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ANTI-TERRORISM CONVENTIONS

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Mr. BIDEN from the Committee on Foreign Relations
submitted the following

REPORT

[To accompany Treaty Docs. 106–6 and 106–49]

The Committee on Foreign Relations, to which was referred the International Convention for the Suppression of Terrorist Bombings (Treaty Doc. 106–6) and the International Convention for the Suppression of the Financing of Terrorism (Treaty Doc. 106–49), having considered the same, reports favorably thereon with reservations, understandings, and conditions as indicated in the resolutions of advice and consent, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolutions of advice and consent to ratification.

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I. PURPOSE

These two anti-terrorism conventions address two specific aspects of terrorist conduct: terrorist bombings and the financing of terrorism. Their objective is to require the United States and other States Parties to criminalize such activities and to cooperate with each other in extraditing or prosecuting those suspected of such activities.

II. BACKGROUND

The Convention for the Suppression of Terrorist Bombings was adopted by the United Nations General Assembly on December 15, 1997; signed on behalf of the United States on January 12, 1998; and sent to the Senate for its advice and consent on September 8, 1999. It has been ratified by more than the requisite 22 states and entered into force on May 23, 2001. To date, 58 states have signed the Convention; 45 are parties to it. The Convention is the result of an initiative by the United States following such incidents as the 1996 bombing attack on U.S. military personnel in Saudi Arabia and bombing attacks by HAMAS in Tel Aviv and Jerusalem.

The Convention for the Suppression of the Financing of Terrorism was adopted by the UN General Assembly on December 9, 1999; signed by the United States on January 10, 2000; and transmitted to the Senate for its advice and consent on October 12, 2000. It has not yet been ratified by the requisite 22 states and, as a consequence, it is not in force. To date, 119 nations have signed the Convention; 14 nations have ratified it. The Convention is the result of a French-led initiative by the Group of Eight (G–8) that had substantial U.S. input and support.

There is no one international treaty which addresses all aspects of terrorism. Rather, over the last three decades the international system has devised a series of multilateral treaties focused on specific aspects of terrorist activity. For example, there are international treaties addressing such acts as hostage taking, hijacking of aircraft, and violence against ships.[1] The United States is a party to these and other treaties. The conventions pending before the Senate are intended to supplement the existing panoply of treaties concerning terrorism.

These conventions generally apply a criminal law model to the designated offenses, that is, they require the Parties to the agreement to criminalize certain acts and to either submit the case for prosecution or extradite alleged offenders to a country that has jurisdiction to prosecute. The two conventions before the Senate take the same approach.

III. SUMMARY OF KEY PROVISIONS OF THE CONVENTIONS

A detailed article-by-article discussion of the two conventions may be found in the Letters of Submittal from the Secretary of State to the President, which are reprinted in full in the respective Senate Treaty Documents. A summary of the key provisions of the two conventions, many of which are similar or identical, is set forth below.

1. Definition of covered offenses

Bombing Convention. Defines covered offenses as (1) the unlawful and intentional delivery, placement, discharge, or detonation of an explosive or other lethal device in a place of public use, a government facility, a public transportation system, or an infrastructure facility, with the intent to cause death or serious bodily injury

[1] International Convention Against the Taking of Hostages, TIAS 11081; Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 22 UST 1641, TIAS 7192; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, S. Treaty Doc. 101–1.

or extensive destruction that likely will result in major economic loss; (2) an attempt to commit such an offense; and (3) organizing, directing, participating as an accomplice, or otherwise contributing to such an offense. (Article 2)

Financing Convention. Defines covered offenses as (1) the provision or collection of funds "by any means, directly or indirectly," with the knowledge that they will be used to carry out (a) a terrorist act within the scope of the treaties listed in the annex, including the Convention for the Suppression of Terrorist Bombings, or pertinent treaties that are subsequently concluded, or (b) any other act intended to cause harm to a civilian, or any other person not taking an active part in an armed conflict with the intent of intimidating a population or compelling a government or international organization to do or to abstain from doing any act; (2) an attempt to commit such an offense; and (3) organizing, directing, participating as an accomplice, or otherwise contributing to the commission of such an offense. (Articles 2 and 23)

2. International nexus

Bombing Convention. Excludes from the coverage of the Convention an offense described in Article 2 committed within a single state where both the victim and the offender are nationals of that state and the alleged offender is found in the territory of that state. (Article 3)

Financing Convention. Excludes from the coverage of the Convention an offense committed within a single state where the alleged offender is a national of that state and is present in the territory of that state, and no other state has the basis for exercise of jurisdiction under the convention. (Article 3)

3. Criminalization

Bombing Convention. Requires each State Party to establish the offenses set forth in Article 2 as criminal offenses under its domestic laws and to impose "appropriate penalties which take into account the grave nature of those offences." (Article 4)

Financing Convention. Requires each State Party to establish the offenses set forth in Article 2 as criminal offenses under its domestic laws, to impose "appropriate penalties which take into account the grave nature of those offences," and to ensure that a legal entity organized under its laws may be held liable—criminally, civilly, or administratively—when a person responsible for its management or control has committed a covered offense. (Articles 4 and 5)

4. Jurisdiction

Bombing Convention. Requires each State Party to establish its jurisdiction over these offenses when an offense is committed (1) in its territory, (2) on board a vessel flying its flag or an aircraft registered under its laws, or (3) by one of its nationals, and when an alleged offender is present in its territory and is not extradited.

Also permits each State Party to establish its jurisdiction over these offenses if the offense is committed (1) against one of its nationals, (2) against one of its facilities abroad, (3) by a stateless person habitually resident in that State, (4) in an attempt to coerce that State to do or abstain from doing any act, or (5) on board an aircraft operated by its government. (Article 6)

Financing Convention. Requires each State Party to establish its jurisdiction over these offenses when an offense is committed (1) in its territory, (2) on board a vessel flying its flag or an aircraft registered under its laws, or (3) by one of its nationals, and when an alleged offender is present in its territory and is not extradited. (Article 7)

Also permits each State Party to establish its jurisdiction over these offenses when an offense is directed toward or leads to the commission of a terrorist act (1) in its territory, (2) against one of its nationals, (3) against one of its facilities abroad, (4) in an attempt to coerce that State to do or abstain from doing any act, or when the offense is committed, (5) by a stateless person habitually resident in that State, or (6) on board an aircraft operated by its government. (Article 7)

5. Investigation and mutual legal assistance

Bombing Convention. Requires each State Party to investigate whenever it receives information that an alleged offender is present in its territory and to "take the appropriate measures" to ensure that person's presence "for the purpose of prosecution or extradition." Also requires States Parties to assist one another in any investigation, including, if necessary, by transferring for purposes of giving testimony a person already serving a sentence. (Articles 7, 10, and 13)

Financing Convention. Requires each State Party to investigate whenever it receives information that an alleged offender is present in its territory and to "take the appropriate measures" to ensure that person's presence "for the purpose of prosecution or extradition." Also requires States Parties to assist one another in any investigation, including, if necessary, by transferring for purposes of giving testimony a person already serving a sentence, and provides that they may not refuse a request for mutual legal assistance on the ground of bank secrecy. (Articles 9, 12 and 16)

6. Prosecution or extradition

Bombing Convention. Requires each State Party either to extradite an alleged offender to another State that has jurisdiction or to prosecute, and to inform other interested States of both the findings of its investigation and of its decision whether to submit the case for prosecution or extradite. (Articles 7 and 8)

Financing Convention. Requires each State Party either to extradite an alleged offender to another State that has jurisdiction or to prosecute, and to inform other interested States of both the findings of its investigation and of its decision whether to submit the case for prosecution or extradite. (Article 9 and 10)

IV. IMPLEMENTING LEGISLATION

In submitting the Conventions, the Executive Branch indicated that implementing legislation will be necessary in order for the United States to fulfill its obligations under the Conventions. The President submitted the proposed legislation to the Senate on October 25, 2001. The legislation was referred to the Committee on the Judiciary.

V. Entry Into Force and Denunciation

The provisions on entry into force and denunciation in the two conventions are identical. Each enters into force thirty days following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession. For each State ratifying a convention which has already entered into force, the convention shall enter into force for that party on the thirtieth day after deposit of the instrument of ratification.

As stated above, the Convention on the Suppression of Terrorist Bombings has entered into force; the Convention on the Suppression of the Financing of Terrorism has not. Thus, if the United States ratifies the former convention, it will take effect thirty days after it deposits the instrument of ratification. If the United States ratifies the latter convention in the near future, it will take effect thirty days after twenty-two nations have ratified or approved it.

Any party may denounce the conventions by written notification to the Secretary-General of the United Nations. The denunciations take effect one year following the date on which the notification is received by the Secretary-General.

VI. Committee Action

The Committee held a public hearing on the conventions on October 23, 2001, taking testimony from representatives of the Departments of State and Justice (a transcript and the questions and answers for the record may be found in the appendix to this report). On November 14, 2001, the Committee considered the conventions and ordered them favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to ratification of the conventions, subject to the reservations, understandings, and conditions in the resolutions of advice and consent to ratification.

VII. Committee Recommendation and Comments

The Committee recommends that the Senate advise and consent to the ratification of the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. The Committee believes that they will fill gaps in international law by requiring nations to criminalize the acts of terrorist bombing and financing of terrorism, and to cooperate with each other in the prosecution of those suspected of such crimes. In the wake of the barbaric terrorist attacks on the United States on September 11, the United States is engaged in a campaign against terrorism on many fronts. These conventions will provide important tools on the legal and financial fronts.

The Committee believes the Convention on the Suppression of Financing of Terrorism is particularly important, because it will provide a means of attack on the financial bases of the international terrorist networks. The Convention is not yet in effect, and to date 14 of the required 22 nations have ratified it. The Committee urges the Executive Branch to engage in active diplomacy to persuade other signatories to ratify the Convention at the earliest possible date.

In presenting the conventions to the Senate, the Clinton Administration proposed several reservations, understandings, and declarations. During the Committee hearing, the Executive Branch witnesses affirmed that the Bush Administration supported these proposals made by the prior Administration. With two exceptions, the Committee has included in the resolutions of advice and consent to ratification the proposals made by the Executive Branch, with minor modifications made only for style or sake of clarity. The two exceptions are as follows.

First, the Committee has not included the proposed declaration regarding the Convention on the Suppression of Financing of Terrorism Article 2(2) (relating to the Convention on the Suppression of Terrorist Bombings). Article 2(2) permits a State Party to declare, when depositing its instrument of ratification, that it is not a party to a treaty listed in the annex. The Executive Branch proposed such a declaration with regard to the Convention on the Suppression of Terrorist Bombings, in that the United States is not yet a party to that Convention. Inasmuch as the Committee recommends approval of both the Convention on Suppression of Financing of Terrorism and the Convention on the Suppression of Terrorist Bombings at this time, this proposed declaration is unnecessary.

Second, the Committee has modified one of the proposed understandings regarding Article 19 of the Convention on the Suppression of Terrorist Bombings. The Executive Branch proposed an understanding related to the second part of Article 19(2) which restated the pertinent text of the article almost verbatim. The Committee believes it unnecessary, and unwise as a matter of practice, to restate in an understanding the text of the proposed treaty. Instead, the Committee has proposed, in understanding (3), a broader statement regarding the application of Article 19(2) and a related definition set forth in Article 1(4). The Committee believes this proposed understanding provides clarity about the understanding of the United States of the scope of the Convention with regard to the official activities of military forces, as well as civilians supervising such forces, and civilians acting in support of those forces who are in the formal command structure. As the text of Article 19 implies, and as the Secretary of State's letter of submittal indicates, the official activities of State military forces are already comprehensively governed by other bodies of international law, such as the laws of war and the international law of state responsibility.

The Committee has added three conditions to the resolutions.

The first condition sets forth important principles of treaty interpretation, which the Senate has reaffirmed on numerous occasions in the recent past. The condition has been altered slightly from the text used in the 106th Congress, but the intent is the same. The condition reaffirms condition (8) of the "CFE Flank Document," which the Senate approved in 1997. That condition relates to, and includes, the language of condition (1) of the INF Treaty, approved by the Senate in 1988. The Committee explained the background to, and rationale for, the original condition in its report on the INF Treaty, *see* S. Exec. Rept. No. 15, 100th Cong., 2d Sess., at 87–108 (1988), and gave further elaboration on the meaning of the condition in its report on the CFE Flank Document. *See* S. Exec. Rept. No. 1, 105th Cong., 1st Sess., at 22–24 (1997). In brief, the condi-

tion is designed to set forth elemental principles of treaty interpretation under our constitutional system. These principles apply whether the Senate chooses to say so during consideration of a treaty.

The other two conditions have been approved by the Senate several times in recent years in consideration of law enforcement treaties. Condition (2) bars the extradition of any person by the United States under these conventions to the International Criminal Court unless the United States becomes a party to the Court pursuant to the treaty power of the Constitution. Condition (3) relates to the supremacy of the U.S. Constitution.

VIII. TEXT OF RESOLUTIONS OF ADVICE AND CONSENT TO RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS, SUBJECT TO A RESERVATION, UNDERSTANDINGS, AND CONDITIONS.

The Senate advises and consents to the ratification of the International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly on December 15, 1997, and signed on behalf of the United States of America on January 12, 1998 (Treaty Document 106–6; in this resolution referred to as the "Convention"), subject to the reservation in section 2, the understandings in section 3, and the conditions in section 4.

SEC. 2. RESERVATION.

The advice and consent of the Senate under section 1 is subject to the reservation, which shall be included in the United States instrument of ratification of the Convention, that—

(a) pursuant to Article 20(2) of the Convention, the United States of America declares that it does not consider itself bound by Article 20(1) of the Convention; and

(b) the United States of America reserves the right specifically to agree in a particular case to follow the procedure in Article 20(1) of the Convention or any other procedure for arbitration.

SEC. 3. UNDERSTANDINGS.

The advice and consent of the Senate under section 1 is subject to the following understandings, which shall be included in the United States instrument of ratification of the Convention:

(1) EXCLUSION FROM COVERAGE OF TERM "ARMED CONFLICT".—The United States of America understands that the term "armed conflict" in Article 19(2) of the Convention does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature.

(2) MEANING OF TERM "INTERNATIONAL HUMANITARIAN LAW".—The United States of America understands that the term "international humanitarian law" in Article 19 of the Convention has the same substantive meaning as the law of war.

(3) EXCLUSION FROM COVERAGE OF ACTIVITIES BY MILITARY FORCES.—The United States understands that, under Article 19 and Article 1(4), the Convention does not apply to—

(A) the military forces of a state in the exercise of their official duties;

(B) civilians who direct or organize the official activities of military forces of a state; or

(C) civilians acting in support of the official activities of the military forces of a state, if the civilians are under the formal command, control, and responsibility of those forces.

SEC. 4. CONDITIONS.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) TREATY INTERPRETATION.—The Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31, 1996), approved by the Senate on May 14, 1997 (relating to condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988).

(2) PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States shall not transfer any person, or consent to the transfer of any person extradited by the United States, to the International Criminal Court established by the Statute adopted in Rome, Italy, on July 17, 1998, unless the Rome Statute has entered into force for the United States, by and with the advice and consent of the Senate, as required by Article II, Section 2, Clause 2 of the United States Constitution.

(3) SUPREMACY OF THE CONSTITUTION.—Nothing in the Convention requires or authorizes the enactment of legislation or the taking of any other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM, SUBJECT TO A RESERVATION, UNDERSTANDINGS, AND CONDITIONS.

The Senate advises and consents to the ratification of the International Convention for the Suppression of the Financing of Terrorism, adopted by the United Nations General Assembly on December 9, 1999, and signed on behalf of the United States of America on January 10, 2000 (Treaty Document 106–49; in this resolution referred to as the "Convention"), subject to the reservation in section 2, the understandings in section 3, and the conditions in section 4.

SEC. 2. RESERVATION.

The advice and consent of the Senate under section 1 is subject to the reservation, which shall be included in the United States instrument of ratification of the Convention, that—

(a) pursuant to Article 24(2) of the Convention, the United States of America declares that it does not consider itself bound by Article 24(1) of the Convention; and

(b) the United States of America reserves the right specifically to agree in a particular case to follow the arbitration procedure set forth in Article 24(1) of the Convention or any other procedure for arbitration.

SEC. 3. UNDERSTANDINGS.

The advice and consent of the Senate under section 1 is subject to the following understandings, which shall be included in the United States instrument of ratification of the Convention:

(1) EXCLUSION OF LEGITIMATE ACTIVITIES AGAINST LAWFUL TARGETS.—The United States of America understands that nothing in the Convention precludes any State Party to the Convention from conducting any legitimate activity against any lawful target in accordance with the law of armed conflict.

(2) MEANING OF THE TERM "ARMED CONFLICT".—The United States of America understands that the term "armed conflict" in Article 2(1)(b) of the Convention does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature.

SEC. 4. CONDITIONS.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) TREATY INTERPRETATION.—The Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31, 1996), approved by the Senate on May 14, 1997 (relating to condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988).

(2) PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States shall not transfer any person, or consent to the transfer of any person extradited by the United States, to the International Criminal Court established by the Statute adopted in Rome, Italy, on July 17, 1998 unless the Rome Statute has entered into force for the United States, by and with the advice and consent of the Senate, as required by Article II, Section 2, Clause 2 of the United States Constitution.

(3) SUPREMACY OF THE CONSTITUTION.—Nothing in the Convention requires or authorizes the enactment of legislation or the taking of any other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

IX. APPENDIX

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS [TREATY DOC. 106–6]; AND INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM [TREATY DOC. 106–49]

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TUESDAY, OCTOBER 23, 2001

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:18 a.m. in room S–116, the Capitol, Hon. Joseph R. Biden, Jr., (chairman of the committee) presiding.

Present: Senators Biden, Sarbanes, Kerry, Wellstone, Boxer, Helms, Lugar, Chafee, Allen, and Brownback.

The CHAIRMAN. The hearing will come to order.

I apologize to everyone for the warmth in here.

Everyone is welcome to take off their jackets if they want. Obviously, I have. We appreciate the witnesses taking the time to come

up today. I will have a brief opening statement and turn to Senator Helms and then we will get under way.

Today the Foreign Relations Committee considers two multilateral treaties: the International Convention on the Suppression of Terrorist Bombings and the International Convention on the Suppression of Financing of Terrorism. After the barbaric attacks on the United States on September 11, the United States and the international community have fully awakened to the threat that terrorism poses to the civilized world. The world is coming together like never before to support a broad campaign, led by the United States, against this threat. The President and Congress have joined to support a campaign that will be waged on many fronts—diplomatically, financially, militarily, and law enforcement.

The two Conventions we consider today will provide important tools on the legal and financial fronts. The International Convention for the Suppression of Terrorist Bombings, conceived by the United States in the wake of the bombing attack on U.S. military personnel in Saudi Arabia in 1996, requires parties to criminalize the act of terrorist bombing aimed at public or governmental facilities or public transportation or infrastructure facilities. The International Convention for the Suppression of Financing of Terrorism requires nations to criminalize the act of collecting or providing funds with the intention that they will be used to support acts of international terrorism.

We must make every effort to deprive the terrorists networks of their financial bases. I caution that we should not overstate the importance of these treaties. They are unlikely to provide immediate assistance in the anti-terrorism effort. Indeed, one of them is not yet in force. Rather, they are weapons for the long term. They give the President and the Secretary of State additional tools to hold all nations to international standards, standards which we will expect them to embrace and to enforce.

Although the treaties were submitted by President Clinton, they are fully endorsed by President Bush. The United States will, I hope, do its part in approving them and do it swiftly in the coming weeks.

Let me now turn to Senator Helms for any comments he may have.

Senator HELMS. Thank you, Mr. Chairman.

In 1941—and I may be one of the few people in this room who remembers this—the accepted and effective policy of the United States was to identify and, if and when necessary, destroy forces resorting to violence against the American people. That is how and why the United States and our allies won World War II. That type of resolve will soon help us defeat this new enemy, global terrorism.

On September 12, I mentioned that I will do everything in my power to encourage and supplement the revival of the policy that once protected innocent Americans, and that is why I asked the distinguished chairman to schedule this meeting. So members of the committee, the question for us today is simple: Will these United Nations treaties today help us find and, when necessary, defeat the new enemy? Overall, I think the answer is yes. A worldwide effort is needed to stop the conduct covered by these treaties,

and if the United Nations can help put that worldwide effort together, then the United States obviously should not withhold our support.

The Bush administration has expressed great interest in these two treaties, but the treaties are not without their flaws and I feel that I must acknowledge that. Neither of them removes barriers to extradition of terrorist murderers. Neither of these treaties addresses the obvious fact that many nations have not even specified that terrorism is a crime, let alone the financing of terrorism or terrorist bombing itself.

So I am supporting these treaties, but I will ensure in the resolution of ratification that the treaties do not establish links to the so-called International Criminal Court established by the Rome Statute, and that they will not impede U.S. law enforcement or our national security efforts.

Mr. Chairman, I will end on a note of caution with regard to U.N. efforts to negotiate further international terrorism treaties and agreements. Incredibly, there are significant disagreements within the United Nations as to what constitutes terrorism. This should cause all of us to pause and consider whether the more than 180 countries comprising the United Nations may be incapable of ever agreeing on a suitable definition.

We should not waste time negotiating a lowest common denominator in terms of a definition of terrorism for the sake of universal agreement, because such an effort would instead undermine the President's campaign to eliminate the global terrorists organizations.

I look forward to hearing from our distinguished witnesses. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

It is usually not the practice for opening statements for everyone, but I see my colleagues that are gathered here. Do any of you have any comment you would like to make at the outset of this?

Senator ALLEN. We just want to learn.

The CHAIRMAN. Thank you.

Today we are pleased to hear from three distinguished public servants. Ambassador Francis Taylor is the State Department's Coordinator for Counterterrorism. Prior to joining the State Department, Ambassador Taylor served in the United States Air Force for three decades, rising to the rank of brigadier general. General, it is a delight to have you here.

Ambassador Will Taft, not unknown to this committee and always a welcome witness, is the State Department's Legal Adviser. Ambassador Taft has served in many important legal and policy positions in the Federal Government over the past three decades, including Ambassador to NATO and Deputy Secretary of Defense.

Michael—I have got to put my glasses on here—Michael Chertoff—is that correct?

Mr. CHERTOFF. Correct.

The CHAIRMAN [continuing]. Is the Assistant Attorney General for the Criminal Division, Department of Justice. Mr. Chertoff previously served as a partner in Latham and Watkins in New Jersey and was United States Attorney for New Jersey in the early 1990's.

We are pleased to have all of you here and, General Taylor, I invite you to begin.

STATEMENT OF HON. FRANCIS X. TAYLOR, COORDINATOR FOR COUNTERTERRORISM, DEPARTMENT OF STATE, WASHINGTON, DC

Mr. TAYLOR. Thank you, Mr. Chairman, members of the Foreign Relations Committee. I want to thank you for scheduling this hearing so quickly on the two pending counterterrorism treaties. I have a more detailed statement. With your permission, I would like to submit that for the record and I will summarize my comments here.

The CHAIRMAN. Without objection, it will be entered in the record.

Mr. TAYLOR. Again, I appreciate the opportunity to testify and stress the importance of these treaties on two levels: one, their role in law enforcement efforts against terrorists; and two, their place in the multilateral counterterrorism strategy we are implementing in concert with our traditional NATO, EU, G–7, and other key foreign governments.

I want to begin by expressing the condolences of the Department to the families of the thousands of Americans and citizens of over 80 countries who were killed, injured, or terrorized by these cruel acts of terror on the 11th of September. I want to express my admiration and appreciation for the courageous airline passengers and the thousands of law enforcement officers, firefighters, emergency service, and medical personnel, and many others who were involved as they responded magnificently to save lives and to avert an even greater tragedy.

Mr. Chairman, the horrific events of September 11 have reinforced the need for a far-reaching, coordinated approach to deal with the threat of international terrorism. Military activities and the television footage may attract the most attention, but the military operations are but a part of our campaign against terrorism. The nature of terrorism has been evolving and so have the efforts of terrorists to conceal their activities. Therefore, we must use a variety of tools, such as diplomacy, foreign assistance, multilateral law enforcement, intelligence cooperation, as well as military action where appropriate.

These tools, however, must be constantly refined and coordinated in order to expose terrorists networks, supporters, whenever and wherever possible, to detect and disrupt their activities.

These two treaties before you are key elements in this broad framework of international counterterrorism structure for the 21st century. The treaties are part of a comprehensive framework of agreements that obligate nations to criminalize terrorist conduct. The terrorist bombing and similar attacks have been a particular scourge in recent years. The United States has unfortunately been a frequent victim.

In addition to the tragic events of September 11, the 1993 World Trade Center attack, the 1996 attack on the U.S. barracks at Khobar Towers in Saudi Arabia, the 1998 attack on our embassies in Kenya and Tanzania, and the October 2000 attack on the USS

Cole triggered both international condemnation and multinational cooperation in bringing the perpetrators to justice.

The earlier attacks against the United States and other targets prompted the development of the Terrorist Bombings Convention. The Convention for the Suppression of Financing of Terrorism is a part of the effort to starve terrorist groups of their lifeblood, their financial support. The Convention criminalizes financial support for the terrorist activities of groups such as al-Qaida. It supplements our existing network of laws, executive orders, U.N. Security Council resolutions, and other international efforts to deprive terrorists of the assets they need to pursue their deadly work.

Ratification of the two Conventions before the Senate is important to our overall counterterrorism strategy and the President's campaign against terrorism that has taken shape since the attacks on the United States on the 11th of September. We are urging countries to ratify and implement all 12 of the International Terrorism Conventions if they have not done so already.

Our latest count is that 58 countries have signed and 29 countries have become parties to the Terrorist Bombings Convention and 58 countries have signed and 4 have become parties to the Terrorism Financing Convention. Our government will be better positioned to provide leadership in this regard once the United States itself ratifies the two Conventions before the committee today.

We are also encouraging countries all over the world to re-examine their own laws and strengthen and implement multilateral and bilateral law enforcement, financial, trade, and political sanctions against those that finance and otherwise support terrorists. For example, we and like-minded countries obtained passage on September 28 of U.N. Security Council Resolution 1373, which requires all U.N. member states to take steps against financing of terrorist acts and to freeze all terrorist-linked assets.

Terrorist groups largely raise funds through contributions via charitable groups, through front companies, and through criminal activities. The funding also is essential for groups that operate schools, medical clinics, and other facilities in order to develop broader support and help attract terrorist recruits. Some groups, such as Hamas, assure potential suicide bombers that their families will later receive financial support.

It is important that people throughout the world understand that contributions to organizations that have ties to terrorist groups, even if the organization conducts some charitable activities, also contribute to the cold-blooded murder committed by terrorists.

Mr. Chairman, the international conventions and the broader counterterrorism effort of which they are part underscore the point that acts of terrorism—terrorist bombings, hijackings of aircraft, taking of hostages—are crimes regardless of the motivation. These acts are not acceptable in the civilized world. They should not be rationalized nor glamorized. They should be punished. Approval of these two Convention before you today will help ensure that the perpetrators of these heinous acts are brought to justice.

There is no single solution to the problem of international terrorism. We are certain, however, that these legal instruments before the committee will strengthen our ability to fight international terrorism. They are powerful new tools that will complement those

already in use domestically and internationally. Given the serious threat we face, early ratification is clearly needed.

We very much appreciate the committee's decision to consider these important treaties and recommend that they receive advice and consent to ratification at the earliest date.

If I may, sir, I would like to turn to Mr. Taft, the State Department Legal Adviser, who will provide additional comments about the Conventions.

[The prepared statement of Ambassador Taylor follows:]

PREPARED STATEMENT OF AMBASSADOR FRANCIS X. TAYLOR

Mr. Chairman and Members of the Committee: Thank you for scheduling in such a timely manner this hearing on the two pending counterterrorism treaties, the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism.

I appreciate the opportunity to testify, as I would like to stress the importance of these treaties on two levels: their role in the law enforcement efforts against terrorists and their place in the multilateral counterterrorism strategy we are now implementing in concert with our traditional NATO, EU and G–7 partners, and other key foreign governments. With me today is the Department's Legal Adviser, William H. Taft, IV. Following my statement, Mr. Taft will provide additional background on the Conventions.

I want to begin by expressing condolences to the families of the thousands of Americans and citizens of 80 countries who, exactly six weeks ago, were killed, injured or terrorized by these cruel acts against humanity. I also want to express my admiration and appreciation for the courageous airline passengers and the thousands of law enforcement officers, firefighters, emergency service and medical personnel and many others who responded so magnificently to save lives and avert an even greater tragedy.

Mr. Chairman, the horrific events of September 11 have reinforced the need for a far reaching, coordinated approach to deal with the threat of international terrorism. Although military activities attract the most attention, they are a small part of the campaign. Because of the evolving nature of terrorism and the efforts of terrorists to conceal their activities, we must use a variety of tools such as diplomacy, foreign assistance, multilateral law enforcement cooperation, as well as military actions as appropriate. We will continue to refine and use these tools in a coordinated manner to expose terrorists' networks and supporters, wherever and whenever possible to detect and disrupt their activities.

ROLE OF TREATIES

The two treaties before you, and the other 10 major counterterrorism conventions, to which the United States is a party, are key elements in this broad framework of the international counterterrorism structure for the 21st century.

These treaties are a major component of our international strategy to develop a comprehensive framework of agreements that obligate nations to criminalize terrorist conduct, to assist one another in the investigation and prosecution of these crimes, and to extradite alleged offenders to another country with jurisdiction or submit the case for prosecution.

The Terrorist Bombings Convention, which is already in force for many other countries, is part of the web of 12 treaties already in place designed to track down and punish those who perpetrate these heinous violent acts that threaten civilized society.

Terrorist bombings and similar attacks have been a particular scourge in recent years. The United States has unfortunately been a frequent victim. In addition to the tragic events of September 11, the 1993 World Trade Center attack, the 1996 attacks on the U.S. Khobar Towers facility in Saudi Arabia, the 1998 attacks on our embassies in Kenya and Tanzania, and the October 2000 attack on the USS *Cole,* triggered both international condemnation and multinational cooperation in bringing perpetrators to justice. The earlier attacks against U.S. and other targets prompted the development of the Terrorist Bombing Convention.

THE TERRORISM FINANCING CONVENTION

The Convention for the Suppression of the Financing of Terrorism also was developed against a background of our experience with terrorism. It is part of the effort to starve terrorist groups of their lifeblood, financial support.

The Convention criminalizes financial support for the terrorist activities of groups such as al-Qaida and requires parties to the Convention to cooperate in investigations and prosecutions of such financing. It will thereby supplement our existing network of laws, executive orders, UN Security Council resolutions and other international efforts to deprive terrorists of the assets they need to pursue their deadly work.

Ratification of the two Conventions before the Senate is important to our overall counterterrorism strategy and the President's Campaign against Terrorism that has taken shape since the attacks on the United States on September 11.

A key part of our diplomatic effort in the campaign is urging countries to ratify and implement all 12 of the major international terrorism conventions if they have not done so already. Our latest information from the United Nations is that 58 countries have signed and 29 have become parties to the Terrorist Bombings Convention and 58 countries have signed and four have become parties to the Terrorism Financing Convention. The Bombings Convention has been in force among other countries since May 2001, and the Financing Convention will enter into force once 22 countries deposit their instruments of ratification.

Our government will be better positioned to provide leadership in this regard once the United States itself ratifies these two Conventions before the Committee today. Every day since September 11, we see reporting of new interest and actions by other counties on the treaties.

We also are encouraging countries all over the world to reexamine their own laws and strengthen them and implement bilateral law enforcement, financial, trade, and political sanctions against those that finance or otherwise support terrorists. Great Britain and Greece, for example, passed tighter counterterrorism laws even before the September 11 attacks. Other countries are considering doing the same. These efforts have been very encouraging.

OTHER STEPS

In the multilateral arena, early ratification of the pending treaties will also demonstrate the importance both branches of government attach to the collective international steps against terrorism.

We are working hard, both with our major western and G–7 allies as well with the broader world community, to support coordinated and multilateral efforts. For example, with other countries, we obtained passage on September 28 of U.N. Security Council Resolution 1373, which requires all UN Member States to prevent and suppress the financing of terrorist acts and to freeze all terrorist-linked assets. Even prior to the passage of UNSCR 1373 we have seen rapid, favorable responses to our bilateral calls to implement UNSCR 1333 of December 2000, which, among other things, requires Member States to freeze bin Laden/al-Qaida assets.

We also propose to utilize the money laundering expertise of existing entities such as the Financial Action Task Force (FATF) and the Egmont Group of Financial Intelligence Units and the anti-organized crime capabilities of the Lyons Group. The G–7 Financial Ministers also agreed to counterterrorism cooperation at their meeting in Washington earlier this month.

At the same time, the U.S. has been taking important unilateral terrorist financing initiatives. President Bush's Executive Order published on September 24 froze the assets here of 27 terrorist groups and their supporters associated with al-Qaida. On October 12, 39 more groups and individuals were added to the Executive Order's annex. The Administration, meanwhile, has established an interagency task force to work on these and related financial matters.

Earlier key steps aimed at curbing terrorism fund raising include the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, which you, Mr. Chairman, wearing your Judiciary Committee hat, helped steer through Congress. This important law makes it a criminal offense for persons subject to U.S. jurisdiction to knowingly contribute funds or other material support to any groups that the Secretary of State designates as a Foreign Terrorist Organization (FTO). On October 5, the Secretary redesignated 26 FTO's whose two-year designations were due to expire on October 8. The State Department's Antiterrorism Assistance (ATA) program, developed a new course to help train foreign officials in the practical aspects of spotting and curbing terrorism money flows.

These above steps were prompted by the emergence in recent years of groups that do not depend on state support, but largely raise funds themselves, through con-

tributions via charitable groups, through front companies, and through criminal activities. These funds are important to the terrorist groups in many ways, and not only for directly financing terrorist attacks. The funding also is essential for groups that operate schools, medical clinics and other facilities in order to develop broader support and help attract recruits. Some groups such as HAMAS assure potential suicide bombers that their families will later receive financial support.

It is important that people throughout the world understand that contributions to organizations that have ties to terrorist groups—even if the organizations conduct some charitable activities—also contribute to the cold-blooded murder committed by terrorists. I would like to quote from Section 301 of the 1996 Antiterrorism Act. "(F)oreign terrorist organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct."

EARLY RATIFICATION

Mr. Chairman, the international conventions and the broader counterterrorism efforts of which they are a part, underscore the point that acts of terrorism—terrorist bombings, hijacking of aircraft, taking of hostages—are crimes whatever the motivation. These acts are not acceptable to the civilized world. They should not be rationalized or glamorized. They should be punished. Approval of the two Conventions before you today will help ensure that perpetrators of these heinous acts are brought to justice.

There is no single solution to the problem of international terrorism. We are certain, however, that these legal instruments before the Committee will strengthen our ability to fight international terrorism. They add powerful new tools that will complement those already in use domestically and internationally. Given the serious threat we face, early ratification is clearly needed.

We very much appreciate the Committee's decision to consider these important treaties, and recommend that they receive advice and consent to ratification at an early date. If I may, I will now turn to Mr. Taft, the State Department's Legal Adviser, who will provide additional information about these two Conventions.

The CHAIRMAN. Thank you.

Mr. Taft.

STATEMENT OF HON. WILLIAM H. TAFT IV, LEGAL ADVISER, DEPARTMENT OF STATE, WASHINGTON, DC

Mr. TAFT. Thank you, Mr. Chairman. I am very pleased to appear before you, Senator Helms and the other members of the committee to testify in support with Ambassador Taylor of Senate advice and consent to ratification of the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. I have a prepared statement which, if you agree, I would like to submit for the record and I will summarize.

The CHAIRMAN. Without objection, it will be placed in the record.

Mr. TAFT. As Ambassador Taylor described in his testimony, the United States is advancing a broad counterterrorism strategy that includes several significant multilateral initiatives. These Conventions on which my office and Ambassador Taylor's office have worked closely together are very important components of that counterterrorism strategy.

These two instruments follow the general models of prior terrorism Conventions that the Senate has considered and approved in the past and to which the United States is already a party. The U.N. General Assembly adopted the International Convention for the Suppression of Terrorist Bombings, commonly called the Terrorist Bombings Convention, on the 15th of December, 1997. The United States signed it on January 12, 1998, which was the first day that it was open for signature. The Convention entered into

force in May 2001 when the required number of parties had ratified it.

The United States initiated the negotiation of this Convention in July 1996 in the aftermath of the June 1996 bombing attack on U.S. military personnel at the Khobar Towers in Dahran, Saudi Arabia, in which 17 U.S. Air Force personnel were killed. The Convention fills an important gap in international law by expanding the legal framework for international cooperation in the investigation, prosecution and extradition of persons who engage in such bombings and similar attacks.

More specifically, the Convention will create a regime of universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into, or against various defined public places with the intent to kill or cause serious bodily injury or with the intent to cause extensive destruction of the public place.

An explosive or lethal device is defined broadly in the Convention, so that in addition to criminalizing the unlawful use of bombs and similar explosive devices, the Convention addresses, for example, the intentional and unlawful release of chemical and biological devices.

Like earlier Conventions, the new Convention requires parties to criminalize under their domestic laws the offenses set forth in the Convention if they have an international nexus, to extradite or submit for prosecution persons accused of committing or aiding in the commission of such offenses, again if they have an international nexus, and to provide one another assistance in connection with investigations or criminal or extradition proceedings relating to those offenses.

We recommend that ratification of the Convention be subject to two proposed understandings and one proposed reservation, which would be deposited by the United States along with its instrument of ratification. The two understandings relate to the exemptions from coverage in article 19 of the Convention for armed forces during an armed conflict and for military forces of states at any time.

The first understanding will provide the definitions that the United States will employ for the terms "armed conflict" and "international humanitarian law," which are two phrases used in article 19 that are not defined in the Convention. So we think it is a proper caution to define them in our understanding.

With this understanding, the United States would make clear: first, that, consistent with the law of armed conflict, isolated acts of violence, for example by insurgent groups, that include the elements of the offenses set forth in the Convention would be encompassed in the scope of the Convention despite the armed conflict exemption; and second, that for purposes of this Convention the phrase "international humanitarian law" has the same substantive meaning as the "law of war."

The second understanding will constitute a statement by the United States noting that the Convention does not apply to the activities of military forces of states. While such an exclusion might be thought to be implicit in the context of the Convention, The Convention's negotiators thought it best to articulate the exclusion in article 19 in light of the relatively broad nature of the conduct

that is described in article 2, where it is describing the offenses, and the fact that this conduct overlaps with common and accepted activities of state military forces.

We recommend that the United States include an understanding to this effect in its instrument of ratification.

In the reservation, the United States will exercise its right not to be bound by the binding dispute settlement provisions of article 21, which is our customary reservation in our treatment of conventions and which is explicitly provided for in this Convention if we want to take that reservation.

Now, turning to the International Convention for the Suppression of Financing of Terrorism, the U.N. General Assembly adopted this Convention, which is commonly known as the Terrorism Financing Convention, on December 9, 1999. The United States signed the Convention on the first day that it was open for signature, January 10, 2000. The Convention will enter in force once 22 states deposit their instruments of ratification. As Ambassador Taylor indicated, just four have deposited their instruments as of this time.

France initiated the negotiation of this Convention in the fall of 1998, with strong support and input from the United States as part of the G–8 initiative to combat terrorist financing. The Convention fills another important gap in international law in the same way as the Terrorist Bombings Convention, by expanding the legal framework for international cooperation in the investigation, prosecution, and extradition of persons who engage in financing terrorism.

The Convention provides for states parties to exercise criminal jurisdiction over the unlawful and willful provision or collection of funds with the intention that they be used or in the knowledge that they are to be used in order to carry out certain terrorist acts which are set forth in the Convention. It requires parties to criminalize, under their domestic laws, the offenses that are set forth in the Convention if they have an international nexus, to extradite or submit for prosecution persons accused of committing or aiding in the commission of those offenses, again if there is an international nexus, and to provide assistance to one another in connection with investigations or criminal or extradition proceedings regarding such offenses.

The Terrorism Financing Convention is aimed specifically at cutting off the resources that fuel international terrorism. Once in force, it will obligate the states parties to it to criminalize conduct relating to the raising of money and other assets that support terrorist activities.

As stated in article 2, a person commits an offense under this Convention if that person "by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that they should be used or in the knowledge that they are to be used to carry out terrorist acts."

The first category of terrorist acts consists of any act that constitutes an offense within the scope of one of the nine counterterrorism conventions previously adopted and listed in the Convention. The second category includes any other acts intended to cause death or serious bodily injury to a civilian or to any other

person, for example to an off-duty military officer or enlisted man, not taking an active part in hostilities in a situation of armed conflict, when the act has a terrorist purpose.

An act has a terrorist purpose under the Convention when by its nature or context it is intended to intimidate the population or to compel a government or international organization to do something or to not do something. The offense includes attempts, accomplices, and anyone who organizes or directs or contributes to the commission of an offense.

We recommend that ratification of the Terrorism Financing Convention be subject to a proposed understanding and a proposed reservation. If for any reason the United States has not become a party to the Terrorism Bombings Convention before or simultaneously with the ratification of the Terrorism Financing Convention, we also recommend a declaration.

The understanding addresses two issues: First, it makes clear the understanding of the United States that nothing in the Convention precludes states parties from conducting legitimate activities against all lawful targets in accordance with the law of armed conflict. Second, it provides the definition the United States will employ for the term "armed conflict" as it is used in article 2.1(b), but that term is not defined in the Convention. This is similar to the point that we were reflecting in our understanding on the Terrorist Bombings Convention.

In the reservation the United States shall exercise its right under article 24.2 not to be bound by the binding dispute settlement resolutions of article 24.1, just as in the other convention.

The possible declaration would exercise the right of the United States not to have the Terrorism Financing Convention's scope encompass the financing of offenses under the Terrorist Bombings Convention until we become a party to that Convention, just to tie the two together.

As noted in the transmittal of these Conventions to the Senate, implementing legislation will be required before the United States can become a party. This legislation is being prepared and will be transmitted to the Congress as soon as possible.

Mr. Chairman, I reiterate Ambassador Taylor's recommendation that these important treaties receive the advice and consent of the Senate to ratification at an early date. I will be happy to take questions that any of the members of the committee or you may have, and Assistant Attorney General Chertoff I think has a statement as well.

[The prepared statement of Mr. Taft follows:]

PREPARED STATEMENT OF HON. WILLIAM H. TAFT IV

Mr. Chairman and Members of the Committee: I am pleased to appear before you today, following Ambassador Taylor, as the second State Department witness in support of Senate advice and consent to ratification of the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism.

Sadly, nothing can replace the lives that were lost as a result of the dreadful events that occurred on September 11. However, instruments that make our work with other countries more effective can assist in preventing such tragedies in the future.

As Ambassador Taylor described in his testimony, the United States is advancing a broad counterterrorism strategy that includes several significant multilateral ini-

tiatives. These Conventions, on which my office and Ambassador Taylor's office have worked closely together, are very important components of that counterterrorism strategy.

These two instruments follow the general models of prior terrorism conventions that the Senate has considered and approved in the past and to which the United States is already a party, such as the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, the 1979 Convention Against the Taking of Hostages, and the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation.

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS

The UN General Assembly adopted the International Convention for the Suppression of Terrorist Bombings, commonly called the "Terrorist Bombings Convention," on December 15, 1997. The United States signed the Convention on January 12, 1998, the first day it was open for signature. The Convention entered into force in May 2001.

The United States initiated the negotiation of the Terrorist Bombings Convention in July 1996 in the aftermath of the June 1996 bombing attack on U.S. military personnel at the Khobar Towers in Dhahran, Saudi Arabia, in which seventeen U.S. Air Force personnel were killed. That attack followed other terrorist attacks in 1995–96 including poison gas attacks in Tokyo's subways; bombing attacks by HAMAS in Tel Aviv and Jerusalem; and a bombing attack by the IRA in Manchester, England. The Convention fills an important gap in international law by expanding the legal framework for international cooperation in the investigation, prosecution and extradition of persons who engage in such bombings and similar attacks.

More specifically, the Convention will create a regime for the exercise of criminal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place. An explosive or other lethal device is defined broadly in Article 1 as "(a) an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or (b) a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material." Thus, in addition to criminalizing the unlawful use of bombs and similar explosive devices, the Convention addresses, for example, the intentional and unlawful release of chemical and biological devices.

Like earlier similar conventions, the new Convention requires Parties to criminalize under their domestic laws the offenses set forth in the Convention, if they have an international nexus; to extradite or submit for prosecution persons accused of committing or aiding in the commission of such offenses, if they have an international nexus; and to provide one another assistance in connection with investigations or criminal or extradition proceedings in relation to such offenses.

We recommend that ratification of the Convention be subject to two proposed understandings and one proposed reservation, which would be deposited by the United States along with its instrument of ratification of the Convention. The two understandings relate to the exemptions from coverage in Article 19 of the Convention for armed forces during an armed conflict and for military forces of states at any time. The first Understanding will provide the definitions the United States will employ for the terms "armed conflict" and "international humanitarian law," two phrases used in Article 19 that are not defined in the Convention. With this Understanding, the United States would make clear, first, that, consistent with the law of armed conflict, isolated acts of violence, for example by insurgent groups, that include the elements of the offenses set forth in the Convention would be encompassed in the scope of the Convention despite the Convention's "armed conflict" exemption and, second, that for purposes of this Convention the phrase "international humanitarian law" has the same substantive meaning as the law of war. The second Understanding will constitute a statement by the United States noting that the Convention does not apply to the activities of military forces of states. While such an exclusion might be thought to be implicit in the context of the Convention, the Convention's negotiators thought it best to articulate the exclusion in Article 19 in light of the relatively broad nature of the conduct described in Article 2 and the fact that this conduct overlaps with common and accepted activities of State military forces. We recommend that the United States include an Understanding to this effect in

its instrument of ratification. In the Reservation, the United States will exercise its right not to be bound by the binding dispute settlement provisions of Article 20(1).

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM

The UN General Assembly adopted a new counterterrorism convention entitled the International Convention for the Suppression of the Financing of Terrorism, commonly known as the "Terrorism Financing Convention," on December 9, 1999. The United States signed the Convention on January 10, 2000, the first day it was open for signature. The Convention will enter into force once twenty-two states deposit their instruments of ratification.

France initiated the negotiation of this convention in the Fall of 1998, with strong support and input from the United States, as part of the Group of Eight Industrialized Nations initiative to combat terrorist financing. The Convention fills an important gap in international law by expanding the legal framework for international cooperation in the investigation, prosecution and extradition of persons who engage in financing terrorism.

The Convention provides for States Parties to exercise criminal jurisdiction over the unlawful and willful provision or collection of funds with the intention that they be used or in the knowledge that they are to be used in order to carry out certain terrorist acts set forth in the Convention. This new Convention requires Parties to criminalize under their domestic laws the offenses set forth in the Convention, if they have an international nexus; to extradite or submit for prosecution persons accused of committing or aiding in the commission of such offenses, if they have an international nexus; and to provide one another assistance in connection with investigations or criminal or extradition proceedings in relation to such offenses.

The Terrorism Financing Convention is aimed specifically at cutting off the resources that fuel international terrorism. Once in force, the Convention will obligate States to criminalize conduct related to the raising of money and other assets to support terrorist activities.

As stated in Article 2, a person commits an offense "if that person, by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used" to carry out terrorist acts. The first category of terrorist acts consists of any act that constitutes an offense within the scope of one of the nine counter-terrorism conventions previously adopted and listed in the Annex. The second category includes any other act intended to cause death or serious bodily injury to a civilian, or to any other person (e.g., off-duty military personnel) not taking an active part in hostilities in a situation of armed conflict, when the act has a terrorist purpose. An act has a terrorist purpose when, by its nature or context, it is intended to intimidate a population or to compel a government or international organization to do or abstain from doing any act. The offense includes "attempts," "accomplices," and anyone who "organizes or directs," or "contributes" to the commission of an offense.

We recommend that ratification of the Terrorism Financing Convention be subject to a proposed Understanding and a proposed Reservation. If for any reason the U.S. has not become a party to the Terrorist Bombings Convention before or simultaneously with the ratification of the Terrorism Financing Convention, we also recommend a Declaration. The Understanding addresses two issues. First, it makes clear the understanding of the United States that nothing in the Convention precludes States Parties from conducting legitimate activities against all lawful targets in accordance with the law of armed conflict. Second, it provides the definition the United States will employ for the term "armed conflict" which is used in Article 2.1(b), but is not defined in the Convention. The Understanding achieves essentially the same objectives as the two proposed Understandings regarding the Terrorist Bombings Convention. In the Reservation, the United States will exercise its right under Article 24.2 not to be bound by the binding dispute settlement provisions of Article 24.1. The possible Declaration would exercise the right of the United States under Article 2.2(a) not to have the Terrorism Financing Convention's scope encompass the financing of offenses under the Terrorist Bombings Convention until the United States becomes a Party to the Terrorist Bombings Convention.

As noted in the transmittal of these Conventions to the Senate, implementing legislation will be required before the United States can become a party. That legislation is being prepared and will be transmitted to the Congress as soon as possible.

Mr. Chairman, I reiterate Ambassador Taylor's recommendation that these important treaties receive advice and consent to ratification at an early date. I will be happy to answer any questions the Committee may have.

The CHAIRMAN. Thank you.

Mr. Chertoff.

STATEMENT OF HON. MICHAEL CHERTOFF, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE; ACCOMPANIED BY: MARY ELLEN WARLOW, DEPARTMENT OF STATE, WASHINGTON, DC

Mr. CHERTOFF. Thank you, Mr. Chairman, members of the committee. I am going to be brief and, with the permission of the chairman, I would request that my fuller remarks be made part of the record.

The CHAIRMAN. Without objection, they will be.

Mr. CHERTOFF. I am pleased to appear before the committee and to join my colleagues at the Department of State in urging that the Senate provide its advice and consent to these two important anti-terrorism treaties. As the events of September 11th have illustrated gruesomely and dramatically, we are now confronted with a battle against international terrorism. Unfolding in our investigation is a complex web of terrorist cells here, in Europe, and elsewhere in the world, supported by flows of money around the globe.

In sum, we see a terrorist network that is international in all respects: in its membership, its financing, its logistics its intelligence and training, and in its leadership.

This episode also demonstrates the critical importance of international cooperation in law enforcement, and in this case I am happy to report that in general we are seeing unprecedented levels of cooperation from our law enforcement partners overseas.

The Department of Justice strongly supports these treaties for a very practical reason: They will strengthen our capacity to secure cooperation in our investigations and prosecutions, whether in providing the foundation for the return of fugitives or in creating international obligations to furnish evidence.

The Bombings Convention reaches the most horrific of terrorist acts, bombings and uses of weapons of mass destruction in public places and against infrastructure and transportation systems. The Financing Convention recognizes that providing money and materiel to terrorists is in itself a serious crime and one that all nations must address. Those who knowingly fund organizations which wreak murder and mayhem must be held accountable and we must have the tools to disrupt and block terrorist funding that so easily moves around the globe.

The bombing and financing conventions will significantly strengthen the network of anti-terrorism treaties built over the last 30 years. The United States has used these instruments and used them successfully in concrete cases, sometimes as part of an arsenal of formal legal tools and sometimes as important diplomatic and political leverage, but always with the same aim—getting the evidence and bringing terrorists to justice.

For these reasons, the Department of Justice joins the Department of State in strongly supporting prompt approval by the Senate of these two new anti-terrorism treaties. I would be happy to respond to any questions the committee may have.

[The prepared statement of Mr. Chertoff follows:]

PREPARED STATEMENT OF HON. MICHAEL CHERTOFF

Mr. Chairman and Members of the Committee, I am pleased to be here today to endorse the advice and consent of the U.S. Senate to the ratification of the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. In the view of the Department of Justice, both instruments are critical to the efforts of the United States to prevent, deter and combat terrorist acts. As the investigation of the tragic events of September 11th has so graphically demonstrated, it is imperative to effectively penetrate and thwart the global reach and network of terrorist activity. These Conventions serve our vital law enforcement and national security interests by establishing important mechanisms to secure the cooperation of our international partners in the fight against terrorism.

Both the Convention on Terrorist Bombings and Convention on Terrorism Financing have unique features representing important advances on the international front to address the complex and difficult issue of terrorism. As a general matter, these instruments serve to strengthen the international norm against terrorism and reinforce the international community's intolerance for, and condemnation of, terrorist acts and their financing. Each Convention explicitly recognizes that there is no justification, no rationale that will excuse the commission of terrorist acts or the financing or support of such acts.

A primary objective of both Conventions is to close the jurisdictional net around offenders by effectively denying them safe haven. Both Conventions require that States Parties establish jurisdiction over persons found in their territory who have engaged in the prohibited activities, where those activities have an international nexus, and either to extradite the offender to a State that has jurisdiction or, if they do not do so, to submit the case for prosecution, regardless of whether the State Party otherwise has any connection to the offense or offender.

Such "extradite or prosecute" provisions are historically reserved for acts universally condemned. These provisions represent the core obligation of States Parties to the Terrorist Bombings and Terrorism Financing Conventions. In establishing such regimes, the Conventions seek to bring to justice those who commit terrorist bombings or finance or provide support for terrorist acts, wherever they are found.

From a law enforcement perspective, the nature and breadth of the offenses covered by these instruments are of particular note. Importantly, the offenses, as well as the jurisdictional and the extradite or prosecute obligations of these instruments, encompass not only those who commit the prohibited acts, but those who attempt or conspire to commit such acts, or participate as accomplices in those acts.

In addition, the type of offenses addressed by these Conventions are core terrorism offenses. The Terrorism Financing Convention addresses a common element of every terrorist act—financing and other support. The Terrorist Bombings Convention addresses the most utilized form of terrorism, the bombing of public places, state or government facilities, public transportation systems or infrastructure facilities, with the intent to cause death or serious bodily injury. The United States and its citizens have repeatedly been victims of such attacks, most recently, of course, in the horrific attacks of September 11th, where the hijacked planes were employed as explosive and incendiary devices against places utilized by members of the government and the public and with the intent to cause death. As such, events such as the September 11th attacks fall within the coverage of the Terrorist Bombings Convention, as would the 1998 bombings of our embassies in Tanzania and Kenya. Although the domestic regimes of most States, including the United States, have long-established penal provisions to address attacks by conventional means, the Terrorist Bombings Convention breaks important ground in forging an international framework for cooperation in preventing, detecting and bringing to justice those who plan or participate in such bombings.

Moreover, the framework of cooperation established by the Terrorist Bombings Convention applies to a wide range of terrorist offenses. Any person commits an offense within the meaning of the Convention if that person delivers, places, discharges or detonates an explosive or other lethal device in, into or against government facilities or public places. The public places covered by the Convention are defined broadly and include public transportation systems and infrastructure facilities.

The Terrorist Bombings Convention also fills important gaps in the existing international regime relating to non-conventional weapons. The Convention encompasses attacks committed with biological weapons, and hence supplements the 1972 Biological Weapons Convention; the instrument also covers attacks in public places when chemical weapons are utilized, and thus supplements the regime established by the 1997 Chemical Weapons Convention. Finally, the Terrorist Bombings Convention addresses radiological devices, as well as nuclear devices, and thereby effec-

tively supplements the 1987 Convention on the Physical Protection of Nuclear Materials. In light of increasing information and intelligence relating to terrorist interest in the development of non-conventional weapons of mass destruction, the coverage of the Terrorist Bombings Convention as it pertains to biological, chemical and radiological weapons is particularly important.

The nature of the offenses covered by the Terrorism Financing Convention also bears special mention. The Department of Justice has committed significant efforts to combating the financing and support of terrorist acts. We have worked within the law enforcement community domestically, as well as within such international fora as the Group of Eight, the Financial Action Task Force, the Organization of American States and others, to establish investigative and financial mechanisms to aid in the detection and rooting out of financial crime, including improvements to bank regulations and record-retention that will facilitate international efforts to eliminate terrorist financing and support. We are gratified that, through the Terrorism Financing Convention, the international community at large recognizes the vital importance of choking the financial lifeline of terrorists. This instrument also embodies the important recognition that the financiers of terrorist acts, including those who provide assets of any kind, are as reprehensible as those who commit the terrorist acts themselves, and treats them as seriously.

The Terrorist Financing Convention requires States Parties to implement penal legislation to address terrorist financing and other support. Such domestic laws do not currently exist in many countries. The definition of the offenses covered by Article 2 is formulated expansively to capture both the direct and indirect collection and provision of financing and other support. The offenses include financing that is provided in full or in part for terrorist acts. In addition, the Convention includes a broad definition relating to the meaning of financing and embraces "assets of every kind, whether tangible or intangible" and "legal documents or instruments in any form." Considering the many ways to provide financial support to terrorists, and the misuse of charitable institutions in particular in such financing, these provisions have particular importance.

The offense provision of the Terrorism Financing Convention applies to the financing of terrorist acts addressed through existing terrorism treaties, arguably covered previously by the accessory provisions in at least some of those instruments, but now explicitly addressed in this new instrument. In addition, the offense provision covers the financing of any act intended to cause death or serious bodily injury to a civilian, or to a military member outside of active participation in hostilities in a situation of armed conflict, when the circumstances indicate that the act was undertaken for a terrorist purpose. In this way, the Terrorism Financing Convention broadly addresses the financing of acts of terrorism.

There are provisions common to both Conventions that represent advances in establishing international cooperative measures in the terrorism area. For example, the Terrorist Bombings Convention is the first terrorism treaty expressly to preclude States Parties or individuals from resisting an extradition or mutual legal assistance request by claiming that the offense was connected with a political offence or inspired by political motives. Considering the political rationales that are often claimed as the motivation for terrorist acts, this provision represents an important recognition on the part of the international community that no justification exists for such heinous acts as the bombing of public places. This important provision is carried through in the Terrorism Financing Convention.

Both instruments include additional provisions designed to enhance the extradition regime applicable to these offenses. These provisions effectively amend existing extradition treaties to add as extraditable offenses the terrorist bombing and financing offenses covered by the Conventions. They also require States to undertake to include those offenses as extraditable offenses in every extradition treaty subsequently concluded by them. In addition, if a State Party's domestic law allows, it may extradite for the covered offenses even where a bilateral treaty is not in place with the State seeking extradition. These are just a few of the provisions included in these Conventions that serve to establish an effective international framework of cooperation to counter terrorist acts and their financing.

The Terrorism Financing Convention also includes several unique and important provisions designed to address the complexities inherent in investigations and prosecutions relating to terrorist financing. Article 5, for example, addresses corporate liability. It requires States Parties to take necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable (through criminal, civil or administrative measures) when a person responsible for the management or control of that legal entity has, in that capacity, committed the offense of terrorism financing. This provision recognizes that corporate entities, particularly

financial and charitable institutions, are often knowingly exploited to finance or aid in the financing of terrorist groups.

Article 13 is intended to break down barriers encountered in the past when States have shielded individuals or information on the grounds that the offense was fiscal in nature. Article 13 precludes States Parties from invoking such a claim to resist a request for extradition or mutual legal assistance.

Article 12, paragraph 2, is an equally vital provision aimed at enhancing the ability to obtain information from other States Parties necessary to the effective investigation and prosecution of terrorist financing. As we have seen most recently in the wake of the September 11 attacks, the trail of terrorist financing, particularly in this technological age, quickly crosses State borders and often winds and twists, sometimes electronically, through several national systems. Historically, some States have hid behind the cloak of bank secrecy in refusing to yield information relating to terrorist financing. This provision precludes States Parties from invoking bank secrecy to refuse a request for mutual legal assistance. As such, it is an extremely useful provision in the investigation of terrorist financing offenses.

Article 18 seeks to address a systemic problem inherent in detecting and tracing transactions involved in supporting terrorist acts or groups. These tasks are currently immeasurably more difficult, because many States do not have domestic financial regulations in place which alert law enforcement authorities to suspicious financial transactions and trends. Even if such States were otherwise willing to cooperate in the effort to stop such financial flows into and through their financial institutions, they do not always have the infrastructure in place to meaningfully provide such cooperation.

Article 18 seeks to push States to adopt such measures and infrastructure. That Article encourages States Parties, among other things, to implement measures to identify customers of financial institutions, to prohibit the opening of accounts by unidentified or unidentifiable holders or beneficiaries, and to identify and report to competent authorities unusual or suspicious transactions or financial patterns. Other helpful measures in this Article relate to cooperation among States Parties in financial investigations in the rapid exchange of relevant information. Combined, the provisions precluding claims of fiscal offense and bank secrecy, and the affirmative obligations relating to cooperation generally and the expeditious sharing of financial information in particular, are all designed to bring down existing barriers to effectively detecting, preventing and investigating terrorist financing.

The Terrorist Bombings Convention and Terrorism Financing Convention are critical instruments in our efforts to effectively detect, prevent and bring to justice those who commit and support terrorist acts. The Department of Justice strongly recommends that these Conventions receive the Senate's advice and consent to ratification.

Thank you for the opportunity to appear before you today. I would be happy to respond to any questions that you may have.

The CHAIRMAN. Thank you very much, General and colleagues. We appreciate your testimony. It is straight and to the point.

The staff has asked me to inform my colleagues here that, for the information of the members, tomorrow there will be another hearing in this room at 10:30 a.m. We will hear several African ambassadorial nominees. That hearing will be presided over by Senator Feingold.

Also, the committee will have a coffee meeting for British Foreign Minister Jack Straw tomorrow at 4:15 in this room. We are trying to work out and trying to work it with everyone's schedules, a meeting with Shimon Peres, who is in town. We were going to—to make a long story short, the President has contacted the ranking member, myself, and others I suspect, as well as Shimon Peres, to set up meetings with each of us and him separately, which has knocked off our whole schedule.

So we are trying very hard to see if we can rearrange a coffee, a meeting with Peres here in this room. We are looking at 5:15, but that is not settled. We will just keep you all informed.

Senator BROWNBACK. Is that 5:15 tomorrow?

The CHAIRMAN. No, 5:15 today.

Senator BROWNBACK. Is that on, Joe?

The CHAIRMAN. That is not on yet. In other words, we are juggling schedules because the President has asked Peres to change his schedule slightly and has called some of the committee members down as well today, which messed the whole arrangement up. We are trying to reconfigure the schedule. I just wanted everybody to know.

Senator ALLEN. So in effect it is off?

The CHAIRMAN. No. It is off at the—we were going to have it at 2 o'clock. He, Shimon Peres, cannot do it at 2 o'clock. He was able to do it at 3:30, but the President asked me and the ranking member to come down to the White House at 3:30, so we could not do it at 3:30. Now we are shooting for 5:15 today. We are waiting to hear back from Mr. Peres to determine whether he is able to do it at 5:15. If he is able to, we will notify all the members.

I just wanted to give you a little alert. I probably confused you more than I helped you, and I apologize.

Senator LUGAR. Mr. Chairman, could you repeat the times for tomorrow?

The CHAIRMAN. The times for tomorrow are 10:30 for the African ambassadorial hearings and for the British Foreign Minister, 4:15 in this room.

Senator LUGAR. Tomorrow?

The CHAIRMAN. Tomorrow. Both those are tomorrow. The only other thing that may occur today is Shimon Peres if we can work it out, and we are looking at 5:15 right now.

Let me get a couple of housekeeping things out of the way if I may, General. When the Clinton administration submitted these Conventions, it recommended that the Senate approve a handful of reservations and understandings. I think Will has spoken to those. I want to make sure we are talking about one and the same reservations. What you testified to, Will, related to the reservations and understandings in the resolution of ratification. Are they one and the same with the ones that the Clinton administration had put forward?

Mr. TAFT. Yes, Mr. Chairman, they are the same understandings and the same reservation and declaration.

The CHAIRMAN. I just do not want to———

Mr. TAFT. They were in the letter in the submission to the Senate.

The CHAIRMAN. Yes, I was quite sure that was the case, but I just do not want to———

Mr. TAFT. Yes, they relate to the exact same subject.

The CHAIRMAN. The exact same subject.

Now, another quick housekeeping question. A few years ago, a State Department witness sat where you all are sitting and urged us to adopt a particular reservation which applied to the Defense Department in the treaty, and after the hearing we learned that the Defense Department no longer supported that reservation and the State Department had not bothered to check with the Defense Department.

So again, I do not want to be assuming anything. Has your testimony and the position you have taken, the three of you, on the proposed reservations and understandings been coordinated with other

affected government agencies, including the Department of Defense?

Mr. TAFT. Yes, Mr. Chairman, my testimony related to that has been cleared. It is the administration's position.

The CHAIRMAN. Knowing you, I was sure. I apologize for being so protective, but I wanted to make sure.

Mr. TAFT. I think it is important.

The CHAIRMAN. Now, Ambassador Taft, last month the U.N. Security Council approved Resolution 1373, a broad-ranging resolution, that, among other things, required nations to suppress financing of terrorism by criminalizing the provision of funds to terrorists and by freezing any funds of terrorists. The language of that resolution is similar to the language in the Financing Convention.

The Council acted under its chapter VII powers, thereby making the resolution binding on states under international law. What is the legal relationship between the Financing Convention and the Security Council resolution that was passed? Does the Security Council resolution impose the same obligations as the Convention, if you know?

Mr. TAFT. Yes, Mr. Chairman. There is considerable overlap in the subject matter addressed by the U.N. Security Council resolution and the Financing Convention. The terms of the resolution are rather more general and not defined as precisely as we find them in the Convention, and the duties of the states specifically are not exactly lined up. But the subject matter is the financing of terrorist activities and of course, as you noted and very importantly, the U.N. Security Council resolution is binding, because taken under chapter 7, on member states and the Convention of course is only binding as between the parties to it.

The CHAIRMAN. Thank you.

General, Mr. Ambassador—once a general, always a general.

Mr. TAYLOR. Yes, sir.

The CHAIRMAN. General, there are two Conventions before us. One has the requisite number of states that have ratified and the other, on financing, has only four. Is there a reason to the best of your knowledge why the Financing Convention has gone more slowly, unrelated to us, in terms of the number of states that have ratified?

Mr. TAYLOR. Mr. Chairman, I do not think there is a specific reason that we know of, except that perhaps it has not had the emphasis that it has needed. It has been or will be a centerpiece of our bilateral and multilateral diplomatic strategy in encouraging our partners around the world to speed up the implementation. Indeed, since September 11 we have had significant movement on getting it signed and ratified.

Mr. TAFT. Mr. Chairman, if I may, I think it also started later, about a year later.

The CHAIRMAN. About a year later. Thank you.

Mr. Chertoff, I understand that the administration is still developing legislation which is necessary to implement the treaties; is that correct?

Mr. CHERTOFF. That is correct.

The CHAIRMAN. And the United States already criminalizes some of this behavior, but I understand that additional legislation is

needed. The legislation as I understand it would amend the Federal Criminal Code, that is Title 18, and it means it would probably not go through this committee, but would go through the Judiciary Committee, on which I sit.

Can you give us, if you are able, a snapshot of what this legislation will entail, the nature of it?

Mr. CHERTOFF. I think I can give you a snapshot, maybe not a full picture. But this is obviously still being considered and developed and I hope shortly that we will be able to submit something.

I do not think it makes huge changes. What it is designed to do is fill gaps in the existing law that would enable us to prosecute instances in which, for example, people bomb public places where there is an international nexus even if we did not have what we currently use as our jurisdictional basis, which is for example the presence of American employees abroad or things of that sort.

It might be the case, for example, that civilians killed overseas in a bombing can be reached through the legislation we would be proposing under this treaty, whereas we might not be able to reach those deaths directly under existing law. So I do not think it is a dramatic change, but it will fill some gaps we have currently that deal with our prosecution of these cases.

The CHAIRMAN. Do you know whether you intend to go beyond what is required in the treaty and submit a larger portfolio of changes in the criminal code? Do you have any idea?

Mr. CHERTOFF. I do not think this implementing legislation is designed to go beyond what we need to do for this.

The CHAIRMAN. My unsolicited advice would be as honed as you can get it to work with this, so we do not generate a whole new—although I suspect like you, have been pushing since 1994 for some other changes in Title 18. But my unsolicited advice would be to keep it as close to this as you can and move it as quick as you can, if you could.

I yield to my colleague from North Carolina.

Senator HELMS. Thank you, Mr. Chairman.

Before I proceed, let me recommend to the chairman and the other members that we consider having this whole proceeding printed so that every Senator will have a copy of what was said here and what is proposed and the reservations and so forth. Otherwise, we are going to be answering technical questions that cannot be done easily on the Senate floor.

The CHAIRMAN. Mr. Chairman, I think that is a good idea. I would recommend that. If I had known that I would have been more careful of how I have spoken so far. But I think that is a very good idea.

Senator HELMS. The Senator can amend his remarks if he wants to.

Mr. Chertoff, you referred in your statement to the misuse of charitable institutions to finance terrorism. Now, will the Financing Convention provide new authority to the United States law enforcement agencies to stop such activities in the United States?

Mr. CHERTOFF. Senator, I believe it will, because it will require members of the Convention to make sure that their own laws address financing of terrorist acts as defined either with reference to

other conventions or with reference to acts that result in the death or serious injury to individuals based on terrorist motives.

We currently, obviously, have laws that we can use in this country. What we need to do, given the global way in which terrorist financing operates, is make sure that other countries have comparable laws and that we can mesh them with ours and that we can get extraditions. So I think it is going to be an indispensable tool.

Senator HELMS. Mr. Taft, we have had a Taft in the Senate since I have been here. Are you in that Taft family?

Mr. TAFT. That was my uncle.

Senator HELMS. Your uncle?

Mr. TAFT. Yes.

Senator HELMS. Well, it is good to have a Taft with us again.

The CHAIRMAN. There are a lot of Tafts.

Senator HELMS. If the Rome Statute to create a so-called International Criminal Court enters into force, will that court assert jurisdiction over the offenses created by these two treaties?

Mr. TAFT Mr. Chairman, I think that the answer to that is no. The jurisdiction of that court does not include terrorist acts. It is limited to, as I understand it, to war crimes, to genocide, and to crimes against humanity. The terrorist acts are criminal offenses, but as I understand it not subject to the jurisdiction of that court in theory. Of course, that court is not with us at this moment and it does not apply to anything until it comes into existence.

The CHAIRMAN. As long as this man is with us, I do not think that will be——

Senator HELMS. If you have any further thoughts about that, would you let me know, please, sir.

Mr. TAFT. I will do that, sir.

Senator HELMS. Will the United States—how to put it—end up competing with the court for jurisdiction over terrorists trying to avoid the death penalty or life imprisonment in the United States?

Mr. TAFT. I do not think, Mr. Chairman, there will be a competition with the court because, as I mentioned, the terrorist activities are not actually subject to the court's jurisdiction. They would be subject to our jurisdiction and in fact to universal jurisdiction under these treaties, and we will have our own penalties in place for these offenses under our criminal law passed pursuant to the treaties.

Senator HELMS. If you have any further thoughts on that, I wish you would let me know, because it is a matter of some importance to a lot of us, certainly to me.

Are there negotiations under way now to outlaw forms of terrorism not covered by existing multilateral anti-terrorism conventions?

Mr. TAFT. Mr. Chairman, there are in fact negotiations under way in New York, at this time on a general terrorism convention. They are not concluded or expected to conclude immediately. I have noted the remarks that you made about the difficulties of defining terrorism, and these are vexing those negotiations. We are concerned about them, and we are participating in them, but I do not know when they will reach a conclusion.

Senator HELMS. That is another one if you have further thoughts I wish you would let me know before the debate begins on this.

Mr. TAFT. I think the session discussing those will conclude next week, or maybe it is even the end of this week, and perhaps I will be able to let you know how it goes.

Senator HELMS. OK. Well, one of the examples that comes to mind: Is sending lethal substances through the mail outlawed by an international agreement with appropriate penalties? I address that to each of you. Is sending lethal substances through the mail, is that outlawed by any international agreement with appropriate penalties that you know of?

Mr. TAFT. I am not aware of any, of an international agreement on that, but I believe that we have our own laws.

Mr. CHERTOFF. I do think that the Terrorist Bombings Convention we are talking about as I understand it would cover devices that are used to disseminate bacteriological entities. Now, I do not know whether that requires an explosion of some kind as opposed to I think what is on everybody's mind now, which is opening a letter. I cannot speak to the other international agreements, but I am sure it is something that is now present in everybody's mind.

Senator HELMS. You nodded. Are you telling him he did good?

Ms. WARLOW. He did very good.

Mr. CHERTOFF. That is always good to hear.

Senator HELMS. I know these are technical questions.

Senator ALLEN. That is a very important question, though.

Senator HELMS. Excuse me?

Senator ALLEN. That is a very important question.

Senator HELMS. These treaties do not remove barriers to extradition such as nationality, do they? Any one of you.

Mr. TAFT. There is a requirement to extradite in certain cases, but not if the country which is asked to extradite submits the matter for prosecution in its own courts. That is the basis on which an extradition would be declined.

Mr. CHERTOFF. Let me add. My understanding is, although it piggybacks on existing extradition treaties, it does remove the political defense to extradition in these cases, which it will be self-evident that when you are dealing with terrorism if you have a political defense it eviscerates the ability to extradite.

Of course, it continues to allow us to use what we might call informal means to acquire people for prosecution.

The CHAIRMAN. What does that mean, if I may ask?

Mr. CHERTOFF. Occasionally we get a deportation or other kinds of assistance in getting people.

The CHAIRMAN. That is what I thought.

Senator HELMS. One final question. Given the awful thing that happened in New York on September 11, will foreign states continue to use nationality or sentencing issues as excuses to deny the United States their extradition requests?

Mr. TAFT. I believe that under the Convention those who become parties to these Conventions will be obliged to extradite people under the terms where they have violated them unless, as I say, they prosecute them, submit them for prosecution in their own courts.

Senator HELMS. Especially extradition requests related to the attack, is that right?

Mr. TAFT. That would be, yes.

Senator HELMS. I do not want to delay things. I have three or four more questions. Going ahead.

The CHAIRMAN. One more scheduling issue the staff just gave me. On Thursday of this week, at 2 p.m. Secretary Powell will be testifying. If the Dirksen Building has re-opened by then, it will be in the large hearing room. But if not, we will have the hearing in this room. That is 2 o'clock on Thursday.

I yield to Senator Sarbanes, but before I do I would like to just say that this Financing Convention that we are about to ratify is important and good work, but I want to compliment the Senator from Maryland for his work dealing with a related issue, that he put through the terrorism bill—the bill that is before the House now, that I understand he has worked out an agreement on, on dealing with the same issue in terms of the banking industry as well. So I just want to thank him for his work there.

Senator SARBANES. Well, I appreciate that very much. We had a great deal of help from the Assistant Attorney General in that regard.

Have you recommended to the Congress language on the resolutions, reservations, and understandings?

Mr. TAFT. Yes, Senator. The language is actually included in the transmittal package that sent the treaties up.

Senator SARBANES. Are we ready to go on that? Does the language need any modification?

Mr. TAFT. Not modification from us, but we will be glad to work with the committee on any modifications it would make.

Senator SARBANES. That is a very diplomatic answer.

How far along on the implementing language are you?

Mr. CHERTOFF. I cannot give you a specific prediction. I hope it is close. I know that there are some tweaks that are being worked out in terms of language. But I would hope within a matter of a few weeks we can get this ready, a couple weeks.

Senator SARBANES. Is moving the Conventions related to the implementing language?

Mr. CHERTOFF. My understanding is—and I am going to defer to the Legal Adviser on this, but my understanding is that we need the implementing legislation ultimately in order to make this effective.

Mr. TAFT. Yes. We would not ratify the treaty until after the implementing legislation has been passed. You may give advice and consent if you wish before then.

The CHAIRMAN. It is not ratified until the President signs it.

Senator SARBANES. All right. I understand that the Convention on the Financing of Terrorism was sent to us about a year ago; is that right?

Mr. TAFT. October 2000.

Senator SARBANES. It has not yet been ratified by the requisite number of states, correct?

Mr. TAFT. That is right, Senator Sarbanes. I think four states have ratified and 22 are required.

Senator SARBANES. Who has ratified it?

Mr. TAFT. I do know that. Sri Lanka, the U.K., Uzbekistan, and Botswana.

Senator SARBANES. Not the French. It was a French-led initiative, as I understand it.

Mr. TAFT. France has not yet ratified. They signed on the 10th of January, the first day that it was open for signature, as did we.

Senator SARBANES. Is there a push to get these ratifications?

Mr. TAFT. Yes, sir.

Mr. TAYLOR. Across the world, it is one of our major foreign policy bilateral issues with all of our countries around the world to get this moving very quickly. We have seen very positive results coming back from that effort.

Senator SARBANES. Obviously our ratification would give a boost to that effort.

Mr. TAYLOR. Yes, sir.

Senator SARBANES. It would certainly support our efforts to get others to ratify this convention.

I do not have anything else.

The CHAIRMAN. Thank you very much.

Senator Lugar.

Senator LUGAR. General, what has been the effect of all of the treaties with regard to terrorism thus far? Have we been able to determine if these treaties have made any difference or is the thought that essentially we are trying to piece together a network of treaties that might be helpful in the future?

Mr. TAYLOR. I think they have been useful to us and I think these two will add to that web of treaties that we will need in our campaign to ask countries to join us in fighting terrorism. So I think they are very, very important ingredients in that, in addition to the other things that we are doing in terms of law enforcement, intelligence cooperation, and those things that are ongoing. So I would tell you, Senator Lugar, that we believe they are very essential to our campaign, will serve us well in the future, and as these get implemented will add more tools to our tool kit that we will need to take on these individuals.

Senator LUGAR. But they are prospective treaties. In other words, people have not yet been prosecuted, convicted, or incarcerated under these treaties?

Mr. TAYLOR. Sir, I am not—if I could take that question, I will get back to you on whether any one has ever been used in the past.

[The informations can be found in additional questions for the record on page 51.]

Senator LUGAR. My impression is that the answer is probably negative, although I would be delighted to find out it is affirmative.

The second part of this is, following on Senator Helms' logic, you were talking in terms, Mr. Taft, about a general treaty, which is a good idea because even with the list that the staff has given us of I think eight or nine treaties to date plus these two, people keep thinking of other forms of terrorism. In fact, we are not inventive enough to think of ahead of time all the treaties that might cover whatever else somebody might do. So that the need for the general treaty would seem to be of the essence.

What is the resistance to this, or is it simply the definitional problem that has been discussed?

Mr. TAYLOR. I think the definitional problem is one issue and the scope of the Convention. When you have that number of countries negotiating, they have their interests. But certainly it is our hope to get a more comprehensive convention that would allow us to include what we know and anticipate our adversaries will do using terrorism.

Mr. TAFT. I would say that this is desirable if we can do it. The pattern of developing a convention to deal with the last terrorist event is a very sad one and that is why we have nine or ten of these. I think each one of them, one of the ones today, is a reaction, not an anticipation. So the hope is that we would do better, have a broader framework.

But there is a very significant controversy about the definition of terrorism and how it interacts with national liberation movements, so-called, and with the activities of armed forces. We have some points that we absolutely have to have straight on that and we are not going to go with a convention that does not address them.

Senator LUGAR. Let me ask your view on the current situation, that is Osama bin Laden and his lieutenants in al-Qaida. It has become popular to ask: In the event that Osama bin Laden should be caught today, should he be tried in the United States or where should he be tried if not the United States? Who has jurisdiction under all of these treaties?

My response has been the United States is at war and we are defending ourselves and that that takes precedence since bin Laden has been indicted in the 1993 World Trade attack. But then you read very thoughtful comments by attorneys who say what if you got your wish, what problems would surface in presenting evidence in our courts that might reveal sources and methods of intelligence while we are still prosecuting a war against terrorists.

I am trying to get to the practical effects of these treaties. Even after you construct a web of treaties that show our general intent, our cooperation with the world, we are at war, at war with terrorists, and in the event we capture them and bring them here for trial, what are the problems of prosecution presented by these treaties, or what conflicts may arise with our laws.

Mr. TAYLOR. I am going to defer to the prosecutor.

Mr. CHERTOFF. That is obviously, Senator, a very complicated and important question. I think what I can say—and clearly people are thinking about this from a practical as well as a legal standpoint. I think what I can say is that I do not know that these remedies are mutually exclusive. There are a wide range of options that we have.

Certainly when we deal with the issue of a terrorist who is apprehended in a third party country, let us say France, we have to have some legal mechanism to deal with that. Now, it might turn out that that person ultimately would be tried in France for crimes in France or tried in another country. I think what we are hoping to do is have the broadest range of tools that we can use in the tool kit. But deciding which tool to use is a complicated issue with a lot of practical ramifications.

Senator LUGAR. On that one, does it make a difference if you capture him in Afghanistan as opposed to France, to which he might have fled?

Mr. CHERTOFF. I think it makes a difference whether—I think the way I put the question is it makes a difference whether we capture him or some third party captures him. I think that raises a different set of concerns.

Senator LUGAR. If we capture him in France he is ours, the French notwithstanding?

Mr. CHERTOFF. I cannot envision the situation where we would be capturing people in France. But I think, for example, if we captured someone in the field, that is a different legal issue.

Senator LUGAR. But I raise that because at some point Osama bin Laden may flee after his cover in Afghanistan is gone and land in another country. Now, what is relevant, the laws of that particular place? If he winds up in Somalia as opposed to France, does that make a difference?

Mr. CHERTOFF. Well, this is a huge question because there are a lot of variables. It clearly makes a difference to where somebody flees. It makes a difference whether it is a country that we have friendly relations with, that is party to all these agreements. It makes a difference whether we have the ability to get access, physical access to the person, either through formal means or informal means.

I do not know that—one thing lawyers always learn is not to speculate far in advance of the event. But I do agree that—and we are clearly looking at these issues and developing a menu of options.

The CHAIRMAN. My guess is France would send him with love, but Somalia might not.

Senator LUGAR. Just one more question. Why have not the treaties come up before now? Is it simply because of the war effort and you took a look around the cupboard and said, we have not done very much on these items? Do you have any thought about that?

Mr. TAYLOR. Well, Senator, I think that they have—at least the Bombings Convention has been up for some time, the Financing Convention not as long. But I think we need to get the implementing legislation ready.

Senator LUGAR. It is partly our fault. One of them has been here and the administration now asks the committee to act.

Mr. TAYLOR. I think it is the right time to do it now.

Senator LUGAR. Thank you.

The CHAIRMAN. If I can help clarify that. We had contact, I had contact with the cooperation of the chairman, with the State Department asking them what were their priorities on treaties that they would want us to move on and suggesting this may be one of them because, although it was here before, we did not have the opportunity to move on it. Now we have. It was a mutual initiative. We asked and they said this is the top of the list, and that is how it came about.

Senator LUGAR. Thank you.

The CHAIRMAN. Senator Kerry.

Senator KERRY. Thank you, Mr. Chairman.

Good morning. Thanks for being here. These two Conventions are here to supplement the ten or so conventions that are already in effect with respect to aircraft, civil aviation, hostages, and so forth.

I wonder, can you tell the committee sort of how effective and successful the implementation of those ten conventions has been?

Mr. TAYLOR. Sir, as I mentioned earlier to an earlier question, I will take that to go back and find out who has actually been prosecuted under one of the conventions that we have had. But what it does provide for us is truly a spider web of capability to use in the international arena, to ask countries to assist us in our investigations and, more importantly, as we get to the 1998-1999 campaign, more effectively assist us.

Senator KERRY. It depends, however, entirely on the laws that are specifically passed by each country or state.

Mr. TAYLOR. Indeed, yes, sir.

Senator KERRY. And those laws are not required necessarily to conform precisely to our laws with respect to intent or other criminal components. They simply have to pass a law, correct?

Mr. TAFT. On the question of the precise laws that people enact pursuant to the Conventions, there are provisions that must be included in each Convention.

Senator KERRY. Right, excuses, jurisdiction, optional, et cetera.

Mr. TAFT. And the definition of the offense, and so forth.

Senator KERRY. But is there a requirement about the precise language to adopt or the procedures within each of those?

Mr. TAFT. No. There are details and variations that would be left, as long as they conform to the language in the treaty to each state.

Senator KERRY. If it conforms in that regard, is that sufficient to eliminate haggling and sort of the kind of, well, we interpret it this way, you interpret it that way, issues that arise so frequently? Will there be a conformity that is adequate?

Mr. TAFT. I should think so. We will never be able to anticipate all the friction and misunderstandings, but would certainly be a lot better off than we are now.

Senator KERRY. Well, the financing component of this has not yet been ratified by the requisite 22 states. How many states have ratified?

Mr. TAFT. Just four.

Senator KERRY. And only those four—but 58 have signed it.

Mr. TAFT. Right.

Senator KERRY. Do we know where we stand—which four have signed it, have ratified it?

Mr. TAFT. Let us see. Sri Lanka, Botswana, Uzbekistan, and the U.K.

Senator KERRY. So we are a long way from any kind of—this is the same sort of resistance we have met in Senator Sarbanes' efforts to try to get us down the money-laundering road here recently.

Mr. TAYLOR. Actually, sir—go ahead.

Mr. TAFT. I do not think that this is really unusual in the time that has been taken. There is a necessity before ratification can be deposited to enact implementing legislation, as we ourselves have. The Convention was open for signature on the 10th of January 2000 and I think that it is perhaps not a credit to the international community, but taking 2 years to get up to the number would not

be unusual at all. These are matters that the countries take seriously and of course they should.

Senator KERRY. Have any of the countries that have been involved in the Islamic charities to the degree that those charities have been specifically known to have been involved in transferring funds to terrorist activities, have any of those nations signed?

Has Saudi Arabia signed?

Mr. TAYLOR. That is the one I was looking for. No, sir, Saudi Arabia has not signed, Sudan has signed.

Senator KERRY. Would any changes have to be made in our money-laundering laws to be in conformity with this?

Mr. TAFT. I believe there are some changes that we have included in the implementing, the draft implementing legislation.

Senator KERRY. Has our staff, I wonder, have we———

Mr. TAFT. We have not submitted it yet.

Senator KERRY. You have not submitted it. Has there been a cross-tab of that relative to the legislation we have just passed in the Senate and the House?

Mr. CHERTOFF. I cannot tell you. I know we are in the process of finalizing a package of implementing legislation. I do not know that anyone—I presume, but I cannot say as a fact, that someone has specifically looked to see whether there is something in the implementing legislation that is also carried in the money-laundering piece. I suspect not because I think the financing piece is a little more narrowly focused than the money-laundering legislation.

Senator KERRY. But I understand we are required—what I want to make certain is that there are no requirements here that are going to put us out of compliance conceivably and-or that are going to diminish what we are doing.

Mr. CHERTOFF. The answer is no. We will have to probably adjust and fill in some gaps in our law, but it will not prevent us.

Senator KERRY. What has happened is I think the money-laundering piece is new enough here that it probably has not been fully vetted in this context.

Senator SARBANES. No, no, no, I do not want to do that.

Senator KERRY. No, I am not talking about opening it up.

Senator SARBANES. I do not want to do that. The money-laundering piece has been settled.

Senator KERRY. That is what I am saying.

Senator SARBANES. It just needs enactment.

Senator KERRY. Senator Sarbanes, that is exactly what I am saying. What I am saying is, whatever they are coming in with I want to make sure is in conformity with what we have just passed.

Mr. CHERTOFF. What I can say is this. There is nothing, as I understand it, about the implementing legislation or the treaty that in any way, shape, or form restricts the full scope of what is being contemplated.

Senator KERRY. That is just what I want to make sure.

Mr. CHERTOFF. I think in general, as I understand the treaty, it is a minimum. Everybody has got to be up to that level. It does not forbid countries, including our own, from going beyond, and I think in fact we are probably already beyond the treaty requirements in some respects.

Senator KERRY. Thank you. I do not have any further questions.

The CHAIRMAN. Thank you very much.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Thank you, gentlemen. What is the timetable we are looking for on this implementing legislation?

Mr. TAFT. Senator Chafee, the implementing legislation is in draft form. It will be submitted as soon as possible. As I mentioned, you can consider these treaties and give your advice and consent at any time, but they would not be ratified until the implementing legislation is actually enacted. I think that we should be able to get that legislation up here soon enough so that you will have it in connection with your consideration of the treaty itself, which is probably the best way to do it.

Senator CHAFEE. What does that mean, a couple weeks?

Mr. TAFT. Yes, that would be reasonable.

Senator CHAFEE. And did you say we have a copy of your proposed reservations and understandings?

Mr. TAFT. Yes, you do. They were in the original transmittal packages when the treaties came up.

Senator CHAFEE. I see, and that mostly has to do with the definition of armed conflict?

Mr. TAFT. That is right. They both do. We need to make a distinction between the acts of terrorists and acts that occur in a conflict that armed forces normally conduct. Those are not terrorist acts. They are the acts of state military forces, and we want to be sure they are not covered as terrorist acts, and likewise, on the contrary, that the terrorist acts are included even though they might look like the acts of an armed force, but if they are committed by terrorists, isolated acts and so forth, then they are covered.

Senator CHAFEE. Is there some unanimity on that on the various countries as to a definition of armed conflict, or is that difficult to define?

Mr. TAFT. It is not defined in the treaty, which is why we have put in our understanding what the definition of armed conflict is. I would say that that is not controversial. In the course of the negotiations this was accepted, so I think our understanding is a case of having a belt and suspenders, but a proper one.

Senator CHAFEE. How hard would it be just to spell it out in outline right here, and we can go into the details if we have it in the submittal? But where do you make that delineation?

Mr. TAFT. The law of armed conflict would apply in a case where there are hostilities between regular armed forces, the military forces of the state. Terrorist acts are conducted by irregular groups, not recognized armed forces that conduct themselves in accordance with the law of war. So they are the ones that are subject to terrorism laws and conventions, not to the law of armed conflict.

Senator CHAFEE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from California.

Senator BOXER. Thank you, Mr. Chairman.

Some of the questions I had have been covered, Mr. Chairman.

The CHAIRMAN. I beg your pardon?

Senator BOXER. I said, some of the questions I had have been covered, Mr. Chairman, but I do have two quick questions if I might. One of them, on September 28 we put forward a resolution at the U.N. and it deals with Security Council Resolution 1373 and it requires all U.N. member states to prevent the financing of terrorist acts and to freeze all terrorist-linked assets. So we have that and that passed.

What is the legal relationship with that Security Council resolution and the U.N. Convention on Suppression of Terrorism? How do those mesh?

The CHAIRMAN. Senator, they have already spoken to that for the record.

Senator BOXER. They have? Then it is not necessary to answer.

The CHAIRMAN. But you might give the Senator a short answer on that.

Senator BOXER. No, that is OK. I will get briefed on it afterwards. I have another question. Tell me if this one was spoken to.

The CHAIRMAN. I apologize for that, but the general has to leave at 11:40.

Senator BOXER. Yes, that is fine. I can get the answer later.

I have this other question. Tell me if this was covered. There are a number of conventions that we are a party to and other countries are parties to that deal with terrorism, such as Convention for the Suppression of the Unlawful Seizure of Aircraft. Has anyone raised that yet today?

Mr. TAFT. No.

Senator BOXER. OK. Another one is the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. That is another one, and there is at least ten of these conventions, Physical Protection of Nuclear Materials, Suppression of Unlawful Acts of Violence in Airports. It goes on. I will not take the committee's time.

I hope you could you get back to me and perhaps other members of the committee who might be interested in the following question. It seems to me if a lot of countries of the world are party to these conventions dealing with unlawful seizure of aircraft, unlawful acts against the safety of civil aviation, and they are not cooperating with us now, we may have some action against them. Off the top of your head without having a chance to review this, do you know how many countries are not a party to these other conventions?

Mr. TAFT. I do not know the answer to that, but I think Ambassador Taylor could tell you that we have gotten a lot of cooperation from a lot of countries at this time. Perhaps we should provide information for the record.

Senator BOXER. Well, a lot of cooperation from a lot of countries is really good. My specific question is: are there any countries who are party to these conventions dealing with unlawful seizure of aircraft, unlawful acts against the safety of civil aviation, who are not cooperating with us in terms of this investment on the World Trade Center bombing?

Mr. TAYLOR. I think the more general answer to your question is we have gotten excellent cooperation from across the world from all countries that we have asked for cooperation, with the exception of Iraq that has been defiant. I can give you, Senator, or for the

staff a matrix of all countries that have passed or ratified each of these conventions.

Senator BOXER. I would like that. Now, has Iraq, do you know, ratified those?

Mr. TAYLOR. They have signed two and passed—they have signed three and passed three of the 12.

Senator BOXER. OK. But you do not know about unlawful seizure of aircraft or unlawful acts against the safety of civil aviation?

The reason I am asking this question, Mr. Chairman, is if Iraq is a party to those conventions and they are not cooperating, we may have some very interesting avenues open to us on the international stage.

So would you get back to me specifically on that? Also, I really appreciate knowing who signed onto all of these conventions, because clearly we have been able to get a broad omnibus convention against terrorism and these two important treaties that we are looking at today just fit into the pattern of taking each thing, each little issue one at a time, which is fine. But I think if we could find out if Iraq was involved in those and they are not cooperating, I think that is some good information.

So thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. TAYLOR. Senator, if I may, one of our major diplomatic goals in this campaign is to get all nations to ratify all treaties. Both bilateral and multilaterally, we are working that, and we have seen excellent results since the 11th of September from nations around the world to do that. But specifically on Iraq, I will get back to you with the answer to that question.

[The information can be found in additional questions for the record on page 53.]

Senator BOXER. Thank you.

The CHAIRMAN. Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman.

The CHAIRMAN. General Taylor, do you have to leave, because Senator Allen will direct his question to you.

Mr. TAYLOR. I am OK, thank you.

Senator ALLEN. Ambassador-general, I incorporate by reference all the questions and comments as far as reservations, particularly protecting military personnel and our interests in that regard.

Since September 11, how many countries have at least started moving, as we are, to either sign or to actually ratify either of these Conventions?

Mr. TAYLOR. I cannot give you a specific number, Senator. I can only tell you that in our bilateral working with more than 100 countries we have seen tremendous movement. I would have to go back and compile each one individually, but certainly the U.N. Conventions are a key part of our overall international strategy and many countries have in a sense leaned forward to move this through their legislatures to passage. Again, I can get more information for you on that.

[The information can be found in additional questions for the record on page 52.]

Senator ALLEN. Let me ask two followups, then. Now, as a practical matter how would these treaties affect our efforts to intercept

financing of terrorist organizations. If certain countries—and I do not need to be mentioning the names of the countries or islands—that are fairly well known as places for havens for people to have banking transactions which are not very transparent, in the event, let us say you have the United States and France and Germany and Japan and Korea, they all sign onto it, but there are certain countries that are in Europe or certain island states, so to speak, if they do not do it, what practical impact is this going to have on our trying to thwart the financing of terrorist organizations?

Mr. TAYLOR. Well, certainly it presents a challenge, because it presents a seam that we need to close. Through our bilateral relations with those countries, we intend to put great pressure on them not to have that sanctuary that would allow people to use that country as another conduit that is not available to the world.

My sense is we will be very successful in pressuring those countries, to do that. At least that is our goal.

Senator ALLEN. Now, the final question, Mr. Chairman. These treaties or conventions about bombings and financing, we are all focused on what happened to the United States. Now, to the extent that the rest of the world is signing onto these and hopefully ratifying them with various reservations, as we will have, what would be the impact on, say, what could be defined as a terrorist bombing in Israel or Ireland or Spain or Colombia?

Many movements that are motivated by independence or self-determination end up being wars. In Quebec, theirs is being done in a very civil process. In this country our secessions have not been civil, but they were at least legislative approaches being taken and then the battle. But when you think of some of the activities and bombings in Israel and Ireland, in Spain, Colombia and other countries, how would this definition of terrorist bombings affect some of those activities in those countries?

Mr. TAFT. Most of those bombings would be covered, the ones that I am familiar with. Obviously, we would have to look at each particular one, and the authorities, the Israelis or the authorities in Northern Ireland or whatever, would look at them. The principal benefit of the Convention would then be that, at least among the parties to it, there would be enhanced cooperation in law enforcement in the investigation and provision of evidence and in extradition.

Senator ALLEN. Would that affect also the financing? This follows up on Senator Boxer and Senator Kerry's questions on the financing organizations for some of these other areas.

Mr. TAFT. The same is true of the Financing Convention. It has all of those cooperation in law enforcement features.

Senator ALLEN. Thank you, Mr. Chairman. I thank the three gentlemen for your testimony.

The CHAIRMAN. Thank you very much.

Mr. Chairman, do you have any other questions?

Senator HELMS. No.

The CHAIRMAN. With your permission, I have a few questions to submit for the record. There is no urgency in responding as long as they are in before we get the implementing legislation.

Unless anyone has any further questions for our witnesses, we thank you very, very much, and we hope that we can move expedi-

tiously on this, and we thank you very much for your consideration. Thanks.

[Whereupon, at 11:43 a.m, the committee was recessed subject to the call of the Chair.]

ADDITIONAL STATEMENT SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF PROF. BARRY KELLMAN, DIRECTOR, INTERNATIONAL WEAPONS CONTROL CENTER, DEPAUL UNIVERSITY COLLEGE OF LAW, CHICAGO, ILLINOIS

The two conventions currently under consideration re-affirm that terrorism is a threat not only to the United States but to the entire civilized world. Accordingly, the effort to defeat terrorism must be multilateral to have any chance of success. These conventions more accurately define conduct that contributes to and constitutes terrorism, and they impose rigorous legal assistance and cooperation obligations on States Parties. Moreover, these two conventions symbolize the coalescence of international efforts to fight terrorism.

The following brief comments do not address the broad and manifold policy justifications for their ratification. Instead, these comments highlight a few provisions that, perhaps, have not received sufficient attention. These comments also suggest reasons why, despite their positive attributes and the need for their ratification, these conventions fall far short of establishing the foundation for the international effort that is necessary to defeat terrorism.

CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM

This Convention reaches into the vital core of terrorist operations: its necessary financial infrastructure. The Convention is tightly drafted, and it should be ratified.

Special note should be taken of:

- Article 12, para. 2—"States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy."

This provision is extremely important because the primary impediment to tracing financial support for terrorism is the assertion of bank secrecy. This provision not only prohibits that assertion, it means that a refusal of a request for assistance on these grounds is a breach of the Convention. Moreover, it suggests that the assertion of bank secrecy is a step toward establishing that the State Party in question is implicitly a supporter of terrorist activity.

- Article 18, para. 4—"States Parties may exchange information through Interpol."

Article 18 sets forth obligatory "practicable measures" to prevent terrorist financing, including modalities of legal cooperation. The somewhat buried reference to Interpol in para. 4 is perhaps the most important of these measures. To combat terrorist financing (and terrorism generally), there is a need not only for legal cooperation among States but also for the direct involvement of international institutions, beginning with Interpol, that can centralize operations and monitor compliance. This provision is unique among anti-terrorism conventions in explicitly calling upon States Parties to use Interpol to perform necessary functions.

However, it should be noted that Interpol is an under-staffed, under-financed organization. If Interpol is to have the law enforcement and anti-terrorist financing role that is truly effective, a treaty provision is inadequate by itself. Accordingly, this provision should be a spur to increase Interpol's capabilities.

- The Annex: No reference to the Biological or Chemical Weapons Conventions

Under Article 2, para. 1(a), prohibited offenses are defined (in part) as providing or collecting funds in order to carry out an offence within the scope of the treaties listed in the annex. However, the annex does not include either the BWC nor the CWC which prohibit the use or possession of prohibited weapons by persons as well as by States. This is an inexplicable oversight and should be remedied.

CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS

This Convention criminalizes behavior that is, at least arguably, already illegal. It serves to clarify the illegal status of terrorist bombings, to deprive perpetrators of any claim to the "political offense" exception, and to specify legal assistance and

cooperation obligations. In comparison to the Financing Convention, it is less tightly drafted and has a few problems. Nevertheless, it should be ratified.

- Article 1, para. 3(b)—"'Explosive or other lethal device' means: A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or *substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents* or toxins . . ." (emphasis added)

This definition is very problematic for the Department of Defense which is developing biological agents that can cause substantial material damage without harming humans, animals, or plants. Indeed, microbes are currently used to consume oil spills; the DOD's efforts are based on similar principles.

- Article 2, para. 1—"Any person commits an offence within the meaning of this Convention if that person *unlawfully* and intentionally . . ." (emphasis added) The word "unlawfully" either has no meaning and is superfluous in the paragraph, or it means that it is not an offence if the person acts "lawfully", *i.e.* pursuant to the authority of a legitimate State government. Hypothetically, if an authorized Iraqi agent detonates an explosive in Manhattan, it is not clear the Convention would apply to that activity. This Convention should not leave doubt on that issue.
- Article 15—"States Parties shall cooperate . . ."

This Article is noteworthy for what it does not say. In contrast to the Financing Terrorism Convention, there is no mention of Interpol or any other reference to making use of an international law enforcement institution (the IAEA, OPCW, to name a few) in order "to prevent and counter preparations" (para. (a)). Yet, it defies reality to expect that many nations, especially those nations where terrorists tend to operate, will be able to prevent preparations for terrorist bombings on their own.

GENERAL COMMENTS

Despite all the good reasons to ratify these two conventions, they are inadequate to achieve the objective of security against international terror violence.

A more comprehensive international effort against terrorism should overcome two problems which these treaties do not address: (1) the need to prohibit development of illegal capabilities without having to wait for those capabilities to actually be used; and (2) the need to strengthen the direct law enforcement system in addition to the indirect law enforcement system.

Prohibiting Development of Terrorist Capabilities

The effects of modern terrorism are too cataclysmic to delay law enforcement until the deed is done. The purpose of criminalization, therefore, is to facilitate pre-use interdiction of terrorist capabilities. The bad news here is that there is no primary prohibition against acquisition of violent capabilities, including chemical or biological or nuclear weapons, by sub-national groups (SNGs). Thus, international law enforcement capabilities are marginalized, at least until those capabilities become catastrophic.

A more effective international agreement should criminalize preparations toward development of dangerous capabilities, including construction of relevant production facilities as well as assistance to other groups that develop those capabilities. The prohibition should extend to all SNGs universally, without regard to whether the State with jurisdiction over that group has joined a relevant treaty, and all States Parties should extend adjudicative jurisdiction (under either the universal theory or the passive personality theory) to anyone, irrespective of nationality. Moreover, prohibited conduct should be defined according to criteria that is not based on the actor's intent.

Because relevant capabilities are typically dual-use—they could be employed for legitimate purposes—there should be multilateral regulatory obligations that enable legitimate activities to escape suspicion through a licensing system. Accordingly, receiving, supplying, or smuggling weapons precursors, critical materials, or critical equipment would be illegal unless that activity is declared and subject to appropriate national and international regulation. If those activities are kept secret and unregulated, the presumption must be that the objective (of the receiver, supplier, or smuggler) is criminal. Stated simply: as to terrorism capabilities, SNG acquisition or possession without compliance with relevant regulatory obligations should be an international crime.

Need for Direct Law Enforcement Through International Institutions

More important is the need to develop the direct law enforcement system. International criminal law enforcement is, for the most part, an indirect system based

on the idea that States must enforce, under national law, international legal prohibitions. The indirect enforcement system depends on national criminal justice systems to investigate, apprehend, prosecute, and adjudicate accused persons within their jurisdictions and to punish those found guilty. It also depends on the cooperation of States to extradite and to provide legal assistance to other States investigating cases or seeking to apprehend persons accused or found guilty of international crimes.

The problem with the indirect law enforcement system is that many of the nations of greatest concern lack capabilities to undertake their responsibilities. Therefore, prohibitions against development of terrorist capabilities should be supported, not only by legal assistance and cooperation obligations, but by enhancing the direct law enforcement capabilities of relevant international institutions, notably policing institutions and those which oversee the international traffic in goods.

As already mentioned, Interpol (and Europol) should be strengthened both in terms of legal authority as well as technical and financial capabilities. The World Customs Organization, the World Health Organization, and various UN agencies should, along with the OPCW and IAEA, be integrated into an anti-terrorism network capable of obtaining and analyzing information and of investigating suspicious activities. Regional organizations, especially in regions where terrorism has concentrated, should also be included in this network.

Upcoming Opportunities

The most important near-term opportunity for the international community to develop mechanisms that can make a positive contribution to defeating terrorism is the Review Conference for the Biological Weapons Convention. Unfortunately, biological weapons have become a weapon of choice for terrorists. Yet, the BWC is entirely inadequate to counter this horrifying threat. Efforts to produce a verification Protocol ended by producing a system that would have put significant burdens on legitimate enterprise without markedly improving capabilities to prevent, detect, or interdict bioterrorism.

The Administration's rejection of that Protocol earlier this year, although justified on the merits, has been viewed as yet another example of American unilateralism. It is incumbent, therefore, that U.S. representatives to the upcoming Review Conference offer meaningful anti-terrorism and international law enforcement proposals. This forum and whatever final document it produces could have a far more decisive impact on the campaign to defeat terrorism than either of the two conventions currently under consideration.

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD

RESPONSES FROM THE DEPARTMENT OF STATE TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR BIDEN

I. QUESTIONS WITH REGARD TO BOTH TREATIES

A. Authoritative Nature of Executive Branch Testimony

Question. When Executive Branch witnesses testify on the treaties before the Senate, can the Committee assume that the testimony is contributing to the "shared understanding" between the Executive and the Senate as to the meaning of the treaties and the way the United States will interpret it?

Answer. Yes. Testimony by Executive Branch witnesses on treaties before the Senate is intended to contribute to the "shared understanding" between the Executive and the Senate on the meaning of the treaties and the way such treaties will be interpreted by the United States.

Question. Does the Executive Branch believe that it is necessary for the Committee to question Executive Branch witnesses with respect to each clause of the treaties in order to firmly establish the "shared understanding" of the meaning of the treaties?

Answer. No. It is not necessary for the Senate Foreign Relations Committee to question Executive Branch witnesses with respect to each clause of treaties pending before the Committee in order to establish the "shared understanding" of the meaning of the treaties. For purposes of U.S. law, the formal transmittal documents submitted by the President, the accompanying report of the Department of State, the testimony of Executive Branch witnesses and responses to the Committee's questions contribute to the "shared understanding" of the meaning of such treaties with respect to the issues covered therein.

Question. In order for the Senate to establish its expectation—and to establish law—that the Executive Branch will interpret the treaties as they have been presented to the Senate (including in the formal submittal and in testimony), do you regard it as necessary for the Senate to take each provision of the treaties which it regards as significant, to commit the interpretation to writing, and to convert that interpretation into a formal condition of Senate consent? Or can the Senate act on the assumption that it can rely on the Executive Branch and act in accord with its presentation of the treaties to the Senate without going through such a ritual?

Answer. In order for the Senate to establish its expectation with respect to Executive Branch interpretation of treaties, it would be unnecessary and impractical for the Senate to take each significant provision of the treaties, commit the interpretation to writing, and attach that interpretation as a formal condition of Senate consent. For purposes of U.S. law, the formal transmittal documents submitted by the President, the accompanying report of the Department of State, the testimony of Executive Branch witnesses and responses to the Committee's questions provide the context for interpreting such treaties with respect to the issues covered therein.

Question. Does the Executive Branch regard it as necessary for the Senate to examine the entire negotiating record of the treaties in order to establish that there is nothing in that record inconsistent with the terms in the text of the treaties and the Executive Branch interpretation of those terms?

Answer. No. The Senate does not need to examine the entire negotiating record of such treaties in order to establish that the record is consistent with the treaty text and the Executive Branch's interpretation of the treaty terms. The Executive Branch takes into account relevant points in the negotiating record when it presents a treaty to the Senate.

Question. To summarize, if the text of the treaties and the Executive Branch's presentations of the treaties' meaning are clear and mutually consistent, then can we expect the Executive Branch to act in accordance with that interpretation, even if the Senate does not explicitly state in the resolution of advice and consent to ratification that it is relying upon the Executive Branch to do so?

Answer. Yes. If the treaty text and the Executive Branch's presentation of its meaning are clear and mutually consistent, the Committee can expect the Executive Branch to act in accordance with that interpretation with respect to the issues covered therein.

B. General Questions

Question. The Convention on the Suppression of Terrorist Bombings has entered into force, but the Convention on the Suppression of Financing Terrorism has not yet entered into force.

Does the Administration intend to engage in active diplomacy to encourage states to sign and ratify these treaties? Have any diplomatic measures been undertaken in this regard?

Answer. The Administration is engaging in active international diplomacy to encourage states to become parties to the treaties before the Committee, as well as the ten previous counterterrorism treaties that have been agreed upon at the United Nations and its specialized agencies. We have made such efforts both in bilateral diplomatic contacts with other parties and as a part of the Group of Eight Industrialized countries, which for many years has made adherence to the counterterrorism conventions a very high diplomatic priority. As of October 31, 2001, 58 countries had signed the Terrorist Bombings Convention and 29 had ratified. As of the same date, 69 countries had signed the Terrorism Financing Convention and 5 had ratified. We believe that U.S. ratification of these two conventions will bolster our efforts to encourage other countries to become party to these Conventions if they have not already done so.

Question. Article 23 of Convention on the Suppression of Financing Terrorism provides a means for amending the annex of the Convention. Neither Convention provides a means for amending the text of the treaties.

Does the Executive Branch intend to submit any amendments, including amendments to the annex of the Convention of the Suppression of Financing Terrorism, to the Senate for advice and consent to ratification?

Answer. Consistent with the October 3, 2000, Letter of Submittal accompaning the Terrorism Financing Convention, if a new counterterrorism treaty enters into force for the United States, after the Senate has given its advice and consent, and that treaty has been added to the Annex through the amendment process set out in Article 23, then the United States expects to deposit an instrument of acceptance of the amendment adding that treaty to the Annex. Such an instrument of Accept-

ance would not require future advice and consent because the Senate would already have approved the treaty in question. Any other amendment to the Terrorism Financing Convention or its Annex, or to the Terrorist Bombings Convention, would be submitted to the Senate for its advice and consent.

Question. Article 9 of the Convention on the Suppression of Terrorist Bombings and Article 11 of the Convention on the Suppression of Terrorist Financing provide that State Parties may, in cases where it receives a request for extradition from another State Party with which it has no extradition treaty, consider the conventions as a legal basis for extradition in respect of the offenses in the respective conventions.

Is it the intention of the Executive Branch to consider the conventions as a legal basis or bases for extradition in cases where the United States has no extradition treaty with the other State Party?

Answer. The United States would not use these Conventions as an independent legal basis for extradition from the United States in cases where the United States has no extradition treaty with another State Party seeking extradition. We will continue our practice of extraditing persons under the authority of bilateral extradition treaties, in conjunction with multilateral counterterrorism conventions, as applicable.

Question. Both Conventions, in the key articles defining offenses under the Conventions, include in the definition the concept of a person acting "unlawfully". That is, Article 2 of the Convention of the Suppression of the Financing of Terrorism provides that any person commits an offense under the Convention if that person "by any means, directly or indirectly, unlawfully and willfully, provides or collects funds. . . ." Similarly, Article 2 of the Convention on the Suppression of Terrorist Bombings provides that any person commits an offense if that person "unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device. . . ."

The letter of submittal provided by the Secretary of State to the President in connection with the Conventions does not provide any analysis of the meaning of the term "unlawfully." One possible reading of this term is that the Conventions do not cover activity authorized by governments. That is, under this construction of the term, if a foreign government authorized an activity described, then it would be "lawful" and not covered by the Conventions. I presume that is not the intention.

Am I correct in my understanding that the term "unlawfully" is not meant to exempt state-sponsored terrorism? What then, is the meaning of the term?

Answer. The word "unlawfully" in Article 2 of each of these Conventions is not meant to exempt state-sponsored terrorism. It is a term used in many international conventions, including the prior counterterrorism conventions, to make clear that States are not required to criminalize conduct which under common principles of criminal law is not considered unlawful (e.g., properly authorized use of force by its own police forces or conduct permitted as self-defense), even if those actions are otherwise described in the offense.

Question. Both Conventions contain exclusions for military activity. Article 19 of the Convention on the Suppression of Terrorist Bombings states that "activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention." The Convention on the Suppression of the Financing of Terrorism addresses the issue in a different manner. Article 2(1)(b) defines a category of acts which are illegal under the Convention, and excludes from the definition persons "taking an active part in the hostilities in a situation of armed conflict." With regard to both Conventions, the Executive Branch has recommended that the Senate approve an understanding which would state that the term "armed conflict" does not include "internal disturbances and tensions, such as riots, isolated or sporadic acts of violence and other acts of a similar nature."

Does the definition of "armed conflict" include subnational groups?

In the current military action in Afghanistan, we are presumably providing financial support to the Northern Alliance and to other anti-Taliban groups. Am I right in understanding that the Financing Convention would not bar that kind of financial support by the United States—because the situation is an "armed conflict"?

Answer. Article 2 of the Terrorism Financing Convention states in relevant part that "[a]ny person commits an offence within the meaning of the Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that that they are to be used, in full or in part, in order to carry out: [a]n act which constitutes an offence within the scope of and as defined in one of the treaties listed

in the annex; or [an] act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation or armed conflict," when such act is accompanied by a "terrorist purpose," as set forth in the Convention. ("Armed conflict" can include conflicts where sub-national groups are combatants.) U.S. Government assistance mentioned in the question would not be covered by the Convention, since the groups identified in the question are not engaged in these activities.

Question. Does the Executive Branch regard it as necessary for the Senate to include a condition in the resolutions of advice and consent regarding the International Criminal Court?

Answer. It is not necessary for the Senate to include a condition in the resolutions of advice and consent regarding the International Criminal Court. The ICC will not be a party to these Conventions, and our assistance to other parties to the Conventions would be for their proceedings, not those of the ICC. Should we deem it necessary, the United States could limit or condition its assistance to other parties to ensure that U.S. assistance is not subsequently transferred to the International Criminal Court.

Question. The treaties state that the texts of Arabic, Chinese, English, French, Russian and Spanish are equally authentic. Are there any material ambiguities in the translations? If so, what are they?

Answer. To our knowledge there are no material ambiguities among the various authentic language texts.

II. QUESTIONS WITH REGARD TO INTERNATIONAL CONVENTION FOR SUPPRESSION OF FINANCING TERRORISM

Question. On September 28, 2001, the UN Security Council approved Resolution 1373. Among other things, the resolution requires all States to "prevent and suppress the financing of terrorist acts," (para. 1(a)) and to "[c]riminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts." (para. 1(b)). The language in paragraph 1(b) is similar to Article 2(1) of the Convention.

What is the relationship between the Convention and the provisions of Resolution 1373 as they relate to the suppression of financing of terrorism? Are the legal obligations on states to suppress the financing of terrorism under Resolution 1373 and under the Convention (for states that ratify the Convention) identical? If they differ, how do they differ? If they differ, will the implementing legislation need to also address obligations under Resolution 1373?

The United States sponsored Resolution 1373. Was it drafted by the United States? Was Resolution 1373 drafted in coordination with the U.S. government departments which were involved in the negotiation of the Convention?

Answer. The Convention and UNSCR 1373 complement one another and improve our overall ability to combat the financing of terrorism. Resolution 1373 imposes on all U.N. Member States broad obligations to take steps immediately to combat the financing of terrorism. The resolution requires Member States, inter alia, to prevent and suppress the financing of terrorist acts, to criminalize the willful provision or collection of funds with the intent or knowledge that the funds will be used to carry out terrorist acts, to freeze the funds and other financial assets or economic resources of persons who commit, or attempt to commit, such acts or are affiliated with such persons, and to prohibit their nationals or others within their territories from making any funds, financial assets or economic resources or financial or other related services available for the benefit of those who commit or attempt to commit terrorist acts. The resolution also requires Member States to refrain from providing support to terrorists and terrorist groups, and to deny safe haven to those who finance, plan, support or commit terrorist acts.

The Financing Convention will provide the specificity and international legal mechanisms that are needed to combat terrorist financing. The Convention defines with more specificity than UNSCR 1373 what conduct must be criminalized under domestic law and, provided there is an international nexus, requires States Parties to establish jurisdiction when the offense is committed in its territory, on board its ships or aircraft, or by its nationals. (The Convention allows States Parties to exercise discretionary jurisdiction in certain other prescribed circumstances.) Although UNSCR 1373 requires Member States to ensure that persons who finance terrorism are brought to justice, the Convention requires parties to extradite alleged offenders or submit them for prosecution and amends existing extradition treaties by incorporating the Convention's offenses as extraditable offenses under such treaties.

Once the Financing Convention is in force, we anticipate that these instruments will complement and support each other. UNSCR 1373 will provide a basis for challenging any States that have not become party to the Convention to refrain from providing support to terrorists and to take steps to prevent terrorist financing in their territories. In addition, the committee established by the resolution will monitor implementation and promote and facilitate international cooperation in combating terrorist financing. Finally, the Convention, once it enters into force, will establish specific mechanisms for detecting, investigating and prosecuting individuals who finance terrorist acts.

UNSCR 1373 can be fully implemented under existing law and the implementing legislation for the two conventions need not address the United States' obligations under Resolution 1373.

The initial draft of the Security Council resolution was prepared by the United States. The final text was the product of negotiations among the members of the Security Council. Yes, Resolution 1373 was drafted in coordination with the U.S. government departments that were involved in the negotiation of the Convention, including State, Justice and Treasury.

Question. Article 2(1)(b) requires states to criminalize acts "intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population. . . ."

Does the negotiating history reflect an understanding of the term "population" as used in this Article?

Answer. The negotiating history does not provide any guidance concerning the meaning of the term "population." The Administration interprets "population" as used in Article 2(1)(b) to mean "civilian population." This interpretation is consistent with U.S. law, for example 18 U.S.C. § 2331(1)(B)(i) ("to intimidate or coerce a civilian population"), as well as the law of armed conflict.

Question. In Article 1(1), does the term "funds" include non-financial assets such as personal or real property?

Answer. Yes. As defined in Article 1(1) of the treaty, the term "funds" includes "assets of every kind, whether tangible or intangible, movable or immovable . . . ." As noted in the State Department's report in the transmittal package (p. VI), all delegations understood the definition to include "property." The Administration's proposed implementing legislation defines "funds" as "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to, coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit." (Section 202, adding new section 2339C(e)(1) to title 18)

Question. Does the term "State" (as used in Article 1(2)) include political subdivisions of a State?

Answer. Yes, the term "State" (as used in Article 1(2)) includes political subdivisions of a State.

Question. What is the meaning of the term "fiscal offense" as used in Article 13?

Answer. Some countries refuse international cooperation in cases involving crimes that they consider "fiscal offenses." There is no generally accepted definition of what constitutes a "fiscal offense," and indeed, several countries, including the United States, do not use this concept to limit international assistance in criminal matters. In our experience, when the concept is used, it will generally encompass tax offenses, but a given country might extend it to other crimes such as banking or currency controls, money laundering crimes, customs offenses, or financial regulatory offenses. Thus, because the term is not clearly defined, and could potentially include a broad range of offenses involving financial flows and financial instruments, a particular country might apply it to the very offenses which are the subject of the Convention. Accordingly, Article 13 prohibits a State from using a "fiscal offense" exception to international cooperation which might exist in its law, irrespective of how expansively the term might be defined in its law, to circumvent its obligations under the Convention. A similar provision was included in the 1988 UN Drug Convention, to assure that a "fiscal offense" exception did not defeat its provisions regarding money laundering.

Question. On page VIII of the Senate print of the Convention (T.Doc. 106–49) there is discussion of Paragraph 5 of Article 2. There appears to be an erroneous internal reference in this section. The erroneous sentence reads "These ancillary of-

fenses in *paragraph 3* are more comprehensive than those included in the earlier counterterrorism conventions to which the United States is a party—″

Is not the reference in italics to "paragraph 3" an error? Should it not be a reference to "paragraph 5?″

Answer. The reference to paragraph 3 is incorrect. The proper reference should be to paragraph 5.

III. QUESTIONS WITH REGARD TO INTERNATIONAL CONVENTION FOR SUPPRESSION OF TERRORIST BOMBINGS

Question. The Executive Branch proposes an understanding regarding Article 19 which reads:

The United States of America understand that, pursuant to Article 19, the Convention does not apply in any respect to the activities undertaken by military forces of States in the exercise of their official duties.

Article 19 of the Convention reads in pertinent part that "the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention." The proposed understanding and the language of Article 19 are virtually identical in their operative words.

a. Why is this understanding necessary?

b. What is meant by the phrase "inasmuch as they are governed by other rules of international law." To which rules of international law does this phrase refer?

c. Was there negotiating history on this point which was agreed to by the other participants in the negotiations?

Answer. The exclusion of the official activities of military forces of states from the scope of this Convention was an important negotiating objective that was achieved by the United States during the development of this Convention and is a key to the Convention's success internationally. We recommend that an Understanding be included in the U.S. instrument of ratification in order to underscore the importance of this provision in the interpretation of the Convention. In addition, we recommend the Understanding because of the way Article 19(2) combines in its text two different exceptions to the Convention's coverage for "armed forces" (which are only excepted during "armed conflict," as those terms are understood under international humanitarian law, which are governed by that law) and for "military forces of a state" (which are excepted under all circumstances in the exercise of their official duties). Because these different concepts are combined in a lengthy single sentence with numerous clauses, and because of our strong interest in noting our understanding of the wording, we believe it is helpful to note in an Understanding that the exception for military forces of a state is absolute.

The reference in Article 19(2) to "other rules of international law" includes the international instruments relating to the law of war (including the 1949 Geneva Conventions) and the international law of state responsibility. There is no formal negotiating history on this subject, but these bodies of law were referred to by the negotiators as the justification and explanation of the "military forces of a state" exception in that article.

RESPONSES FROM THE DEPARTMENT OF STATE TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD BY SENATOR HELMS

CHARITABLE ORGANIZATIONS

Question. Will the financing convention provide new authority to U.S. law enforcement agencies to stop the financing of terrorism by charitable organizations in the United States?

Answer. The administration has developed and transmitted to the Congress draft implementing legislation for the Terrorism Financing Convention that would create a new legal basis for U.S. law enforcement authorities to investigate and prosecute the financing of terrorism. In addition, the Convention itself will provide a legal basis for the United States to seek assistance from other countries in our investigations and prosecutions of those believed to have engaged in the financing of terrorism.

OTHER PRIORITIES

Question. Have events since September 11th indicated other international law enforcement priorities that could be addressed by treaties already pending on the For-

eign Relations Committee calendar, or which are being negotiated now? What are these priorities?

Answer. The Convention for the Suppression of Terrorist Bombings and the Convention for the Suppression of the Financing of Terrorism are the two completed law enforcement conventions of greatest general concern relating to the efforts to address international terrorism. Several additional important multilateral law enforcement instruments are likely to be before the Committee in the near future. In December 2000, the United States signed the UN Convention Against Transnational Organized Crime and two accompanying protocols. The United States and other countries recently completed the negotiations of the Council of Europe Cyber-Crime Convention. Finally, the Committee has pending before it the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials.

Apart from these multilateral conventions, the United States has signed or is in the final stages of negotiating approximately eight bilateral extradition or mutual legal assistance treaties and will be submitting those to the Committee for its consideration in the near future.

ADDITIONAL ANTI-TERRORISM CONVENTIONS

Question. Are there negotiations underway now to outlaw forms of terrorism not covered by existing multilateral anti-terrorism conventions? For example, is sending lethal substances through the mail outlawed by an international agreement with appropriate penalties? Can you provide details or a timetable?

Answer. Negotiations are underway at the United Nations General Assembly Sixth Committee on a new comprehensive convention on international terrorism. Also, pending before the Sixth Committee is a draft nuclear terrorism convention. Those negotiations are not yet completed and we are not yet in a position to assess whether we will recommend that the United States become a party to the new instruments.

With respect to the delivery of lethal substances, Article 2(1) of the Convention for the Suppression of Terrorist Bombings provides:

"Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

"(a) With the intent to cause death or serious bodily injury; or

"(b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss."

Under Article 1(3), an "explosive or other lethal device" means:

"(a) An explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage; or

"(b) A weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material."

Thus, the Terrorist Bombings Convention would cover the act of sending a lethal substance through the mail with the intent to cause death or serious bodily injury, provided the offense has an international nexus as required in Article 3 of the Convention (e.g., a foreign perpetrator).

RESPONSE FROM THE DEPARTMENT OF STATE TO AN ADDITIONAL QUESTION SUBMITTED FOR THE RECORD BY SENATOR LUGAR

Question. What has been the effect of all of the treaties with regard to terrorism thus far? Have people been prosecuted, convicted, incarcerated under these treaties, the whole collection?

Answer. The following are examples of prosecutions undertaken by the United States under U.S. law implementing the prior counterterrorism conventions:

Montreal Convention (Aircraft Sabotage)

United States v. *Yousef,* 1999 WL 714103 (S.D.N.Y. 1999) (defendant convicted of conspiring to bomb U.S. passenger airlines in violation of 18 U.S.C. § 32, the implementing statute of the Montreal Convention) [For list of charges, see United States v. Yousef, 925 F. Supp. 1063 (S.D.N.Y. 1996)]

United States v. *Rashed,* 234 F.3d 1280 (D.C. Cir. 2000) (ongoing prosecution of defendant under Montreal Convention for placing a bomb on a passenger flight)

United States v. *Munoz-Mosquera,* unreported case, E.D.N.Y. 1995, aff'd in part and vacated and modified in part in unpublished opinion referred to at 101 F.3d 683, 1996 WL 281591 (2d Cir. 1996) (member of Medellin drug cartel convicted of offenses relating to the November 1989 bombing of an Avianca aircraft, in violation of 18 U.S.C. § 32).

Hague Convention (Hijacking)

United States v. *Rezaq,* 134 F.3d 1121 (D.C. Cir. 1998) (affirming defendant's conviction for aircraft piracy in violation of 49 U.S.C. § 46501, the implementing legislation of the Hague Convention)

United States v. *Mena,* 933 F.2d 19 (1st Cir. 1991) (same) [This case provisionally upheld the conviction; the conviction was affirmed fully in 946 F.2d 881 (1st Cir. 1991)]

United States v. *Pablo-Lugones,* 725 F.2d 624 (11th Cir. 1984) (affirming defendant's conviction for aircraft piracy in violation of 49 U.S.C. § 46501) [then 49 U.S.C. App. 1472]

United States v. *Castaneda-Reyes,* 703 F.2d 522 (11th Cir. 1983) (same)

United States v. *Dixon,* 592 F.2d 329 (6th Cir. 1979) (same)

United States v. *Busic,* 592 F.2d 13 (2d Cir. 1978) (same)

Hostages Convention

United States v. *Lue,* 134 F.3d 79 (2d Cir. 1998) (affirming hostage-taking conviction/plea under 18 U.S.C. sec. 1203, the implementing legislation for the Hostages Convention)

United States v. *Lin,* 101 F.3d 760 (D.C. Cir. 1996) (affirming hostage-taking conviction under 18 U.S.C. sec. 1203)

United States v. *Lopez-Flores,* 63 F.3d 1468 (9th Cir. 1995) (same)

United States v. *Carrion-Caliz,* 944 F.2d 220 (5th Cir. 1991) (same)

United States v. *Yunis,* 924 F.2d 1086 (D.C. Cir. 1991) (same; also hijacking)

Internationally Protected Persons Convention

United States v. *Omar Ahmad Ali Abdel Rahman, et al.,* S.D.N.Y. (prosecution against ten defendants for conspiracy to bomb the U.N., the Lincoln and Holland Tunnels, the George Washington Bridge, and various U.S. government buildings and military installations, as well as conspiracy to murder Egyptian President Hosni Mubarak, the latter offense in violation of 18 U.S.C. §§ 1116 and 1117; all defendants convicted on all counts; unreported trial court decision posttrial, aff'd in part, remanded in part, 189 F.3d 88 (2d Cir. 1999), cert. denied, 528 U.S. 1094 (2000))

United States v. *Usama Bin Laden, et al.,* S.D.N.Y. (prosecution against four defendants in custody for the bombings of U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania and for conspiracy to kill U.S. military personnel serving in Somalia and Saudi Arabia; numerous other defendants remain fugitives; in June 2001, all four defendants convicted of, among other charges, conspiracy to kill internationally protected persons, in violation of 18 U.S.C. §§ 1116 and 1117; no reported post-trial decision or appeal)

United States v. *Shirosaki,* unreported case, D.D.C. 1998, aff'd without opinion, 194 F.3d 175 (D.C. Cir. 1999), cert. denied, 528 U.S. 1081 (2000) (member of Japanese Red Army convicted of attempted murder of internationally protected persons in connection with May 1986 mortar attack on U.S. Embassy in Jakarta, Indonesia, in violation of 18 U.S.C. § 1116, one of the implementing statutes for the Internationally Protected Persons Convention)

United States v. *Vasquez,* 867 F.2d 872 (5th Cir. 1989) (affirming conviction for threatening Pope in violation of 18 U.S.C. § 112, one of the implementing statutes for the Internationally Protected Persons Convention)

United States v. *Gan,* 636 F.2d 28 (2d Cir. 1980) (affirming defendants' convictions under 18 U.S.C. § 112(a))

RESPONSE FROM THE DEPARTMENT OF STATE TO AN ADDITIONAL QUESTION SUBMITTED FOR THE RECORD BY SENATOR ALLEN

Question. Since September 11, how many countries have at least started moving to sign or to ratify either of these Conventions?

Answer. The following countries have either signed or deposited instruments of ratification with respect to either the International Convention for the Suppression of Terrorist Bombings or the International Convention for the Suppression of the Financing of Terrorism since September 11, 2001:

Convention for the Suppression of Terrorist Bombings

Ratifications deposited:

Belarus—October 1, 2001
Costa Rica—September 20, 2001

Convention for the Suppression of the Financing of Terrorism

Signed:

Australia—October 15, 2001
Austria—September 24, 2001
Azerbaijan—October 4, 2001
Bahamas—October 2, 2001
Belgium—September 27, 2001
Colombia—October 30, 2001
Cuba—October 19, 2001
Denmark—September 25, 2001
Guatemala—October 23, 2001
Iceland—October 1, 2001
Indonesia—September 24, 2001
Ireland—October 15, 2001
Jordan—September 24, 2001
Liechtenstein—October 2, 2001
Luxembourg—September 20, 2001
Madagascar—October 1, 2001
Morocco—October 12, 2001
Nicaragua—October 17, 2001
Norway—October 1, 2001
Paraguay—October 12, 2001
Poland—October 4, 2001
Republic of Korea—October 9, 2001
Sweden—October 15, 2001
Tajikistan—November 6, 2001
Tunisia—November 2, 2001
Turkey—September 27, 2001
Uruguay—October 25, 2001
Ratifications deposited:
Azerbaijan—October 26, 2001

(Information available as of November 8, 2001)

RESPONSE FROM THE DEPARTMENT OF STATE TO AN ADDITIONAL QUESTION SUBMITTED FOR THE RECORD BY SENATOR BOXER

Question. What countries have signed or are parties to the antiterrorism Conventions?

Answer. Please see attached chart indicating those countries that have signed each counterterrorism convention and those that have become parties, as of November 8, 2001.

INTERNATIONAL TERRORISM CONVENTIONS

	1999 Convention for the Suppression of the Financing of Terrorism [1]	1998 Convention for the Suppression of Terrorist Bombings [2]	1991 Convention on the Making of Plastic Explosives for the Purpose of Detection	1988 Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navagation	1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf	1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation Civil Aviation	1979 Convention Against the Taking of Hostages	1979 Convention on the Physical Protection of Nuclear Material	1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons	1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation	1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft	1963 Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft
Afghanistan			S							P	P	P
Albania										P	P	P
Algeria	S	S	P	P		P	P		P	P	P	P
Andorra												
Angola										P	P	P
Antigua & Barbuda							P	P	P	P	P	P
Argentina	S	S	P	P	S	P	P	P	P	P	P	P
Armenia								P	P			
Australia	S			P	P	P	P	P	P	P	P	P
Austria	S	P	P	P	P	P	P	P	P	P	P	P
Azerbaijan	P	P	P			P	P		P	P	P	
Bahamas	S			S	S		P		P	P	P	P
Bahrain			P			P				P	P	P
Bangladesh										P	P	P
Barbados				P	P		P		P	P	P	P
Belarus		P	S	S	S	P	P	P	P	P	P	P
Belgium	S	S	S	S	S	P	P	P		P	P	P
Belize			S			P				P	P	P
Benin												P
Bhutan							P		P	P	P	P
Bolivia			S				S			P	P	P
Bosnia-Herzegovina						P	P	P	P	P	P	P
Botswana	P	P	P	P	P	P	P	P	P	P	P	P
Brazil		S	P	S	S	P	P	P	P	P	P	P
Brunei				S	S	P	P		P	P	P	P
Bulgaria	S		P	P	P	P	P	P	P	P	P	P
Burkina Faso						P				P	P	P
Burma						P				P	P	P
Burundi		S							P	P	S	P

Cambodia						P				P	P	P
Cameroon			P			S	P		P	P	P	P
Canada	S	S	P	P	P	P	P	P	P	P	P	P
Cape Verde										P	P	P
Central African Republic						P				P	P	P
Chad										P	P	P
Chile	S		P	P	P	P	P	P	P	P	P	P
China			[3] P	P	[3]	[3 4] P		[3]	[3 4]	[4]	[3 4]	
Colombia	S		S					P	P	P	P	
Comoros	S	S							P	P	P	
Congo (ROC, Brazzaville)						S				P	P	
Congo (DROC, Kinshasa)						S	S		P	P	P	P
Costa Rica	S	P	S	S	S	S			P	P	P	P
Cote d'Ivoire		S	S			S	P			P	P	P
Croatia						P		P	P	P	P	P
Cuba	S							P	P			P
Cyprus	S	P		P	P		P	P	P	P	P	P
Czech Republic	S	P	P	S	S	P	P	P	P	P	P	P
Denmark	S	P	P	P	P	P	P	P	P	P	P	P
Djibouti										P	P	P
Dominica				P			P					
Dominican Republic							S	S	P	P	P	P
Ecuador	S			P	S	S	P	P	P	P	P	P
Egypt	S	S	P	P	P	P	P		P	P	P	P
El Salvador			P	P	P	P	P		P	P	P	P
Equatorial Guinea										P	P	P
Eritrea			P									
Estonia	S	S	P			P		P	P	P	P	P
Ethiopia						P				P	P	P
Fiji						P				P	P	P
Finland	S	S	S	P	P	P	P	P	P	P	P	P
France	S	P	P	P	P	P	P	P		P	P	P
Gabon	S		S			S	S		P	P	P	P
Gambia			P	P		P				P	P	P
Georgia	S		P			P				P	P	P
Germany	S	S	P	P	P	P	P	P	P	P	P	P
Ghana			P			P	P		P	P	P	P
Greece	S	S	P	P	P	P	P	P	P	P	P	P

INTERNATIONAL TERRORISM CONVENTIONS—Continued

	1999 Convention for the Suppression of the Financing of Terrorism [1]	1998 Convention for the Suppression of Terrorist Bombings [2]	1991 Convention on the Making of Plastic Explosives for the Purpose of Detection	1988 Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navagation	1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf	1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation Civil Aviation	1979 Convention Against the Taking of Hostages	1979 Convention on the Physical Protection of Nuclear Material	1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons	1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation	1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft	1963 Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft
Grenada			P				P			P	P	P
Guatemala	S		P			P	P	P	P	P	P	P
Guinea		P	S			P				P	P	P
Guinea-Bissau			S							P	P	
Guyana										P	P	P
Haiti							P	S	P	P	P	P
Holy See												S
Honduras			S				P			P	P	P
Hungary		S	P	P	P	P	P	P	P	P	P	P
Iceland	S	S				P	P		P	P	P	P
India	S	P	P	P	P	P	P		P	P	P	P
Indonesia	S					S		P		P	P	P
Iran									P	P	P	P
Iraq				S	S	P	S		P	P	P	P
Ireland	S	S				P		P		P	P	P
Israel	S	S	S	S	S	P	S	S	P	P	P	P
Italy	S	S		P	P	P	P	P	P	P	P	P
Jamaica						S	S		P	P	P	P
Japan	S	S	P	P	P	P	P	P	P	P	P	P
Jordan	S		P	S	S	P	P		P	P	P	P
Kazakhstan			P			P	P		P	P	P	P
Kenya						P	P			P	P	P
Kiribati												
Korea (DPRK)						P			P	P	P	P
Korea (ROK)	S	S	S			P	P	P	P	P	P	P
Kuwait			P			P	P		P	P	P	P
Kyrgyzstan		P	P			P				P	P	P
Laos										P	P	P
Latvia			P			P			P	P	P	P

Lebanon			P	P	P	P	P	P	P	P	P	P
Lesotho	S						P			P	P	P
Liberia				P	P	S	S		P	P	P	S
Libya		P				P	P	P	P	P	P	P
Liechtenstein	S					P	P	P	P	P	P	P
Lithuania		S	P			P	P	P		P	P	P
Luxembourg	S	S				S	P	P		P	P	P
Macedonia, FYROM	S	S	P			P	P	P	P	P	P	P
Madagascar	S	S	S			P				P	P	P
Malawi						S	P		P	P	P	P
Malaysia						S				P	P	P
Maldives		P	P			P			P	P	P	P
Mali			P			P	P			P	P	P
Malta	S		P			P				P	P	P
Marshall Islands				P	P	P				P	P	P
Mauritania							P		P	P	P	P
Mauritius			S			P	P		P	P	P	P
Mexico	S		P	P	P	P	P	P	P	P	P	P
Micronesia, FSO												
Moldova			P			P		P	P	P	P	P
Monaco		P	P			P	P	P		P	P	P
Mongolia		P	P			P	P	P	P	P	P	P
Morocco	S		P	S	S	S		S		P	P	P
Mozambique												
Namibia												
Nauru										P	P	P
Nepal		S					P		P	P	P	P
Netherlands	S	S	P	P	P	P	P	P	P	P	P	P
New Zealand	S			P	P	P		P	P	P	P	P
Nicaragua	S		S						P	P	P	P
Niger						S		S	P	P	P	P
Nigeria	S			S	S					P	P	P
Norway	S	P	P	P	P	P	P	P	P	P	P	P
Oman				P	P	P	P		P	P	P	P
Pakistan			S	P	P	P	P	P	P	P	P	P
Palau						P				P	P	P
Panama		P	P			P	P	P	P	P	P	P
Papua New Guinea										P	P	P

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Paraguay	S							P	P	P	P	P
Peru	S		P	P	P	P	P	P	P	P	P	P
Philippines		S		S	S	S	P	P	P	P	P	P
Poland	S	S		P	P	S	P	P	P	P	P	P
Portugal	S	S		P	P	S	P	P	P	P	P	P
Qatar			P						P	P	P	P
Romania	S	S	P	P	P	P	P	P	P	P	P	P
Russian Federation	S	P	S	P	P	P	P	P	P	P	P	P
Rwanda									P	P	P	P
Saint Kitts and Nevis							P					
Saint Lucia						P				P	P	P
Saint Vincent and the Gr.						P	P		P	P	P	P
Samoa			P			P				P	P	P
San Marino	S											
Sao Tome and Principe												
Saudi Arabia			P	S	S	P	P			P	P	P
Senegal			S			S	P			P	P	P
Seychelles				P	P				P	P	P	P
Sierra Leone										P	P	P
Singapore						P				P	P	P
Slovak Republic	S	P	P	P	P	P	P	P	P	P	P	P
Slovenia		S	P			P	P	P	P	P	P	P
Solomon Islands										P		
Somalia												
South Africa		S	P			P		S		P	P	P
Spain	S	P	P	P	P	P	P	P	P	P	P	P
Sri Lanka	P	P	P	P		P	P		P	P	P	P

Sudan	S	P	P	P	P	P	P	P	P	P	P	P
Suriname							P			P	P	P
Swaziland										P	P	P
Sweden	S	P	S	P	P	P	P	P	P	P	P	P
Switzerland	S		P	P	P	P	P	P	P	P	P	P
Syria									P	P	P	P
Taiwan[5]												
Tajikistan	S					P		P	P	P	P	P
Tanzania										P	P	P
Thailand						P				P	P	P
Togo		S	S			P	P		P	P	P	P
Tonga										P	P	
Trinidad & Tobago		P	P	P	P	P	P	P	P	P	P	P
Tunisia	S		P	P	P	P	P	P	P	P	P	P
Turkey	S	S	P	P	P	P	P	P	P	P	P	P
Turkmenistan		P		P	P	P	P		P	P	P	P
Tuvalu												
Uganda		S				P	S			P	P	P
Ukraine	S		P	P	P	P	P	P	P	P	P	P
United Arab Emirates			P			P				P	P	P
United Kingdom	P	P	P	P	P	P	P	P	P	P	P	P
United States of America	S	S	P	P	P	P	P	P	P	P	P	P
Uruguay	S	S	P	P	P	P			P	P	P	P
Uzbekistan	P	P	P	P	P	P	P	P	P	P	P	P
Vanuatu				P	P					P	P	P
Venezuela		S				S	P			P	P	P
Vietnam						P				P	P	P
Yemen		P		P	P				P	P	P	P
Yugoslavia (FRY)							P	P	P	P	P	P
Zambia			P							P	P	P
Zimbabwe										P	P	P

[1] Not in force. P reflects a Party once in force.
[2] Not in force for U.S.
[3] Applicable to Hong Kong.
[4] Applicable to Macau.
[5] Taiwan committed to implement all anti-terrorism UN conventions.