriate; he shall take into account the effective-*  
3 *ness of specific sanctions in inducing change in a country's*  
4 *policy or practice of supporting acts of international terror-*  
5 *ism; the likely effect of sanctions on overall United States*  
6 *relations with such country or with other countries; and the*  
7 *effect such sanctions would have on other United States na-*  
8 *tional interests.*

9 *(d) The President shall take all appropriate diplomatic*  
10 *measures consistent with international obligations to support*  
11 *the effectiveness of actions taken pursuant to this authority*  
12 *in the accomplishment of the purposes of this Act.*

13 *(e) The President shall promptly and fully inform the*  
14 *President pro tempore of the Senate and the Speaker of the*  
15 *House of Representatives of each exercise of authority*  
16 *granted under the Act.*

17 *REPORT ON FEDERAL AND INTERNATIONAL CAPABILITIES*  
18 *TO COMBAT TERRORISM*

19 *SEC. 7. (a) Not later than six months after the date of*  
20 *enactment of this Act, and at intervals of two years there-*  
21 *after, the President shall submit to the President pro tem-*  
22 *pore of the Senate and the Speaker of the House of Rep-*  
23 *resentatives a Report on Federal and International Capa-*  
24 *bilities To Combat Terrorism. Such report shall include a*  
25 *comprehensive and specific review of Federal antiterrorism*

1 organization, policies, and activities. It shall include a de-  
2 scription and evaluation of the effectiveness of relevant Federal  
3 organizational structures, planning, coordination, including  
4 with State and local authorities, response capability, intelli-  
5 gence gathering and analysis, assistance to and cooperation  
6 with United States business representatives abroad, and se-  
7 curity preparedness and security adequacy of United States  
8 diplomatic and military installations. Such report shall fur-  
9 ther include a statement and evaluation of all revelant Fed-  
10 eral policies, including those with respect to responding to  
11 threats, and the management of a terrorist incident. The re-  
12 port shall contain an assessment of the capability and effec-  
13 tiveness of the International Civil Aviation Organization and  
14 other international programs and organizations to establish  
15 appropriate airport security standards and combat terrorist  
16 activities.

17 (b) Nothing in this section is intended to require the  
18 public disclosure of information which is properly classified  
19 under criteria established by Executive order, or is otherwise  
20 protected by law. Such information shall be provided to the  
21 President pro tempore of the Senate and the Speaker of the  
22 House of Representatives in a written classified report. In  
23 such case, an unclassified summary of such information  
24 shall be prepared and submitted to the President pro tempore  
25 of the Senate and the Speaker of the House of Representatives.

1            *INFORMATION ON FOREIGN AIRPORT SECURITY*

2            *SEC. 8. Section 1115 of the Federal Aviation Act of*  
3            *1958 (49 U.S.C. 1515) relating to security standards in*  
4            *foreign air transportation is amended to read as follows:*

5            *"SECURITY STANDARDS IN FOREIGN AIR*

6                            *TRANSPORTATION*

7            *"SEC. 1115. (a) The Secretary of Transportation shall*  
8            *conduct at such intervals as the Secretary shall deem nec-*  
9            *essary an assessment of the effectiveness of the security meas-*  
10           *ures maintained at those foreign airports serving United*  
11           *States carriers, those foreign airports from which foreign*  
12           *air carriers serve the United States, and at such other foreign*  
13           *airports as the Secretary may deem appropriate. Such*  
14           *assessments shall be made by the Secretary in consultation*  
15           *with the appropriate aeronautic authorities of the concerned*  
16           *foreign government. The assessment shall determine the ex-*  
17           *tent to which an airport effectively maintains and administers*  
18           *security measures. The criteria utilized by the Secretary*  
19           *in assessing the effectiveness of security at United States*  
20           *airports shall be considered in making such assessments and*  
21           *shall be equal to or above the standards established pursuant*  
22           *to the Convention on International Civil Aviation. The as-*  
23           *essment shall include consideration of specific security pro-*  
24           *grams and techniques, including but not limited to, physical*

1 *and personnel security programs and procedures, passenger*  
2 *security and baggage examination, the use of electronic,*  
3 *mechanical or other detection devices, airport police and*  
4 *security forces, and control of unauthorized access to the*  
5 *airport aircraft, airport perimeter, passenger boarding, and*  
6 *cargo, storage, and handling areas.*

7       “(b) *The report to the Congress required by section 315*  
8 *of this Act shall contain:*

9               “(1) *A summary of those assessments conducted*  
10 *pursuant to subsection (a) of this section. The summary*  
11 *shall identify the airports assessed and describe any*  
12 *significant deficiencies and actions taken or recommended.*

13               “(2) *A description of the extent if any to which*  
14 *specific deficiencies previously identified, if any, have*  
15 *been eliminated.*

16       “(c) *When the Secretary finds that an airport does*  
17 *not maintain and administer effective security measures at*  
18 *the level of effectiveness specified in subsection (a) of this*  
19 *section, he shall notify the appropriate authorities of such*  
20 *foreign government of his finding, and recommend the steps*  
21 *necessary to bring the security measures in use at that airport*  
22 *to the acceptable level of effectiveness.*

23       “(d)(1) *Not later than sixty days after the notifica-*  
24 *tion required in subsection (c) of this section and upon a*  
25 *determination by the Secretary that the foreign government*

1 *has failed to bring the security measures at the identified*  
2 *airport to the level of effectiveness specified in subsection*  
3 *(a) of this section, he—*

4       “(A) *shall publish in the Federal Register and*  
5 *cause to be posted and prominently displayed at all*  
6 *United States airports regularly serving scheduled air*  
7 *carrier operations the identification of such airport; and*

8       “(B) *after consultation with the appropriate aero-*  
9 *nautical authorities of such government and, notwith-*  
10 *standing section 1102 of this Act, may, with the approval*  
11 *of the Secretary of State, withhold, revoke, or impose*  
12 *conditions on the operating authority of any carrier or*  
13 *foreign air carrier to engage in foreign air transporta-*  
14 *tion utilizing that airport.*

15       “(2) *The Secretary shall promptly report to the Con-*  
16 *gress any action taken under this subsection setting forth*  
17 *information concerning the attempts he has made to secure*  
18 *the cooperation of the nation in attaining the acceptable level*  
19 *of effectiveness.”.*

20       AVIATION SECURITY ASSISTANCE TO FOREIGN

21                       GOVERNMENTS

22       SEC. 9. (a)(1) *The Secretary of Transportation is au-*  
23 *thorized to promote the achievement of international avia-*  
24 *tion security by providing technical assistance concerning*  
25 *aviation security to foreign governments. Such technical*

1 assistance may include the conduct of surveys to analyze  
2 the level of aviation security in airports and the provision  
3 of training in aviation security to foreign nationals. Such  
4 training in aviation security may be conducted either in the  
5 United States or in foreign nations. The Secretary may  
6 provide for the payment of subsistence and expenses for  
7 travel within the United States for foreign nationals receiv-  
8 ing such aviation security training in the United States.

9 (2) The Secretary may require a foreign government  
10 to reimburse the United States for all, part, or none of the  
11 cost of providing the technical assistance authorized under  
12 paragraph (1).

13 (b) There is authorized to be appropriated to carry out  
14 the provisions of this subsection an amount not to exceed  
15 \$100,000 for each of the fiscal years 1980, 1981, and 1982.

16 PRIORITIES FOR NEGOTIATION OF INTERNATIONAL  
17 AGREEMENTS

18 SEC. 10. (a) The President is hereby urged to seek in-  
19 ternational agreements to assure more effective international  
20 cooperation in combating terrorism.

21 (b) High priority in the negotiation of such agreements  
22 should be given to agreements which include, but which need  
23 not be limited to the following:

24 (1) establishment of a permanent international  
25 working group, including subgroups on topics as may be

1       *appropriate, including but not limited to, law enforce-*  
 2       *ment and crisis management, which would combat inter-*  
 3       *national terrorism by—*

4               (A) *promoting international cooperation*  
 5               *among countries; and*

6               (B) *developing new methods, procedures, and*  
 7               *standards to combat international terrorism;*

8       (2) *establishment of means to effect observance of—*

9               (A) *the Convention for the Suppression of Un-*  
 10              *lawful Seizure of Aircraft (The Hague, Decem-*  
 11              *ber 16, 1970);*

12              (B) *the Convention for the Suppression of Un-*  
 13              *lawful Acts Against the Safety of Civil Aviation*  
 14              *(Montreal, September 23, 1971); and*

15              (C) *the Convention on the Prevention and*  
 16              *Punishment of Crimes Against Internationally Pro-*  
 17              *TECTED Persons, Including Diplomatic Agents (New*  
 18              *York, December 14, 1973);*

19       (3) *establishment of international legal requirements*  
 20       *to prohibit and punish the act of taking hostages.*

21       EXTENSION OF EXISTING SECURITY MEASURES

22       SEC. 11. *Section 315(b) of the Federal Aviation Act of*  
 23       *1958 (49 U.S.C. 1356(b)) is amended by adding the words*  
 24       *“or charter” immediately after the word “scheduled” where*  
 25       *it first appears.*

## EXPLOSIVE TAGGANTS

1

2       *SEC. 12. (a) Section 841 of title 18, United States*  
3 *Code, is amended by adding at the end thereof the following:*

4       “(o) ‘Identification taggant’ means any substance  
5 which (1) is added to an explosive material during the man-  
6 ufacture of such material and (2) is retrievable after detona-  
7 tion and permits the identification of the manufacturer, the  
8 date of manufacture of such material, and provides such other  
9 information as determined by the Secretary of the Treasury.

10       “(p) ‘Detective taggant’ means any substance which (1)  
11 is added to an explosive material during the manufacture of  
12 such material, and (2) permits detection of such material  
13 prior to its detonation.”.

14       *(b) Section 842 of title 18, United States Code, is*  
15 *amended by adding at the end thereof the following:*

16       “(l) One year after the date of the enactment of this  
17 Act, it shall be unlawful for any person or persons to manu-  
18 facture any explosive material which does not contain an  
19 identification taggant which satisfies the standards promul-  
20 gated by the Secretary as provided in section 847.

21       “(m) Two years after the date of the enactment of this  
22 Act, it shall be unlawful for any person or persons to manu-  
23 facture any explosive material which does not contain a detec-  
24 tion taggant which satisfies the standards promulgated by the  
25 Secretary as provided in section 847.

1       “(n) Two years after the date of the enactment of this  
2 Act, it shall be unlawful for any person or persons to trans-  
3 port, ship, distribute, or receive, or cause to be transported,  
4 shipped, distributed, or received, in interstate or foreign com-  
5 merce any explosive material which does not contain an identi-  
6 fication taggant which satisfies the standards promulgated by  
7 the Secretary as provided in section 847.

8       “(o) Three years after the date of the enactment of this  
9 Act, it shall be unlawful for any person or persons to trans-  
10 port, ship, distribute, or receive, or cause to be transported,  
11 shipped, distributed, or received, in interstate or foreign com-  
12 merce any explosive material which does not contain a detec-  
13 tion taggant which satisfies the standards promulgated by the  
14 Secretary as provided in section 847.

15       “(p) One year after the date of the enactment of this  
16 Act, it shall be unlawful for any person or persons to import  
17 any explosive material which does not contain an identifica-  
18 tion taggant which satisfies the standards promulgated by  
19 the Secretary as provided in section 847.

20       “(q) Two years after the date of the enactment of this  
21 Act, it shall be unlawful for any person or persons to import  
22 any explosive material which does not contain a detection  
23 taggant which satisfies the standard promulgated by the Secre-  
24 tary as provided in section 847.

25       “(r) Two years after the date of the enactment of this

1 Act, it shall be unlawful for any person to resell or otherwise  
2 dispose of any explosive material sold as surplus by a mili-  
3 tary or naval service or other agency of the United States  
4 which does not contain an identification taggant which satis-  
5 fies the standards promulgated by the Secretary as provided  
6 in section 847. The shipment of surplus explosive materials  
7 from the military establishment where sold to the purchaser's  
8 place of business shall be in accordance with regulations  
9 promulgated by the Secretary.

10       “(s) Three years after the date of the enactment of this  
11 Act, it shall be unlawful for any person to resell or otherwise  
12 dispose of any explosive material sold as surplus by a military  
13 or naval service or other agency of the United States which  
14 does not contain a detection taggant which satisfies the stand-  
15 ards promulgated by the Secretary as provided in section 847.  
16 The shipment of surplus explosive materials from the military  
17 establishment where sold to the purchaser's place of business  
18 shall be in accordance with regulations promulgated by the  
19 Secretary.

20       “(t) The Secretary shall by regulation defer one or  
21 more of the time periods specified in paragraphs 1 through  
22 8 by extensions of not more than one year at a time until he  
23 is satisfied that taggants: are available in sufficient quantity  
24 for commercial purposes; will not impair the quality of the  
25 explosive materials for their intended use; are not unsafe;

1 or will not adversely affect the environment. The Secretary  
2 shall inform the Congress sixty days prior to each extension,  
3 specifying the reasons for such extension, and estimating the  
4 time he expects the provisions of this section will become  
5 effective.

6 “(u) Black and smokeless powders, used as propellant  
7 powders, shall be excluded from the provisions of this Sec-  
8 tion until the Secretary of the Treasury, in consultation  
9 with the Committees on Commerce and Governmental Af-  
10 fairs of the Senate, deems that appropriate technology allows  
11 inclusion of taggants in propellant powders.

12 “(v) The requirements of paragraphs (1) through  
13 (6) of this subsection shall not apply to any explosive ma-  
14 terial designated by the President or the Secretary of Defense  
15 as an explosive material to be used by the Department of  
16 Defense or another agency of Government for national de-  
17 fense or security purposes. Any explosive material so desig-  
18 nated shall be reported promptly to the Secretary of the  
19 Treasury.”

20 (c) Section 844(a) of title 18, United States Code, is  
21 amended (1) by striking out “(a) Any” and inserting in  
22 lieu thereof “(a)(1) Any”, and (2) by adding at the end  
23 thereof the following new subsection:

24 “(2) Any person who violates subsection (1) of section

1 842 of this chapter shall be fined not more than \$10,000 or  
2 imprisoned not more than ten years, or both.”.

3 (d) Section 845(a) of title 18, United States Code, is  
4 amended by inserting a new paragraph immediately follow-  
5 ing paragraph (6) as follows:

6 “(7) the provisions of subsection (1) of section 842  
7 of this title shall apply to paragraphs (4) and (5) of  
8 this subsection.”.

#### 9 IMPLEMENTATION OF MONTREAL CONVENTION

10 SEC. 13. The President shall develop standards and  
11 programs to insure the full implementation of the provisions  
12 of the Convention for the Suppression of Unlawful Acts  
13 Against the Safety of Civil Aviation (Montreal, September  
14 23, 1971).

#### 15 AIRCRAFT SABOTAGE

16 SEC. 14. (a) Section 31 of title 18, United States Code,  
17 is amended by striking out the words “Civil Aeronautics Act  
18 of 1938” and inserting in lieu thereof the words “Federal  
19 Aviation Act of 1958” and by adding at the end thereof the  
20 following two paragraphs:

21 “‘In flight’ means any time from the moment all the  
22 external doors of an aircraft are closed following embarkation  
23 until the moment when any such door is opened for dis-  
24 embarkation. In the case of a forced landing the flight shall  
25 be deemed to continue until competent authorities take over the

1 *responsibility for the aircraft and the persons and property*  
2 *aboard.*

3        *“‘In service’ means any time from the beginning of pre-*  
4 *flight preparation of the aircraft by ground personnel or by*  
5 *the crew for a specific flight until twenty-four hours after*  
6 *any landing; the period of service shall, in any event, extend*  
7 *for the entire period during which the aircraft is in flight.”.*

8        *(b) Section 32, title 18, United States Code, is amended*  
9 *to read as follows:*

10        *“Whoever willfully sets fire to, damages, destroys, dis-*  
11 *ables, or interferes with the operation of, or makes unsuitable*  
12 *for use any civil aircraft used, operated, or employed in*  
13 *interstate, overseas, or foreign air commerce; or willfully*  
14 *places a destructive substance in, upon, or in proximity to*  
15 *any such aircraft which is likely to damage, destroy, or dis-*  
16 *able any such aircraft, or any part or other material used,*  
17 *or intended to be used, in connection with the operation of*  
18 *such aircraft; or willfully sets fire to, damages, destroys, or*  
19 *disables any air navigation facility or interferes with the*  
20 *operation of such air navigation facility, if any such act is*  
21 *likely to endanger the safety of such aircraft in flight; or*

22        *“Whoever, with intent to damage, destroy, or disable any*  
23 *such aircraft, willfully sets fire to, damages, destroys, or dis-*  
24 *ables or places a destructive substance in, upon, or in the*  
25 *proximity of any appliance or structure, ramp, landing area;*

1 *property, machine, or apparatus, or any facility, or other*  
2 *material used, or intended to be used, in connection with the*  
3 *operation, maintenance, or loading or unloading or storage*  
4 *of any such aircraft or any cargo carried or intended to be*  
5 *carried on any such aircraft; or*

6 *“Whoever willfully performs an act of violence against*  
7 *or incapacitates any passenger or member of the crew of any*  
8 *such aircraft if such act of violence or incapacitation is likely*  
9 *to endanger the safety of such aircraft in service; or*

10 *“Whoever willfully communicates information, which*  
11 *he knows to be false, thereby endangering the safety of any*  
12 *such aircraft while in flight; or*

13 *“Whoever willfully attempts to do any of the aforesaid*  
14 *acts—shall be fined not more than \$10,000 or imprisoned*  
15 *not more than twenty years, or both.”.*

16 *(c) (1) Chapter 2, title 18, United States Code, is*  
17 *amended by adding a new section after section 32 to read as*  
18 *follows:*

19 *“§ 32A. Offenses in violation of the Convention for the*  
20 *Suppression of Unlawful Acts Against the Safety*  
21 *of Civil Aviation*

22 *“(a) Whoever commits an offense as defined in sub-*  
23 *section (b) against or on board an aircraft registered in a*  
24 *state other than the United States and is afterward found in*

1 this country—shall be fined not more than \$10,000 or im-  
 2 prisoned not more than twenty years, or both.

3 “(b) For purposes of this section a person commits an  
 4 ‘offense’ when he willfully—

5 “(1) performs an act of violence against a person  
 6 on board an aircraft in flight if that act is likely to en-  
 7 danger the safety of that aircraft; or

8 “(2) destroys an aircraft in service or causes dam-  
 9 age to such an aircraft which renders it incapable of  
 10 flight or which is likely to endanger its safety in flight; or

11 “(3) places or causes to be placed on an aircraft in  
 12 service, by any means whatsoever, a device or substance  
 13 which is likely to destroy that aircraft, or to cause dam-  
 14 age to it which renders it incapable of flight, or to cause  
 15 damage to it which is likely to endanger its safety in  
 16 flight; or

17 “(4) attempts to commit, or is an accomplice of a  
 18 person who commits or attempts to commit, an offense  
 19 enumerated in this subsection.”.

20 (2) The analysis of chapter 2 of title 18 of the United  
 21 States Code is amended by adding after item

“32. Destruction of aircraft or aircraft facilities.”

22 the following new item:

“32A. Offenses in violation of the Convention for the Suppression of Un-  
 lawful Acts Against the Safety of Civil Aviation.”.

23 (d) Section 101(34) of the Federal Aviation Act of

1 1958, as amended (49 U.S.C. 1301(34)), relating to the  
2 definition of the term "special aircraft jurisdiction of the  
3 United States," is amended as follows:

4 (1) by deleting the word "or" at the end of subsec-  
5 tion (d)(i);

6 (2) by deleting the word "and" at the end of sub-  
7 section (d)(ii) and inserting in lieu thereof the word  
8 "or"; and

9 (3) by adding a new subsection (d)(iii) as follows:

10 "(iii) regarding which an offense as defined in sub-  
11 section (d) or (e) of article I, section I of the (Mon-  
12 treal) Convention for the Suppression of Unlawful Acts  
13 Against the Safety of Civil Aviation is committed, pro-  
14 vided the aircraft lands in the United States with an  
15 alleged offender still on board; and".

16 (e) Section 902(k) of the Federal Aviation Act of  
17 1958, as amended (49 U.S.C. 1472(k)), is amended by  
18 adding subsection (3) to the end thereof, to read as follows:

19 "(3) Whoever while aboard an aircraft in the special  
20 aircraft jurisdiction of the United States commits an act  
21 which would be an offense under section 32 of title 18, United  
22 States Code, shall be punished as provided therein."

23 (f)(1) Chapter 2 of title 18, United States Code, is  
24 amended by adding at the end thereof the following new  
25 section:

1 "§ 36. *Imparting or conveying threats*

2 " (a) *Whoever imparts or conveys or causes to be im-*  
3 *parted or conveyed any threat to do an act which would be*  
4 *a felony prohibited by section 32 or 33 of this chapter or*  
5 *section 1992 of chapter 97 or section 2275 of chapter 111*  
6 *of this title with an apparent determination and will to carry*  
7 *the threat into execution shall be fined not more than \$5,000*  
8 *or imprisoned not more than five years, or both.*"

9 (2) *The analysis of chapter 2 of title 18 of the United*  
10 *States Code is amended by adding at the end thereof the*  
11 *following new item:*

*"36. Imparting or conveying threats."*

12 *AIRCRAFT PIRACY*

13 *SEC. 15. (a) Section 901 of the Federal Aviation Act*  
14 *of 1958, as amended (49 U.S.C. 1471), is amended by*  
15 *adding at the end thereof the following new subsections:*

16 " (c) *Whoever imparts or conveys or causes to be*  
17 *imparted or conveyed false information, knowing the infor-*  
18 *mation to be false, concerning an attempt or alleged attempt*  
19 *being made or to be made, to do any act which would be a*  
20 *crime prohibited by subsection (i), (j), (k), or (l) of sec-*  
21 *tion 902 of this Act, shall be subject to a civil penalty of*  
22 *not more than \$1,000 which shall be recoverable in a civil*  
23 *action brought in the name of the United States.*

24 " (d) *Except for law enforcement officers of any municipi-*

1 *pal or State government, or the Federal Government, who*  
2 *are authorized or required within their official capacities*  
3 *to carry arms, or other persons who may be so authorized*  
4 *under regulations issued by the Administrator, whoever,*  
5 *while aboard, or while attempting to board, any aircraft in,*  
6 *or intended for operation in, air transportation or intrastate*  
7 *air transportation, has on or about his person or his prop-*  
8 *erty a concealed deadly or dangerous weapon, which is, or*  
9 *would be, accessible to such person in flight shall be subject*  
10 *to a civil penalty of not more than \$1,000 which shall be*  
11 *recoverable in a civil action brought in the name of the*  
12 *United States."*

13 *(b) Subsection (a) of section 1395 of title 28, United*  
14 *States Code, is amended by striking the period at the end*  
15 *of such subsection and adding the following: ", and in any*  
16 *proceeding to recover a civil penalty under section 35(a) of*  
17 *title 18 of the United States Code or section 901(c) or 901*  
18 *(d) of the Federal Aviation Act of 1958, all process*  
19 *against any defendant or witness, otherwise not authorized*  
20 *under the Federal Rules of Civil Procedure, may be served*  
21 *in any judicial district of the United States upon an ex*  
22 *parte order for good cause shown."*

23 *(c) (1) Section 902(m) of the Federal Aviation Act of*  
24 *1958 (49 U.S.C. 1472(m)) is amended to read as follows:*

## FALSE INFORMATION AND THREATS

1

2       “(m)(1) Whoever willfully and maliciously, or with  
3 reckless disregard for the safety of human life, imparts or  
4 conveys or causes to be imparted or conveyed false informa-  
5 tion knowing the information to be false, concerning an  
6 attempt or alleged attempt being made or to be made, to do  
7 any act which would be a felony prohibited by subsection (i),  
8 (j), or (l)(2) of this section, shall be fined not more than  
9 \$5,000 or imprisoned not more than five years, or both.

10       “(2) Whoever imparts or conveys or causes to be im-  
11 parted or conveyed any threat to do an act which would be  
12 a felony prohibited by subsection (i), (j), or (l)(2) of this  
13 section, with an apparent determination and will to carry the  
14 threat into execution, shall be fined not more than \$5,000 or  
15 imprisoned not more than five years, or both.”.

16       (2) The table of contents of the Federal Aviation Act  
17 of 1958, in the matter of title II (subchapter IX, chapter 20  
18 of title 49, United States Code, section 1472(m)), is  
19 amended by redesignating

      “(m) False information.”

20 to read

      “(m) False information and threats.”.

21       (d) Section 903 of the Federal Aviation Act of 1958  
22 (49 U.S.C. 1473) is amended by striking “Such” at the  
23 beginning of the second sentence of subsection (b)(1) of that

1 section, and substituting therefor "Except with respect to civil  
2 penalties under section 901 (c) and (d) of this Act, such".

3 NUCLEAR MATERIAL SECURITY INFORMATION

4 SEC. 16. (a) The Atomic Energy Act of 1954 is  
5 amended by inserting the following new section after section  
6 146:

7 "SEC. 147. NUCLEAR MATERIAL SECURITY IN-  
8 FORMATION.—

9 "a. In addition to any other authority or requirement  
10 regarding protection or disclosure of information and not-  
11 withstanding section 552 of title 5, United States Code, relat-  
12 ing to the availability of records, the Commission shall pre-  
13 scribe such regulations and orders as it may deem necessary  
14 to prohibit the unauthorized disclosure of nuclear material  
15 security information, by whomever possessed, whose un-  
16 authorized disclosure the Commission determines could sub-  
17 stantially facilitate, in transit or at fixed sites as the case  
18 may be, the theft or diversion of plutonium, uranium-233,  
19 uranium enriched to greater than 20 percent in the isotope  
20 235, or any other special nuclear material determined by the  
21 Commission to be readily usable as the fissionable component  
22 of a nuclear explosive device so as to endanger the common  
23 defense and security or the public health and safety.

24 "b. For the purposes of this section the term 'nuclear  
25 material security information' means:

1           “(1) information identifying a licensee's or appli-  
2       cant's detailed material control and accounting proce-  
3       dures for, or measures for the physical protection of,  
4       plutonium, uranium-233, or uranium enriched to  
5       greater than 20 percent in the isotope 235, or any other  
6       special nuclear material determined by the Commission  
7       to be readily usable as the fissionable component of a nu-  
8       clear explosive device including (A) information identi-  
9       fying aspects of facility design, but only if such aspects  
10      of facility design are directly and predominantly related  
11      to the foregoing procedures and measures, and (B) in-  
12      formation identifying inventory differences of such ma-  
13      terial, but only for a period of six months after such in-  
14      formation is compiled or for any longer period of active,  
15      ongoing investigation by any duly authorized agency  
16      or department of the United States Government; and

17           “(2) any studies reports, or analyses concerning  
18      the protection of nuclear materials against theft or di-  
19      version whose disclosure could reasonably be expected  
20      to have a direct and significant adverse impact on the  
21      effectiveness of the material control and accounting pro-  
22      cedures or physical protection measures of licensees for  
23      plutonium, uranium-233, uranium enriched to greater  
24      than 20 percent in the isotope 235, or any other special  
25      nuclear material determined by the Commission to be

1 readily usable as the fissionable component of a nuclear  
2 explosive device.

3 "c. The Commission shall exercise the authority herein  
4 conferred so as to apply the minimum restriction on the  
5 disclosure of such nuclear material security information to  
6 the public, consistent with the objectives of this section. Any  
7 person who violates any provision of this section or rule or  
8 regulation promulgated thereunder, shall be subject to the  
9 civil monetary penalties of section 234 of this Act. Nothing  
10 in this section shall be construed to authorize the withhold-  
11 ing of information from the duly authorized Committees of  
12 the Congress.

13 "d. The Commission is authorized to prescribe such  
14 regulations or orders as it may deem necessary to ensure  
15 that information which is protected from unauthorized dis-  
16 closure under this section shall be disclosed only to persons  
17 as to whom the Commission shall have determined that per-  
18 mitting each such person access to such information will  
19 not substantially facilitate the theft or diversion of pluto-  
20 nium, uranium-233, uranium enriched to greater than 20  
21 percent in the isotope 235, or any other special nuclear  
22 material determined by the Commission to be readily usable  
23 as the fissionable component of a nuclear explosive device.  
24 In support of the foregoing determination, such persons may  
25 be investigated under standards and specifications estab-

1 lished by the Commission: Provided, That any such stand-  
2 ards and specifications shall be no more stringent than those  
3 established by the Commission pursuant to section 161i(2)  
4 of this Act for the investigation of persons engaged in acti-  
5 vities involving special nuclear material: And provided  
6 further, That the Commission shall exercise the authority  
7 conferred herein to the minimum extent necessary to permit  
8 the foregoing determination.”.

9 (b) Section 181 of the Atomic Energy Act of 1954 is  
10 amended as follows:

11 Following the term “Restricted Data” the first time  
12 that term appears, delete “or” and insert “,”;

13 Following the term “defense information,” the first  
14 time it appears insert “or nuclear material security in-  
15 formation protected from disclosure under section 147  
16 of this Act,”;

17 Following the term “Restricted Data” the second  
18 and third times it appears, delete “or” and insert “,”;

19 Following the term “defense information” the sec-  
20 ond and third times it appears, insert “, or such pro-  
21 tected nuclear material security information”.

22 (c) Section 223 of the Atomic Energy Act of 1954  
23 is amended as follows:

24 Following the phrase “subsections 161b., i., or o.”  
25 insert “, or subsection 147a.”

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60

Amend the title so as to read: "A bill to strengthen Federal policies and programs and international cooperation to combat international terrorism."

Senator GLENN. It may not be perfect and the committee will, I am sure, consider proposals to strengthen and improve the legislation. This bill is, however, a step in the right direction, that of doing everything possible in both the unilateral and multilateral areas to fight this menace to our interests and peace.

## WITNESSES

We will now hear from our first panel from the executive branch. It will consist of the Honorable Benjamin H. Read, Deputy Under Secretary for Management, Department of State, accompanied by the Honorable Heyward Isham, Director, Office for Combating Terrorism, Department of State; Mary C. Lawton, Deputy Assistant Attorney General, Department of Justice, accompanied by Sebastian Mignosa, Federal Bureau of Investigation, Department of Justice; Richard F. Lally, Director of Civil Aviation Security Service, Federal Aviation Administration, Department of Transportation; and Stanley J. Marcuss, Senior Deputy Assistant Secretary for Industry and Trade, Department of Commerce.

I welcome you all here today, and whoever would prefer to go first, please proceed either with your full statement or a summary thereof.

**STATEMENT OF HON. BENJAMIN H. READ, DEPUTY UNDER SECRETARY FOR MANAGEMENT, DEPARTMENT OF STATE; ACCOMPANIED BY HON. HEYWARD ISHAM, DIRECTOR, OFFICE FOR COMBATING TERRORISM, DEPARTMENT OF STATE**

Mr. READ. Thank you, Mr. Chairman and members of the committee. I am pleased to appear before the committee today to testify on S. 2236, which is entitled "An Act To Combat International Terrorism."

We consider this an important and timely piece of legislation, building on existing policies, procedures, practices, and programs and representing a significant new national initiative.

(In recent months we have all had grim reminders that international terrorism brutalizes, maims, or kills the innocent and tests the resiliency of societies and governments, and causes physical and psychological damage difficult to estimate.)

(But just as lack of preparedness can invite attack, overreaction can obviously jeopardize liberties; and acts of terrorism and state support for such acts can take multiple forms, requiring highly differentiated responses.)

Combating terrorism, therefore, may require either comprehensive or selective approaches and flexible strategy, including such elements as a firm no-concessions policy which utilizes established communication techniques in incidents involving hostages; clear crisis management authority at Federal and local levels; close coordination and consultation among all responsible agencies; advanced methods of intelligence collection, analysis, and dissemination; and the availability of trained units prepared and ready for swift deployment.

This bill establishes the executive branch and the Congress as partners in the pursuit of strong counterterrorist policies and practices. It represents a commitment to action; a program designed to reduce

support for terrorist acts provided deliberately by some governments; and a framework for informing the Congress and the public about evolving terrorist acts and trends and U.S. capabilities to combat terrorism.)

#### WHAT BILL DOES NOT DO

Before discussing the executive branch views on the pending proposal and its principal features, let me state three points briefly which are not encompassed or affected by this bill.

First, the bill does not signify that we are departing from the multi-lateral initiatives at the United Nations and elsewhere and adopting unilateral approaches. We continue to support all forms of multi-lateral cooperation.

For instance, the U.S. and other members of the International Civil Aviation Organization are now in the process of commenting on the ICAO Council's proposal to strengthen the organization's security annex. We have taken the lead this spring with other like-minded states in seeking additional accessions to the Hague and the Montreal Conventions against hijacking and aircraft sabotage. Already the number of actual or prospective accessions has increased in recent months from 89 to over 100, and the process continues.

Second, this legislative proposal is not aimed at any one state or group of states, but rather at deliberate actions which, when committed by any state, violate fundamental rights to life and security of all peoples.)

Deliberate and willful acts of state support for international terrorism are defined in objective and specific terms. If enacted, the executive branch would, of course, adhere to the strictest standards of impartiality in determining whether the evidence of state conduct demonstrates a pattern of support for international terrorism.

Third, this bill is not a panacea for the grievances which may underlie some acts of international terrorism. These grievances will continue to be addressed in other ways. We understand that success in ameliorating these causes, both real and perceived, may have as great an impact on terrorist activities as anything else.

#### PASSAGE SUPPORTED SUBJECT TO MODIFICATIONS

Mr. Chairman, the administration supports passage of S. 2236, subject to further suggested modifications of the bill. The executive branch places fundamental importance on two proposed changes in particular.

#### AUTOMATIC APPLICATION OF SANCTIONS

The first such proposed change relates to the provisions of section 6(a) dealing with the automatic application of sanctions by the President against listed states which have provided a "pattern of support" for international terrorism, unless he finds that the interests of national security require suspension of such sanctions.

There is no question that positive and premeditated state support helps to perpetuate certain terrorist operations. There is also no question, as Secretary Vance testified before the Senate Government Affairs Committee on January 23 of this year, that sanctions must be appropriate to the specific case and must take into account prob-

able effectiveness, the interests of U.S. citizens living abroad, and our overall political, security, and economic relationships.

In addition, to be effective, sanctions must be fashioned and timed so that they can be altered or lifted in response to the evidence.)

That is why we support the use of a broad range of sanctions, as specified in the bill, but, at the same time, after careful consideration, have concluded that the automaticity of application of such sanctions provided in the bill would reduce their effectiveness.

We may decide, for example, that the use of one of the sanctions cited would reduce the impact of the others. We may wish to apply a stick but retain the option of a carrot if progress is made.

The scope and scale of exports, for example, to be disapproved pursuant to section 6(a)(3) should be carefully selected for maximum effectiveness, as the Department of Commerce witness will point out. An automatic, "all or nothing" list of sanctions simply does not afford the varied approach that we know from experience will yield the best results. We have, therefore, proposed that section 6 be amended accordingly, preserving the same responsibilities to report fully to Congress where any of the listed sanctions are not applied.

#### NATIONAL SECURITY WAIVER PROVISION

In its present form, we feel that the national security waiver provision in section 6(b) may not always be relevant to the task at hand and could pose serious problems in the conduct for foreign policy. We may be dealing with a situation wherein the exclusive goal of the President would be to rein in terrorism—to encourage a nation to desist from aiding terrorists. The country might have little or nothing to do with U.S. national security except in the very broadest sense of the term, although substantial foreign policy and other considerations might be involved.

It is our view that a requirement that the President report his justification for not using any specified sanction would be a desirable alternative to this waiver provision.

This alternative emphasizes the strong reporting and consultative requirement of the President while allowing him to apply creative and flexible responses to the matter at issue—the battle against terrorism. Therefore we recommend, most respectfully that the President be required to consider all of the sanctions and be permitted to use any or all of these sanctions, reporting to the Congress his reasons for not applying any of them.

#### OVERRIDING CONCURRENT RESOLUTION PROVISION

The other proposed modification, to which we ascribe fundamental importance, relates to section 5 of the bill.

As the committee is aware, we have serious constitutional and political objections to the provisions that Congress, by concurrent resolution, can override a Presidential decision to remove a country from the list. Since the bill authorizes the President to determine which countries should properly be listed as pursuing a pattern of support for terrorism based upon his weighing of the evidence against the statutory criteria established in the bill, the making of these determinations becomes an exercise of his constitutional authority to

execute the laws. Only a full legislative act—a statute or joint resolution subject to his approval—can alter the functions conferred on the President by statute or otherwise exercise oversight over his execution of the laws. Ms. Lawton of the Department of Justice is here to speak to this issue in greater detail.

In practical terms, the President's ability to induce and reward changes in patterns of state support for terrorism would be sharply circumscribed, if a decision to remove a state from the list could be vetoed by legislative action, even if the President had found evidence of a change of behavior so that such a listing was no longer justified.

We have therefore proposed a change in this provision which would authorize the President to remove states from the list when he determines that they are no longer exhibiting a pattern of support for international terrorist acts but requires him to inform the Congress fully and promptly of any such change, such action, and the reasons therefor.

#### OTHER AMENDMENTS

There are other amendments which we feel would improve and strengthen the bill.

The first is in the nature of a perfecting amendment to section 4(a) which would have the President rather than the Secretary of State submit required reports since some of the incidents involved will be purely domestic in nature.

The second is we would expand the reporting requirements of section 4(b)(4) to cover not only descriptions of terrorist incidents, but the response of the U.S. Government thereto, including actions taken by the President not encompassed by the legislation that is pending.

Third, and finally, we suggest amendments to the sections dealing with sensitive elements of the required reports. These are found in sections 4(c), 5(c), and 7(b) of the bill.

We look on the bill as a valuable framework for keeping the Congress and the public informed of the significant trends in international terrorism and Federal and international capabilities to combat terrorist acts.

Since much of this information will be sensitive, provision is properly made for classified written reports in the bill, as it stands. However, we believe that periodic classified briefings in executive session to the appropriate committees of the Congress may sometimes be a better method to achieve this protection. We must balance our responsibility to inform the Congress and the public against our responsibility to protect information which terrorists could use against us and others.

We will be discussing with the committee staff language to accomplish the changes that we have suggested. I understand that other agencies will shortly make available to the committee two or three other proposed changes.

#### CONCLUSION

Let me conclude, Mr. Chairman, if I may, with the words of Secretary Vance in his testimony last January, which I cited earlier. He said:

Congress and the administration must work closely on this vital issue so that as a government we are prepared to deal with terrorist acts rapidly, decisively, and effectively.

We continue to believe that this cooperative spirit can result in effective legislation to achieve this important goal.

Ambassador Heyward Isham, Mr. Mark Feldman from the Legal Adviser's Office of the State Department, would be glad to answer any questions which you may have.

Senator GRIFFIN [presiding]. Thank you, Mr. Secretary.

Unless the witnesses have some order they would prefer, we will proceed in the order that appears on our printed agenda.

Accordingly, we will call next on Ms. Mary Lawton, of the Department of Justice, to make her presentation in such manner as she sees fit.

**STATEMENT OF MS. MARY C. LAWTON, DEPUTY ASSISTANT  
ATTORNEY GENERAL, DEPARTMENT OF JUSTICE**

Ms. LAWTON. Thank you, Senator.

I have a nine-page statement which has been furnished to the committee, but I think I can summarize it.

As Secretary Read suggested, the main concern of the Department of Justice is the concurrent resolution provision whereby the Congress would undo what the President has done without legislating.

We maintain, and have always maintained, that this is an unconstitutional approach to the checks and balances situation. There are ways that it can be accomplished so that the Congress, as well as the President, has a say, but each must act in their respective spheres laid out in the Constitution. It is for the President to execute authorities delegated to him; it is for the Congress to legislate and of course to exercise oversight jurisdiction.

But legislation is defined in the Constitution as an act requiring both Houses and submitted to the President for his approval. A concurrent resolution, of course, does not do that.

In the statement we suggest several possible ways that the Congress as well as the President can participate in these determinations without doing violence to the separation of powers principle laid out in the Constitution.

We also have some technical concerns with the reports required by the bill, largely involving law enforcement investigations which may be ongoing at the time a report is required.

International terrorism is defined in this bill to pick up a number of Federal crimes that might take place in the United States—assault on a Federal official, destruction of foreign embassy property, attack on U.N. officials, and so forth. These are within the jurisdiction of the Federal Bureau of Investigation to investigate and of the Department of Justice to prosecute.

We believe it might be a disadvantage to ongoing investigations to have to include them in a public report. There may be grand juries convened in the process of investigating a terrorist incident at the time a report is required, and yet nothing in the bill, as presently drafted, would permit the withholding of this grand jury material, notwithstanding the Federal Rules of Criminal Procedure, which require that it be withheld.

I think this is not the intent of the bill. I think it is a matter of technical draftsmanship which we discuss in the prepared statement, and I believe it can be taken care of.

Another matter of some concern to the Department is the specificity required in the reports dealing with the strengths and weaknesses of Federal responses to terrorism and the strengths and weaknesses of airport security.

It is important for Congress to analyze this in the course of exercising its oversight responsibilities and its appropriations responsibilities. At the same time, to gather all of this information in a single report which may become publicly available, whether or not that is intended, is to, perhaps, write a guidebook for terrorists on where to strike next.

Certainly Congress needs to know the information and needs to know where the Federal Government needs improvement in dealing with terrorism. I think there are better ways, however, than to consolidate it all into one report.

Those are the basic points we have to make, Senator, other than to point out that section 15 of the bill is legislation we believe absolutely necessary—that is, sections 14 and 15—to our final implementation of all our responsibilities under the Montreal Convention. We are quite anxious that it be enacted and be enacted this year.

Senator GRIFFIN. Do you anticipate that the Department will be sending up suggested amendments to take care of these points?

Ms. LAWTON. In the statement, Senator, there are suggestions that I think, while not cast in proposed amendment form, explain what we think needs to be done. We can submit actual drafted amendments if you think that would be helpful.

Senator GRIFFIN. Your full statement will appear in the record at this point.

[Ms. Lawton's prepared statement follows:]

PREPARED STATEMENT OF MARY C. LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL

Mr. Chairman and Members of the Committee, we appreciate the opportunity to comment on S. 2236 as reported by the Committee on Governmental Affairs. While the Department of Justice fully supports efforts to deal more effectively with international terrorism, there are a few provisions of S. 2236 which, in their present form, cause us serious concern.

Section 5 of the bill would require semi-annual reports of the President to the Congress listing nations which have demonstrated a pattern of support for international terrorism, and those nations against which sanctions have been taken. The President's determinations in this regard would be based on the facts and information available to him, information which would be reported to the Congress. Deletion of nations from the list, however, would be accomplished by "proposal" of the President which would become effective only if the Congress has not disapproved such deletion by concurrent resolution. In the opinion of the Department of Justice, this provision is unconstitutional.

As drafted the provision could be read in one of two ways: either the President has been given authority to determine which countries belong on the list but Congress can veto some of this determinations, or the President has been given authority to place countries on the list but only Congress can remove countries from the list. In either case, the provision is constitutionally defective.

If authority has been conferred upon the President by statute to place countries on the list and remove them from it, the responsibility to exercise that authority is vested in him by article II, section 3 of the Constitution. The Congress may revoke the authority granted by statute, but only by enacting another statute in the manner prescribed by Article I, § 7, that is, the action of both Houses and the approval of the President or the override of his veto. Accordingly, if the intent of S. 2236 is to confer on the President the authority to determine which countries should properly be listed as supporting international terrorism, placing names on the list or removing them as the facts warrant, the making of these determinations becomes an exercise of his constitutional authority to execute the laws.

Congress may not limit this authority or review its exercise except by a full legislative act—a statute or joint resolution subject to his approval. This is the sole method prescribed by the Constitution for altering the functions conferred on the President by statute or otherwise exercising oversight over his execution of the law.

If the bill intends to confer on the President the power to place nations on the list but to retain in Congress the power to remove nations from the list, it is likewise defective. As drafted, the bill provides for negative action only. That is, Congress could be silent and a country would presumably cease to be on the list, but Congress could by concurrent legislation retain a name on the list. This is inconsistent with the method of legislating prescribed in Article I. Under the Constitution, the Congress must act in order to exercise its legislative role; it cannot do so through silence. Moreover, every act of the Congress "shall, before it become a Law, be presented to the President of the United States." If, then, Congress intends that only it may remove names from the list of nations supporting terrorism, it must provide for removal by statute.

Congress could, we assume, establish the list directly by statute, reserving as always the power to amend the list by statute. Congress may also confer the authority on the President to establish such a list or to delete countries from it. But if this authority is conferred on the President by statute, a statute is required to revoke it or to control the exercise of power under it. If Congress wishes to be advised of contemplated actions of the President so that it may have forewarning in order to prevent the President's action by alteration of his authority, then this should be accomplished by requiring a notice, as provided in section 5 and an alteration by joint resolution. Compare § 3, Arms Export Control Act, 82 Stat. 1322, as amended, 22 U.S.C. 2753. This is the method prescribed by the Constitution for maintaining the checks and balances among the separate but co-equal branches of Government.

Section 4 of the bill requires that the Secretary of State report to the Congress on acts of international terrorism in considerable detail. It would permit a classified report containing those matter which are properly classified or otherwise protected by law but would require an unclassified summary to be furnished. The final section of the reporting requirement specifies that it is not intended "to require disclosure of investigatory records compiled for law enforcement purposes specifically protected by section 522(C)(b)(7) of title 5, United States Code." The Department of Justice has several concerns with this section.

At the outset, it should be noted that the definition of "international terrorism" in section 3 of the bill encompasses unlawful acts of violence which are committed outside the territory of the state of which the alleged offender is a national "or" outside the territory of the state against which the act is directed, so long as the act is intended to damage or threaten the interests of or obtain concessions from a state or an international organization. Thus, unlawful acts of American citizens directed against the United Nations, a foreign official or a foreign embassy in the United States would be acts of international terrorism as well as violations of federal and, in most cases, State law. These are matters which normally are investigated as federal law violations by the Federal Bureau of Investigation. In our view, it is inappropriate for the Secretary of State to be reporting to the Congress on crimes under investigation by the Department of Justice. If such reports are to be required they should be made by the Attorney General or by the President.

In addition, the requirement of detailed reports on federal criminal investigations poses serious problems of interference with the investigatory process. Grand Jury matters, for example, while protected by Rule 6(e) of the Federal Rules of Criminal Procedure from disclosure are not classified or usually classifiable. Thus, the provision for a classified report in section 4(c) would not protect Grand Jury matters.

It may be that subsection (d) of section 4 was intended to protect these and other investigatory matters from inclusion in the report, but it is not adequate to do so. First, the section cited is obviously incorrect since there is no section 522 in Title 5 of the United States Code. We assume the intent of this provision is to cross-reference the Freedom of Information Act, 5 U.S.C. 552. We are not sure, however, whether the intent is to protect only those records covered by section 552(b)(7)(C) or all records covered by section 552(b)(7). The distinction is important. The only records protected from disclosure under section 552(b)(7)(C) are those the disclosure of which would constitute an unwarranted invasion of privacy. Subsection (b)(7) as a whole, however, also protects against the disclosure of records which would prejudice a defendant's rights, interfere with

legal proceeding, identify a confidential source, disclose law enforcement techniques or methods, or endanger the life of a law enforcement officer. In our view, all of these considerations warrant protection if the reports required by section 4 are to extend to law enforcement investigations in the United States.

As a technical matter, we suggest that it is inappropriate to use a cross-reference to the Freedom of Information Act to provide such protection. That Act, while exempting various Executive branch records from disclosure, including law enforcement records, expressly provides that none of the exemptions apply to disclosures to congressional committees. 5 U.S.C. 552(c). Thus, section 552(b)(7) of Title 5 would not by its own terms permit the exclusion of law enforcement material from the report required by section 4. If such material is to be excluded this can be accomplished more effectively by simply stating that nothing in section 4 is intended to require disclosure of investigatory records compiled for law enforcement purposes.

It should be noted that similar problems arise in connection with section 5(d) of the bill.

We are also concerned with the impact of the detailed reports required by sections 7 and 8 of the bill. In addition to requiring the President to report on federal antiterrorism organization, policies and activities, the provisions require detailed evaluations of the strengths and weaknesses of federal programs and facilities and the security of airports around the world. Not all of this information may be properly classifiable as relating to national defense or foreign policy but it may yet be much too sensitive to be included in a public report. To report publicly on law enforcement tactical plans and techniques for combating terrorism, and to describe publicly whatever weaknesses exist, may serve to aid rather than combat international terrorism. A terrorist who can learn from a public report what airports are weak in baggage security, for example, would be clearly assisted in determining the best chance for blowing up an aircraft.

The Congress has the ability to undertake investigations and conduct hearings in executive session to obtain this information from the various federal agencies involved. Given the possible sensitivity of the information, this would seem to be the wiser course in examining the details of federal capabilities. Consolidating all of this material in a single report, even if it could be classified, increases the risk that it will fall into terrorist hands.

The Department of Justice has no further comments on S. 2236 other than to note that the provisions of section 14 and 15 of the bill are essential to our proper implementation of and effective enforcement of the provision so the Montreal Convention. They are virtually identical to provisions which the Department has proposed to the Congress and we urge their enactment.

#### CONSTITUTIONALITY OF CONGRESSIONAL ACTION WITHOUT PRESIDENTIAL CONCURRENCE

Senator GRIFFIN. With regard to the constitutionality of an action by the Congress without the concurrence of the President, which is a long-simmering matter of dispute between the Congress and the executive, do you think the argument on your side has even more weight and substance when you are talking about an area of foreign relations, in view of the President's powers to conduct foreign policy?

Ms. LAWTON. Yes.

There is, of course, language in court decisions, such as the Curtiss-Wright decision, saying that the President is the sole organ of the Nation in foreign affairs. And yet, we must recognize clearly that the Congress, and most particularly the Senate, has a role in that. But it is a defined role, and executing the laws, carrying out the details of delegated authority is not one of the powers reserved to the Congress.

That is our concern.

The general oversight responsibility, the Senate's treaty responsibilities, the appropriations responsibilities, all of which impact on foreign affairs, clearly belong in the Congress, and that is not in dispute. But I think there is a particular sensitivity in the foreign affairs area, and it is in the Constitution for a very practical reason.

Other nations in the world want to be able to deal with one voice speaking for the United States, and 536 separate voices is more than most nations can cope with in a foreign affairs-diplomatic context.

So, I think it is perhaps even stronger, as you suggest, Senator, in the foreign affairs area. But it is, as you know, a matter of concern to us in all areas.

Senator GRIFFIN. There are a number of staff questions I am supposed to present for the committee, but I think I will wait until all of the members of the panel have had an opportunity to make their presentations.

Next we will turn to Mr. Richard F. Lally, Director of the Civil Aviation Security Service of the Federal Aviation Administration.

**STATEMENT OF RICHARD F. LALLY, DIRECTOR, CIVIL AVIATION SECURITY SERVICE, FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION**

Mr. LALLY. Thank you, Mr. Chairman, but I do not have a statement to offer this morning. I will be available to answer your questions as they may come up in the future, however.

Senator GRIFFIN. Very well.

Our next witness is Mr. Stanley J. Marcuss, Senior Deputy Assistant Secretary for Industry and Trade of the Department of Commerce.

We would be happy to hear from you, sir.

**STATEMENT OF STANLEY J. MARCUSS, SENATOR DEPUTY ASSISTANT SECRETARY FOR INDUSTRY AND TRADE, DEPARTMENT OF COMMERCE**

Mr. MARCUSS. Thank you, Mr. Chairman.

I do have a prepared statement which I have made available to the committee. It is very brief. Let me try to hit the highlights, if I may.

The Department of Commerce fully supports the goal of the bill, which is to devise an effective way to combat international terrorism.

The key question in our minds is how we can be most effective. In that regard I want to echo the State Department's view that combating terrorism requires a comprehensive and flexible strategy. The bill, in our judgment, makes a valuable contribution to that objective.

I do want to emphasize before this committee the crucial importance of flexibility in targeting our response to terrorism in a way that maximizes its potential effectiveness, and effectiveness depends on a wide variety of factors which will differ in different circumstances.

**CONCERNS OVER AUTOMATIC DENIAL OF EXPORT LICENSES**

Our principal concern with the proposed legislation is with the automatic imposition of sanctions against designated countries, particularly the automatic denial of export licenses. Whether the denial of an export license will have the desired effect depends upon a wide variety of circumstances.

These include, for example, whether the product bears a relationship to the Government's activities in support of terrorism; whether

the product is available from countries other than the United States; the effect of a denial on the willingness of the target country to cooperate in altering its support for terrorism; and, the effect of an export license denial on the willingness of other countries to cooperate with the United States in bringing pressure to bear on the target country.

There are other considerations as well. One is the effect on U.S. companies which may have spent time and money on developing business in the target country, only to have it frustrated by the subsequent denial of an export license. Not only the company itself, but its U.S. labor force suffers as well.

A second important consideration is the risks of confiscation or loss of other nongovernmental business which companies doing business in the target country incur if they must refuse to continue doing business with their host governments.

I can say, Mr. Chairman, that these are very real concerns. They have been expressed to me in a wide variety of circumstances by many companies on numerous occasions.

A third is the adverse consequences for other U.S. companies which may be seeking to do business with the target country in circumstances which do not involve embargoed goods.

A fourth is the general erosion of the reputation of the United States as a reliable supplier when foreign buyers cannot count on U.S. companies being able to fulfill commitments made in good faith. The result can have serious consequences for our long-term trading posture.

A fifth is the difficulty of effectively enforcing export control restrictions when they apply to a wide variety of products which are easily obtained by the target country once they are in the general marketplace.

#### NEED FOR FLEXIBLE AND FINELY TARGETED RESPONSE

Now, none of these considerations argue against the imposition of export controls per se as a tool in combating terrorism. What they do point out, however, is the need for a flexible and finely targeted response, one which takes into account the wide variety of circumstances within which the problem may arise.

For example, where goods are freely available from other countries and bear little relationship to terrorist acts themselves, automatic unilateral export controls can do little more than send weak signals which may jeopardize our ability to influence the target country by fundamentally bringing into question the seriousness of our commitment. They may impair the Government's ability to develop an effective and meaningful program in cooperation with other governments, as well. And, they may merely result in the transfer of exports and jobs to other countries.

In 1977, just last spring, Congress amended the Export Administration Act to authorize the imposition of export controls to encourage other countries to deny aid to terrorists. At that time, Mr. Chairman, Congress wisely recognized that such controls should be imposed unilaterally only after efforts at international cooperation had been tried and failed.

As a consequence, the Export Administration Act expressly provides that to achieve the goal of combating terrorism, the President shall make every reasonable effort to secure the removal or reduction of

assistance to terrorism through international cooperation and agreement before he resorts to the imposition of export controls. That was enacted just last year.

For any country which supports international terrorism, various alternatives need to be explored and evaluated and, if appropriate, combined into a comprehensive program. These measures include a wide variety of things. Some of them are mentioned in the bill before the committee, and include the denial of aid, the denial of credit, the mobilization of international public opinion, diplomatic initiatives both with respect to the target country and with respect to other nations which might assist us in imposing sanctions, and, of course, the use of export controls, as presently sanctioned under existing law.

The point I am making is that no one measure or combination of measures or automatic imposition of any measure or combination of measures can work in every situation. The opportunity for a flexible response is needed and fortunately, with respect to export controls, it exists under present law.

In our view, therefore, the automatic imposition of sanctions, as contained in the proposed bill, is unnecessary and, more fundamentally, counterproductive.

Thank you, Mr. Chairman.

Senator GRIFFIN. Thank you.

These questions are going to put you on the spot, but I think they ought to be asked.

#### SUFFICIENCY OF U.S. PROGRAMS TO COMBAT TERRORISM

People are concerned with whether or not the United States, particularly the executive branch and the Congress, is moving to take appropriate steps to deal with this subject. The question is since the State Department, the FAA, the FBI and the Commerce Department all have roles, are our programs to combat terrorism here or to deal with terrorist attacks on U.S. citizens and facilities abroad sufficient to meet the threat imposed by an emphasis on attacking U.S. targets? Are our long range and general efforts, or are they aimed only at coping with individual situations?

That is a general question, but we would like to solicit any comments you could provide on this general subject.

Why don't we begin in the same order as we did earlier.

Mr. READ. Senator Griffin, Secretary Vance was asked a very similar question I think in January when he appeared before Senator Ribicoff's committee. He attempted to set forth the really quite substantial changes and developments that had occurred during the administration in the organizational end of this particular effort. They include a number of things, as you know. There are a number of departments involved because of the multiplicity of types of terrorist activities that can occur.

I am not sure whether your question is primarily directed at organizational issues or any facet thereof, but I would be glad to go over that again if that would be helpful.

Senator GRIFFIN. What I have in mind is to give spokesmen of the Department an opportunity to comment in a broader way on the whole subject. We have a piece of legislation which will make a contribution, but to what extent are we coping overall with the problem and the challenge of terrorism?

Mr. READ. We are satisfied that substantial progress has been made and that this legislation, with the modifications that are suggested, will contribute substantially to that goal.

It is an unending process, obviously—readiness for multiple types of activities. And yet, the Government knows its own capabilities much, much better today than it did a year ago, or even half a year ago. The continuing dialog with the committee members, with Senator Ribicoff's staff and Senator Javits' staff, in particular, and with the committee staff, has indeed sharpened the executive branch response to the efforts that are the common goal of the legislative and executive branches of Government.

A number of steps have been taken and a number are underway. I don't think any of us should be satisfied at any one point in time that we have arrived. If we are, I think we will start slackening our efforts. And yet, there is just no question that there is a greater readiness posture today than there was months ago, and the trend is in the right direction.

Mr. MARCUSS. Mr. Chairman, I can say from our point of view, since we are very directly involved in the export control aspect of this, that this is an issue which does command a fair amount of time and attention. Since passage of the export administration amendments in 1977, which explicitly authorize the imposition of export controls for purposes of combating international terrorism, we have denied or provided negative advisory opinions in some 14 cases with respect to 3 countries which are of concern to us from the standpoint of support of terrorism. These cases involved a substantial amount of U.S. exports.

We are continuing to look at those cases, in cooperation with the State Department, which do give us concern and which provide us with an opportunity to make an impact on the terrorist policies of various countries.

Senator GRIFFIN. Do any of the other members of the panel want to contribute anything on this general question?

Ms. LAWTON. Yes, Senator, if I might.

One thing that has changed, I think, in the last 4 years that is a matter of particular concern to the Justice Department is the improvement in our liaison with State and local law enforcement officers in planning and considering responses to and aiding each other in incidents happening in this country which, of course, would be both Federal and State law violations, in most cases. There has been considerable improvement there. There is a great deal more dialog and planning together with State and local authorities than there had been in the past.

Another area that the Department is particularly concerned with is reviewing, from the standpoint of combating terrorism alone, all of the various programs, restrictions, and proposed legislation in the foreign intelligence-counterintelligence area to make sure that the concerns which are somewhat different in the field of terrorism are addressed and addressed as a discreet subject matter and not simply thrown in as an afterthought in legislation dealing with foreign intelligence.

We have a separate committee of lawyers working with the draftsmen in these areas to make sure that that does not happen.

Senator GRIFFIN. Thank you.

## REVIEW OF FOREIGN AIRPORTS' SECURITY STANDARDS

Section 8 of the bill establishes a program of review of security standards of foreign airports. I wonder if the FAA and perhaps the State Department might comment on this section of the bill, particularly on whether you foresee that other nations will cooperate with such a security program.

Mr. LALLY. Yes, Mr. Chairman. I can comment on that.

This section of the bill would expand primarily the FAA's role in conducting an assessment of the level of the effectiveness of security at foreign airports. This would be a new role for the FAA, as opposed to our previous role, which was restricted primarily to the inspection of airline compliance with Federal aviation regulations.

However, in the conduct of those inspections we did make observations with respect to airport security in foreign nations and we did make recommendations to other nations based on our observations. Those recommendations were generally very well received by other nations. We had never, that I can recall, run into the refusal or total uncooperative attitude on the part of another nation.

Our experience indicates that nations are willing and desirous of improving the security of their airports, and we think that this section of the bill basically demonstrates the United States resolve to achieve continuing improvements, and we think it will make a contribution toward that goal.

Mr. READ. We concur in that assessment, Mr. Chairman.

There are obvious technical constraints, and significant ones, on just how far any element of the U.S. Government can go in evaluating and surveying airports elsewhere. We have to recognize a limitation which is real. And yet, the bill, it seems to us, is worthwhile and desirable in this particular section, and we support it as it stands.

## FOREIGN COUNTRIES' REACTION TO BILL

Senator GRIFFIN. Foreign countries will be affected in various ways by the enactment of this bill. That is one way. Other ways, of course, have to do with sanctions that will be imposed if nations are put on the list, among other things.

Has there been any reaction concerning this bill by foreign countries who may be affected by it?

Ambassador ISHAM. I would speak to that, Mr. Chairman.

We have discussed with a number of countries that might be prospective candidates to be listed, particularly the governments of Libya and Iraq, the pending consideration of this bill and its provisions. These discussions have been very useful, both to make clear to those governments the definite concern in our country and in the Congress about the issue, and the potential impact upon them.

So I think that already, even in that preliminary stage, it has served as an adjunct to our diplomatic representations.

Mr. READ. Let me add just a point.

On page 41 of the bill, in section 8, the approval of the Secretary of State is part of the provision, as set forth, and it is for a whole variety of reasons. Obviously there is a network of bilateral conventions and other conventions that exist that have to be taken into account. They have different terms and different provisions and many different elements that we want to take into account.

## POLITICAL IMPACT OF LISTING NATIONS AIDING TERRORISTS

Senator GRIFFIN. The legislation requires the listing of nations aiding international terrorists and the imposition of certain sanctions on those nations listed. What impact will the listing of a known terrorist sympathizer, such as Libya or South Yemen, have on our relations with the more moderate Arab States?

Mr. READ. We don't think that in the cases you have just cited there will be a major political impact. The moderate states in that region are very conscious of the need for international cooperation to get at this root problem. It affects them as much as it does us.

We do not expect or anticipate a major foreign policy problem from this.

## NATIONS WHICH WOULD BE AFFECTED BY LEGISLATION

Senator GRIFFIN. I am not going to put you on the spot to the extent of expecting you to respond in open session on this today, but what countries do you believe would be placed on the list today if this legislation were in effect?

Mr. READ. I will, indeed, duck and weave on that, if I may, Mr. Chairman.

Senator GRIFFIN. I think this committee ought to know, if we can get it out of the State Department, the nations that are going to be affected by this bill if it is enacted.

Mr. READ. Well, we have in that correspondence with Senator Javits given that list which you have just alluded to. It would be very unwise of me, I think, to try to make additions or subtractions from that list as it stands in open session. I think it is going to require, once enacted, the most careful scrutiny as to what the most recent trend and pattern of evidence is, and whether, indeed, it does constitute a pattern. That will not be an easy task, as I am sure your earlier witnesses today indicated.

Senator GRIFFIN. I rather suspected that would be your answer.

There are a number of other questions we may submit to particular members of the panel. Perhaps you could provide your answers in writing. With the option of any of you adding anything you wish at this point, I think we will move on to the next panel because of the Senate schedule. Otherwise we risk cutting them out.

If there are no further contributions, I thank you all very much for your testimony. I am sure it is going to be very helpful to the committee.

## WITNESSES

Next we will hear from a panel of nongovernmental spokesmen. It consists of Prof. John F. Murphy of the University of Kansas Law School, Capt. Tom Ashwood of the Airline Pilots Association, and Prof. Alona Evans of the Department of Political Science of Wellesley College.

I don't know how you would like to proceed. If you have no objection, we can proceed in the order in which I have listed you. Otherwise, I would be glad to accommodate whatever desires the panel members might have.

First, therefore, we will hear from Prof. John F. Murphy of the University of Kansas Law School, Lawrence, Kans.

Please proceed as you see fit.

**STATEMENT OF JOHN F. MURPHY, PROFESSOR OF LAW, UNIVERSITY OF KANSAS SCHOOL OF LAW, LAWRENCE, KANS.**

Mr. MURPHY. Thank you, Mr. Chairman, I understand that our time is very limited this morning and that we should keep our remarks limited to 10 minutes. I therefore will make my remarks brief.

I do have a written statement that, with your permission, I would like to submit for the record.

Senator GRIFFIN. Your statement will be printed in the record.

Mr. MURPHY. I would also, if I might, like to ask permission that two other documents go into the record.

I submitted written testimony on the early version of this bill before the Governmental Affairs Committee. Also, there is a brief paper which Professor Evans and I prepared, which summarizes the major conclusions and recommendations of a report on the legal aspects of international terrorism, which a working group, under our codirection, prepared for the Department of State under an LEAA grant. That contains a number of provisions regarding recommendations concerning legislation.

If you have no objection, I would like to ask that those documents be accepted as a part of the record.

Senator GRIFFIN. The two documents will be made a part of the record of this hearing following your statement.

Mr. MURPHY. Thank you very much, Mr. Chairman.

In the brief time that I have available this morning, I would like to focus my comments on three aspects, three areas of this bill. In doing so, I should mention that I have also in my written statement commented on the other sections, But for purposes of oral remarks, I would like to limit my comments to the three areas of: first, the organization of Government conduct to combat terrorism; second, the definitions in section 3; and third, the lists of States supporting international terrorism and the Presidential authority to combat international terrorism.

**ORGANIZATION OF GOVERNMENT TO COMBAT TERRORISM**

First, with respect to the area of the organization of the Government to combat terrorism, the earlier version of S. 2236 contained provisions calling for reorganization of the Government, and also made a reference to the need to combat terrorism on the basis of high priority.

I would submit that one of the major problems in this area is with respect that the executive branch has not given enough of a high priority to combating terrorism; that by and large this matter has been handled on an ad hoc basis in the absence of long-range planning; and indeed, I think symptomatic of this is the high rate of turnover that one has seen in the important office of the Director of the Office for Combating Terrorism. There have been five directors within a brief period of time.

I therefore would submit that Congress carefully consider the reports that are to be submitted under this bill, both with a view to considering the adequacy of the organizational structure and, equally important, exactly what kind of priority the executive branch is giving to combat terrorism.

Senator GRIFFIN. In other words, you would take some issue, then, with the peaches and cream assessment we heard a few minutes ago.

Mr. MURPHY. With respect, sir, yes, I would.

I should hasten to add that I am not completely condemning in my remarks.

There have been some useful steps taken. Indeed, the people who have been in the office have been highly competent people. They have had very little time to work on the problem in most cases. However, I do believe there is much more that can be done. I do believe there is a need for high level, long-range planning in this area that has been sorely missing up to this point.

Senator GRIFFIN. If I might comment, I think the Congress hasn't exactly had this as its highest priority item, either. Perhaps the fact that we don't have very many members of the committee here is some indication. I think both branches can be criticized.

Mr. MURPHY. I would concur with that assessment, Mr. Chairman.

#### QUESTION OF DEFINITIONS IN SECTION 3

The second area that I would like to focus on is the question of definitions in section 3 of the bill. This, of course, is a key section.

This section defines the concept of international terrorism and state support of international terrorism.

First, let me just comment that these are devilishly difficult concepts to define. The world community has not defined them. Scholars have not agreed on a definition of them.

Nonetheless, the definition of these concepts is crucially important for the purpose of this legislation.

With respect to the definition of "international terrorism," I think it is important that the definition clearly distinguish between so-called state terrorism and individual acts of terrorism. The bill does not seek to deal with so-called acts of state terrorism, such as violation of the laws of war, torture, interception of civil aviation. I therefore would suggest that it would be useful to revise section 3(a) by including after the term "acts," for example, the words, "committed by a private person or a group of private persons," to make this coverage precise and explicit.

Otherwise, I believe that the definition of international terrorism in section 3(a) may be slightly too narrow. The definition in its present form is based largely on the wording that appears in the U.S. Draft Convention that was introduced in 1972 in the wake of the Munich murders. That definition was purposely kept quite narrow in an effort to gain as wide as possible number of adherents, particularly from the so-called Third World countries.

For a variety of reasons, the United States was not successful in this endeavor. But in any event, it would seem to me that the definition for purposes of this legislation might perhaps be somewhat more encompassing in its scope.

Possible gaps that I see in this area deal, for example, with, say, interference with power systems that would result with a blackout, or interference with computer networks that retain vital information for the Government and for private persons.

These might not be deemed to involve debt, bodily harm, or even the violent destruction of property, and yet they have been considered in this general area of terrorism.

Similarly, an attack by a U.S. national, say, of an offshore oil rig or on a marine research installation would, in light of the worldwide energy crisis probably have an international dimension, an international scope; yet this would arguably not be covered.

Finally, the terrorism can become international in scope when perpetrators flee across state boundaries.

Therefore, for these reasons, I have suggested certain revisions to section 3(a), which are set forth on page 6 of my statement.

The next area of definition is the crucially important one of state support of international terrorism.

Here there is a need, I would submit, for a narrow definition, in order to avoid including friends as well as enemies. There is, it would seem, a need to distinguish between general financial aid to the Palestine Liberation Organization and supplying arms directly to the Red Brigade.

On the whole, I believe that section 3(b) does make this distinction in an adequate fashion. One possible problem area that I see is in subsection (4), relating to the question of the use of a territory as a sanctuary. The problem here is that this section raises the difficult issue of granting of political asylum versus the duty to prosecute or extradite. I would therefore suggest simply adding language there along the lines of "giving sanctuary in violation of international obligations to prosecute or extradite perpetrators of acts of international terrorism."

#### AUTOMATIC APPLICATION OF SANCTIONS

The next subject—and the last one—that I would like to comment on this morning is the one that has been the focus of comments previously, namely sections 5 and 6 of the bill, which relate to a list of states supporting international terrorism and the Presidential authority to combat international terrorism.

As has been pointed out, if the President determines that a state is supporting international terrorism and includes that state's name on the list, he would automatically have to apply one or more of the sanctions listed in section 6(a) unless the interests of national security were to dictate otherwise.

Like some of the previous speakers, I am also troubled by the automatic nature of the process. I think the issue may have been framed in a somewhat unfortunate matter.

The issue is often framed as a conflict between the Congress and the executive branch as to who has authority in the conduct of foreign affairs.

I would like to put the issue somewhat differently. I think the issue is whether sanctions against the country deemed to be supporting international terrorism should ever be applied automatically, no

matter who is making the decision, Congress or the executive branch, without considering factors other than the interests of national security and the mere fact that this country has appeared on a list.

In this connection, I note by way of comparison subsection (c) of section 6(a) and the factors listed there. These factors take into account such matters as the likely effectiveness of the application of sanctions in inducing a country to change its policy, the effect on overall relations, the effect on relations between the United States and other countries.

I believe that these factors should be considered in the application of the section before there is application of 6(a) sanctions.

I think that also, in the decisionmaking process, the executive branch should consult with the Congress. Therefore, I would suggest that section 6(a) and section 6(b) should be revised along the lines set forth on page 10 of my written statement.

In effect, what this does is to have the President make the decisions of whether the list of sanctions should be applied in consultation with appropriate leaders of Congress, and committees of Congress, after considering the factors which are now listed in subsection (c), which would then be, under the revision, incorporated in section 6(b).

Finally, Mr. Chairman, I should just note on this last point that under this approach, where the President in consultation with Congress would be considering these various variables in determining whether the sanctions should be applied, it would still, of course, be open to the Congress, if it saw fit, to override the President and decide to employ by enactment of legislation any sanctions it wished to devise. But, it would do this after considering all of the variables of the situation, and particularly at the time when the sanctions were contemplated.

I think one thing that has to be kept in mind is that in the conduct of foreign affairs the situation changes so rapidly that while application of sanctions listed in section 6(a) or other kinds of sanctions might have been the appropriate, most effective, tool to employ 3 days ago, at the time the decision was made, they might not now be. Therefore, I think it is necessary to have maximum flexibility in the decisionmaking process, no matter who makes that decision.

Thank you, Mr. Chairman.

Senator GRIFFIN. Thank you, Professor Murphy.

[Professor Murphy's prepared statement and attachments follow:]

PREPARED STATEMENT OF JOHN F. MURPHY, PROFESSOR OF LAW, UNIVERSITY OF KANSAS

Mr. Chairman, I appreciate the opportunity to appear before this committee today to give my views on S. 2236, a bill to strengthen Federal policies and programs and international cooperation to combat international terrorism. As you know, this bill is a substantially revised version of the bill originally introduced in the Senate Committee on Governmental Affairs. In response to that Committee's invitation, I prepared a statement dated January 27, 1978, on the original version of the bill. Also, I believe your Committee has a copy of the Report on "Legal Aspects of International Terrorism,"<sup>1</sup> which was submitted to the De-

<sup>1</sup> "Legal Aspects of International Terrorism," a Study prepared for the Department of State by a Working Group of the American Society of International Law and edited by Alona E. Evans and John F. Murphy (September 1, 1977).

partment of State on September 1, 1977. Prof. Alona E. Evans and I served as editors of and contributors to this report. Because of the Report's length, and in an effort to focus discussion on the Report, Professor Evans and I prepared a paper, "Legal Aspects of International Terrorism. The Trees and the Forest," which gives our individual views as to the conclusions and recommendations of the Report we regard as especially worthy of consideration. With your permission and for the record, I would like to submit copies of this paper and of my statement of January 27 along with the statement I will deliver today.

In its present form, S. 2236 is a substantial improvement over the original version. Many of the problems raised by the original version have been eliminated. Nonetheless, some problems remain. In the brief time available, let me attempt to identify the most prominent of these and submit suggestions for their resolution. I will not attempt to comment on each and every section of the bill.

#### ORGANIZATION OF THE GOVERNMENT TO COMBAT TERRORISM

Unlike the earlier version, S. 2236 does not now require any reorganization of the executive branch with a view to improving its effectiveness in combatting terrorism. Nor does the bill any longer contain a finding that "the assignment of a high priority in the executive branch for combatting such terrorism is imperative." Instead, under section 7(a) of the bill, the Secretary of State would be required to submit a "Report on Federal and International Capabilities to Combat Terrorism," which would include, inter alia, "a description and evaluation of the effectiveness of relevant organizational structures . . ." Although I am not an expert on public administration, I strongly suspect that the problem does not lie in an inadequate organizational structure. Rather, at least in the very recent past, and perhaps still today in spite of protestations to the contrary, the executive branch has assigned a low priority to combatting terrorism, and the attention of high ranking officials has been limited to ad hoc reactions to individual incidents as they arise. As a result, U.S. policy in this area has been largely reactive rather than prophylactic and lacking in long range planning and coordination. Symptomatic of this problem is the high rate of turnover in the position of Director of the State Department's Office for Combatting Terrorism. Although some highly competent people have served in this post, their tenure has been brief. Just as they begin to develop expertise in this complex area, they are assigned elsewhere in the Department or overseas.

Accordingly, I would urge that Congress, through review of the reports to be submitted under section 7(a) and other means, carefully monitor both the degree of priority the executive branch assigns to efforts to combat terrorism and the effectiveness of institutional arrangements designed as a part of such efforts.

#### DEFINITIONS

Section 3 of the bill attempts a devilishly difficult task, namely, to define "international terrorism" and "State support of international terrorism." The world community (as well as scholars in the field) have failed completely to define either concept. Nonetheless, an appropriate definition of these concepts is crucial to the success of this legislation.

In attempting to define international terrorism, we should keep in mind the basic purpose for which we are engaged in the exercise, *i.e.*, the identification of those countries currently supporting international terrorism and thereby frustrating the world community's efforts to combat it. To this end we should seek to avoid a definition that is either too broad or too narrow in scope.

In at least one sense the definition of international terrorism in section 3(a) may be too broad in that it is not clearly limited by its terms to acts committed by private persons or groups of private persons. The definition should not comprehend within its scope a variety of government acts, often classified as "state terrorism," such as illegal interception of international civil aircraft, suppression of political expression, violation of international humanitarian law by acts of genocide, or violations of the laws of war or the Geneva Conventions relating to prisoners of war or protection of civilians. These actions are best dealt with by laws relating specifically to human rights and armed conflict.

Accordingly, section 3(a) should be revised to read (here and hereafter new language italicized): "International terrorism" includes any act committed by a private person or group of persons and designated as an offense or crime—". Similarly, the first part of section 3(a)(4) should read: "any other unlawful act committed by private persons or groups of persons . . ."

On the whole, however, I believe the definition of international terrorism in section 3(a) of the bill is unnecessarily narrow. Basically, it tracks the definition of international terrorism contained in the Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism, which the United States introduced in the General Assembly in 1972 in the wake of the Munich murders. In introducing the Convention, and in subsequent debates on it, United States representatives stressed the narrow coverage of the Convention in an attempt to obviate the concern of some member states that the Convention was directed against so-called wars of national liberation. The hope of the U.S., which was not realized for a variety of reasons, was thereby to gain wide acceptance by member states of the Convention.

It is doubtful whether the reasons that prompted the United States to introduce a Convention containing such a narrow definition of international terrorism apply to domestic legislation. Certainly the same political constraints are not present in the domestic context.

Moreover, there seem to be unfortunate gaps in coverage in section 3(a)'s definition of international terrorism. For example, in subsection (4) the terms "violent destruction of property" would not necessarily cover acts of sabotage which could cause power blackouts in major cities or the malfunction of computers storing government and corporate records. In a recent report, Robert Kupperman, Chief Scientist, U.S. Arms Control and Disarmament Agency, envisaged what might happen if the recent New York City blackout had lasted just three days more:

Understanding that the City would have been paralyzed, it is not difficult to invent stark—possibly realistic—scenarios: looters would run wild, fires starting at random, and jittery National Guardsmen shooting into crowds of panicked people; food and water would become scarce, the food spoilage being nearly total; the sanitation system would collapse, the spectre of disease becoming an overriding concern; and the rats, which outnumber the people, would be close to achieving a permanent victory.<sup>2</sup>

Similarly, an attack by a United States national against an offshore oil rig or a marine installation and research station located within the territorial sea would not be covered by the terms of subsection (4). Yet in light of the worldwide energy crisis, such actions have a strong international dimension and should be encompassed within the scope of "international terrorism."<sup>3</sup> Finally, terrorism also becomes international in scope when the perpetrator of a terrorist act flees across international boundaries.

On the basis of the above comments I would suggest the following revisions in section 3(a). First the introductory paragraph of subsection (4) of section 3(a) should be revised to read:

(4) any other unlawful act committed by a private person or group of persons which results in the death, bodily harm, or forcible deprivation of liberty to any person, or in the violent destruction of property, or in interference with facilities and installations vital to public health, safety and welfare, or an attempt or credible threat to commit any such act, if the act, threat or attempt is committed or takes effect—

Second, subparagraph (C) of subsection (4) should be modified along the following lines:

(C) within the territory of the state against which the act is directed and the alleged offender knows or has reason to know that a person against whom the act is directed is not a national of that state, or against targets involved in international intercourse and commerce.

Third, subparagraph (D) of subsection (4) might read:

(D) within the territory of any state when the perpetrator flees across international boundaries or when found to have been supported by a foreign state as defined in section 3(b), irrespective of the nationality of the alleged offender.

With respect to section 3(b), "State support of international terrorism," it is important that this crucially important concept be defined as precisely as possible in order to avoid casting too wide a net enclosing friends as well as enemies. Specifically, state actions should be deemed to constitute state support of international terrorism only if they are undertaken with the intention of

<sup>2</sup> Kupperman, R.H., U.S. Arms Control and Disarmament Agency, *Facing Tomorrow's Terrorist Incident Today* (Washington, D.C., 1977).

<sup>3</sup> For recommendations in this area, see Nyhart and Kessler, "Ocean Vessels and Offshore Structures," Volume I, Part II(3), *Report on Legal Aspects of International Terrorism* (Washington, D.C., 1977).

directly supporting acts of international terrorism. Under these limitations furnishing general economic aid to the Palestine Liberation Organization would not fall within the definition of state support of international terrorism, but deliberately supplying the Red Army Brigade with arms and other material support would.

On the whole I believe that the present language of section 3(b) satisfactorily draws this distinction, with the exception of subsection (5) of section 3(b). The problem with this provision is that, in the context of any particular instance of international terrorism, issues may arise as to whether a state has granted impermissible sanctuary to an alleged offender, or has only exercised its right under international law to grant political asylum. A discussion of these complex problems is beyond the scope of this statement.<sup>4</sup> For present purposes I would just suggest that subsection (4) be revised along the following lines:

(4) allowing the use of its territory as a sanctuary, in violation of international obligations to prosecute or extradite perpetrators of acts of international terrorism.

LIST OF STATES SUPPORTING INTERNATIONAL TERRORISM AND PRESIDENTIAL AUTHORITY TO COMBAT INTERNATIONAL TERRORIST ACTS

Like section 3 relating to definitions, sections 5 and 6 are key provisions of the bill. Under section 5 the President, applying the definitions set forth in section 3, would be required to determine which states, if any, were supporting international terrorism and submit a list to Congress every six months containing the names of such states. In the event the President determined that no states were supporting international terrorism within the meaning of section 3, he would be required to report this information to Congress and explain in detail the basis for his decision. The President alone would decide whether a state's name would go on the list, but once a state's name was on the list, he would have to request Congress to remove the name from the list, and Congress could disapprove such a request by concurrent resolution.

Once a state's name appeared on the list, the President would be required, by the terms of section 6(a), to apply one or more of four kinds of specified sanctions against such a state. The President could decline to apply any such sanctions if he found that the interests of national security so required and reported this determination in writing to the President pro tempore of the Senate and the Speaker of the House of Representatives.

It should be noted that, under these provisions, once a state's name appears on the list, the President must automatically apply one or more of the sanctions listed in section 6(a) unless the interests of national security dictate otherwise. This in my view is unfortunate. Some will pose the question of automatic application of sanctions in terms of the current controversy over whether the movement in Congress to restrain Presidential power to conduct foreign policy has gone too far. With respect, I believe this is not the crucial issue. The crucial issue, in my view, is whether economic sanctions against states that support international terrorism should ever be applied automatically without consideration of factors other than the interests of national security—no matter who makes the decision. I submit that they should not.

Subsection (C) of section 6(a) specifies some of the factors that the President shall take into account in deciding whether to take "such other measures available to him as he deems appropriate." They include "the effectiveness of specific sanctions in inducing change in a country's policy or practice of supporting acts of international terrorism; the likely effect of sanctions on overall United States relations with such country or with other countries; and the effect such sanctions would have on other United States national interests." These factors would be a more precise standard for determining whether to apply the sanctions set forth in section 6(a) than the ambiguous and much abused doctrine of "national security."

Under this approach, a Presidential determination that a particular country was supporting international terrorism and the interests of national security would be only two of several variables considered in the process of deciding whether to apply section 6(a) sanctions to such a country. It also would seem appropriate that the President consult with appropriate congressional leaders and committees while considering these variables and as an aid to the decision-making process.

In order to achieve these objectives, the first paragraph of section 6(a) might be revised along the following lines:

<sup>4</sup> For a discussion of this problem, see Evans, "Apprehension and Prosecution of Offenders: Some Current Problems," Volume II, Part III(2), Report on *Legal Aspects of International Terrorism* (Washington, D.C., 1977).

Sec. 6(a) When a foreign government is listed pursuant to section 5 of this Act, the President, *in consultation with appropriate congressional leaders and committees*, shall consider whether one or more of the following prohibitions should be applied against such government—

Section 6(b) might then be revised to read:

(b) *In determining whether one or more of the prohibitions in subsection (a) of this section should be applied the President shall take into account but not be limited to consideration of the interests of national security; the effectiveness of specific sanctions in inducing change in a country's policy or practice of supporting acts of international terrorism; the likely effect of sanctions on overall United States relations with such country or with other countries; and the effect such sanctions would have on other United States national interests. If the President determines that none of the prohibitions in subsection (a) of this section should be applied, he shall report his reasons therefor in writing to the President pro tempore of the Senate and the Speaker of the House of Representatives.*

Current subsection (c) of section 6 would then be eliminated and subsections (d) and (e) changed to (c) and (d).

Parenthetically, and in the interests of full disclosure, I should note that I am among those who are skeptical as to the usefulness of unilateral imposition of sanctions by the United States against countries that support international terrorism. This is not to say that unilateral sanctions should never be applied by the United States against a country supporting international terrorism. But such sanctions should be taken only after full consideration of the variables referred to above and as a last resort after all other approaches have been exhausted. I have attempted to support this view more fully in my statement of January 27 (pp. 10-19) and in the chapter on "State Self-Help and Problems of Public International Law," Volume II, Part III(5) of the Report on "Legal Aspects of International Terrorism."

#### SECURITY STANDARDS IN FOREIGN AIR TRANSPORTATION AND AVIATION SECURITY ASSISTANCE TO FOREIGN GOVERNMENTS

Section 8 of S. 2236 would amend section 1115 of the Federal Aviation Act of 1958 relating to security standards in foreign air transportation. It would require the Secretary of Transportation to assess the effectiveness of security measures maintained at foreign airports engaged in air transportation with the United States. In making such assessments the Secretary is to apply criteria equal to or above standards established pursuant to the Convention on International Civil Aviation. He is to report such findings to Congress, identifying the airports assessed and describing any significant deficiencies and actions taken or recommended to correct such deficiencies. He also is directed to notify appropriate authorities of foreign governments of his findings, and recommend to them steps necessary to bring the security measures in use at those airports up to an acceptable level of effectiveness.

If a notified foreign government has failed within sixty days after notification to bring security measures at the identified airport up to the level of effectiveness required, the Secretary shall publish in the Federal Register and cause to be posted and prominently displayed at all U.S. airports regularly serving scheduled air carrier operations identification of such airport. The Secretary also is authorized, with the approval of the Secretary of State, to withhold, revoke, or impose conditions on the operating authority of any domestic or foreign air carrier to engage in foreign air transportation utilizing that airport.

Unlike the original version of S. 2236, these provisions do not require the automatic application of sanctions against foreign airports with unsatisfactory security measures, emphasizing instead negotiations with foreign government officials regarding such deficiencies and informing travellers using U.S. airports of the risks travel at identified foreign airports may entail. In hearings before the Senate Committee on Governmental Affairs, the Secretary of Transportation contended that notification to the public of unsafe foreign airports would also inform potential terrorists of likely targets. However, it is unlikely that potential terrorists do not already know which airports are vulnerable or at least know how to obtain such information. In any event, the risk of stimulating terrorist acts would seem outweighed by the need to inform travellers of risks they may be undertaking and to bring pressure upon foreign government officials to upgrade security standards at airports.

Two major problems foreign officials face in attempting to improve security at their airports are lack of knowledge concerning the technology involved and the cost of such technology. Section 9 of S. 2236, which would provide technical

assistance concerning aviation security to foreign governments, would seem a useful provision toward obviating the first problem. However, the cost factor would remain. The Committee may wish to consider whether some form of financial assistance might be given at a minimum, to governments of developing countries in order to allow them to meet aviation security standards.

#### PRIORITIES FOR NEGOTIATION OF INTERNATIONAL AGREEMENTS

Section 10 of the bill would urge the President to seek international agreements on a high priority basis with respect to several specified subjects. As this provision in no way commands such action, there is no constitutional problem of interference with the executive branch's prerogatives in the negotiation of international agreements. Also, the subjects specified are intended to be illustrative and not exhaustive.

One possible subject of negotiation, specified in the original version of S. 2236 but absent from section 10, is measures to combat possible terrorist attacks involving nuclear facilities and materials. The chapter on "Nuclear Facilities and Materials," Volume I, Part II(2) of the Report on "Legal Aspects of International Terrorism" documents the substantial need for international agreement in this area. I therefore would respectfully suggest that this subject be added to the list of subjects specified in section 10.

#### OTHER POSSIBLE LEGISLATIVE ACTIONS

Although S. 2236 contains a variety of provisions that will be helpful in combatting international terrorism, there are other areas not covered in this bill where legislative action could make a contribution. Particularly useful would be (1) revision of the U.S. Code so as to fill various jurisdictional lacunae that currently exist with respect to possible terrorist attacks on ocean vessels or offshore structures and (2) clarification of executive and legislative guidelines concerning the scope of permissible activities of law enforcement officers in combatting terrorism. These recommendations are briefly considered in my statement of January 27 at pages 26 and 27 and more fully in the Report on "Legal Aspects of International Terrorism."

In closing, Mr. Chairman, let me just note in passing that S. 2236 contains provisions on explosive taggants, implementation of the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, and nuclear material security information. Time constraints have precluded my commenting on these provisions. I believe, however, that they all have the potential to make a substantial contribution to combatting terrorism, and hope that they will be included in the legislation adopted by the full Congress.

#### LEGAL ASPECTS OF INTERNATIONAL TERRORISM: THE TREES AND THE FOREST

By Alona E. Evans and John F. Murphy

As one can gather from a brief glance, the Report on "Legal Aspects of International Terrorism"<sup>1</sup> is voluminous. In an effort to make the Report more useful to the reader, we have provided in chapter one "executive summaries" of key points raised in the individual chapters of the Report. Moreover, in chapter two we have attempted to summarize the conclusions and recommendations of the Report, as well as their underlying rationales. Admittedly, though, even these summaries are lengthy, perhaps unavoidably so, in light of the magnitude and complexity of the subject matter. At any rate, the purpose of this paper is to give our individual, subjective views as to those conclusions and recommendations of the Report we regard as especially worthy of consideration and, perhaps, action. We hasten to add that we do so in our individual capacities only, and that other members of the working group may, and in some cases surely do, have different opinions.

In thus setting forth our views, we will proceed along the same line as does the chapter in the Report on conclusions and recommendations. That is, we will address ourselves first to general conclusions and recommendations that transcend or cut across the individual manifestations of international terrorism treated in

<sup>1</sup>"Legal Aspects of International Terrorism," a Study prepared for the Department of State by a Working Group of the American Society of International Law and edited by Alona E. Evans and John F. Murphy (September 1, 1977).

the Report. We will then examine the individual chapters of the Report and attempt to glean from the mass of material contained therein conclusions and recommendations we regard as especially worthy of attention.

#### GENERAL CONCLUSIONS AND RECOMMENDATIONS

Throughout the Report, a basic issue raised is whether international terrorism should be combated through multilateral or global, bilateral or regional or unilateral means. Ideally, the approach should be multilateral and global, because, by definition, international terrorism violates vital interests of the world community as a whole and the response thereto should be worldwide. Moreover, if ratified, a general international agreement which would define the offense of international terrorism, require states either to prosecute an accused or to extradite him to another jurisdiction for prosecution, make states which fail to comply liable for damages and make those states which condone or cooperate with international terrorists liable for payment of damages to the victims could be a major contribution toward the goal of preventing and punishing international terrorism.

However, the ideal does not necessarily comport with the real. Recent efforts to draft general treaty law on terrorism indicate that the utility of multilateral treaties is likely to be limited, and that the more like-minded (and thus narrower) the class of states participating in such exercises, the greater will be the likelihood of success either in the drafting effort itself or in the actual operation of the legal regime produced.

On the other hand, one should not give up hope that the political milieu may change so as to be more congenial to the conclusion of a general anti-terrorist treaty. Especially shocking acts of international terrorism, such as the events at Dacca and Mogadishu and the brutal murder of Hanns-Martin Schleyer, as well as pressures such as those generated by the threatened international strike of airplane pilots, may result in an atmosphere where new initiatives in the United Nations General Assembly and in other appropriate international organizations may be feasible. The Department of State should closely monitor the current political climate and develop contingency plans in order to be able to take advantage of favorable developments.

As an alternative to general treaties, the United States should encourage regional efforts to develop conventions for the control of terrorism, such as the recently adopted Convention of the Council of Europe. The conclusion of new or the revision of current bilateral agreements also may be useful. The U.S./Cuba Memorandum of 1973 and the U.S./Canadian Extradition Agreement of 1971 may serve as models.

It should be remembered that in this as in any other field, international law-making is not limited to treaties. The process of customary international law-making may afford some possibilities for overcoming problems created by a lack of pre-existing political consensus on "gut" issues such as sanctuary or the obligation to extradite. Also, to this end quiet and patient negotiations are likely to be more fruitful than the polemical exchanges that all too often characterize meeting-on terrorism in international fora.

The usefulness of unilateral or national efforts, taken either by the United States or by other countries, should not be underestimated. Definition of the offense and prescription of penalties for its commission through domestic legislation, development of security measures, such as screening devices at airports, and improvement of law enforcement techniques would appear especially helpful.

One area where legislation would not be useful is that of negotiations with terrorists. Here government officials and other persons involved in the negotiating process need to have maximum flexibility in order to adjust their strategies to rapidly changing circumstances. General policy guidelines and ad hoc decision-making, plus improved law enforcement techniques, should remain the principal methods for dealing with terrorists.

An area of special concern, although one that this project did not examine in detail, is the possible relationship between media coverage and terrorist activities. In the view of the working group guidelines (non-legal standards, perhaps a code of ethics) should be formulated to govern the nature and extent of media coverage of terrorist activities. Questions that should be addressed would include the need for temporarily withholding publication of a kidnapping or extortion threat until the incident has been resolved; avoiding publication of tactical police information; the relationship between tone and emphasis in media coverage and the encouragement of terrorist activity; and the like.

## SPECIFIC CONCLUSIONS AND RECOMMENDATIONS

## A. TERRORISTS' THREATS AND SOCIETAL VULNERABILITIES

*1. Aircraft and aviation facilities*

Recent events have graphically demonstrated the overriding importance of rigorous national security measures to the protection of aircraft and aviation facilities against terrorist attacks. Highest priority should therefore be given to intensified FAA supervision of security measures in use in American airports. The x-ray screening devices can become faulty very quickly, and the FAA's current quarterly inspections are not frequent enough to ensure continuous operating efficiency. Airport security programs also should be extended to cover General Aviation at the point where general aircraft meet with public air facilities.

In the same vein, the FAA should pursue with increased vigor its efforts to encourage the improvement of airport security at foreign airports. At many of these airports, security is at present lax or non-existent, as recently evidenced by the apparent lack of effective controls at the Bombay, India and Palma, Majorca airports.

In spite of the failure of the 1973 initiative in ICAO, another effort should be made to conclude a multilateral convention that would be designed to enforce, by sanctions, the Tokyo, Hague and Montreal Conventions and any security convention that might be adopted. This convention would seek to strengthen the obligation to prosecute or extradite offenders of these conventions and to eliminate "hijack havens." The time for such action may be especially propitious in the wake of the shocking incidents at Dacca, Bangladesh and Mogadishu, Somalia and the threats by air pilots to strike if effective action is not forthcoming.

*2. Nuclear facilities and materials*

Perhaps the most striking conclusion drawn from this area is that international cooperation with respect to combating possible terrorist attacks or threats involving nuclear facilities and materials has been almost entirely lacking. Neither the Non-Proliferation Treaty, the IAEA Statute, nor any other treaty covers the subject of physical protection of nuclear facilities and materials. There also is no systematic exchange among states of technical, administrative, or intelligence information concerning physical protection of nuclear facilities and materials or of information concerning terrorist threat potentials. Similarly, to our knowledge, no international organization or international coordinative mechanism has been designated or established to plan for or coordinate plans for the contingency of a theft of nuclear materials from one state to another. In the most extreme cases, where stolen nuclear materials were taken to a state which is unwilling or unable to cooperate in locating and recovering these materials, or where the location of stolen nuclear materials is not known, there is no mechanism through which states could plan or effect an efficient and timely coordinated search.

The primary recommendations in this area flow naturally from the above conclusions. The United States in cooperation with other states should seek to designate an international organization or to establish a formal mechanism to deal with physical protection matters. The United States should also aggressively seek the agreement of states on the principles and provisions of an international convention which would establish (1) the legal basis for national and international physical protection standards that uniformly cover nuclear facilities and nuclear materials at fixed facilities and in transit, including sanctions which may be imposed against states which fail to comply with such standards; (2) the rights and duties of states to cooperate with other states in the location and recovery of stolen nuclear materials; (3) the institutional mechanisms through which these rights and duties shall be exercised; (4) a crisis management center or mechanism that would operate in the event of a significant act of nuclear related terrorism; and (5) the duty of states to prosecute or extradite individuals responsible for sabotage of nuclear facilities or theft of nuclear materials.

Pending the conclusion of such a convention, the United States should seek through discussions in appropriate fora the agreement of states on the foregoing principles. The United States and other nuclear supplier states should consider making such principles standard provisions of their bilateral agreements for co-operation on nuclear energy and of their trilateral safeguards agreements with nuclear-recipient states and the IAEA.

*3. Ocean vessels and offshore structures*

Although terrorism on the oceans has to date not been a significant problem, the oceans contain many economic assets which are within the capabilities of

terrorists to attack, and which, because of their economic or symbolic value, are potential targets. Allocation of jurisdictional competence over terrorist acts, at both the international and national levels, is a primary problem in this area. The present jurisdictional framework is an inadequate basis for allowing a state to protect assets beyond its territorial sea against terrorism. If an acceptable Law of the Sea Treaty is concluded, it may provide a basis under international law for national action.

As to the national level, in the case of vessels, current United States legislation grants ample authority to enforcement agencies for preventive and enforcement activity. Clarifying legislative amendments are needed, however, with respect to offshore structures; preventive planning is inadequate, and ambiguities regarding allocation of jurisdiction among the several U.S. enforcement agencies should be resolved.

Accordingly, if an acceptable Law of the Sea Treaty should result from the current negotiations under United Nations auspices, the United States should ratify the treaty and enact legislation to extend federal criminal and civil law to all structures within the U.S. economic zone, under the jurisdictional provisions of the treaty. Failing conclusion or the coming into force of a Law of the Sea Treaty containing adequate economic zone articles, the United States Government should consider extending the federal criminal and civil law so it applies to U.S. structures and objects offshore the U.S. coast which are not covered by the Outer Continental Shelf Lands Act (OCSLA) or the Deepwater Port Act. Upon completion of such an extension of U.S. jurisdiction, the Department of State should consider seeking to negotiate bilateral or multilateral treaties requiring either extradition or prosecution for those criminal acts committed on or against vessels or offshore structures.

With respect to the responsibilities of U.S. agencies, the Coast Guard, the Departments of Defense, State, Justice, and other interested agencies should negotiate Memoranda of Understanding clarifying respective areas of jurisdiction. Upon such clarification, the U.S. Coast Guard should complete development of (and make available to private parties as appropriate) a comprehensive set of contingency plans covering prevention of, reaction to, and follow-up after, acts of ocean terrorism. In the same vein, offshore industries should be required to file their own contingency plans which would include data regarding pipeline cutoffs and other damage control procedures, responses to fire and pipeline rupture, etc. Also, the U.S. Government and private industries and institutions should cooperate in considering the possible vulnerability of offshore structures, deepwater ports and vessels to terrorists, and the cost effectiveness of design modifications to minimize such vulnerability.

Finally, it is important that a low profile be maintained with respect to the problem of ocean terrorism. The possibility of publicity increasing the potential for attacks on ocean facilities would seem substantial.

#### 4. *New weapons: The threat to communications facilities and new technological systems*

A primary conclusion in this area is that there are points of vulnerability in our complex technological infrastructure, as well as weapons that in the hands of a very few people can threaten to disrupt our society and afford opportunities for blackmail by fanatic groups or individuals. However, in terms of their ability to kill large numbers of people, terrorists have generally operated well below their technological ceiling.

The apparent reasons for this are manifold. Technical difficulties, especially in the cases of chemical or biological weapons or fissionable nuclear material or other radioactive material, may be a restraint. Political or moral constraints also may be operative here. Terrorists appear willing to kill a few persons to win publicity, to make a point or to create fear; they have rarely been willing to kill many people to accomplish the same objective, apparently because the public reaction against them would be instantaneous and would enable the government to crack down on them with public approval.

Thus terrorists have exploited the new vulnerabilities of advanced industrial societies in limited and special ways. A primary goal has been to force the government to take security measures that cause inconvenience. Terrorists have bombed transformers, but they have seldom tried to blow up power stations. They have not interfered with water supplies. They have not forced evacuations by igniting fires in chemical manufacturing plants or by blowing up tanks of hazardous chemicals, although the recent publicity given to accidental chemical spills and fires may provide some inspiration in this direction. They have not attacked liquefied natural gas facilities or tankers carrying LNG; this is, however, a comparatively new technology. Political extremists have on several occasions recently

carried out acts of sabotage at nuclear facilities. The vulnerability that modern terrorists have regularly exploited is civil aviation, primarily because airliners are vulnerable and convenient containers of hostages or a guaranteed number of victims.

The unwillingness of terrorists to kill large numbers of people may erode in the case of terrorists operating internationally if they can each sanctuary and if governments are prevented by respect for the sovereignty of other states and by political considerations from responding effectively. If a terrorist group is not dependent on a local constituency for support, and can rely on refuge elsewhere, it may be less concerned about alienating its target population. The apparent willingness of the Japanese Red Army terrorists to kill 156 persons aboard a hijacked airplane if their demands were not met lends support to this thesis.

The existing framework of liberty in the United States, and the explicit restrictions on the powers of government contained in the First, Fourth, Fifth, Sixth, Ninth, Tenth and Fourteenth Amendments to the Constitution place significant limitations on the kinds of actions that may be taken to protect ourselves from exploitation by terrorists of societal vulnerabilities. Nonetheless, it may be possible to reduce the new risks by holding open non-violent means to effective political action, and by some marginal tightening of legal restrictions on possessing substances with particular potential for politically disruptive effects and on the advocacy of certain kinds of acts.

Specifically, Congress should consider the possibility of amending the U.S. Criminal Code along the following lines:

(1) Unauthorized possession of specified destructive substances for which there is no legitimate private use should be forbidden. Examples might include all guided weapons systems, such as heat seeking missiles, and components specifically manufactured for use in them, nerve gases, non-biodegradable herbicides, and biological substances potentially lethal to humans.

(2) Unauthorized interstate trafficking in specified substances which may have legitimate private uses but which also have significant potential use as agents to disrupt essential services or amenities or threaten the life or health or people in any section of the country should be forbidden. Items that could be specified might include explosives of any sort, explosive detonators, and incendiary substances.

(3) Soliciting should be forbidden when that solicitation is likely to produce the unauthorized use of those substances or weapons on targets of high sensitivity. Targets of high sensitivity would include such points of vulnerability as water supply systems, transportation systems, communications systems, energy systems, chemical and biological storage locations, and storage places for radioactive materials. It is recognized that, in the absence of an overt act to carry out a conspiracy, this extension of the criminal law might raise constitutional questions and that these should be exhaustively explored before implementation of this recommendation.

Several initiatives involving international cooperation might be usefully explored. In particular, international agreements that restrict the use of specified weapons (such as chemical and biological weapons) by states should be vigorously pursued and the widest possible ratification sought. It would help to diminish the likelihood of irresponsible groups gaining possession of some particularly dangerous substances if national stockpiles of these weapons were reduced or eliminated. Foreign countries should be encouraged, perhaps by offers of technical assistance, to enact national legislation to control the possession or use of dangerous substances or weapons by unauthorized individuals or groups within their jurisdiction. Other possibilities that should be explored with other countries are measures to limit or control the sale abroad of weapons, destructive devices and their components and measures to identify certain substances or allow identification of their origin. Some limit on the dissemination of particularly dangerous or sensitive devices or components might be achieved by tagging them with radioactive nucleides or other substances.

##### *5. Protected persons and diplomatic facilities.*

The United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, which the United States has ratified and which is now in force, has the potential to become a major factor in the effort to combat one form of international terrorism. However, further steps should be taken in order to maximize the Convention's potential. The United States should undertake a worldwide diplomatic effort to convince as many countries as possible to become parties to the Convention.

To this end, the United States should work closely with the U.N. Secretary-General. Informal arrangements should be worked out between government

officials and appropriate countries to encourage the utilization of the U.N. Secretariat to exchange data and ideas concerning security measures for the prevention of attacks on diplomats and to urge other parties to the Convention to report to the Secretary-General on the steps they have taken to carry out their obligations under the Convention.

As an alternative or supplement to the U.N. Convention, regional and bilateral international agreements should be concluded or more widely ratified. Regional agreements currently apposite include the O.A.S. Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That are of International Significance and the recently adopted European Convention on the Suppression of Terrorism. The United States has become a party to the O.A.S. Convention, but it has not been widely ratified. The European Convention is a major regional initiative toward the prevention and suppression of international terrorism. The Department of State should keep itself fully informed of the status of this Convention and, when appropriate and feasible, consider using it as a model for future agreements or sign and ratify it if it is ever opened to non-European states and likely to become an effective "Atlantic" measure.

As to bilateral agreements, these should be modelled, when feasible, after the U.S.-Canada Extradition Treaty of 1971, which expressly eliminates the political offense exception in the case of an attack upon an internationally protected person. In cases where it is not feasible to eliminate the political offense exception entirely, the 1973 "Memorandum of Understanding" between the U.S. and Cuba concerning the hijacking of aircraft might be employed as a guide and drafted to apply to attacks on diplomats. The first treaty explicitly calls for extradition in cases which would include attacks on diplomats, and the Memorandum incorporates the principle of *aut dedere, aut judicare* but does beyond the U.N. Convention by requiring that the accused person be submitted to trial for the "offense punishable by the most severe penalty" and that signatories prevent the use of their territory as a base for committing the illegal acts covered by the Memorandum.

The Department of State should study the utility of the concept of strict state liability for injuries to diplomats, as both the O.A.S. and U.N. Conventions recognize that diplomats require special protection. Even if developing countries faced a special burden in this area, some form of financial assistance could be considered to ease that burden.

At the national level, high priority should be given to the research and development of technological devices designed to maximize the protection of diplomats and diplomatic facilities. Such efforts would appear especially desirable in light of recent attacks on diplomatic personnel and facilities in New York, Washington, and other major cities in the United States and abroad.

#### 6. "Non-protected" persons or things

The protection of "non-protected" persons or things (i.e., persons or things not enjoying special protection under international conventions such as those covering diplomats or aircraft and aircraft facilities) is one of the most difficult tasks facing the United States Government in dealing with terrorism. In essence the obligation of states to protect persons and things against international terrorism is part and parcel of their larger duty to respect human rights. This duty must include the rejection of general excuses for human rights violations that are couched in terms of "non-innocence," national liberation movement exceptions, aggression, worker struggles, and guerrilla warfare. The most effective response states can make to the "ideological war" terrorists are waging against society is actively to support, by word and deed, fundamental human rights and democratic values and the proposition that terrorism is impermissible as a strategy to coerce the attitudes and behavior of others.

Specifically, governments should not use the methods of terrorism to combat or sanction terrorism. Such methods lend credence to terrorist claims concerning the permissibility of using terror as a political weapon and undermine the credibility of governmental protestations. By way of affirmative action the U.S. Government should continue to publicly condemn serious violations of human rights (including use of torture and terrorism) whether engaged in by governments or private parties, and fund and support, consistent with the federal nature of the American system, programs directed at increasing an appreciation of human rights and strengthening institutions designed for the promotion of law and justice in respect of terrorist violence. Domestically, additional support of, and primary responsibility for, such programs should come from state boards of education, bar associations and other governmental or private groups.

### 7. *Personnel and property of transnational enterprises*

Terrorist attacks against the transnational business operation have increased substantially over the past few years. The threat of terrorism is forcing the transnational enterprise to rethink its traditional approach to security and to develop new modes of cooperative action with government authorities as well as within the private sector.

In general, the United States Government should adopt policies that are designed to allow enterprises maximum flexibility in dealing with terrorism, encourage cooperative measures among enterprises to combat terrorism, and reinforce the general responsibility of states under international law to protect the personnel and property of all aliens against acts of terrorism. Specifically, the United States Government should consider the following recommendations:

(1) The United States Government should not foster a prohibition of ransom payments by business enterprises in their dealings with terrorists. Nor should it encourage efforts among states to establish such a prohibition.

(2) The United States Government should take the position that hostage insurance is a private business matter to be regulated by supply and demand within the insurance industry. It should neither encourage the use of hostage insurance, for to do so could well increase the ransom expectations of terrorists; nor should it prohibit hostage insurance, because as recommended above, a prohibition of ransom payments should not be applied to the private sector.

(3) The United States Government should not undertake a program to subsidize the security costs of private enterprise.

(4) The United States should support and reinforce, where appropriate, the general responsibility of states under international law to protect the person and property of aliens within their jurisdiction against injury, including injury arising from the acts and threats of terrorists. However, the United States should *not* attempt to establish a higher or special standard of protection with respect to acts and threats of terrorists directed against transnational business operations.

(5) The United States Government should foster research on a wide variety of subjects dealing with analysis of terrorist activities, their strategies, and lawful means of prevention in respect to transnational business operations. This research should be undertaken both within the government and within the private sector.

(6) The United States Government should establish a data base through which the private sector is kept informed on a current basis, where appropriate, about the activities, movements, and organization of terrorist groups around the world. Such a resource base might be located within the Department of Commerce, but it should have access as needed to the information of the various intelligence agencies of the government.

(7) The United States Government should foster the establishment of a resource center for the private sector which would be owned and controlled by subscribing businesses. While the Center would be located in the United States, it could furnish services worldwide to transnational business operations. Government funding might be necessary in the beginning phase of the Center.

#### PREVENTION AND CONTROL OF TERRORISM: INTERNATIONAL RESPONSES

##### 1. *An international control scheme for the prosecution of international terrorism: An introduction*

International cooperation with respect to penal matters is minimal and could be increased. The process of extradition, which is cumbersome, is also seriously impeded by the "political-offense exception." Judicial assistance and other forms of cooperation in penal matters are varied and might be useful in this regard; however, they are seldom employed.

With respect to the problem of the political offense exception, the feasibility of a multilateral treaty defining the "exception to the political-offense exception" in extradition should be considered. Such a treaty would list those internationally recognized crimes which are to be excluded from the political offense exception in existing and future treaties, laws, and state practice.

There are other changes that the United States Government should consider with a view to improvements in extradition law and practice. First, it should rely on multilateral treaties as an alternative to bilateral treaties as a basis for extradition. Second, it should enter into special agreements with states that deny extradition of their own nationals or deny extradition for offenses for which the death penalty could be imposed, in an effort to overcome these obstacles to extradition. These agreements should provide that: (a) the alleged offender shall be returned to the requested state after trial in the United States, whether acquitted

or convicted, and, if convicted, that the sentence be carried out in the requested state; (b) the alleged offender shall not be subject to the death penalty.

## *2. Apprehension and prosecution of offenders: Some current problems*

A key mandate of the anti-terrorist treaties upon states parties is to extradite offenders or to submit them to prosecution. State practice indicates, however, that deportation is the more common method of rendition of offenders than extradition, but more information in this area is needed. Accordingly, study of contemporary policy and practice of states with respect to the use of extradition, exclusion, and expulsion of international terrorists should be undertaken under private or governmental auspice. The study should determine the extent of use of each method as a means of international rendition of such offenders to states where they are wanted for prosecution, as well as reasons why extradition appears to be used less frequently than exclusion and expulsion as a means of international rendition.

Utilizing information gained through the study proposed in the preceding paragraph, the Department of State should seek to establish by multilateral convention a common standard regarding the use of exclusion and expulsion for purposes of international rendition with procedural safeguards for the interests of the offender as well as those of the states involved. Once such a common standard has been established, the words "lawful return" should be substituted for "extradition" in the treaty injunction "extradite or submit to prosecution."

Submission of an international terrorist to prosecution is the duty of the state to which he has been surrendered or of the state which, denying rendition, has retained custody of the offender. More information concerning the fulfillment or violation of this obligation by states is needed. Accordingly, a clearinghouse of information regarding instances of prosecution of international terrorists should be established with a view to determining the extent to which such prosecution takes place and the reasons for discrepancies in bringing offenders to trial and in sentencing. Similarly, there is a need for concerted development of a fund of information about policy and practice regarding the criminal justice systems of states. A greater knowledge of the practical operations of the criminal justice systems of various states, coupled with wide-spread development of judicial assistance procedures in criminal matters, would allay much of the reluctance of states to surrender international terrorists for prosecution or to undertake prosecution themselves. International cooperation looking to the establishment of an international minimum standard of criminal justice is needed before "extradite or submit to prosecution" becomes a widely meaningful formula for the legal control of international terrorism.

A suggested location for the clearing house of information proposed in the preceding paragraphs would be the Criminal Division of the Department of Justice.

The grant of political asylum to an offender is a distinctly separate matter from the obligation to submit an offender to prosecution; it must be considered subsequently to prosecution and on different terms. Therefore, the formula "extradite or submit to prosecution" should be amended to recognize that prosecution is a separate act from the grant of political asylum to an offender after he has been prosecuted.

Last, but by no means least, the Departments of State and of Justice should emphasize the need for widespread development of various methods of judicial assistance and other forms of cooperation in penal matters through bilateral, and, where feasible, multilateral agreements as an inducement to lawful rendition and prosecution of international terrorists by states concerned about the quality of the criminal justice systems in other states.

## *3. Criminological policy*

It is important to realize that, unlike the common criminal, a terrorist is an ideologically motivated offender, i.e., a person who engages in acts of terrorism not for personal gain but in order to accomplish a power outcome, and that general criminological policies and practices may therefore be ineffective when employed against terrorist violence. Such a person rejects in whole or in part the social and political system of the society of which he is a member and seeks to overthrow that system by violent means. When a specific target is chosen, the means employed will depend upon the anticipated psychological effects of the violent action.

In this regard, the role of the media and its use by terrorists should be recognized as indispensable to the effective prevention and suppression of terrorism (see the discussion regarding the role of the media in the section on General Conclusions

and Recommendations, p. 4 above). Prosecution, followed by imprisonment, can be used to counter terrorism, but the most effective deterrent is preventive law enforcement.

Numerous agencies in the United States are interested in the enforcement of international criminal law; however, their interests and activities are overlapping and uncoordinated. Moreover, the United States is insufficiently involved, at the governmental level, in the international criminal law activities of private or public international organizations.

The United States Government should take several actions, at both the international and national levels, with a view toward the improvement of criminological policy in dealing with terrorists. At the international level, the United States Government should encourage interested countries to harmonize their criminal laws and penalties for terrorist acts as a means of improving the effectiveness of apprehension and prosecution of such offenders. To that end, a United States study of comparative criminal law should be undertaken by public agency or by private groups or institutions with public funding.

At the national level, the United States Government should be cognizant of the fact that it often cannot avoid, and in some cases might legitimately seek, a role in the development of broad public attitudes toward terrorism and public competence to cope with it.

For example, it should avoid overemphasizing the significance of the dangers and threats of terrorism in order to help prevent the creation of a climate of fear and apprehension among the general population. In order to avoid attracting would-be martyrs, as well as for humanitarian considerations, it should oppose resorting to the death penalty for terrorists. LEAA, HEW and other concerned federal agencies should place more emphasis in dispensing federal funds to appropriate state officials or private entities on the development of programs of education in law with respect to criminal justice, violence, human rights, peaceful resolution of international conflicts, and world public order. The United States Government also should develop new training materials and help prepare qualified instructors to assist U.S. local law enforcement agencies in their efforts to implement new techniques of prevention and control of terrorist activities.

#### *4. Practical problems of law enforcement*

In this crucially important area, the primary problem appears to be that law enforcement officials in the United States and in Western Europe are concerned about ambiguities in the scope of their authority to deal with international terrorism. Steps should accordingly be taken to close loopholes in the law enforcement response to terrorism.

Specifically, in the United States and in other countries, statutes and executive orders should be reviewed to ensure that they: (a) provide law enforcement and security officials with appropriate authority to discharge their responsibilities to combat terrorist activities; (b) do not impose unnecessary and undue restrictions on anti-terrorist law enforcement activities; and (c) provide adequate guidelines for officials discharging their responsibilities to combat terrorism.

In the United States, a review of Executive Order 11905 discloses a serious lack of definition of key terms. Both the 1975 Privacy Act and the Freedom of Information Act contain ambiguities of concern to law enforcement officials. The Presidential Memorandum establishing the Cabinet Committee to Combat Terrorism charges the Cabinet Committee with the responsibility to "coordinate, among the governmental agencies, ongoing activity for the prevention of terrorism. This will include such activities as the collection of intelligence worldwide . . ." However, it is unclear precisely what this memorandum was intended to authorize. In the sensitive area of intelligence, such ambiguity is unwise.

If the recommendation to establish a central data base on terrorism, noted earlier in this paper, is adopted, care should be taken to ensure that the appropriate legal authority has been established for this action and realistic guidelines should be developed defining what information is to be collected, analyzed, and disseminated in order to ensure that this activity is kept within appropriate limits. These guidelines should be developed with guidance and support from the highest levels of the executive branch and in consultation with Congress. Consideration should also be given to establishing judicial or quasi-judicial review for certain threshold decisions, for example, when to start a file on an individual and when to destroy it.

#### *5. State self-help and problems of public international law*

Measures of state self-help, in descending order of intensity of coercion, the use of armed force, economic sanctions, international claims, diplomatic protests and quiet expressions of concern through diplomatic channels. Such measure with

respect to states that harbor, or at least do nothing to prevent and suppress actions of, international terrorists should be employed cautiously. Moreover, when employed, measures of state self-help should normally be of the variety that involve the least intensity of coercion. That is, quiet expressions of concern through the usual diplomatic channels to a state that is hindering efforts to combat international terrorism and demarches to induce that state to cooperate more fully with measures to control international terrorism will normally be more effective than dramatic confrontations subject to the full glare of publicity.

Most particularly, the Department of State should continue to stress the sui generis nature of the incident at Entebbe (which, unlike the 1977 Mogadishu raid, involved the use of armed force on the territory of a state without its consent) and support generally the limitations international law places on the use of force by states against other states in the name of combating international terrorism. To this end, the Department should stress the primary emphasis assigned by the United Nations Charter to avoiding the use of armed force and to settling disputes peacefully.

The Department should not press for the adoption of multilateral or regional conventions enabling states parties to impose economic sanctions against a state that harbors international terrorists, unless all further efforts at international cooperation fail. The United States should first make every effort to induce other states to become parties to and abide by applicable antiterrorist conventions and to take other steps toward the prevention and punishment of international terrorism. Only if all further efforts at international cooperation with recalcitrant states fail, should the Department renew and pursue proposals for the application of economic sanctions.

Further in this area of economic sanctions, the United States Government (Congress and the Executive) should evaluate carefully the utility of legislation compelling the President to impose economic sanctions against countries that grant safe haven to terrorists. Past experience indicates that legislation of this type (e.g., the early version of the so-called Hickenlooper Amendment) tends to exacerbate already delicate U.S. foreign relations with the target state and fails to induce it to take action favorable to U.S. interests.

With respect to international claims, the Department of State should as a first step seek to ensure the inclusion in the document on State Responsibility to be ultimately adopted by the International Law Commission of provisions applicable to states that aid international terrorists. These provisions should specify in precise terms the rights and responsibilities of states in this area. The Department should further encourage the ILC to complete its work on State Responsibility on a high priority basis.

The Department should protest vigorously against actions by states which hinder or interfere with the prevention or punishment of international terrorism. Moreover, where standing exists, such protests should be made even if no United States nationals are among the terrorists' victims.

#### 6. *Private Measures of Sanction*

In the absence of effective responses by governments to individual acts of international terrorism, private measures of sanction have been proposed or employed in order to fill the vacuum. Prominent examples of such measures are the threatened international strike by airline pilots, the use of private police for security purposes or of private armies in retaliation for terrorist attacks, and economic boycotts of states perceived as aiding and abetting terrorist activities. Depending on the nature of the response, and the context in which it is made, individuals, groups and private institutions can respond to terrorism creatively or destructively in terms of serving minimum world order and human dignity. Whether the cumulative effect of private choice will assist in preventing and controlling terrorism and in promoting minimum public order and human dignity may ultimately depend upon popular awareness of and demands for a world of law, justice, and the values of a free society expressed in the human rights instruments of the Twentieth Century.

The ability of the United States Government to facilitate these broad conditions, while limited, is significant. Certainly the government can and should strive to enrich and improve access to the educational process, and employ more broadly an explicit ideological strategy aimed at widening understanding of the humane values that are most threatened by terrorism. At the international plane, this is one of the benefits of the newly invigorated human rights policy of the current Administration.

By way of specific actions, the United States Government should assure that the tactics, equipment and training of private police are within relevant international and domestic legal standards. The United States Government also should

encourage the National Commission on Uniform Laws to consider, in the context of their present and future work, the amendment of federal and state law to assure civil and criminal immunity for persons acting reasonably to aid victims of terrorism, to compensate a victim if the victim is further injured by the person giving aid, and to compensate the individual for losses sustained while attempting to aid a law enforcement officer.

In concluding, we would like to repeat a point made at the beginning of this paper, namely, that the conclusions and recommendations set forth above are only those that appear to us most worthy of attention and do not necessarily represent the views of the entire working group. Moreover, these conclusions and recommendations, as well as others, are developed more fully in chapter two of the Report on "Legal Aspects of International Terrorism" and most fully in the individual chapters which follow. At a minimum we recommend a reading of chapter two. For those with a professional interest in the legal aspects of international terrorism, we urge that the Report be read in its entirety.

#### STATEMENT ON S. 2236, THE OMNIBUS ANTITERRORISM ACT OF 1977

(By John F. Murphy)

Mr. Chairman, I appreciate the opportunity to appear before this Committee today to give my views on S. 2236, the Omnibus Antiterrorism Act of 1977. As one who has himself attempted to cope with the problem of terrorism, I also appreciate the importance that sponsors of this bill have assigned to efforts to prevent and punish these criminal acts which violate fundamental human rights and which constitute a serious threat to democratic principles and to minimal world order.

I believe the Committee has a copy of the Report on "Legal Aspects of International Terrorism,"\* which was submitted to the Department of State on September 1, 1977. Professor Alona E. Evans and I served as editors of and contributors to this Report. Because of the Report's length, and in an effort to focus discussion on the Report, Professor Evans and I have prepared a paper, "Legal Aspects of International Terrorism: The Trees and the Forest," which gives our individual views as to those conclusions and recommendations of the Report we regard as especially worthy of consideration. With the permission of the Chairman, and for the record, I would like to submit this paper along with my statement.

Because of its length and the complexity of the subject it addresses, S. 2236 does not lend itself easily to concise comment. Let me attempt such comment, however, by focusing on those provisions of the bill which appear especially meritorious or which raise possible problems the Committee may wish to consider.

#### HIGH PRIORITY AND REORGANIZATION OF THE EXECUTIVE BRANCH TO COMBAT TERRORISM

I agree emphatically with the finding of the bill that "the assignment of a high priority in the executive branch to United States policy for combatting such terrorism is imperative." Frankly, it has been my impression, as well as the impression of many more familiar with the inner workings of government than I, that at least in the recent past the executive branch has assigned a low priority to combatting terrorism and that the attention of high ranking officials to this problem has been limited to ad hoc reactions to individual incidents as they arise. To be sure, government officials now assure us that this high level inattention is a thing of the past; that U.S. policy is no longer merely reactive and involves long range planning. However, one may be permitted a measure of skepticism.

To implement its intent that efforts to combat terrorism be given a high priority in the executive branch, the bill would require a substantial reorganization of the Executive Office of the President, the Department of State and the Department of Justice. I am informed that the executive branch opposes such reorganization on the ground that existing structure is adequate. Since I am not an expert on public administration, I will refrain from expressing an opinion as to the correctness of this assertion. I would suggest, however, that the Committee may wish to examine this issue closely. The executive branch also opposed reorganization of the Department of State in the human rights area on the ground that the existing

\*"Legal Aspects of International Terrorism," a Study prepared for the Department of State by a Working Group of the American Society of International Law and edited by Alona A. Evans and John F. Murphy (Sept. 1, 1977).

structure was adequate.<sup>1</sup> It may therefore be useful for the Committee to review the effectiveness of the institutional arrangements for human rights and to explore whether experience in that area may hold lessons for the proper institutional approach to terrorism.

#### DEFINING TERRORISM

Section 5 of the bill attempts to do what the world community (as well as scholars in the field) has consistently failed to do: define terrorism. In United Nations deliberations on the problem, the aphorism, "One man's terrorism is another man's heroism," has prevailed. For its part Congress in previous legislation<sup>2</sup> has declined to define terrorism, and Representative Wolff has suggested that " \* \* \* in the end, I fear that the definitions of international terrorism are similar to Supreme Court Justice Potter Stewart's comment on obscenity when he said 'I know it when I see it' ".<sup>3</sup>

Nonetheless, it may be useful to attempt at least a rudimentary definition of terrorism for purposes of this bill, as long as it does not purport to be exhaustive. In this regard, it is noteworthy that Section 5(a) of the bill contains the key language "includes but is not limited to," in order to indicate that the scope of the following definition is not intended to be exhaustive.

It also is noteworthy that the definition of terrorism in the bill, although intended to describe "criminal" acts, would not be the basis for criminal liability under United States law. If it were, the inherent vagueness of the concept of terrorism might create constitutional problems. At any rate I favor the view that the term "terrorism" should not be employed in United States criminal law and that the subject should be approached in terms of identifying actors, targets and circumstances which should give rise to criminal liability. This is the approach taken to date by United States federal criminal law with respect to targets deemed vital to international intercourse, such as aircraft and diplomats.<sup>4</sup>

As presently drafted, the definition of terrorism in Section 5 is somewhat imprecise. To note the missing preciseness is easier than to supply it. But at a minimum the definition should specify that, for purposes of the bill, the acts covered are those of individuals and not those of countries, in order to ensure that so-called state terrorism is not included within the scope of the definition. State terrorism is a singularly ambiguous term and refers to actions by countries which constitute violations of international human rights and the laws of war. These actions are best dealt with by laws relating specifically to human rights and armed conflict.

Another important element of any definition of terrorism, which distinguishes it from such common crimes as murder, assault, kidnapping or hijacking, is the goal of the terrorist, namely, to damage the interests of or obtain concessions from a country or international organization. Thus, for example, the hijackers of the Lufthansa airplane to Mogadishu, Somalia demanded that the Federal Republic of Germany pay a ransom of fifteen million dollars and arrange for the release of eleven political prisoners from West German jails and two from Turkish jails. The immediate or instrumental targets of the terrorists were the airplane and its passengers. But the primary target was the West German Government whose interests the terrorists sought to damage and from whom they sought concessions.

Similarly, terrorist kidnapping of an American businessman and a demand for ransom directed to the business of which the victim is an employee involves the victim and the firm as immediate or instrumental targets and the government of the host country and that of the United States as primary targets, since a primary goal of the terrorists is to damage the interests of the host country and those of the United States by undermining the business climate in the host country and by obtaining funds to finance revolution against the government in power.

In a specific instance of terrorism, the instrumental and primary targets may be the same. Examples would be the assassination of a government official or the bombing of a government building.

<sup>1</sup> International Protection of Human Rights: The Works of International Organizations and the Role of U.S. Foreign Policy: Hearings Before the Subcommittee on International Organizations Movements of the House Committee on Foreign Affairs, 93d, Cong., 1st sess. 817 (1974).

<sup>2</sup> Most particularly, in sec. 620A of the Foreign Assistance Act of 1961, as amended, 22 U.S.C.A. sec. 1713 (a) (b).

<sup>3</sup> Hearings on H.R. 11963 Before the House Committee on International Relations, 94th Cong., 1st and 2d sess. 685 (1976).

<sup>4</sup> For a consideration of the confusion generated by use of the term terrorism, see Baxter, A Skeptical Look at the Concept of Terrorism, 7 U. Akron L. rev. 380 (1974). At the state level, the term has on occasion been used to define criminal liability. See Validity and Construction of "Terrorist Threat" Statutes, 58 A.L.R. 3d 533 (1974).

Hence, with some trepidation, I would suggest that paragraph (a) of Section 5 of the bill be revised so as to read:

(a) "Terrorism" includes but is not limited to the intentional use of violence or the threat of violence by private persons in order to damage the interests of or obtain concessions from a government or international organization through instilling fear, intimidation or coercion; and

Paragraph (b) of Section 5 also attempts a task the world community (as well as scholars) have failed to accomplish: to distinguish "international" from "domestic" terrorism. As it stands, "international terrorism" is imprecise because it is used most often to refer to the acts of individuals rather than to the actions of countries or government officials. As a result, some have employed the term "transnational terrorism" when referring to the acts of individuals who are not controlled by a sovereign nation.

In any event, at a minimum, international terrorism involves the interests of more than one country. This international dimension may be supplied by the location of the terrorist conduct; the political objectives of the terrorists; the nationalities of the terrorists and their victims; the nature of the targets (e.g., aircraft or diplomats); or the flight of a terrorist across international boundaries.

Accordingly, again with trepidation, I would suggest a revision of paragraph (b) along the following lines:

(b) "International terrorism" is terrorism transcending national boundaries and involving the interests of more than one country. The international dimension of terrorism may be found by reference to the following factors: the place(s) where the terrorist act(s) occurs; the political objectives of the terrorists; the nationalities of the terrorists and of their victims; the nature of targets chosen; and the flight of a terrorist across international boundaries.

In its present form, Section 5 omits one very important definition, namely, that of "aiding and abetting" as this concept applies to governmental support of terrorism. These terms are subject to varying definitions under United States criminal law, and their scope for purposes of this bill should be clarified. Defined and applied expansively, these terms could cast a wide net. For example, on Saudi Arabia furnishes substantial financial support to the Palestine Liberation Organization, some of whose members have engaged in terrorist acts. I assume that most if not all would agree, however, that Saudi Arabia should not therefore be classified under this bill as aiding and abetting terrorism.

Thus, for purposes of this bill, aiding, abetting or facilitating terrorism should be defined narrowly to cover only those countries which intentionally and directly contribute to terrorism. Examples would be furnishing arms with the intention and expectation that they would be used in terrorist acts; recruiting and training persons for terrorism; planning and assisting in the execution of terrorism; and providing safe-haven and sanctuary from prosecution for terrorists.

In order to accomplish this, a new paragraph (c) along the following lines might be added to Section 5:

(c) "Aiding, abetting, facilitating, or otherwise assisting terrorism" is limited to the intentional commission of the following acts: furnishing arms to private persons with the expectation that they will be used for terrorism; recruiting and training persons for terrorism; planning and assisting in the execution of terrorism, and providing safe-haven or sanctuary from prosecution to the perpetrators of terrorist acts.

#### REPORT OF TERRORIST ENTERPRISES AND LIST OF COUNTRIES AIDING TERRORIST ENTERPRISES

In my opinion, Section 104's requirement that the President submit a report to Congress regarding an act of terrorism involving citizens of the United States is especially meritorious. As a general matter, I strongly favor maximizing informational interchange between Congress and the executive branch in the conduct of foreign policy,<sup>5</sup> and terrorism is an area where the "need to know," of both Congress and the public, is substantial. Such reports from the President would be particularly useful in cases where the executive branch's handling of an incident was controversial.

To this same end I favor Section 105's requirement that the President prepare and submit to Congress a List of Countries Aiding Terrorist Enterprises (LOCATE). More emphasis should be placed on pointing out those countries supporting terrorist activities in that this would serve both to educate the public

<sup>5</sup> Murphy, Knowledge is Power: Foreign Policy and Informational Interchange Among Congress, the Executive Branch, and the Public, 49 Tulane L. Rev. 505 (1975).

further about the problem of terrorism and to bring the pressure of publicity to bear against the governments of those countries which fall into this category.

I would suggest certain revisions in paragraphs (e), (f) and (g) of Section 105. With respect to paragraph (e), I believe that the name of a country should not be added to the LOCATE over the objection of the executive branch unless both Houses of Congress pass a resolution to this effect. Presumably this kind of conflict between Congress and the executive branch would seldom arise, but if it did, it would likely involve a situation where the executive branch believed that adding a country's name to the list would interfere with delicate negotiations currently in progress with that country. In such a situation, at a minimum, a majority vote of both Houses should be required to override the President's wishes.

In paragraph (f) there appears to be no sound reason for requiring a country's name to be on the list for a year before the President can request its removal. Anytime a country has indicated to the President's satisfaction that it has ceased its support for terrorism, the President should be able to request removal from the list.

As to paragraph (g), in line with my comments on paragraph (e), I would suggest that the President's request for removal of a country's name from the list be acted upon favorably unless both Houses of Congress by resolution disapprove that request.

#### SANCTIONS AGAINST COUNTRIES AIDING TERRORIST ENTERPRISES

Section 106, with its provisions for sanctions against countries aiding terrorist enterprises, is likely to be highly controversial. Most controversial will be paragraph (a) of Section 106, under which the President would be required to impose automatically sanctions against any country listed on the LOCATE. In my opinion, this would be highly undesirable.

It is useful to consider a tentative list of countries against which these sanctions—including, most particularly, the suspension of commercial air service—would automatically be imposed. At a minimum the list would probably include such Communist countries as the Soviet Union, East Germany, Czechoslovakia, Bulgaria, Romania, the People's Republic of China, North Vietnam, North Korea, and Cuba, as well as such non-Communist but "revolutionary" countries as Algeria, Libya, Tanzania, Zambia, the Republic of the Congo (Brazzaville), Zaire, the Popular Democratic Republic of Yemen, Iraq, and Syria.<sup>6</sup> Brian Crozier, a British expert on international terrorism, has identified the Soviet Union as the greatest of the "subversive centers," i.e., countries that provide assistance to subversive or terrorist groups who carry out their terrorist activities in other countries. I submit to the Committee that the application of automatic sanctions to the Soviet Union per Section 106 would be immensely harmful to vital United States interests.

As this Committee is aware, legislation already exists that would enable the United States to impose a variety of economic sanctions against countries aiding and abetting terrorism. For example, the Antihijacking Act of 1974 authorizes the President to suspend civil air traffic with any foreign nation that does not abide by Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention), or that otherwise aids and abets terrorist groups, or with any other nation that continues to provide air service to a nation encouraging hijackers.<sup>7</sup> Also, Section 620A of the Foreign Assistance Act of 1961, as amended, requires termination of military and economic assistance to any country granting sanctuary from prosecution to terrorists unless the President determines that national security considerations justify the continuance of such aid, in which case he must file a report with Congress stating the reasons for his decision.<sup>8</sup> Section 115 of Public Law 95-52, the "Export Administration Amendments of 1977," amends Section 3 of the Export Administration Act of 1969 by adding at the end thereof the following new paragraph:

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territory or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this ob-

<sup>6</sup> See Brian Crozier, *Terrorism: The Problem in Perspective*, (Mar. 25, 1976) (Presented to the Department of State Conference on International Terrorism).

<sup>7</sup> 49 U.S.C.A. sec. 1514.

<sup>8</sup> 22 U.S.C.A. sec. 2371(a)(b).

jective, the President shall make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before resorting to the imposition of export controls.

Finally, Public Law 95-118, the Omnibus Multilateral Development Institutions Act of 1977, in Section 701(a)(2) and (f) requires that United States Executive Directors of these lending institutions oppose any loan or other form of financial or technical assistance to any country that offers sanctuary to individuals hijacking airplanes, "unless such assistance is directed specifically to programs which serve the basic human needs of the citizens of such country."

None of these provisions requires the automatic imposition of sanctions with no "escape clause" available to the executive branch. Under the Antihijacking Act and the Export Administration Act the executive branch has unfettered discretion to decide whether, and if so to what extent, to impose sanctions. In the case of the Foreign Assistance Act and the Omnibus Multilateral Development Institutions Act, although its discretion is limited, the executive branch can avoid the imposition of sanctions if it finds the existence of certain circumstances.

Even in the related area of human rights, legislation has not provided for the automatic imposition of sanction 5. Section 116 of the Foreign Assistance Act of 1961, as amended, prohibits the provision of development assistance to any country that engages in a consistent pattern of gross violations of internationally recognized human rights, unless such assistance will directly benefit the needy people in such country.<sup>9</sup> Section 502B of the same Act applies to all "security assistance" including military aid, military training, sales of defense implements or services, the extension of credit or loans for the purchase of weapons, and any license for the export of defense articles or services:

It is further the policy of the United States that, except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.<sup>10</sup>

Reportedly, the Administration has threatened or halted United States assistance to a number of countries under this or other relevant legislation.<sup>11</sup> Moreover, Congress on its own initiative has enacted legislation which has limited or eliminated assistance to several countries.<sup>12</sup>

A discussion of the human rights policy of the Administration, including the imposition of economic sanctions, is beyond the scope of this statement. It is worth noting, however, that recent legislation in the human rights area appears to rely less on the sanctions approach and more on providing incentives for countries to improve their human rights record. For example, Section 701(a) of the Omnibus Multilateral Development Institutions Act of 1977 provides that the United States Government shall seek to channel the assistance of international lending agencies towards countries other than those that engage in consistent patterns of gross violations of human rights.<sup>13</sup> Section 111(e) of the International Development and Food Assistance Act of 1977 earmarks \$750,000 for studies and for carrying out programs and activities which will encourage increased adherence to civil and political rights set forth in the Universal Declaration of Human Rights, in countries eligible for assistance under the Act.<sup>14</sup> And in the Export-Import Bank Amendments of 1977 Congress rejected amendments that would have mandated the bank to deny any loan or financial assistance going to a country that is violating the basic human rights of its citizens.<sup>15</sup> Rather, the provision adopted requires the Board of Directors of the Bank to take into account the "observance of and respect for human rights in the country to receive the exports . . . and the effect such exports may have on human rights in such country."<sup>16</sup>

There is, of course, the crucial question whether unilateral sanctions are useful in combatting terrorism. I am among those who are skeptical about such sanctions, and I have tried to support this view in the chapter on "State Self-Help and Problems of Public International Law," Volume II, Part III(5) of our Report. Many of the countries that would be potential targets of these sanctions do not even maintain air transport relations with the United States, and U.S. military and economic aid to such countries is limited or even absent entirely. Also, as

<sup>9</sup> 22 U.S.C.A. sec. 2151n(a).

<sup>10</sup> *Id.* sec. 2304(a)(2).

<sup>11</sup> See Recent Human Rights Legislation and Its Implementation, Staff Report of the Senate Committee on Foreign Relations, 123 Cong. Rec. 19420 (daily ed. Dec. 7, 1977).

<sup>12</sup> *Id.*

<sup>13</sup> Public Law 95-118.

<sup>14</sup> Public Law 95-88.

<sup>15</sup> House Committee on Banking, Finance and Urban Affairs, Extending and Amending the Export-Import Bank Act of 1945, H. Rept. No. 95-235 Cong., 1st sess. 4-5 (1977).

<sup>16</sup> Sec. 2, Public Law 95-143.

United States experience with the Hickenlooper Amendment vividly demonstrates, other countries are likely to react strongly and negatively in response to United States' attempts to impose economic sanctions against them.<sup>17</sup>

It has recently been contended that experience under the Hickenlooper Amendment is not apposite because that Amendment was designed to protect only parochial U.S. interests and to elevate a predominantly U.S. view to a supposedly international norm.<sup>18</sup> By way of contrast, the argument continues, legislative provisions that would impose unilateral economic sanctions against countries aiding terrorists in an "expression of . . . a truly global outrage at the threat of terrorism" and serve "actively to advance the emerging international norm condemning terrorism."<sup>19</sup>

With respect, I believe this distinction is more apparent than real. While there may be a "global outrage at the threat of terrorism," this is of little practical significance, because there is no worldwide agreement on the definition of terrorism. On the contrary, many countries, probably a majority, believe that individual acts of international terrorism are a minor threat to human rights and minimum world order as compared with other threats such as state terrorism. As noted previously, state terrorism is a term fraught with ambiguity. According to the ideological viewpoint, state terrorism may be defined to include, among other things, torture, apartheid, Israeli practices on the West Bank, U.S. action in Vietnam, or the excesses of General Amin. Because of the world community's failure to define the subject, one must be skeptical whether there is any "emerging international norm against terrorism."

It has been suggested further that the major benefit of sanctions legislation is symbolic, i.e., "its firm underscoring of the U.S.'s commitment to the antiterrorism cause."<sup>20</sup> I would suggest that the constant efforts of the United States in the United Nations, the International Civil Aviation Organization and other international fora, as well as in bilateral and multilateral negotiations, towards combatting international terrorism should leave no fair minded person or country with any doubts as to the strength of the United States' commitment.

More important, one may ask whether unilateral imposition by the United States of sanctions may appear to many countries to be symbolic of something other than that of leadership in the antiterrorism cause. To some these sanctions may be still another example of the United States wielding its economic power against Third World countries in order to force them to act as the United States dictates. The sensitivities of the developing countries in this area are well known.

There seems to be general agreement that unilateral imposition of sanctions would have little practical effectiveness, at least in the short term, in combatting terrorism. It is possible, however, that such sanctions would be worse than ineffective; they might be, to use a favorite State Department expression, "counter-productive." That is, the reaction of the countries against which sanctions were imposed might be to intensify their support for terrorism. It is worth noting that, in the one case where the Hickenlooper Amendment was applied, Ceylon not only refused to bow to U.S. pressure; it proceeded to expropriate additional assets of the very same companies.<sup>21</sup>

This is not to say that unilateral sanctions should never be applied by the United States against a country aiding terrorists. It is to say that such sanctions should be taken only as a last resort after all other approaches have been exhausted. In most instances quiet and patient negotiations are likely to be the most fruitful method of coping with this problem, as illustrated by the successful conclusion in 1973 by the United States and Cuba of an agreement which eliminated Cuba as a safe-haven country for hijackers of airplanes and by the recent willingness of Libya to allow Lufthansa security personnel to screen passengers and baggage boarding there.<sup>22</sup>

Moreover, such sanctions should be imposed on an ad hoc basis and only after several variables have been considered. These variables include, among others, the effectiveness, if any, of such sanctions in inducing the target country to change its policies; the likely effect imposition of sanctions will have on overall U.S. relations with the target country and with third party countries (will other countries rally to the side of the target country?); the costs of imposing such sanctions

<sup>17</sup> Lillich, *The Protection of Foreign Investment* 117-146 (1965).

<sup>18</sup> Lillich and Carbonneau, *The 1976 Terrorism Amendment to the Foreign Assistance Act of 1961*, II J. Int'l L. and Econ. 223, 225 (1977).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 226.

<sup>21</sup> Lillich, *supra* note 17, at 143.

<sup>22</sup> *New York Times*, Nov. 9, 1977, at A3, col. 1.

(e.g., denial of access to energy resources, eliminating safe-havens as a concern to terrorists if they agree to release hostages). The problem of terrorism is important. It is not, however, the only, nor necessarily the most important, factor to be taken into account in the decision making process in every instance.

There remains the important question of who is to make the final decision on whether to impose sanctions against countries aiding terrorists—the executive branch or Congress? In my opinion, every effort should be made to take such decisions by agreement after close consultation between the executive branch and Congress. If, in a particular case, agreement is not possible, the final decision should rest with the executive branch, unless Congress decides to override by legislation or by a joint resolution. As this committee is aware, there is a sharp dispute—as yet unresolved by the courts—of the constitutionality of the so-called legislative veto.<sup>23</sup> I will leave it to others to argue this thorny issue. For my part, I will just suggest that, as a policy matter, it would be undesirable for Congress to impose economic sanctions against a country aiding terrorists unless it were to do so by means subject to Presidential veto. Here the President's responsibility for the overall conduct of foreign affairs weighs in favor of his making the decision unless two-thirds of both Houses vote to override.

Let me take a moment to discuss the question of multilateral sanctions against countries aiding terrorists. I am not sanguine that global efforts towards sanctions against such countries will be successful, especially in light of the dismal failure of the 1973 Conference of the International Civil Aviation Organization in this regard. Perhaps the possibility of countries with attitudes towards terrorism like that of the United States—i.e., the industrialized countries of Western Europe and Japan—reaching agreement would be greater, but here too there are substantial difficulties. Western Europe and Japan are heavily dependent on some of the possible target countries (most particularly Libya) for energy resources. Also, for the industrialized countries to band together and impose economic sanctions on Third World countries such as Libya or Algeria might result in strong, united and heated response from Communist and Third World countries. This negative reaction could have a number of undesirable ramifications. Irreparable damage might be done to the delicate negotiations now taking place between the United States and the Soviet Union in the area of arms control. Equally delicate negotiations regarding the Law of the Sea, international trade, monetary affairs, and other subjects between the industrialized countries and the Third World also might be seriously compromised. In short, measured in terms of a cost/benefit ratio, a multilateral imposition of sanctions by the industrialized states might result in a situation where the costs would outweigh the possible benefits. Accordingly, less drastic measures of self-help on the part of the United States, such as the bringing of international claims, diplomatic protests and quiet and patient negotiations would seem preferable as alternative courses of action.

#### LIST OF AND SANCTIONS AGAINST DANGEROUS FOREIGN AIRPORTS

The requirement of Section 107 of the bill that the President submit to Congress a List of Dangerous Foreign Airports, as measured by compliance with minimum safety criteria established under the United States Code, would ensure the availability to Congress and the public of important information. Under Section 108, however, this list also would serve as the basis for automatic sanctions against each unsafe airport. For many of the reasons discussed in the previous section of this statement, such a provision would be undesirable.

In addition, application of Section 108 would result in the imposition of sanctions against airports in many of our closest allies. In 1974, for example, the FAA reported that 18 major airports in Western Europe had lax standards of security.<sup>24</sup>

Moreover, Section 108 is superfluous. Under the Antihijacking Act of 1974, the Secretary of Transportation, with the concurrence of the Secretary of State, is authorized to suspend air service between the United States and any country which does not maintain and administer security standards that are equal to or above the minimum standards set forth in Annex 17 to the Chicago Convention on International Civil Aviation.<sup>25</sup> These provisions have not been invoked to date, because more effective results can be obtained through negotiation and cooperative planning. For instance, the FAA has been working with foreign countries to

<sup>23</sup> The U.S. Supreme Court currently has before it the issue of the so-called "one-house veto." *New York Times*, Jan. 9, 1978, at A14, col. 3. For conflicting views on this subject, compare *Abourezk*, *The Congressional Veto: A Contemporary Response to Executive Encroachment on Legislative Prerogative*, 53 *Ind. L. J.* 323 (1977) with *Rovine*, *Separation of Powers and International Executive Agreements*, *Id.* at 398, 421.

<sup>24</sup> *Montreal Star*, Oct. 17, at A15, col. 1.

<sup>25</sup> 49 U.S.C.A. sec. 1515.

help develop effective security systems and to train their security personnel.<sup>26</sup> The FAA also makes periodic visits to foreign airports in order to ensure the maintenance of effective security by United States air carriers.<sup>27</sup> This is not to say that the FAA is doing all it might do in this area. On the contrary our Report recommends that the FAA should pursue with increased vigor its efforts to encourage the improvement of airport security at foreign airports. It is to suggest that the cooperative rather than the confrontational approach is likely to be the most effective in this area.

Further, in this same vein, it is submitted that the development and enforcement of security standards for aircraft and aircraft facilities should be pursued on a bilateral, regional or global basis. Specifically, in the chapter on "Aircraft and Aviation Facilities," Volume I, Part II(1), pp. 66-76, of our Report, it is recommended that bilateral, regional or multilateral treaties should be concluded establishing minimum standards of security for aviation facilities and making attacks on such facilities an international offense. A multilateral treaty might be concluded under the auspices of the International Civil Aviation Organization, and ICAO personnel might serve as inspection teams in order to implement such a treaty.

#### PRIORITIES FOR NEGOTIATION OF INTERNATIONAL AGREEMENTS

Section 203 of the bill would urge the President to seek international agreement on a high priority basis with respect to several specified subjects. Since this provision in no way commands such action, there is no constitutional problem of interference with the executive branch's prerogatives in the negotiation of international agreements. As to the subjects specified, I believe that these all are important areas. Of special importance perhaps is the need for an international agreement regarding measures to combat possible terrorist attacks involving nuclear facilities and materials, as referred to in paragraph (4) of Section 203. The chapter on "Nuclear Facilities and Materials," Volume I, Part II(2) of our Report, documents the substantial need for international agreement in this area.

It should be understood that an international agreement in the areas specified by Section 203 need not necessarily take the form of a treaty. In some areas, such as law enforcement and the gathering of intelligence, more informal arrangements than a treaty would be appropriate.

#### IMPLEMENTATION OF MONTREAL CONVENTION AND EXTENSION OF EXISTING SAFETY AND SECURITY MEASURES REGARDING AIRCRAFT AND AVIATION FACILITIES

Section 204 and Title IV of the bill contain a variety of provisions which would revise U.S. law and practice so as to bring them into accord with the requirements of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (the Montreal Convention). Section 303 would extend existing safety and security measures beyond their present coverage. My colleague, Professor Evans, who is one of the world's leading authorities on United States and international law and practice regarding aircraft hijacking and sabotage, was scheduled to testify in person, and I had planned to defer to her expertise. Unfortunately, Professor Evans is unable to be here today because of illness, although she plans to prepare written testimony on the bill as soon as she recovers her health. In Professor Evans' absence I will attempt a few brief comments on these provisions, while urging the Committee to study Professor Evans' written testimony carefully when it becomes available.

Revision of United States law and practice in order to implement the Montreal Convention is a step that is long overdue. The Montreal Convention is an important supplement to the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) and the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention). The Montreal Convention covers acts against aircraft in a country's domestic service, even when the acts take place solely within that country, if the offender escapes to another country. In the words of the head of the United States delegation to the conference which drafted the Montreal Convention: "This convention declares that no one who sabotages a civil aircraft—whether in domestic or international service—no one who places a bomb on board such an aircraft, no evildoer who commits

<sup>26</sup> Evans, "Aircraft and Aviation Facilities," Vol. I, Legal Aspects of International Terrorism, part II(1), 1-22 (Sept. 1, 1977).

<sup>27</sup> Id.

violence aboard such an aircraft in flight, no criminal of this character shall ever find sanctuary anywhere in the world . . ." United States failure to implement this Convention at the domestic level has left an important gap in enforcement mechanisms with respect to sabotage against aircraft and aircraft facilities.

A problem with security measures concerning aircraft and aircraft facilities in the United States is that they do not reach General Aviation aircraft, i.e., private charters, air taxis, cargo carriers, or private aircraft. Section 303 of the bill would extend existing safety and security requirements to "supplemental means of air transportation, foreign or domestic, including the charter operations of regularly scheduled airlines, commuter services regulated by [the] Civil Aeronautics Board, and other regularly scheduled interstate or intrastate passenger operations; and to any airport in the United States serving aircraft subject to the above provisions." In addition, we would suggest that airport security programs should be extended to cover General Aviation at the point where general aircraft meet with public air facilities. An extension of such programs to cover all of General Aviation would seem precluded by cost factors. However, General Aviation operators should be encouraged to adapt aviation security controls to their facilities to the extent this is economically feasible.

#### DEFENSE SALES TO INDIVIDUALS, GROUPS

Section 205 of the bill would require specific prior approval of the President for the sale and other transactions regarding any defense article or defense service to any individual, group or organization and would prohibit any such transaction with respect to a defense article or service for any country unless that country had agreed not to transfer title to or possession of a defense article or defense service to any other individual, group or organization. As pointed out by the chapter on "New Vulnerabilities and the Acquisition of New Weapons by Non-governmental Groups," Volume II, Part II(4), of our Report, the massive trade in arms provides terrorists with many opportunities to acquire sophisticated weapons. However, the issue of the arms trade is one that involves a number of complex factors besides that of potential benefit to terrorists, and perhaps should be considered in the context of debates on international security assistance and arms control.

Moreover, I would urge the Congress, either in the context of this bill or in some other appropriate forum, to consider the recommendations for congressional action in this area submitted in our Report. Brian Jenkins, the co-author of these recommendations, who also is testifying this morning, is the best person to present and elaborate upon them.

#### OTHER POSSIBLE LEGISLATIVE ACTIONS

##### *A. Terrorism on the oceans*

In the chapter on "Ocean Vessels and Offshore Structures," Volume I, Part II(3), pp. 48-49, of our Report, there are a number of recommendations for revision of the U.S. Code so as to fill various jurisdictional lacunae that currently exist with respect to possible terrorist attacks on ocean vessels or offshore structures. In order to limit the length of this already too lengthy statement, I will not summarize these recommendations here. It should be noted, however, that completion of these revisions of legislation would help the Department of State to negotiate bilateral or multilateral treaties requiring either extradition or prosecution for those criminal acts committed on or against vessels or offshore structures.

##### *B. Law enforcement*

A primary problem identified by U.S. law enforcement officers is that executive and legislative guidelines concerning the scope of their permissible activities in combatting terrorism, especially in the key area of gathering information about terrorists and their activities, are ambiguous and should be clarified by executive order or by legislation. Specifically, as noted in the chapter on "Practical Problems of Law Enforcement," Volume II, Part III(4) of our Report, Executive Order No. 11905, which relates to foreign intelligence activity covering United States citizens, aliens admitted to the U.S. for permanent residence, and corporations or other organizations incorporated or organized in the United States, fails to define key terms. It is recommended that Congress and the executive branch consult with a view to supplying these definitions and to ensuring that they provide law enforcement and security officials with appropriate authority and

adequate guidelines to discharge their responsibilities to combat terrorist activities.

Similarly, the chapter's analysis of both the Privacy Act of 1975 and of the Freedom of Information Act discloses ambiguities of concern to law enforcement officials. These should be resolved in order to avoid imposing unnecessary and undue restrictions on antiterrorist law enforcement activities.

Senator GRIFFIN. I don't know whether this makes sense, but it seems, in view of the collaboration between Professor Murphy and Professor Evans, that perhaps the latter would like to follow Professor Murphy. Then we will turn to Captain Ashwood to wind things up for us.

Does that make sense to you? I think that would work well.

#### STATEMENT OF PROF. ALONA E. EVANS, DEPARTMENT OF POLITICAL SCIENCE, WELLESLEY COLLEGE, WELLESLEY, MASS.

Ms. EVANS. Thank you, Mr. Chairman.

I have a short general statement which I would like to make available to the committee, but which I will not read at this time.

I am in the unfortunate position, Mr. Chairman, of having only received a copy of your revised bill this morning, as I arrived; so I am at a loss to go into it in as much detail at this moment as I hope to do in sending further comments to you at a later date.

I would say, however, that I consider the revision a great improvement over the original S. 2236, and certain aspects of it, such as the reporting of acts of terrorism, and this type of thing, I think constitute a very sound approach.

#### AUTOMATIC IMPOSITION OF SANCTIONS

However, going beyond that to the matter of the action to be taken after reporting, that, is the use of sanctions, I am troubled by what seems to be its automaticity. I believe that I may be merely echoing Professor Murphy's very excellent and thorough comments—we are not collaborating at the moment—when I say that I feel that this automaticity is not a workable approach when one is dealing with international relations. Indeed, a great deal can be done through negotiations, not only at the diplomatic level, but the negotiations which are handled at other levels of Government, as between, for example, the FAA and its counterpart in other States. This type of approach may achieve more than an automatic and rather drastic and dramatic use of sanctions.

In any event, if there is a necessity, in the light of the conditions giving rise to the situation, for the imposition of sanctions, then I do agree that the executive branch and the Congress should, between them, decide as to the merits of such action.

#### ASSESSMENT OF SECURITY STANDARDS

With regard to the assessment of security standards, I have been, myself, interested in hijacking and the protection of aviation facilities. The emphasis again should be upon informal measures. Publication of the failures of States with regard to security may lead to misunderstandings. It has been shown in discussions before the International Civil Aviation Organization from time to time that, as we are surely

aware, there are States which simply cannot afford elaborate security measures, the States in which the amount of air transport per day or per week is very limited indeed. To say that because of an incident that this is a dangerous airport is not to advance the basic need. Advancement on a broad front of security standards must be done through emphasis upon the informal approach. That approach, I believe, is already being undertaken, for example, by the FAA and other Government agencies with regard to other countries. But what of those States which have a great deal of international air transport and famous airports in which incidents have occurred as we have lately seen? Again, I think that use of the diplomatic channel is the way to put the pressure on.

I would like somewhere in here—I think I saw some reference in the bill to the International Civil Aviation Organization's function—I should like to see more emphasis placed upon its taking the responsibility for developing the standards outlined in annex 17, expanding these standards, and for policing these standards around the world. ICAO is actually a more appropriate agency to take action in these matters than any particular government would be.

#### OTHER ASPECTS OF PROBLEM BILL DOESN'T GO INTO

I am sorry that I am unable to speak to all of the details of the bill. I believe that it does not go into other aspects of the problem of control of international terrorism. I would remind the draftsmen that there is the factor of prevention which has proved to be the successful way of reaching the problem of control of terrorism. There is the matter of prosecution, emphasizing not just the acquisition of custody of an offender, but the prosecution of an offender.

Then there is the point raised by Professor Murphy as to the factor of the political defense. This must be borne in mind. It poses a separate situation from prosecution. The granting of political asylum or consideration of the defense of a political reason for undertaking a particular act may be of constitutional or ideological concern in some States, but it must be considered after prosecution. Coming back to the point made earlier by Professor Murphy that more could be done by the executive branch, an effort should be made to encourage and develop approaches to the control of international terrorism by urging States to accept the difference between the prosecution factor and the question of granting political asylum. These are separate matters and should be so considered.

There is no provision in the bill, so far as I can see, as to another factor, which might be one that perhaps the draftsmen—or maybe it is only the executive branch—should think of at the moment, and that is the factor of penalization of states which either engage in support of international terrorists or, for one reason or another, find themselves conniving with international terrorists. On the basis of a liability without fault concept, such states should be held responsible to the victims for injury, death, and loss of property. I think that this approach lies beyond the scope of your bill as currently developed, but it is a matter which should be kept in mind.

## DIFFICULTY OF DEFINITION OF TERRORISM

With regard to the definition of terrorism, I would like also to reiterate Professor Murphy's point. The matter of definition is extremely difficult.

I chair a committee for the International Law Association, which is drafting a convention on the control of international terrorism. Our definition is a very long one, indeed.

I think the point has to be made, however, that there is a difference between state terrorism and individual acts of terrorism. This matter should be clarified in the bill.

Your definition here, on the whole, is satisfactory, except it is narrow because it does follow the draft which the Department of State presented to the U.N. several years ago, and that is not sufficient to meet the particular problems arising in contemporary times.

Senator GRIFFIN. How does the PLO fit into the definition we are discussing? It has a quasi—or some kind of status, at least as an observer to the U.N.

Ms. EVANS. Yes.

I don't think that the international lawyers have quite determined what it is. It may qualify under the protocols to the Geneva Conventions as a belligerent. If it observes the requirements of a state asserting control over its people and maintaining an organization within a relatively defined territory, then I think it has to be considered within such a definition.

On the other hand, if these people are simply independent actors then, that is another situation, and they would be liable to prosecution as common criminals.

[Professor Evans' prepared statement follows:]

PREPARED STATEMENT OF ALONA E. EVANS, KENDALL PROFESSOR OF POLITICAL SCIENCE, WELLESLEY COLLEGE

Mr. Chairman, I appreciate the opportunity to appear before this Committee today to give my views on S. 2236, the Omnibus Antiterrorism Act of 1977 and the problem of control of international terrorism.

International terrorism is everybody's problem. International terrorists are no respecters of persons or of governments. No person or government is proof against them, including those governments which have condoned terrorism for reasons of international or domestic politics. No government can hope to control international terrorism unilaterally. The acts which comprise international terrorism are common crimes control of which is the joint responsibility of all members of the international community.

That states are becoming increasingly alert to this responsibility is evident in several regards. There is the growing commitment to the Tokyo, Hague, and Montreal anti-hijacking conventions the first two of which are now binding upon 90 states and the third, upon 87 states although it may be noted in passing, for what it is worth, that the 1949 Geneva Convention on Prisoners of War is binding upon 144 states. There is the development of regional conventions such as the Council of Europe's Convention on the Suppression of Terrorism. There is the United Nation's Convention on the Protection of Diplomats. Aircraft hijacking is the subject of some 10 bilateral agreements; it and other terrorist acts are being included in lists of extraditable offenses in new extradition treaties. A number of states, *e.g.*, the United Kingdom and the Federal Republic of Germany have adopted strict anti-terrorist legislation which reaches to international terrorism. Beyond conventional international law and domestic legislation, there is a discernible policy consciousness on the parts of states that terrorism benefits only terrorists, an approach which is marked not only by informal cooperative measures among states but also by growing reluctance on the part of former "hijack havens" to provide sanctuaries for terrorists.

There are three approaches to the control of international terrorism: prevention, prosecution, and penalization. The first two are relatively effective, the third is a proposition.

#### 1. PREVENTION

The experience of the United States and like-minded states with strict security measures for aircraft and related aviation facilities has proved the point that prevention is an effective method of control of international terrorism. Where attacks have occurred on aircraft, or more commonly today, within air terminals, the failure of security has resulted either from the use of inadequate security techniques or from laxity in the maintenance of equipment and surveillance.

Prevention is a continuing matter. With regard to international civil aviation, there is still need here to implement the Montreal Convention. Attention should be given to the development of a security convention which would cover air terminals and related aviation facilities and to reconsideration of a convention designed to enforce the Tokyo, Hague, and Montreal Conventions. Encouragement of informal relationships among government agencies concerned with international civil aviation in different countries is as important as the development of conventional international law in working toward a greater international commitment to preventive measures.

#### 2. PROSECUTION

The commitment of states to the necessity of submission to prosecution of persons charged with international terrorist offenses is the second important approach to control. Prosecution should be either by the state having custody of the accused or by a state to which the accused has been surrendered through extradition or deportation (meaning here, exclusion or expulsion). The emphasis should be upon prosecution, not upon the process of obtaining custody. In this regard, there is a need to recognize the usefulness of deportation as a means of relinquishing custody of an accused to another state. At the same time, consideration should be given to the questions of whether the cumbersome extradition process could be revised in order to make it more workable as it is essentially more protective of the interests of both state and accused than is deportation.

In emphasizing prosecution, the defense of the political offense must be squarely faced as being unavailable in criminal proceedings involving international terrorism charges. It would remain, however, at the option of the prosecuting state to weigh political factors in separate and later proceedings on a request by the offender for political asylum.

#### 3. PENALIZATION

The third avenue to control is "penalization," used here to comprehend a process of enhancing states' recognition of their responsibility to control international crime, including terrorist acts. A state which failed to adopt or enforce preventive measures, which refused to prosecute an international terrorist or to surrender him for prosecution elsewhere, which connived at international terrorism for political or other reasons by training terrorists or by providing them with asylum should be liable up to a fixed amount for such acts to the victims for injury, loss of life, or loss of property. The theory is essentially liability without fault, and the terms would be embodied in a convention. The principle of state liability focusses attention upon individual state responsibility for control of international terrorism and avoids the international political complexities emanating from such measures as embargoes, boycotts, strikes, and the like, whether asserted unilaterally or multilaterally.

Senator GRIFFIN. Professor Evans, I want to invite you to submit any additional information in writing you may care to after you have had a chance to examine the bill in more detail.

[The information referred to follows:]

STATEMENT ON S. 2236, A BILL TO STRENGTHEN FEDERAL POLICIES AND PROGRAMS AND INTERNATIONAL COOPERATION TO COMBAT INTERNATIONAL TERRORISM

(By Alona E. Evans, Kendall, Professor of Political Science, Wellesley College)

Mr. Chairman, I appreciate the opportunity to make the following comment on the text of S. 2236, A Bill to Strengthen Federal Policies and Programs and International Cooperation to Combat International Terrorism. Reference is made

to the extensive Report on "Legal Aspects of International Terrorism" which was submitted to the Department of State on September 1, 1977, and for which Professor John F. Murphy and I served as editors and contributors. Reference is also made to the summation of this Report, entitled "Legal Aspects of International Terrorism: The Trees and the Forest."

The present version of S. 2236 is a decided improvement over the first draft. The shift in focus from details of administrative reorganization as the central method of dealing with terrorism to the facilitation of policy-making and communication between the Executive and Legislative Branches and, beyond them, between the United States and other countries constitutes a recognition of the need for treating terrorism as a continuing problem of our time and one which can be controlled, if not eradicated, only by alertness to the problem and cooperative efforts to resolve it on the parts of concerned states. In this context, it follows that the thrust of control should be less to the dramatic gesture of punitive measures than to informal intergovernmental relations. In the last analysis, unilateral sanctions can have only limited effect against offending states, *e.g.*, where the parties do not maintain diplomatic relations, and experience has shown that multilateral sanctions, as by the United Nations, against offending states are little better. Basically, there should be a commitment on the part of the Executive Branch to recognize that terrorism is real, pervasive, incremental and that its control should have high priority in policy-making. Within this frame of reference, I shall comment upon the scope of the definitions of terrorism (Section 3), reporting of acts of terrorism and the implementation thereof (Sections 4-6), and the maintenance of security standards (Sections 8, 9).

#### 1. DEFINITIONS

The definitions should focus upon terrorist acts committed by individuals or groups of individuals, however the latter may be dominated. Acts perpetrated by states, whether violative of human rights, of existing anti-terrorist conventions, or of the laws of war and the Geneva Conventions, constitute "state terrorism" which can be reached by the enforcement of existing treaties or be selected policy measures. The targets of terrorism should comprehend not only those covered by the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention), the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention), and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents but also nuclear facilities and materials, ocean vessels and offshore structure, chemical and biological weapons and techniques, as well as systems of power, transportation, and communication. The scope of the definitions should reach terrorist acts having both international and domestic impact.

"State support of international terrorism" (§3(b)) should be defined so as to exclude those situations in which a state may be compelled for humanitarian reasons or in consideration of extortionate demands to cooperate with terrorists. Such cooperation could be penalized by holding states accountable to the victims on the principle of liability without fault; however, that approach would probably be more appropriately the subject of an international agreement looking to the enforcement of the anti-terrorist conventions. Section 3(b)(5) should be modified so as to recognize the commitment, often in constitutional terms, of many states to the concept of political asylum. The stricture here should be directed to a grant of asylum in violation of a state's duty to submit terrorists to prosecution or to surrender them for prosecution by another state. It should not reach a grant of asylum to an offender who has been acquitted or who has served his sentence.

#### 2. REPORT ON ACTS OF INTERNATIONAL TERRORISM AND IMPLEMENTATION THEREOF

Much of the difficulty in establishing standards for the control of international terrorism arises from want of information about the incidence and nature of terrorist acts, about statutory and administrative measures for control of terrorism in various states, and about the nature and disposition of criminal proceedings against persons accused of international terrorism. Section 4 could be expanded to require the reporting of such information in addition to the information listed in subsection (b)(1)-(4).

The maintenance of a list of states supporting international terrorism (§ 5), which is reminiscent of the wartime Proclaimed List of Certain Blocked Nationals, by its publicity value could serve as a sanction of a sort. But the possibility of conflict between this list and the conduct of relations with particular states could

make the list less useful than it might appear at first glance. The listing of states and their removal from the list should be recognized as a matter of Executive prerogative with due communication to the Legislative Branch as to the action taken.

The implementation of the list in Section 6 by the use of sanctions is open to question because of the virtual mandatory character of the wording. The objective should be control of international terrorism through the use of international cooperative rather than punitive measures. The determination of the types of measures to be used in a particular situation should be made in the light of the Executive Branch's assessment of the impact of such measures upon all factors comprising a particular policy situation.

### 3. SECURITY STANDARDS

The provisions of Sections 8 and 9 regarding security standards are commendable. The traveling public should be made aware of those airports which are "security risks." At the same time, the emphasis should be upon informal methods of assisting other states to achieve more effective security standards. The provision for an appropriation of \$100,000 per year in 1980, 1981, and 1982 to enable the Department of Transportation to provide technical assistance to other states in respect to security matters constitutes a recognition and encouragement of work already in progress in this regard. Given the magnitude of the problem, which is by no means confined to airports in developing countries, a much larger appropriation should be authorized for these three years.

In respect to aviation security, implementation of the Montreal Convention should be of immediate concern. Attention should also be given, however, to the proposition of developing a convention governing the security of airports and their environs.

#### INTERNATIONAL LAW ASSOCIATION—COMMITTEE ON INTERNATIONAL TERRORISM

##### MEMBERS OF THE COMMITTEE

- Professor M. Cherif Bassiouni (U.S.A.).
- Dr. Luis Carlos Cabral (Argentina).
- Dr. Vojin Dimitrijević (Yugoslavia).
- Professor Yoram Dinstein (Israel).
- Professor John Dugard (Union of South Africa).
- Professor Alona E. Evans (U.S.A.), Chairman-Rapporteur.
- Professor Luigi Ferrari Bravo (Italy).
- Professor Atle Grahl-Masden (Norway).
- Professor L. C. Green (Canada).
- Dr. K. Hailbronner (Federal Republic of Germany).
- Professor Ribot Hatano (Japan).
- Lean R. C. Hingorani (India).
- Dr. J. J. Lador-Lederer (Israel).
- Professor Edward McWhinney (Canada).
- Professor Petko M. Radojnov (Bulgaria).
- Professor Giorgio Sacerdoti (Italy).
- Dr. Sebastián Soler (Argentina).
- Mr. J. K. Srivastava (India).
- Professor Jacob Sundberg (Sweden).
- Professor Manuel A. Vieira (Uruguay).
- Professor Gillian White (United Kingdom).

##### SECOND INTERIM REPORT OF THE COMMITTEE

###### *Introduction*

The Committee on International Terrorism submitted an Interim Report to the Association at the Fifty-Sixth Conference at New Delhi. This report, constituting the initial phase of the Committee's study, indicated the frame of reference of the Committee's thinking about the nature and scope of international terrorism. In order to explore the subject more concretely, the Committee has taken as its point of departure a draft outline of a single convention on legal control of international terrorism which treats the "offense of international terrorism" comprehensively and from perspectives which are both contemporary and future-oriented. Of necessity, the draft draws upon previous international legislative efforts, both successful and unsuccessful, to deal with the subject, in particular,

the 1937 League of Nations Convention for the Prevention and Punishment of Terrorism, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking), the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), the 1971 Organization of American States Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that Are of International Significance, the 1973 United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, and the Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism which was submitted by the United States to the United Nations in 1972 (hereinafter referred to as the League, Hague, Montreal, OAS, and UN Conventions, and U.S. Draft Convention).

The following members of the Committee have expressed their views on the draft outline, several of them in substantial detail: Professor Bassiouni, Dr. Dimitrijević, Professor Dinstein, Professor Dugard, Professor Grahl-Madsen, Dr. Hailbronner, Professor Hatano, Dean Hingorani, Dr. Lador-Lederer, and Professor Sacerdoti. Given the Committee's desire to explore the ramifications of this complex and troublesome subject more fully at a round table session at the Fifty-Seventh Conference, the Committee is submitting a Second Interim Report which consists of the draft outline as revised in the light of correspondence within the Committee as well as occasional meetings among Committee members since the New Delhi Conference. It is proposed that the Final Report of the Committee consist of a draft convention, revised in the light of discussions at the Fifty-Seventh Conference and of further expressions of opinion by Committee members, and supported by succinct position papers treating the relevant international and national law and jurisprudence concerning international terrorism.

#### DRAFT OUTLINE OF SINGLE CONVENTION ON LEGAL CONTROL OF INTERNATIONAL TERRORISM

##### *Preamble*

The Contracting States—

Considering the common danger to the international community, including states and their nationals, caused by terrorist acts having international impact;

Considering the international commitment to the protection of human rights contained in the United Nations Charter and in the Universal Declaration of Human Rights;

Affirming that effective measures for the legal control of international terrorism are urgently needed at the international level and at the state level;

Have agreed as follows:

##### *Article I. Definition of Offense of International Terrorism*

1. The offense of international terrorism shall consist of any act of violence or threat thereof by an individual or by groups of individuals, however denominated, directed against internationally protected persons, internationally protected organizations, internationally protected places, internationally protected transportation systems, or internationally protected communications systems, with the intention of intimidating such persons or members of the general public, or of causing injury to or the death of such persons or of members of the general public who have been seized as hostages or otherwise singled out as objects of terrorist attack, or causing loss, detriment, or damage to such places or property in order to undermine friendly relations among states or among the nationals of different states or to disrupt the activities of such international organizations or such international transportation or communications systems or to extort concessions from states, whether committed internally or externally.

The offense shall comprehend conspiracy to commit, attempts to commit, and complicity in the commission of the offense.

2. For the purposes of this Convention:

(a) "Internationally protected persons" means those persons comprehended in and protected by the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1969 United Nations Convention on Special Missions, the 1971 Organization of American States Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that Are of International Significance, and the 1973 United Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents; officers of public or private enterprises engaged in educational, charitable, or commercial activities outside the state in which the enterprise maintains its headquarters;

persons invited to a state as official guests; persons visiting a state as bona fide tourists;

(b) "Internationally protected organizations" means an international intergovernmental organization or a public or private enterprise engaged in educational, charitable, or commercial activities outside the state in which the enterprise maintains its headquarters;

(c) "Internationally protected places" means—

(aa) Diplomatic or consular missions or premises;

(bb) Headquarters of an international intergovernmental organization;

(cc) Headquarters of a public or private enterprise engaged in international educational, charitable, or commercial activities;

(dd) Meeting place of an international intergovernmental organization;

(ee) Place in which a conference, congress, convention, sports event, or other assembly is held in which nationals of different states participate in their public or private capacity;

(ff) Aviation facilities including international air terminals, ticket agencies, storage facilities, maintenance facilities, landing strips, and air fields;

(gg) Docks, terminals, warehouses, harbor works, roadsteads, marine installations, and research stations located on the territorial sea or high seas or on the continental shelf or deep sea bed;

(hh) Railway tracks crossing state boundaries and related terminals, warehouses, and maintenance facilities;

(ii) Public highways crossing state boundaries and related autobus terminals and maintenance facilities;

(d) "Internationally protected transportation systems" means civil aircraft as comprehended in the 1944 Convention on International Civil Aviation and protected by the 1963 Convention on Offenses and Certain Other Acts Committed on Board Aircraft, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking), and the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage); international transportation by water of passengers, freight, fuel, and chemicals; international railway systems; international highway systems;

(e) "Internationally protected communications systems" means postal services, submarine cables, and telephone, radio, television, and satellite telecommunications systems in international use;

(f) "Internally" means an act committed wholly within territory under the jurisdiction of one state;

(g) "Externally" means an act committed or taking effect outside territory under the jurisdiction of one state.

#### *Article II. Obligations of Contracting States*

1. Each Contracting State undertakes to amend its present penal legislation or to adopt new legislation comprehending the offense of international terrorism as defined in Article I and to make such offense punishable by a minimum sentence of 2 years imprisonment.

2. Each Contracting State's jurisdiction shall extend to such an offense committed within its territory, committed by one of its nationals, or committed within the territory of another Contracting State where the alleged offender has come into the territory of the first State.

3. Each Contracting State in whose territory an alleged offender is found shall without exception whatsoever either (a) extradite the offender or (b) submit the offender to prosecution in its regular court system in accordance with its established penal procedures. The process of prosecution shall commence without undue delay. Offenders must be provisionally detained until the process of prosecution has been terminated.

4. No person, whether an individual or a member of a group of individuals, however denominated, acting in a public or private capacity shall be exempted from extradition or criminal process on a charge made in pursuance of this Convention. A person held in jail for trial or serving a sentence in prison who is released through terrorist extortion shall not be exempted thereby from extradition, criminal process, or the obligation to complete his sentence.

5. Any person who has been tried in the territorial state or abroad on a charge made in pursuance of this Convention and has been acquitted or, if convicted, has served a sentence therefor shall not be subject to further criminal proceedings on such charge.

6. The accused shall be accorded fair and humane treatment at all stages of the criminal proceedings. Where the accused cannot afford counsel, he shall have access to publically financed counsel.

7. The Contracting States shall afford one another the greatest measure of assistance in respect of the investigation and prosecution of persons charged with the offense of international terrorism. This provision shall not affect obligations concerning the taking of testimony and mutual judicial assistance embodied in other conventions to which these States are party.

8. The statutory limitation for instituting prosecution for the offense of international terrorism shall be 15 years.

#### *Article III. Extradition process*

1. International terrorism as defined in this Convention shall be deemed to be included as an extraditable offense in any extradition treaty existing between Contracting States. Contracting States shall include the offense as an extraditable offense in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it shall consider this Convention as the legal basis for extradition in respect of the offense. Extradition shall be subject to the procedural provisions of the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offense as an extraditable offense between themselves, subject to the procedural provisions of the law of the requested State.

4. The offense shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article II(2).

5. An extradition request from the State in which the offense was committed shall have priority over other such requests if received by the Contracting State in whose territory the alleged offender has been found within 30 days after all Contracting States have been notified of the detention of the alleged offender.

#### *Article IV. Responsibility of Contracting States*

1. Each Contracting State shall, in pursuance of international and national law, take all practicable measures for the prevention of acts of international terrorism.

2. Any Contracting State which has failed to act to control international terrorism, as defined in Article I, (a) in a concrete case by adopting legislation for the implementation of this Convention, (b) by extraditing an alleged offender found in territory under its jurisdiction, or (c) by submitting to prosecution in its regular courts in accordance with its established penal procedure an alleged offender found in territory under its jurisdiction shall be liable for the payment of damages for the wounding or death of any individual or for bodily or mental injury to any individual, whether a national or alien or a public servant or private person, or for the loss, detriment, or damage to real or personal property, whether of national or alien ownership or of a public or private character, caused by international terrorism. Liability for each victim shall be limited to proven damages not to exceed \$100,000 (U.S.), exclusive of legal fees and costs. Liability for damage to or destruction of real or personal property shall be determined by arbitration.

3. A Contracting State which grants a haven or otherwise cooperates with international terrorists in order to protect the lives of innocent civilians is not exempt from the obligation under this Convention to extradite such offenders or to submit them to prosecution in its courts or to pay damages to the victims of international terrorism.

#### *Article V. Settlement of Disputes*

#### *Article VI. Ratification, Entry into Force, Termination*

#### COMMENTARY

##### *Preamble*

Three considerations underlie the draft: that all states, whether large or small, industrialized or in the process of economic development, and all persons, whether natural or legal, diplomat or tourist, are the potential victims of international terrorists acts; that the duty of all states party to the United Nations Charter and the Universal Declaration of Human Rights to respect and promote human rights and freedoms comprehends the protection of these rights and freedoms from impairment or destruction by persons resorting to the methods of international terrorism; that the continuing and increasing world-wide manifestation of terrorism necessitates attention now to the establishment of an international standard

of legal control over terrorist acts. Within this context, the draft focusses upon three principles of legal control: that motive must be separated from the criminal act; that states must be committed to the prosecution of an offender either in the state in which he is found, or, following extradition proceedings, in another state; and that a state is responsible to the victims of international terrorism on a theory of strict liability where the state has failed to act against international terrorists or has temporized with them.

#### *Article I. Definition of Offense of International Terrorism*

The definition of the "offense of international terrorism" presented here is more comprehensive than the definitions, for example, in Articles 1(2), 2, and 3 of the League Convention or in Article 1 of the U.S. Draft Convention.

(a) *Targets.*—The targets of international terrorism are broadly defined so as to reach beyond international persons and other entities, international places, and international civil aircraft, which are protected to some extent by conventional or customary international law, to persons, entities, places, and whole systems of transportation and communication whose vulnerability to attack because they may have some international character has become evident but has not been recognized as a matter for international legal concern. In addition to the diplomatic or consular officer or the representative of an international inter-governmental organization, there is the private individual who acquires "international personality" so as to become a target of international terrorism by reason of his function as an officer of an international educational, charitable, or commercial enterprise, or his participation in an international conference, sports event or similar gathering which attracts persons from various countries, or indeed, his presence in a country as a bona fide tourist. This category includes the member of the general public who is taken hostage or otherwise subjected to attack in the name of international terrorism.

In addition to the intergovernmental organization, there is the public or private organization or enterprise whose international activities of an educational, charitable, or commercial nature make it an attractive target for international terrorist attack. In addition to such places as the embassy, consulate, or the headquarters of an intergovernmental organization which are protected under international law, there are the headquarters of public or private enterprises engaged in international educational, charitable, or commercial activities as well as the meeting places of intergovernmental organizations and the centers of international conferences and like events which are endangered by their very international character.

In the contemporary world, all international transportation and communications systems are vital to the conduct of economic and political relations among states, and they are all vulnerable to terrorist attack. Only international civil aircraft have been singled out for protection under international law. The draft extends international protection to international airports and related facilities, international water, rail, and highway systems and their related facilities, and to various forms of international communication.

(b) *Nature of the offense.*—The offense of international terrorism which has been broadly defined in the draft comprehends such criminal acts as *inter alia* extortion, kidnapping, assault, murder, arson, sabotage, and the sending of letter bombs. Given the variety of targets recognized in the draft, a general statement is preferred to an attempt at an exhaustive list of possible criminal acts. This general statement would be implemented at the national level. Following the usual language of extradition treaties and criminal codes, the offense includes the related acts of conspiracy, attempt, and complicity. Acts committed in the course of military hostilities are not dealt with here as they would be subject to control pursuant to the conventions which have been designed for the protection of human rights in armed conflict, such as the 1949 Geneva Convention Relative to the Treatment of Prisoners of War and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War. The draft reaches terrorist acts which are committed within territory subject to a state's jurisdiction or which are committed or take effect outside such territory.

(c) *Intent.*—In terms of intent, the offense is seen as consisting of criminal acts which in the last analysis undermine, disrupt, or destroy friendly relations among states and among the nationals of different states. The motivation of an international terrorist act, whether noble or ignoble, is treated as a matter for separate consideration from the intention to commit the act. As was pointed out in the United Nations Secretariat's study of international terrorism, submitted to the Sixth Committee on November 2, 1972, "... the legitimacy of a cause does

not in itself legitimize the use of certain forms of violence, especially against the innocent."

Articles II and III of the draft indicate that international legal control of terrorist acts must be predicated upon the recognition of the criminal character of the offense in both international and national law and a commitment to the prosecution of the offender. Consideration of political motivation should be limited to (aa) the determination of whether an extradition request has been made for the purpose of prosecuting an offender on political charges rather than on criminal charges, in which case the requested state has the option of extraditing the offender to another Contracting State or prosecuting him itself; (bb) the determination of whether political asylum should be granted to an offender upon his acquittal of the criminal charges or, if convicted thereof, upon the completion of his sentence.

#### *Article II. Obligations of Contracting States*

This article defines the commitment of Contracting States with respect to prosecution of an offender under the Convention.

1. Contracting States are required to provide specific legislation dealing with the offense rather than to rely upon current criminal statutes or provisions in penal codes for control of the offense. The adoption of specific legislation and the requirement of a minimum penalty of 2 year's imprisonment emphasize the significance of the offense covered in this draft.

2. The provision for jurisdiction follows the concept of limited universality which is found in the Hague, Montreal, OAS, and UN Conventions, and the U.S. Draft Convention.

3. The obligation of the state into whose jurisdiction an alleged offender comes is to extradite him or to submit him to prosecution. Unlike the Hague, Montreal, and U.N. Conventions and the U.S. Draft Convention, this draft permits no exception to extradition because, as has been pointed out above, the requested state which is concerned that an offender might be tried in the requesting state on a political rather than a criminal charge has the option of extraditing him to another Contracting State or prosecuting him itself. Consideration should also be given to the possibility of an offender's serving his sentence in a Contracting State other than the one in which he was prosecuted.

The Hague, Montreal, OAS, and UN Conventions and the U.S. Draft Convention provide that a state shall "submit the case to its competent authorities for the purpose of prosecution." Because "competent authorities" could be interpreted to include special political courts or ad hoc tribunals established for the purpose of trying persons accused of international terrorist acts, this draft, emphasizing the criminality of the acts, provides for trial in a state's regular court system and pursuant to its established penal procedures.

4. No distinction should be made as to perpetrators of terrorist act on grounds of status or position. Release of an offender from jail or prison through extortionate acts against the state of incarceration would not relieve him from facing charges under the Convention or from serving out his sentence.

5. As the concept of universal jurisdiction among the Contracting States is basic to the Convention, a provision against double jeopardy (*non bis in idem*) is included.

6. Fair and humane treatment of an accused together with right to counsel would seem to be elementary requirements in a civilized legal system.

7. This provision for interstate cooperation in facilitating the investigation and prosecution of an offense under the Convention is based on similar provisions in the Hague, Montreal, OAS, and UN Conventions and the U.S. Draft Convention.

8. Statutes of limitations on the prosecution of serious offenses vary from state to state, and within a given state's system of criminal law, the limits vary as to particular offenses. There is also the concept of no limit because of the heinous character of the offense as seen, *e.g.*, in the 1968 UN Convention on Nonapplicability of Statutes of Limitations to War Crimes and Crimes against Humanity. In the draft, a limit of 15 years is suggested as a possible compromise.

#### *Article III. Extradition Process*

The provisions of Article III follow, in general, the like provisions in the Hague, Montreal, OAS, and UN Conventions and the U.S. Draft Convention. The main difference is, as mentioned above, that extradition, like prosecution, shall be undertaken "without exception whatsoever."

*Article IV. Responsibility of Contracting States*

This article is addressed to the basic responsibility of states for the legal control of international terrorism.

1. The draft emphasizes the importance of preventive measures as a means of controlling international terrorism. Concern for prevention is also found in the Hague, Montreal, OAS, and UN Conventions and in the U.S. Draft Convention.

2. The draft penalizes the state which fails to take measures to control international terrorism by making it liable for the payment of damages to the victims of international terrorist acts. This penalty clause is in accordance with the principles of state responsibility under international law. It may be noted that the principle of liability without fault appears in another context in the 1966 Montreal (IATA) Agreement.

3. It is recognized that some states have been constrained to cooperate with international terrorists for the humanitarian purpose of protecting the innocent victims of the terrorists. Participation in such criminal extortion, whatever the purpose, would not, however, relieve a state from its obligations under this draft convention.

*Article V. Settlement of Disputes*

This article will be developed in the final text. In principle, disputes concerning the interpretation or application of the Convention which cannot be resolved by negotiation could be submitted to arbitration and, failing agreement on the organization of the arbitration, to the International Court of Justice. In this regard, reference is made to the relevant provisions in the Hague, Montreal, and UN Conventions. It may be noted that the U.S. Draft Convention provides for the submission of disputes to a Conciliation Commission.

*Article VI. Ratification, Entry into Force, Termination*

This article will be developed in the final text. It has been suggested that the draft Convention should become effective for the Contracting States as soon as they ratify it and deposit their ratifications, thus obviating lengthy delays in putting the Convention into force pending the acquisition of a fixed number of ratifications or accessions. The OAS Convention contains such a provision.

Senator GRIFFIN. Professor Murphy, did you wish the floor?

Mr. MURPHY. Yes.

## STATUS OF PLO

Perhaps I might make one additional comment to follow up on Professor Evans regarding the status of the PLO.

It seems to me that the status of the PLO at the moment is rather *sui generis*. Depending upon what kind of activity it was involved in, it might fall under the laws of war under the new Geneva Protocols of 1977, if it were involved in a paramilitary type operation, let's say, against Israel in Israel.

On the other hand, if a member of the Palestine Liberation Organization were back in Munich, Germany, and attacked Israeli competitors, I think that situation would be the kind of act that would fall under the definition of individual acts of terrorism and would be covered by the bill.

Senator GRIFFIN. Professor Evans and Professor Murphy, thank you both for your presentations today.

Captain Ashwood, your interest in this is not theoretical. Members of your association have reason to be very much interested and concerned about this subject.

We would be very interested in hearing from you. I regret very much that your presentation is late and last. But I want to indicate that I think it is very, very important to hear from you on this subject and to hear your views with regard to the impact of this particular legislation.

STATEMENT OF CAPT. THOMAS ASHWOOD, SECRETARY, AIRLINE  
PILOTS ASSOCIATION, INTERNATIONAL, WASHINGTON, D.C.

Captain ASHWOOD. Thank you, Mr. Chairman. I have been accustomed to the role of cleanup man in the past.

If I may, sir, we have submitted a recent statement and I would ask that it be included in the record. I would simply talk to the statement, if I may.

Senator GRIFFIN. Your statement will be made a part of this record.

Captain ASHWOOD. Mr. Chairman, I am neither a lawyer, a bureaucrat, nor an academic. I am an airline pilot, and consequently I would like to address the concepts and the purpose contained in the bill, rather than the details and the technical difficulties that the bill might create for people, for departments, and for organizations.

We, that is, ALPA, is interested in the entire scope of international terrorism, not just that which addresses itself to civil aviation. We feel, and we feel rightfully so, that any terrorist act in any country that has such a wide effect upon our own lives, as citizens of the United States and as international commercial pilots, requires our taking an interest in its entire scope.

QUESTION OF DISRUPTION

I have heard arguments such as why are we using a sledge hammer to crack a nut. After all, in the last 5 years only 2,000-odd people have been killed due to direct acts of terrorism. If we can put aside that moral question, I think there is an answer to it also, sir.

Respectfully, I would suggest that terrorism is not just a question of killing people. It is really a question of disruption, disruption of our society and our lives; disruption of our governments.

I know for a fact, and with the 8 years of experience that I have had in this field, that if I just took the number of people contained within this room and \$200,000 or \$300,000 I could, in a very short period of time, disrupt and perhaps even destroy segments of the government of this country or any other country. That is what is so frightening—that a handful can affect so many.

IMPORTANCE OF LEGISLATION

This legislation that we are talking about, S. 2236, is not only important to us here in the United States, but I have proof that already, just from the introduction of the provisional bill—the very first bill that came out—that through the international committee of which I am chairman, through the International Federation of Air Line Pilots Associations, that it has created or started legislation in at least 15 other nations.

This is important because this is actually a watershed, if you will, for international legislation which will come throughout the world. Now I am talking about the concepts and not the details of it.

I heard some of the comments earlier from the State Department, the Department of Commerce, the FAA, and so forth, concerning the difficulties that various sections of the bill could create for their departments.

How about the difficulties created by terrorism? Every piece of intelligence that I have received—and I am sure you have much more than I, and after the closed session of this morning I am sure you have additional information—indicates that it is on the increase. We will be facing greater and more bloody incidents in the future, in the very near future.

Sir, you also mentioned the roles of the FBI, State, Commerce, FAA, and so forth. But I have a role. We have a role also. That is the role of targets. It is not a very comfortable role, sir, and I know this from personal experience. I have been named as an assassination target by a Middle East terrorist organization. In fact, an attempt was made on my life last October.

So, I understand my role in this issue. But I question the role of some of the other agencies, such as the State Department and the Commerce Department, when they raise objections to doing something which we consider to be morally right and necessary.

#### AUTOMATIC SANCTIONS

I hear some comments about the automatic sanctions contained in the bill. I always thought that sanctions were meant to be at best, or at least, persuasive, and at worst punitive. I have always understood that punishment was meant to create difficulties for the punished. That is the purpose of the bill. This is why we support this bill so strongly. For the very first time, either nationally or internationally, we have a vehicle which establishes an offense, if you will, and also establishes a punishment for that offense.

The existing Hague, Montreal, and Tokyo Conventions are very clear in what constitute offenses, in what is a hijacking and what is interference with civil aviation. But none of them has any enforcement procedures. That is like having laws without having punishment. This makes them empty laws, worthless laws.

#### AFFORDABILITY OF FLIGHT SECURITY

I heard a comment that some of the states that subscribe to ICAO have such small civil aviation networks that they cannot afford security for their flights. I am addressing now the section that deals with airport security overseas. I can only say that that is nonsense because providing security for flights is not a vastly complicated and esoteric venture. It is very pragmatic; it is reasonably cheap; and it can be done and set up in a matter, literally, of days, to protect flights.

The type of security that we enjoy in the United States and have had since 1974 has been in place for almost 4 years. It has been developed and refined. You are talking about a few mechanical devices which are shelf hardware and which can be purchased by any state. It is not terribly expensive, especially when you consider just the cost of an airplane and ignore the lives of the passengers.

The cost of a 747 aircraft these days is in excess of \$50 million per copy. I am sure you would spend, or anybody would spend, if he made a \$50 million investment, \$100,000 to protect it.

So, I do not accept the fact that other nations cannot provide airport security at their airports for their flights and for our flights—and by our flights I mean U.S.-flag carriers overseas. This is because

when they get contaminated, or when any part of the system gets contaminated, we also get contaminated because we share the same airspace and we share the same airport facilities as they do.

I will finish my rather impassioned statement here, Mr. Chairman, and make myself available for questions, if you have any.

[Captain Ashwood's prepared statement follows:]

PREPARED STATEMENT OF THOMAS ASHWOOD, SECRETARY, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

Mr. Chairman, I am Captain Tom Ashwood, Secretary of the Air Line Pilots Association (ALPA), which represents the interests of 50,000 professional pilots and flight attendants.

I am also Chairman of the International Flight Security Committees of ALPA and the International Federation of Air Line Pilots Associations (IFALPA).

I am grateful for the opportunity to appear before this committee. I am ever more grateful that you are considering legislation to combat the growing scourge of international terrorism. Unfortunately, we live in a time when a few warped and dangerous individuals can place the lives of hundreds of innocent persons in jeopardy.

Terrorists are usually willing—sometimes even eager—to sacrifice themselves for whatever cause they subscribe to. They have no concern for their hostages, regarding them only as mere aids in achieving an objective.

The growing supply of sophisticated weapons and explosives available today to terrorists make them even more dangerous. For example, Mr. Chairman, we know there are small surface-to-air missiles available right now to various terrorist groups. We also know of at least two incidents in which terrorists with these missiles have been arrested near airports. It is only a question of time until someone uses such a missile to shoot down an airliner and murder the innocent persons on board.

Even more frightening is the prospect that some of the large amount of nuclear material available will find its way to a terrorist group. Sooner or later, innocent residents of a city will find themselves facing nuclear destruction not from a hostile nation but from a small band of fanatics.

Some may ask, what does terrorism have to do with commercial aviation? The answer is: quite a lot because airliners and their passengers are one of the most attractive targets for terrorists.

The reasons for this attraction include the following:

Airlines are highly identifiable with their country. Most are government-owned, and even privately-owned airlines such as Pan American and TWA are widely considered to represent their countries.

The place of attack can be selected from a variety of airports considering such factors as security arrangements, closeness to the destination and political stance of the government.

Modern airliners cost up to \$50 million. Where else can something so valuable be taken so easily?

The aircraft are relatively fragile and can be easily disabled or destroyed with a few dollars worth of easily obtainable materials.

There will be as many as 400 passengers of different nationalities on a single flight. They make invaluable hostages.

The hijacked aircraft provides the terrorists with a fast, reliable means of escape to almost any part of the world.

One of the goals of terrorists is publicity. Aircraft hijackings and airport terminal attacks are proven world-wide attention-getters.

Because terrorism today is frequently international, there are some who say the United Nations is the proper body to deal with it. However, the airline pilots of the world have been struggling for more than eight years to find measures to block the terrorism that threatens us and our passengers. Many of our efforts have been in the forums of the U.N., and they have been without success.

We have been forced to conclude that the U.N. has neither the will nor the way to take effective measures against international terrorism. The only practical method, we have decided, is firm action by a few powerful nations.

S. 2236, the bill you are considering, is an example of the kind of action we are talking about. We are pleased and relieved that the Congress is taking action now on the vital issue of international terrorism.

For too many years, Mr. Chairman, airline pilots have been pleading for diplomatic solutions to the problem of international hijackings, and for too many years the United States has been merely talking about it.

Meanwhile, international terrorism continues to grow like a cancer. Because we have an effective security system in this country, we tend to overlook the fact that aircraft hijackings are on the increase. There were 30 throughout the world last year, exactly twice as many as in 1976.

We believe this bill, if enacted, will be an important weapon in the battle to reverse this trend.

Sections 5 and 6 of S. 2236, which require the President to identify publicly those countries that support international terrorism and to take action against them, provide an appropriate mixture of firmness and flexibility.

There are only a few countries that, in the language of the bill, "have demonstrated a pattern of support for acts of international terrorism." Libya and Algeria are two that come quickly to mind. But even one country supporting terrorists is too many. We hope that firm action by the United States and other countries will cause these outlaw nations to change.

We also believe that the section on improving security at foreign airports will have a major impact on hijackings. Effective screening of passengers before boarding is the most important single action foreign governments could take to cut down on hijackings.

Such screening now takes place only in a few countries, such as the U.S., the United Kingdom and Israel. Security in most of the world is usually non-existent or at best ineffective.

The figures speak for themselves. Of the 25 hijackings involving foreign aircraft last year, the Federal Aviation Administration found that 21 "occurred because of weak passenger screening procedures."

Incidentally, to illustrate the scope of international terrorism, those 25 hijackings took place in 17 different countries, and the hijackers boarded the aircraft at 24 different airports.

The requirement that the Secretary of Transportation display prominently in U.S. airports the names of those foreign airports that have inadequate security will help publicize the lamentable security situation in most of the world.

U.S. airlines are already required to screen passengers boarding at foreign airports. In some instances, our airlines have been increasing their share of passenger traffic because people prefer to fly on the airline with less chance of being hijacked. That has caused some resentment on the part of some foreign governments and airlines.

Mandatory screening of passengers would do away with that competitive edge for U.S. airlines, but it would make flying safer for all of us.

What I call the stoplight syndrome applies to passenger screening. Basically, this syndrome says that someone must be killed before the authorities put a stoplight at a dangerous crossing. In some cases, it takes several terrorist incidents to force improvements in airport security.

I passed through Orly Airport in Paris last fall a week after a French domestic airliner was hijacked. There was no screening. Perhaps the incident last month at Orly in which three terrorists were killed while attempting to shoot passengers waiting for an El Al Israel flight will induce the French to tighten their airport security.

We consider the sections on nations aiding terrorism and airport security to be the heart of the bill, and we support them strongly. Regarding other provisions of S. 2236, we offer the following comments:

We welcome Section 10 that gives high priority to negotiating international agreements to combat terrorism. We believe bilateral agreements are probably the most effective ones because they oblige countries to take a public stand. We applaud the emphasis on obtaining compliance with existing international conventions, but we believe diplomatic persuasion and bilateral agreements may be more effective in realizing the goals of this bill.

Creation of a permanent international working group would be a useful step. We suggest, however, that such a group not be formed under the auspices of the United Nations, where it could easily become bogged down in talk and produce no action. Rather, we would prefer the State Department to take the initiative in forming such a group and invite other responsible nations to participate.

The provision in Section 10 calling for establishment of international legal requirements to prohibit and punish the taking of hostages is one of the briefest and most important in the bill. Agreement on this point would take the prospect of sanctuary away from terrorists. We expect it will be difficult to get international agreement on this point, but we should still strive to do so.

The requirement for the tagging of explosives during manufacture is long overdue. We would be much closer to solving the problem of aircraft sabotage if such tags were already in use.

Section 11 to extend existing safety and security standards to charter operations is also overdue. ALPA has repeatedly pressed for the same level of security on all commercial flights within the U.S.

In summary, Mr. Chairman, we wholeheartedly support S. 2236 and urge Congress to enact it or similar legislation. Such a law has been needed for many years.

Thank you for the opportunity to testify, and I will be pleased to answer any questions.

Senator GRIFFIN. Thank you, Captain.

#### COMMENDATION OF WITNESS

I have no questions, Captain. I think your statement is impressive and moving. It is certainly a very valuable contribution to the hearing on this important legislation.

If there are no other comments, I would thank all of our witnesses for appearing here today and for participating.

We appreciate it very much.

Captain ASHWOOD. Thank you, sir.

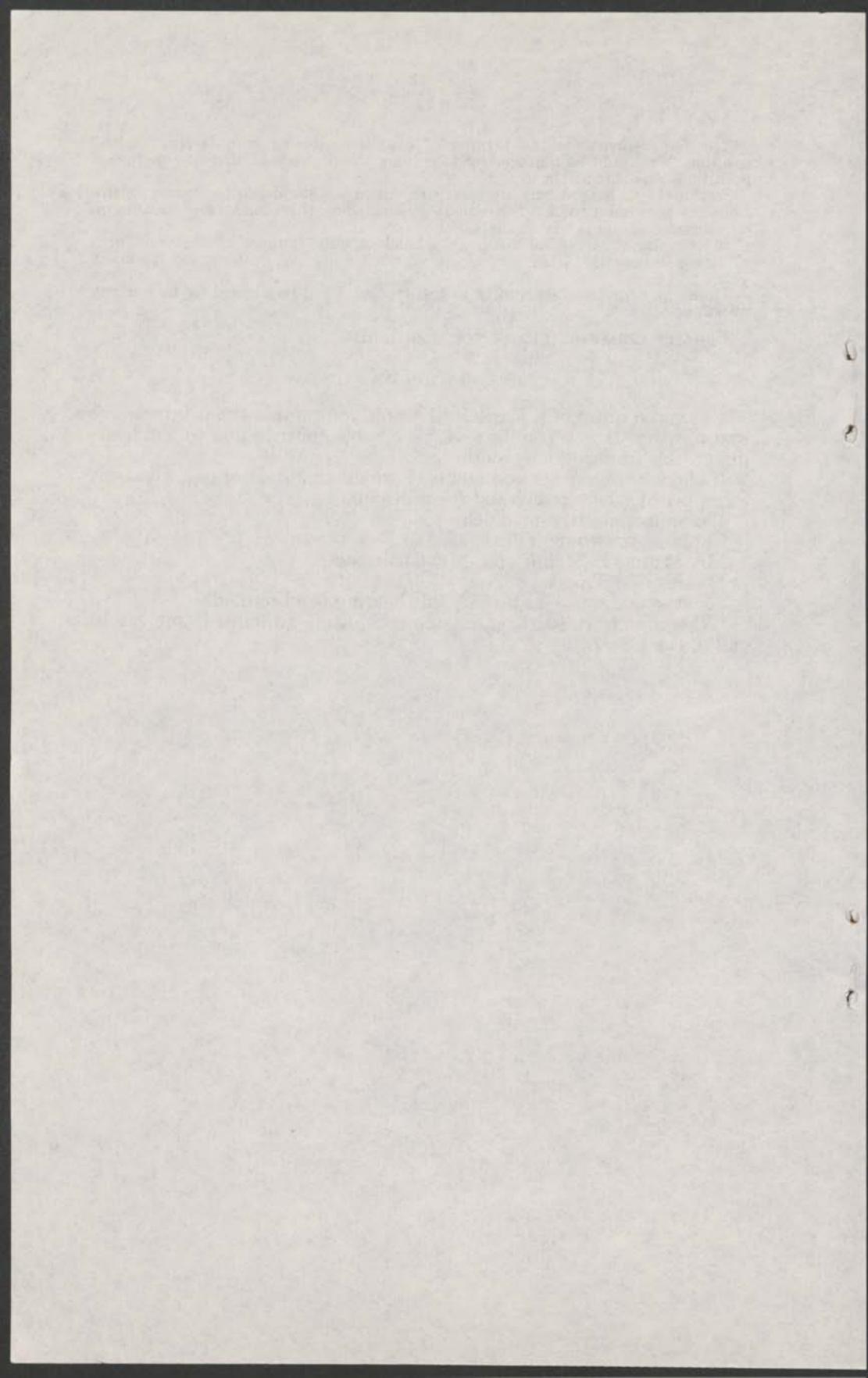
Mr. MURPHY. Thank you, Mr. Chairman.

Ms. EVANS. Thank you.

Senator GRIFFIN. With that, this hearing is adjourned.

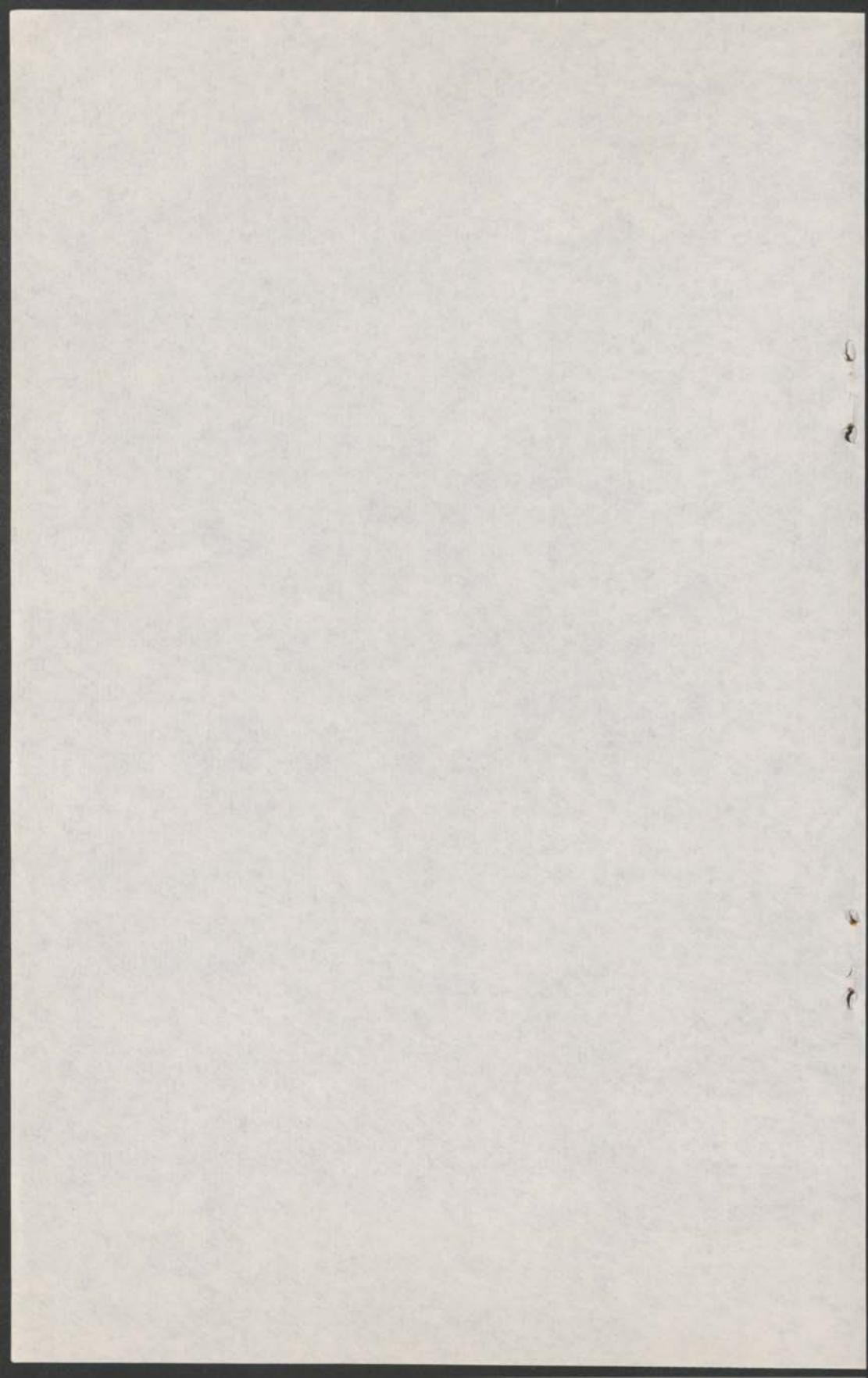
[Whereupon, at 12:13, p.m., the committee adjourned, subject to call of the Chair.]





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