

INTERNATIONAL TERRORISM: LEGISLATIVE INITIATIVES

HEARINGS AND MARKUP
BEFORE THE
COMMITTEE ON
INTERNATIONAL RELATIONS
AND ITS
SUBCOMMITTEE ON INTERNATIONAL SECURITY
AND SCIENTIFIC AFFAIRS
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
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SEPTEMBER 12, 14, 20, 28; AND OCTOBER 5, 1978

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INTERNATIONAL TERRORISM: LEGISLATIVE INITIATIVES

TUESDAY, SEPTEMBER 12, 1978

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON INTERNATIONAL SECURITY
AND SCIENTIFIC AFFAIRS,
Washington, D.C.

The subcommittee met at 10:15 a.m., in room H-236, the Capitol, Hon. Clement J. Zablocki (chairman) presiding.

Chairman ZABLOCKI. The subcommittee will please come to order.

It is the policy of the Chair to have minority members present as well, but I understand they are coming, and our first witness is from the minority side.

We recognize him as a member of the subcommittee for this purpose.

The subcommittee meets today to consider the growing problem of international terrorism and the essential efforts both the executive branch and the Congress must take to provide a feasible, credible, and well-timed response to the threatening challenge of terrorism.

The problem of dealing with the complex phenomenon of international terrorism has been one confronting responsible representatives of many groups and institutions. The Carter administration has undertaken a major effort to reorganize the resources of the executive branch and clarify the diffuse lines of authority involved in combating terrorism.

Numerous interested private organizations and individuals have done extensive research into the phenomenon of terrorism and devised programs of action to combat the problem. Congress has expressed its concern through proposed legislation, including H.R. 13387.

The principal sponsors are Congressmen Anderson of California, Johnson of California, Mr. Harsha, and Mr. Snyder. I also understand there are identical bills introduced, and Congressman Gilman is a cosponsor of a bill identical to H.R. 13387.

H.R. 13387 and the issue of international terrorism will be the subject of intense discussion today and markup by the subcommittee this Thursday.

To illustrate this multifaceted concern on combating international terrorism, the subcommittee will hear from five witnesses today, beginning with Representative Benjamin Gilman from New York, and a fellow member of the Committee on International Relations.

Ambassador Anthony Quainton, chairman of the Interagency Working Group on Terrorism and Director of the Office of Combating Terrorism, Department of State, will also be a witness.

We will also hear from Mary C. Lawton, Deputy Assistant Attorney General, Office of the Legal Counsel, Department of Justice, accompanied by Sebastian S. Mignosa, Director of the Terrorism Section, FBI; Mr. F. Richard Lally, Director of Civil Aviation Security, Federal Aviation Administration; and finally from Dr. Robert H. Kupperman, chief scientist, Arms Control and Disarmament Agency.

Dr. Kupperman is appearing today not in his capacity as an official of ACDA but because of his extensive expertise on the subject of terrorism. Dr. Kupperman, who has written extensively on this subject, is appearing in response to our invitation.

Because of the widespread interest in this issue, the subcommittee has received written testimony from a number of groups which, without objection, I request be made a part of the subcommittee hearing.

Groups submitting testimony include the Bureau of Alcohol, Tobacco, and Firearms; the Department of the Treasury; the Sporting Arms and Ammunition Manufacturers Institute; the Airline Pilots Association, and the Air Transport Association.

Without objection, those groups will be allowed to submit testimony.

The Chair hears no objection, and it is so ordered.

Due to the importance of this issue and, unfortunately, the brief time the subcommittee has to examine the problem of international terrorism, the Chair would ask the witnesses to briefly summarize their statements so that we may proceed directly to questions.

We will hear first from Representative Gilman, Ambassador Quainton, then Ms. Lawton, Mr. Lally, and finally Dr. Kupperman.

Mr. Gilman, you may proceed.

STATEMENT OF HON. BENJAMIN A. GILMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. Chairman and other distinguished members of the subcommittee, I welcome the opportunity to appear before the Subcommittee on International Security and Scientific Affairs, and I wish to state my support for legislation to combat international terrorism.

I commend the subcommittee for its diligent efforts toward seeking passage of legislation enabling us to respond effectively to fanatic bands of terrorist and those who assist them, who have proven their wanton disregard for human life and the civilized institutions of our international community.

The sad fact is that living with terrorism has become a way of life for millions of people around the globe. The pattern of terrorism continues to grow and spread throughout the world. As cooperation between terrorism and terrorist organizations increases, so do the bombings, kidnappings, assassinations, and hijackings.

These aspects of the terror have become a popular tool for all those seeking to impose their will on a world community unable or unwilling to defend itself. The most frightening aspect of this trend is its arbitrary nature, where innocent victims are gripped by the

consequences of terrorist activities, often being slaughtered for no apparent reason.

As indicated by a PLO terrorist leader in 1970, and I quote from his statement: "There can be no geographic boundaries or moral limits to the operation of the people's camp. In today's world, no one is innocent, no one is neutral."

As a product of this type of insanity over the last 10 years, worldwide there have been nearly 1,000 terrorist incidents resulting in the deaths of more than 1,300 people and more than 3,600 wounded.

Unfortunately, under current laws and current levels of international cooperation more than three-fourths of all terrorists escape punishment for their actions, and they are almost certain to achieve their aim of achieving widespread publicity concerning their crimes.

In the past I have joined you in speaking out against terrorist acts claiming the lives of innocent victims. We have put this Congress squarely on record as to the urgent need to fashion effective legislative remedies to quash terrorist groups engaging in bombings, assassinations, kidnappings, and hijackings.

During this Congress I was pleased to have been joined by 60 of my colleagues who cosponsored a measure I introduced, House Concurrent Resolution 72, calling for stringent action against terrorists and nations aiding terrorists. The legislation also urged conclusion of an effective international convention against terrorism.

A similar thrust against terrorism has been incorporated into H.R. 13387: Act to Combat International Terrorism, introduced by Congressman Glenn Anderson, of which I am a cosponsor and a copy of which is presently before you.

I urge this subcommittee to consider favorably the strong legislative initiatives proposed to combat international terrorism, and I request permission that the full text of my prepared statement be included in the record.

Chairman ZABLOCKI. Without objection, so ordered.

[Mr. Gilman's prepared statement follows:]

PREPARED STATEMENT OF HON. BENJAMIN A. GILMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, and other distinguished members of the Subcommittee on International Security and Scientific Affairs, I am pleased to have this opportunity to appear before you as this subcommittee considers much needed legislation to combat international terrorism. You are to be commended for your diligent efforts to focus attention on the critical problem of international terrorism, and for seeking responsible and effective legislative remedies to this problem.

The sad fact is that living with terrorism has become a way of life for many millions of people around the globe. The pattern of terrorism continues to grow and spread throughout the world. As cooperation between terrorists and terrorist organizations increases, so do the bombings, kidnappings, assassinations and hijackings.

These acts of terror have become a popular tool for all those seeking to impose their will on a world community which is unable or unwilling to defend itself. The most frightening aspect of this trend is its arbitrary nature, where innocent victims are gripped by the consequences of terrorist activities often being slaughtered for no apparent reason. As indicated by a PLO terrorist leader in 1970. "There can be no geographic boundaries or moral limits to the operation of the people's camp. In today's world, no one is innocent, no one is neutral."

As a product of this insanity, over the last ten years, worldwide, there has been nearly 1,000 terrorist incidents resulting in the deaths of more than 1,300 people

and more than 3,600 wounded. Unfortunately, under current laws and current levels of international cooperation, more than three-fourths of all terrorists escape punishment for their actions while they are almost certain to achieve their aim of gaining widespread publicity.

The conviction rate for terrorists and the length of actual sentences imposed has been unimpressive. While the FBI has a better than 90 percent capture rate for criminals involved in kidnapping for ransom, a terrorist involved in an international kidnapping has about an 80 percent chance of escaping capture or death. Sadly, the average sentence for those who are caught and brought to trial has been only eighteen months.

At a time when the threats of terrorism are at an all time high, our current domestic and international efforts fall way short of the tasks before them. Earlier this year, FBI Director William Webster testified before the Congress that the bureau's presently strained resources are not adequate to cope with a major terrorist campaign. In fact, he warned that proposed budget cuts this year would threaten already existing investigations of terrorist incidents.

The people of this nation through their government must respond to this attack on the civilized world. We must join together in seeking to mobilize the necessary forces in this and other nations which would be equal to the task of combatting the bands of terrorists fanatics and the conditions from which they spring. We must seek to deny a safe haven to terrorists and to establish sanctions against states which aid them, harbor them, or fail to prosecute or extradite them.

We must impress upon each other the collective threat posed by terrorism. As history has shown, terrorism begets other acts of terrorism and violence. Our response can only be to create a dedicated, aggressive, coordinated, multinational effort to apprehend and punish terrorists wherever and whenever they strike. We must meet this challenge. As pointed out by the Washington Post in its March 17, 1978, editorial: "The terrorists are pressing the question whether a government actually exists—or is it only the legal shell of a government, with nothing inside? Is it capable of acting, at last, to preserve itself and public order?"

During the past few years in different forums, I have sought to denounce terrorism and to alert those still unmoved to action, that terrorist acts feed on each other. A civilized society cannot for long fail to respond to the threats to its very existence which are posed by the ever increasing incidents of terror. It is impossible to forget that the hateful creed of the terrorist is that there are no innocents; any individual regardless of age or sex regardless of station is a potential victim.

I have had the privilege in the past and in the present Congress of authoring and cosponsoring much need legislation to deal with terrorist-related problems. One resolution I have sponsored, House Concurrent Resolution 72, calls for an international study of the causes of terrorism, urges the President to both take action against nations aiding terrorists, and to seek stronger international sanctions against such countries, and strive for conclusion of an effective international convention against terrorism.

In the specific area of air piracy and hijacking which is currently under study by this Subcommittee, H.R. 13261 will, as stated by its author, Congressman Glenn Anderson, Chairman of the Subcommittee on Aviation "deal in a comprehensive way with the threat terrorism poses to Americans both at home and abroad." This bill and similar legislation now before you can contribute meaningfully by enabling our nation to deal more effectively and promptly with terrorism.

As a compliment to these vital efforts, we must encourage the world community to fully support the existing international treaties dealing with air piracy and hijacking.

The Tokyo Convention of 1963, The Hague Convention of 1970 and the Montreal Convention of 1971 provide for the classification of air piracy as an international crime and provide for the extradition or prosecution of hijackers. Unfortunately, these conventions have not had unanimous acceptance or adherence.

Recently, however, there have been some encouraging signs of an awakening in the world community to threats posed by terrorist hijackings. On November 3, 1977, the United Nations General Assembly, for the first time, adopted a resolution condemning air piracy and called upon all governments to take steps to tighten security and to agree to prosecute or extradite hijackers. In addition, at this week's Bonn Economic Summit Conference, the seven heads of state reached an important agreement on air piracy and terrorism that includes a call for suspension of air flights to and from those countries that provide assistance to hijackers.

I urge the members of this Subcommittee to seize this opportunity to strengthen these efforts through the passage of the legislation before it, thereby strengthening our Nation's hand in combatting terrorism. The terrorist challenge to the civilized

world was summarized recently in a Washington Post editorial of May 16, 1978: "The breakdown of law enforcement tends, unfortunately, to be circular. One successful crime incites other people with guns to try the same thing. Demoralization among the police spreads. To reverse the deterioration requires vigorous political intervention by the national leadership."

This subcommittee is playing an important role in providing the needed leadership to combat terrorism. Now the United States as a nation must take the lead to enlist all nations and peoples that are outraged by the brazen attacks, assassinations; threats, the taking of innocent hostages, and other vile forms in which international terrorism manifests itself.

Mr. GILMAN. Thank you, Mr. Chairman.

Chairman ZABLOCKI. Let me state that I and many of our colleagues are fully cognizant of your deep interest, your hard work and your efforts in combating terrorism, and we thank you for your statement.

Mr. GILMAN. Thank you, Mr. Chairman.

Chairman ZABLOCKI. Ambassador Quainton.

Perhaps to expedite matters. The House will be going into session at 12 o'clock, and I know immediately Members will be called to the floor. If we can have Mrs. Lawton, Mr. Lally, and Dr. Kupperman take their places up here we will hear all of your statements and then pose questions to you as a team.

Ambassador Quainton.

STATEMENT OF HON. ANTHONY QUAINTON, CHAIRMAN OF THE INTERAGENCY WORKING GROUP ON TERRORISM AND DIRECTOR, OFFICE FOR COMBATING TERRORISM, DEPARTMENT OF STATE

Mr. QUAINTON. Thank you, Mr. Chairman and members of the subcommittee.

You have the text of my remarks. You have asked me to address three different areas of interest to your subcommittee: Coordination activities of the U.S. Government in this area, the multilateral initiatives which we have taken, and our comments on H.R. 13387, which is currently before your subcommittee.

As you are aware, last year the U.S. Government's efforts to combat terrorism were put under the Special Coordination Committee of the National Security Council in order to give our efforts a direct link to the policymaking levels of the U.S. Government.

A working group for combating terrorism has been established which is chaired by the representative of the Department of State, myself, and whose vice chairman is the representative of the Department of Justice.

This working group has been subdivided into a number of committees designed to deal with critical problems in this area, research and development, contingency planning, crisis management, the role of the media, and international initiatives.

An executive committee reviews recommendations and policy concerns and forwards such relevant matters to the Special Coordinating Committee for decision.

When there is a terrorist incident which requires the management of the U.S. Government, this is handled on the lead agency basis with the Department of State taking the lead in international terrorist incidents outside the United States, and the Department of Justice with the FBI taking the lead inside the United States.

In cases involving domestic terrorist hijackings, the Department of Transportation and the FAA take the lead.

With regard to our international initiatives and efforts, the most noteworthy in recent months has been the declaration signed at Bonn in July by the heads of state and government under which the seven countries representing 69 percent of the world's, the non-Communist world's aviation, agreed to cut off air services to and from any country which fails to prosecute or extradite hijackers and fails to return the hijacked aircraft.

Since that announcement was made we have met at the level of officials in Bonn in early August. We will be meeting again probably in Ottawa at the end of this month to review in the international context the support which we have received—we have addressed all countries with a request that they support the declaration—and to iron out the various necessary procedures for implementing the declaration.

To supplement the effort of the Bonn declaration we have also been active in the last year in obtaining increased accessions on the Montreal and the Hague conventions on hijacking which now number over 90. We anticipate, additional accessions in the future.

We will be supporting early in the new year the efforts of the West German Government to draft a convention against hostage-taking. This will also be in the United Nations context.

Finally, with respect to the bill which is before your committee, let me say that we welcome the initiative which the Congress has taken to enact this comprehensive bill. We regard it as a timely piece of legislation. We welcome the various elements of that bill: The definition of terrorism, the reporting requirements which we regard as a vital means of keeping the Congress and the public informed, the description of appropriate measures to be taken against governments who demonstrate a pattern of support, the efforts to improve aviation security and to implement the Montreal Convention, and finally the provision to add identification and detection taggants to those explosive materials which terrorists use.

All of these measures will enhance our capabilities to combat terrorism.

It is our view that they must be used with imagination and determination and must be supplemented by efforts to deal with the root causes of terrorism, where that is possible. The administration's efforts to find solutions to the problems of the Middle East and Southern Africa are steps in that direction.

In dealing with terrorism we have had to confront a wide variety of problems in the past, and it has been our experience that we need to tailor our response to each terrorist situation to enhance the effectiveness of our actions.

In that regard, we believe that the provisions of H.R. 13387 which provide for automatic application of sanctions could hinder our ability to adapt our tactics to the situation at hand.

We feel that selectivity in applying these sanctions is essential to gain the maximum leverage in attempting to change the policies of a country supporting terrorism. If it is determined that a particular sanction would not be effective, it would be better to simply not

use it than to waive the sanction and risk the interpretation we are being lenient.

We do believe, however, it is desirable to retain that portion of the bill that contains the requirements to report to the Congress on the use or nonuse of sanctions. Strong reporting and consultive provisions should be retained.

Finally, let me reaffirm what Secretary Vance said last January in his testimony before the Senate Governmental Affairs Committee, that the "Congress and the administration must work closely so that we are prepared to deal with terrorist acts rapidly, decisively, and effectively."

It is in this spirit that we have supported the Congress initiative in preparing this legislation.

[Ambassador Quanton's prepared statement follows.]

PREPARED STATEMENT OF HON. ANTHONY QUAINTON, DIRECTOR, OFFICE FOR
COMBATING TERRORISM, DEPARTMENT OF STATE

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am pleased to appear before you today to testify on the subject of your hearing, "International Terrorism: Legislative Initiatives." I have recently assumed direction of the State Department's Office for Combatting Terrorism which is the focal point for coordinating the anti-terrorist activities of the US Government. You have asked that I describe this important effort. You have also requested that I summarize the multilateral implications of the recent Bonn Summit Anti-Hijacking Declaration, as well as comment on H.R. 13387, an "Act to Combat International Terrorism" which is now being considered by your Subcommittee.

GOVERNMENT ORGANIZATION

Last year, an extensive NSC review of our Government's anti-terrorism effort took place. As a result, the State Department's Office for Combatting Terrorism was given a new leadership mandate to enhance the US Government's ability to deal with the problems of both domestic and international terrorism.

The current Executive Branch organization in this area consists of two complementary structures -- one devoted to incident management and the other concerning itself with

policy formulation and contingency planning. Both structures are ultimately responsible to the Special Coordination Committee (SCC) of the National Security Council.

With respect to the handling of the US Government's involvement in a terrorist incident in progress, the SCC, chaired by the President's National Security Advisor, has been charged with assisting the President in the management of such crises. Its membership includes the statutory members of the NSC and other senior officials, as appropriate. In practice, the SCC would probably directly exercise this responsibility only in the event of a major terrorist incident requiring highest level decisions. In general, the US Government's response to terrorist incidents is based on the lead agency concept: the State Department has operational responsibility for international incidents; the Department of Justice and FBI handle domestic incidents coming under Federal jurisdiction. They work closely with state and local law enforcement authorities where there is overlapping jurisdiction. Aircraft hijacking is a special case -- the Congress has mandated by law that the Federal Aviation Administration shall have primary responsibility in this field. Each of these agencies can and does draw

upon the support of other Federal agencies with relevant expertise. Where interagency policy issues arise during the course of an incident, senior officials of concerned agencies can meet under NSC Staff leadership, to resolve them. The members of the SCC are kept continually informed of significant developments so that it can convene on short notice, if necessary.

Because the Department of State will have to manage the United States Government's response to international terrorist incidents, we have recently upgraded our plans and procedures. The State Department's Operations Center is on duty around-the-clock and has a capability for virtually instantaneous communications with other agencies' Operations Centers, with senior officials and with our diplomatic missions. In the event of a major terrorist event, we would immediately set up a task force or working group to handle the detailed management of our reaction to the incident.

The tasks of policy formulation and contingency planning are handled by the NSC/SCC Working Group on Terrorism and its Executive Committee. These bodies ensure that there is a timely, effective and detailed coordination among all

agencies having jurisdictional or support responsibilities for combatting terrorism. The State Department chairs both groups with the Justice Department's representatives as Vice Chairman. Neither body manages incidents, but they could serve in a staff support role to the SCC or the lead agency during a crisis.

The Executive Committee is a senior-level interagency group which, at the request of the SCC, deals on a regular basis with counter-terrorist policy and the many complex issues of contingency planning, including command and control arrangements. The Departments of State, Defense, Justice, Treasury, Transportation, Energy, the Joint Chiefs, CIA and the NSC Staff are represented.

The Working Group represents an additional twenty agencies and departments with less direct involvement in these problems. Apart from general information sharing, we have found that the number of participants in meetings of the Working Group is too large for effective interaction, drafting or planning. Accordingly, in order to streamline its operations and maximize its effectiveness in policy coordination and review, the Working Group has been subdivided into Committees organized on functional lines. There are Committees to deal with Research and Development,

Security Policy, Contingency Planning and Crisis Management, Public Relations and International Initiatives. These Committees are responsible for reviewing the US Government's preparedness to meet a terrorist attack and to make policy recommendations for Working Group and Executive Committee review.

INTERNATIONAL INITIATIVES

Recognizing that international terrorism is a problem where there is not one battleground but many, the fight against terrorism has been made an integral part of our relations with all governments. We seek their cooperation in combatting this scourge and in bringing terrorists to justice.

The problem confronting all countries is how best to deal with this phenomenon in its current form, recognizing the diversity of political viewpoints to which terrorists appeal. It is commonplace to note that one man's terrorist is another's freedom fighter. Counter-measures which seem appropriate in one context will be bitterly opposed in another. Thus the fight against terrorism in the international arena is a continual search for consensus.

The disruptive impact of terrorism has spread across international boundaries and in some countries has undermined the established political order. As a result, there is a growing awareness of the threat which terrorism represents. The recent Declaration by the Bonn Summit participants of their intention to halt bilateral air service between themselves and countries which refuse to extradite or legally prosecute airplane hijackers is a major step forward in this search for an international consensus.

The US Government has actively pursued the Bonn Summit initiative. I led a US delegation to a follow-on meeting in Bonn, August 1-2, of representatives of the Seven Summit powers to discuss questions of practical implementation. The two principal areas of discussion were the procedures which each of the Seven would institute in the event of a hijacking and the diplomatic initiatives which should be taken to ensure broad support for the Declaration. Each country has designated a central coordination point for dealing with the implementation of the Declaration. My Office will perform that function for the US Government.

We are pleased at the progress which has been made. We and our six allies, whose airlines carry almost 70 per

cent of the passengers of the non-Communist world, are now able to take prompt, effective and coordinated action in dealing with hijacking situations which might trigger the sanctions provided for in the Bonn Declaration. We will also be working closely with our six partners to maximize international support for the Declaration. In close collaboration with our allies, we have sought the support of all countries for the Bonn initiative. Many countries in various parts of the world have already indicated to us their desire to support the Declaration.

The August 1-2 meeting in Bonn has given renewed impetus to the Summit Declaration and we have undertaken to meet again within the next few weeks to ensure that this momentum is maintained.

In tandem with this effort, we are working through ICAO to upgrade international standards for airport security. We are also working with a number of like-minded states to obtain additional accessions to the Hague and Montreal Conventions against hijacking and aircraft sabotage. The number of countries adhering to the Hague Convention increased in 1978 from 82 to 93 and to the Montreal Convention from 80 to 89. At least 18 other countries are well along in the ratification/accession process. Fewer and fewer hijackers can count on landing in countries which once gave them sanctuary.

The building of this consensus has been slow and in other areas, relating to hostage taking, for example, has been less complete. Nonetheless, the search for agreement goes on, and early next year UN member states will be resuming work on a new international hostage convention. We shall be giving these efforts our full and enthusiastic support.

LEGISLATIVE INITIATIVES

There remains much to be done. We welcome the initiative which the Congress has taken in moving to enact a comprehensive bill to combat international terrorism. It is a timely piece of legislation.

We support the principal elements of H.R. 13387: the definition of terrorism; the reporting requirements which are a vital means of keeping the Congress and the public informed of significant trends and actions; the description of appropriate measures to be used against governments which demonstrate a pattern of support for terrorism; the effort to improve international aviation security by drawing attention to the critical question of airport security and by modifying the United States Code to implement the Montreal Convention on airport sabotage; and, finally, the

provision designed to add identification and detection taggants to the explosive materials which terrorists might use.

With respect to taggants, the Department regrets the exclusion of black and smokeless powders from the explosives tagging requirements of the bill. We understand that the Treasury Department, the principal US agency with enforcement responsibilities, will be given an opportunity to provide the Committee with more detailed reasons for inclusion of such a provision, given the fact that black and smokeless powders are the second most widely used explosives in illegal bombings in the United States.

The above measures will enhance US capabilities to combat terrorism. They must be used with imagination and determination. They must be supplemented by efforts to deal with those cases where the inspiration and motivation of terrorist acts arise from deeply felt and long-standing political grievances. Our efforts to find solutions to the problems of the Middle East and Southern Africa are steps in this direction.

In dealing with terrorist groups and with their patrons in recent years we have had to consider a wide range of factors

and possible courses of action. In our experience, the sanctions proposed in the bill would be appropriate in dealing with many situations, but their imposition should be considered in the light of each situation. In each case we should take into account their likely effectiveness and the impact they will have on our ability to combat terrorism as well as other political, economic and security interests of the United States. They should be such that they can be altered as appropriate in response to a positive evolution in the policy of the state subject to sanction. The provision of H.R. 13387 which provides for automatic application of sanctions would, in fact, hinder our ability to adapt our tactics to the situation at hand. We feel that selectivity in applying sanctions is essential to gain the maximum leverage in attempting to change the policies of a country supporting terrorism. If it is determined that a particular sanction would not be effective in influencing a country's policy on terrorism, it would be better simply not to use it, rather than to waive the sanction and risk the interpretation that we are being lenient. We would, however, propose to retain that portion of the bill which contains the requirement to report to the Congress on the use or non-use of sanctions. Strong reporting and consultative provisions would thus be retained.

Finally, let me reaffirm that the Executive Branch attaches great importance to the passage of legislation which will enhance our capacity to combat international terrorism. As Secretary Vance indicated last January in his testimony before the Senate Governmental Affairs Committee, "Congress and the Administration must work closely so that we are prepared to deal with terrorist acts rapidly, decisively and effectively." It is in this spirit that we have supported Congress' initiative in preparing this legislation.

I would be happy to answer any questions which you, Mr. Chairman, or members of the Subcommittee may have.

Chairman ZABLOCKI. Thank you, Ambassador Quinton.
Ms. Lawton.

STATEMENT OF MARY C. LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE; ACCOMPANIED BY SEBASTIAN S. MIGNOSA, DIRECTOR, TERRORISM SECTION, FBI

Ms. LAWTON. Thank you, Mr. Chairman.

We were asked specifically to address the definitions in H.R. 13387 and the reporting requirements concerning the sanctions to be taken.

The definition of international terrorism basically breaks down into three parts: The definition of the acts which are covered, the definition of the motivation that distinguishes terrorism from ordinary crimes, and the aspects of the definition that make terrorism international.

With respect to the aspects that make terrorism international and the definition of the acts, we have no suggestions for change.

However, the definition of motivation as it appears in H.R. 13387 we believe could be sharpened somewhat to accomplish what I think we all intend. Presently it speaks of actions intended to damage or threaten the interests of a nation. Actions could do that without being terrorist in nature.

For example, a thief who blows up a building or a portion of a building in order to get access to something he wishes to steal could be damaging a government but not necessarily be engaging in a terrorist act.

Therefore, we have suggested some alternative language, not much more precise, but perhaps indicating a little better what it is that characterizes terrorist motivation.

The definition of international aspects of terrorism may seem a bit vague on first reading, but we think it is necessarily broad to cover the diversity of terrorist acts.

Similarly, the definition of state support of international terrorism is very general in its terms, but again is necessarily broad because of the diversity in terrorist action, and I think that the recognition of states which support international terrorism will prove easier in practice than it does in statutory definition.

In the reporting provisions of the bill there are a series of sanctions listed against nations which support international terrorism, and the State Department has already addressed these. I would note particularly, however, that the reporting requirements, when sanctions have not been taken and the President has determined they are not appropriate, contain no explicit provision for the protection of classified information.

This is found in sections 3 and 4 of the bill but not in section 5, and yet the President's reasons for not applying sanctions may involve classified information in this context as well, and we would suggest that such a provision be added in section 5.

Apart from that, Mr. Chairman, the Department of Justice's primary concern with the bill is the provisions in sections 10 and 11 designed to implement the Montreal convention. These would aid our enforcement jurisdiction enormously and give us the tools we need to cope with acts of international terrorism particularly in the hijacking area.

The language of the bill tracks very closely language which the Department recommended to the Congress, and we fully support its enactment and hope it can be enacted this year.

We have one technical problem which I don't think I need to discuss at this point with the provisions of the bill designed to protect the reporting of law enforcement information. We have suggested in the prepared statement an amendment which would address the problem.

Finally, we too support the concept of requiring taggants in explosives. The experience of the Department is that in this country bombings are by far the most frequent terrorist acts, and any assistance we can have in detecting bombs before they are exploded or in determining the nature of the explosive material and tracing it thereafter will aid us in combating terrorism.

That is all, Mr. Chairman.

[Ms. Lawton's prepared statement follows:]

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

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to comment on behalf of the Department of Justice on H.R. 13387 and related legislative proposals concerning international terrorism. The Department of Justice is, of course, directly concerned with international terrorism because of its responsibilities for intelligence collection, response to terrorism incidents in the United States, and the detection and prosecution of those engaged in terrorist activities in violation of federal law.

As you have requested, I will address my testimony today to the definitions of international terrorism and state support of international terrorism in H.R. 13387 and to those provisions of the bill regarding imposition of sanctions on states supporting terrorism. With your permission, I would also like to touch briefly on matters of particular concern to the Department of Justice, namely, the criminal provisions relating to threats to aircraft and the reporting requirements of H.R. 13387.

I.

The definition of international terrorism encompasses

three distinct aspects: specific acts which constitute terrorism, the motivation behind those acts, and the factors which make the acts "international" in character. It incorporates by specific reference the conduct threatening civil aviation condemned in the Hague and Montreal conventions and the conduct threatening diplomatic personnel condemned in the New York convention. The definition then encompasses, in more general terms, other unlawful acts involving harm to individuals or violent destruction of property. In our judgment, this aspect of the definition is as precise as it can be, given the potential variety of crimes which terrorists might commit. It covers hijacking, bombings, hostage-taking and assassinations -- the typical terrorist acts.

The provisions relating to the motivation which distinguishes terrorism from other crimes are less precise. They refer to actions intended to damage, threaten the interest of, or obtain concessions from a nation or international organization but exclude military or paramilitary operations directed essentially against military forces or

targets or an "organized armed group." It is possible that this definition could encompass conduct which most of us would not ordinarily view as terrorism. For example, an individual who places a bomb in a government building for the purpose of facilitating the theft of something in that building could nevertheless be said to have damaged the interests of the country. Yet the ordinary thief is not generally considered a terrorist simply because he uses a bomb. It is, of course, difficult to formulate language adequately describing the diverse motivation of terrorists. One formulation which may be helpful, however, is that used in Executive Order 12036, defining terrorist motivation as:

"intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause."

This definition recognizes that terrorists strike directly at government but that they also seek to influence government either by frightening the general civilian population into demanding concessions or by generating enough publicity for their cause to bring pressure to bear on government.

The aspects of the definition of terrorism which reflect its international character encompass acts which an individual commits in a country other than his own, or commits against one country within the boundaries of another. They also include acts directed at individuals who are not nationals of the country in which the act takes place or acts which are supported by one foreign state within the territory of another. These various concepts, I believe, encompass all of the variations of terrorism normally considered international. It should be noted, however, that they also include acts which are criminal under existing federal and state law, such as killing or injuring a foreign official or damaging the property of a foreign government within the United States.

"State support of international terrorism" is defined as supplying material or financial support to terrorist organizations, the provision of training, direction or support or diplomatic facilities to aid and abet terrorism, and giving sanctuary to terrorists. Several of these concepts are extremely general in their terms but, in our view, their application in actual circumstances will become more evident than the broad language suggests.

Section 5 lists three specific sanctions to be taken against foreign governments which demonstrate a pattern of support for international terrorism. In addition, it authorizes the President to take other measures which may be available to him to induce a country to change its practice of supporting international terrorism. At the same time, the bill recognizes that overriding national security interest may militate against the imposition of sanctions even though a country is clearly supporting international terrorism. Thus, it provides that the President may suspend the applicability of any of the sanctions, reporting his reasons therefor to the Congress. We defer to the Department of State with respect to this provision. We would note, however, that, unlike sections 3 and 4, section 5 contains no explicit protection for classified material. It should be recognized that the President's reasons for not imposing sanctions may well warrant classification of his report to the Congress. Accordingly, similar protection for classified information should be contained in section 5.

II.

Sections 10 and 11 of H.R. 13387 contain amendments to the existing law relating to aircraft hijacking which are

substantially similar to provisions recommended by the Department of Justice last year. They are designed to bring the United States into full compliance with the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and provide additional sanctions for hijacking threats and hoaxes. We are particularly anxious that these provisions be enacted this year.

Section 10 clarifies the language of 18 U.S.C. 32 and substitutes a new burden of proof called for by the Montreal Convention. Instead of being obligated to prove an intent to damage aircraft, the prosecution will only be required to prove that the conduct involved is "likely" to damage aircraft. Further, acts of violence against passengers which are likely to endanger an aircraft are added to the list of prohibited acts. Finally, communicating false information which endangers an aircraft in flight would be added to the crimes now listed in 18 U.S.C. 32.

Section 10 also adds a new provision to the criminal code extending United States criminal jurisdiction to the prosecution or extradition of hijackers and others threatening aircraft when the events occur outside the United States but the individual responsible is later found within the

United States. This extension of jurisdiction is consistent with the provisions of the Montreal Convention and follows the historic rule of international law that the nation which apprehends a pirate may assume jurisdiction over him.

Other amendments in H.R. 13387 make it criminal to threaten to damage an aircraft as well as to actually damage it. New civil penalties for carrying arms aboard aircraft or conveying false information regarding an aircraft would be added. This would permit the government to impose a sanction for conduct which, while serious, does not warrant imposition of full criminal penalties, either because the offender lacks real criminal intent or because the threat itself is so minimal that a jury is unlikely to convict the individual of a crime.

The Department of Justice strongly supports these provisions.

III.

Sections 3 and 4 of the bill require the President to report to the Congress on acts of international terrorism and on countries which have demonstrated a pattern of support for international terrorism. Each section contains a provision designed to protect classified information and information related to law enforcement. In our view, however, the

provisions designed to protect law enforcement information are inadequate for that purpose.

As noted earlier, the definition of international terrorism in H.R. 13387 encompasses acts which are already violations of federal law investigated and prosecuted by the Department of Justice. These individual crimes may well be subject to lengthy investigations and grand jury actions encompassing one or more years. The Letelier investigation is a classic example. To require periodic reports to the Congress while such investigations are going on may well jeopardize the investigation or generate publicity which will lead to the acquittal of the defendant. It must be remembered that investigative information frequently does not warrant classification in the interest of national security and so it could not be protected from disclosure in that manner. Yet the need to protect such information is well recognized. It is for this reason that Rule 6(e) of the Federal Rules of Criminal Procedure absolutely prohibits the disclosure of grand jury information without the consent of the court.

The language of the bill designed to reflect these same concerns is not adequate to accomplish this purpose. It protects from disclosure only that information which is

protected by the law enforcement exemption of the Freedom of Information Act, 5 U.S.C. 552(b)(7). That exemption, however, is completely inapplicable to the Congress. 5 U.S.C. 552(c). Accordingly, there is nothing in the bill to exclude investigatory information from the public reports to the Congress, even though the disclosure of such information may be in violation of the grand jury secrecy rule and endanger the investigation. We recommend that subsection (d) of both section 3 and section 4 be amended by deleting the cross-reference to the Freedom of Information Act and simply state: "Nothing in this section is intended to require disclosure of investigatory records compiled for law enforcement purposes."

In one respect the reporting requirements of H.R. 13387 are a significant improvement over the bill reported in the Senate, S. 2236. The Senate bill purports to authorize Congress to veto the President's determination that a country no longer warrants retention on the list of those supporting terrorism. As the President has made clear, he views such Congressional veto provisions as unconstitutional. H.R. 13387 wisely leaves these determinations to the President, while at

the same time assuring that the Congress is kept informed of the reasons for his decisions.

IV.

Subject to these comments, the Department of Justice defers to the Departments of State, Treasury and Transportation with respect to this bill. We should point out, however, that while we defer to Treasury on the technical aspects of the taggant provisions of section 9, we strongly support the concept. To date bombings are by far the most frequent terrorist acts committed in the United States and this aid to the prevention of bombing and the detection of those responsible could prove extremely helpful in reducing the incidence of bombings in this country.

Chairman ZABLOCKI. Thank you, Ms. Lawton.
Next we will hear from Mr. Lally.

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

Mr. LALLY. Thank you, Mr. Chairman.

I have submitted a prepared statement and I think the views contained in that statement are not only consistent with some of the comments made earlier today by Ambassador Quainton but they are also consistent with the testimony delivered by the Secretary of Transportation, Brock Adams, during earlier consideration of this legislation.

There are a couple of points I would like to make as a summary of the statement.

First of all, I would like to supplement the statement by commenting on the last topic Miss Lawton covered, which dealt with the introduction of taggants to detect and identify explosives. My statement does not contain any comment on that, so I would like to add it at this point.

We fully endorse the views that the introduction of a detection taggant will aid greatly in achieving improvements in aviation security. The FAA has compiled considerable data on bombings and attempted bombings against aircraft and airports. Of the 43 specific incidents for which we have detailed documentation, 20 involved the use of black and smokeless powder.

I know that this is a point of some controversy in the Congress, but from the standpoint of aviation security we find that almost half of the bombings that have occurred have involved the use of smokeless and black powder. So we do urge the committee to

consider retention of the provision for the introduction of taggants into those types of explosives.

Mr. BINGHAM. Mr. Chairman, could I interrupt for a moment to clarify something?

Chairman ZABLOCKI. Proceed.

Mr. BINGHAM. Would you define the word "taggant"?

Mr. LALLY. I should probably defer to the technical experts of the Department of Treasury, but my understanding of it is it is the introduction of a substance into the explosive or into the blasting cap which can be sensed and given a reading to detect the presence of explosives. That would be a detection taggant.

An identification taggant would be a substance introduced into an explosive that would be recovered after detonation that would allow the explosive to be traced to its source, that is, identify the nature and source of the explosive.

I don't hold myself out as a technical expert in this field, however.

Mr. BINGHAM. And these are substances that are presumably required to be introduced into the product as it is manufactured, is that right?

Mr. LALLY. As I understand it, that is correct, sir, and it would be a judgment of the Secretary of the Treasury when such a substance was available that was reliable, and a time frame which would cover its introduction into the manufacturing process.

Mr. BINGHAM. So, it would apply to other uses? I mean, once that were required in the manufacturing process, then the source of the product would be identifiable whether the use of the product was legitimate or illegitimate, right?

Mr. LALLY. Yes; once it got into the legitimate manufacturing and supply and processing, yes, sir.

Mr. BINGHAM. Thank you.

Mr. LALLY. Turning to aviation and transportation in general, our experience is that transportation, particularly aviation, has been a target for terrorist attack and primarily this has taken the form of aircraft hijacking or air piracy. We have also noted, as you may be aware, a rather dramatic increase in airline hijackings in 1977. There were 30 scheduled airline hijackings that occurred worldwide in 1977, 5 of which involved U.S. airlines—5 of the 25 foreign hijackings, but none of the 5 U.S. hijackings, we categorize as acts of terrorism.

These figures are almost double the total for 1976 and more than any year since the 1968-72 peak, and it appears that the trend is continuing this year. To this point in 1978 there have been 18 airline hijackings, 13 against foreign airlines, and 5 against U.S. airlines.

One of the foreign airline hijackings we have categorized as a terrorist act.

These figures dramatize the need for attention to this problem that the committee is facing. And, while it dramatizes the need, these figures also give us some basis for a remedy, because most of the hijackings that have occurred have occurred because of weaknesses in passenger screening systems, not in the U.S. experience, but in the foreign airline experience.

If those weaknesses were eliminated from the foreign passenger screening processes, I think we would see a substantial reduction in the number of hijackings.

With respect to the bill itself, I would support the comments previously made. We are particularly anxious and urge speedy enactment of the legislation to implement the U.S. commitment under the Montreal convention. We do endorse the taggant provision, and we do favor the other measures as indicated in prior testimony by Secretary Adams.

Thank you, sir.

[Mr. Lally's prepared statement follows:]

PREPARED STATEMENT OF RICHARD F. LALLY, DIRECTOR, CIVIL AVIATION SECURITY
SERVICE, FEDERAL AVIATION ADMINISTRATION

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to appear before you today on the subject of international terrorism. We in the Federal Aviation Administration share your concern about the alarming increase in terrorist acts throughout the world and the increasing tendency to use terrorism to achieve political objectives. Clearly, there is a need to strengthen worldwide measures not only to condemn terrorism but to work toward its elimination from the political scene. We applaud the interest of this Subcommittee and your desire to build on the steps already taken by our government and governments elsewhere in the world to free all nations from this threat.

In November 1977, Secretary of Transportation Adams appeared before a special meeting of the Council of the International Civil Aviation Organization (ICAO) in Montreal to point out the increasing severity of the threat of terrorism, to urge universal adoption of and adherence to the conventions on hijacking and aircraft sabotage, and to emphasize to the Council that we must have more stringent international

standards for the security of aviation. Terrorist incidents have continued to occur since that time, underscoring far better than words the need for prompt and effective action.

For a number of years, transportation, and particularly aviation, has been a target for terrorist attack, primarily in the form of aircraft piracy. Recently, a worldwide increase in hijacking has been noted. There were 30 scheduled airline hijackings worldwide in 1977, of which 5 involved U.S. carriers. Five of the 25 foreign hijackings, but none of the 5 U.S. hijackings, were acts of terrorism. These figures are almost double the total for 1976 and more than any year since the 1968-72 peak. The trend continues. To this point in 1978, there have been 17 hijackings--12 against foreign and 5 against U.S. airlines. One of the foreign hijackings was terrorist motivated, while none of the U.S. hijackings fall into that category.

These figures, while providing the basis for concern, also point the way to an effective countermeasure. Of those 25 foreign air carrier hijackings in 1977, 21 occurred because of weaknesses in passenger screening procedures. Similarly, of the 12 foreign hijackings thus far in 1978, information

available indicates that 6 resulted from defective passenger screening measures. It is also noted that all 5 of the terrorist hijackings that occurred in 1977 and the one occurring in 1978 were facilitated by either a total lack of or seriously defective screening. In those incidents, the hijackers boarded the aircraft with their weapons through the normal boarding process. Properly operating passenger screening systems should have detected and intercepted those weapons. Eliminating the weaknesses in passenger screening systems should result in a significant reduction in the number of aircraft hijackings and terrorist attacks.

In contrast to the foreign experience, no U.S. hijacking since 1973 has involved real firearms or explosives passing undetected through passenger screening points. FAA regulations governing the security of air transportation currently cover 36 U.S. and 73 foreign airlines operating some 15,000 scheduled passenger flights each day to and from 620 U.S. and foreign airports and boarding some 585,000 passengers and 800,000 pieces of carry-on baggage daily. In spite of the complexities of this system and the fact that the person or baggage we are looking for is literally one among millions, our experience, as well as the experience of other nations who have adopted similar aggressive

anti-hijacking programs, demonstrates that passenger screening systems work.

The commitment of the U.S. government to passenger screening is firm. Our procedures have been in effect for more than five years and are fully consistent with procedures recommended for all countries by the International Air Transport Association (IATA), an organization representing 109 of the world's major airlines. We applaud the airlines for their continuing efforts in seeking improvements in international civil aviation security, and we also applaud the vigorous efforts by airline pilots and their organizations to promote a safe and secure flying environment.

Both the International Civil Aviation Organization (ICAO) and the United Nations have addressed themselves to the improvement of aviation security. We welcome these efforts. In 1974, ICAO incorporated a number of Standards and Recommended Practices for Security in Annex 17 of the Convention on International Civil Aviation, known as the Chicago Convention. Of particular importance, the ICAO Council submitted to member states for comment in May of this year a series of amendments to Annex 17. These amendments represent substantial improvements, and the U.S. will work for their early adoption.

In July, at an Economic Summit Conference held in Bonn, Germany, President Carter and the heads of State of six other participating nations issued a Declaration indicating a commitment to intensify joint efforts to combat terrorism. The Declaration announced that, where a country refuses extradition or prosecution of those who have hijacked an aircraft and/or does not return the aircraft, the seven nations would take immediate action to cease all flights to that country, halt all incoming flights from that country or from any country by airlines of the country concerned. A follow-on meeting was held in Bonn in August, and was attended by representatives of the seven countries. The purpose of this meeting was to develop procedures for implementing the Declaration and for encouraging other nations to declare their support of the initial seven countries. Progress has been good, and a further meeting of representatives of these seven countries is anticipated in the near future.

Of course, many, if not most, nations and airlines of the world now have active civil aviation security programs and are making significant improvements in the security of their air transportation systems. The U.S. has endeavored to speed these improvements by providing to these countries, as well as those countries with limited experience, technical assistance, guidance and motivation. In this connection, FAA

technical assistance teams have visited many countries; hundreds of foreign officials and technicians have attended our aviation security training courses or have received indepth briefings on aviation security; and we have made available our training materials to numerous foreign governments and airlines.

We regularly conduct security inspections of U.S. flag carrier and certain foreign carrier facilities outside the U.S. This involves visits to most of the major foreign airports. The purpose of these inspections is to assure that the airlines are in compliance with our Federal Aviation Regulations. During the course of the inspections, our representatives meet with foreign airport security officials and any airport security weaknesses or deficiencies observed are called to their attention. This inspection activity has produced security improvements at many foreign airports and has helped to assure the continuing effectiveness of airline security measures required by Federal Aviation Regulations.

Turning now to the legislation before this Subcommittee, Mr. Chairman, we strongly endorse the objectives of H.R. 13387. We particularly urge that the provisions of Section 10 that would implement the Montreal Sabotage Convention be enacted

at the earliest possible time. Section 11 of the bill would provide additional measures for prosecution and extradition that will strengthen existing deterrence for persons who would commit crimes affecting the security of air transportation. We also urge adoption of this section.

Section 8 of the bill would require an extension to charter operations of the security measures currently applicable to scheduled passenger operations. I am pleased to report that regulations providing this coverage have already been issued and screening of public charter flights began July 25.

Section 6 is the section most pertinent to the Department of Transportation. It would require that assessments be conducted of certain foreign airports to determine the extent to which they effectively maintain and administer security measures. If it is determined by the Secretary of Transportation that an airport does not maintain effective security measures, the responsible government would be notified and corrective actions recommended. If corrective action were not taken within 180 days, the identity of the airport would be published in the Federal Register and prominently posted at U.S. air carrier airports. Further, consideration would be given to the imposition of certain

measures against air carrier operations to or from that airport. We have examined this section carefully and believe it to be a reasonable, balanced approach to a most difficult problem.

Section 7 authorizes the Secretary to promote international aviation security by providing technical assistance to foreign states. As I indicated earlier, we have had for several years a limited program of assistance to foreign governments, funded primarily by the Law Enforcement Assistance Administration (LEAA). We welcome this authorization as it will enable us to continue this important and worthwhile program more effectively.

In my judgment, the best way to achieve lasting improvements in aviation security is through the multilateral efforts of all concerned nations, working together through ICAO, a recognized international, safety oriented organization. Further, the work of ICAO should continue to be supplemented through bilateral efforts of those nations, including the U.S., that have led in the development and implementation of effective aviation security programs.

It must be made clear, nonetheless, that the U.S. is prepared to take unilateral action, including the imposition of

sanctions, if necessary to protect U.S. citizens. The provisions of H.R. 13387 place the nations of the world on notice of our resolve to counteract terrorist acts, and provide some of the tools necessary to do so. At the same time, this legislation would provide the mechanism for an active U.S. program of helping other countries to upgrade airport security and sharing with them our expertise and experience. This legislation adopts a firm policy toward countries whose airports do not have effective security, but it also provides for giving to those countries help they may need to make necessary improvements and to achieve an acceptable level of security. That concludes my statement, Mr. Chairman. I will be pleased to respond to questions you or members of the Subcommittee may have.

Chairman ZABLOCKI. Thank you, Mr. Lally.
We will now hear from Dr. Kupperman.

**STATEMENT OF ROBERT H. KUPPERMAN, PH. D., CHIEF
SCIENTIST, ARMS CONTROL AND DISARMAMENT AGENCY**

Mr. KUPPERMAN. Thank you, Mr. Chairman.

For 3 years I have been studying the problem of terrorism. On behalf of the predecessor to Ambassador Quainton's present committee, known as the Cabinet Committee to Combat Terrorism, I directed three interagency studies dealing with mass destruction terrorism, technology, and, in general, problems attendant to higher order acts.

Let me begin by saying I do not minimize the hardships, the tragedies that are attendant to the acts that have already been committed. My fundamental fear is that terrorism, since it is in part theater, will mutate in terms of targets and mode of attack. The ante, if you will, will be upped. We may see fewer "usual" hostage events. Unfortunately, we may well see the downing of aircraft with surface-to-air rockets; we may well see limited biological and chemical attacks, as well as attacks on power systems. I feel that the ability of the terrorist to maintain his sense of public credibility—if you will, his Broadway presence—is waning. Thus, we may begin to witness dramatic changes in the nature of terrorism.

This implies to me that we have to deal with well-conceived lines of defense. These include intelligence, which is our first line of defense; and the ability to harden targets, such as the key nodes of the electrical power system.

For example, Mr. Lally has spoken about security requirements at airports, but these are not enough. We must prevent the transfer of advanced manner portable weapons to the less reliable countries.

In addition, we must double our efforts at developing a credible incident management system in order to minimize the derivative effects of terrorism, trying our best to deter as well as limit the damage that could occur.

Whether we face terrorism on an international or domestic basis—and often this business is inextricably entwined—we must understand that government must appear efficient; it must operate in a way that the public understands that we have done our homework. In this spirit I support the need for simulations, gaming efforts, and the development of crisis teams.

I must say that I have been preaching this sermon for over a year—at times, quite publicly. I am very heartened to say that since Ambassador Quainton has come on board, much of what I want of government may be coming true. An exceedingly responsible, potentially effective effort is being undertaken.

Thank you.

[Mr. Kupperman's prepared statement follows:]

PREPARED STATEMENT OF ROBERT H. KUPPERMAN, PH. D., CHIEF SCIENTIST, U.S.
ARMS CONTROL AND DISARMAMENT AGENCY

Introduction

As you may appreciate, I am both pleased and honored to appear before you. I have been studying counterterrorism for nearly three years -- especially its crisis management and technological aspects. On behalf of the former Cabinet Committee to Combat Terrorism, I have directed three government-wide, classified studies of terrorism: the Mass Destruction Terrorism study, The Near-Term Potential for Serious Acts of Terrorism, and An Overview of Counter-Terrorism Technology. In addition, I have examined the crisis management needs of a large nation coping with a sizable terrorist incident. This effort, as well as the three interagency studies, were supported by the Law Enforcement Assistance Administration. My final report to LEAA, Facing Tomorrow's Terrorist Incident Today, was published in October 1977 by the Government Printing Office. Having both a scientific and a national security policy background, I am concerned about the complexities of higher-order acts of terrorism.

Possibly the most striking feature of terrorism is its great public significance. However measured, the strongest band of terrorists is far weaker than the tiniest national military force. Yet the terrorist does not fight in a conventional way. Even more elusive than the guerrilla, he preys upon open societies, gaining his leverage from their

physical and institutional vulnerabilities and dramatizing his cause through massive media coverage.

A good illustration of the erosive effects of terrorism can be found in the Harris Survey of December 5, 1977. The Survey states that, "Terrorism is viewed as a very serious world problem by 90 percent of the American people and a very serious domestic problem by 60 percent."

The Survey goes on to state, "By 55 to 29 percent, Americans would also support the organization of a 'special world police force which would operate in any country of the world and which would investigate terrorist groups, arrest them, and put their leaders and members to death.'"

Thus far America has been spared, for the great majority of terrorist assaults have occurred abroad, especially in the Mideast, South America and Europe. Spectacular airline hijackings, hostage episodes such as Munich in 1972 and OPEC in 1975, a myriad of bombings and assassinations -- these have set the tone of world opinion. On a tactical level, terrorism is a success. On the strategic front, however, the score in the game of nation-state vs. terrorist group is not clear.

However, one maxim is self-evident: if terrorism is to abate, our preeminent goal must be to make terrorism a strategic failure. This can happen only if there is international cooperation and the tough-mindedness of the international

community makes significant political gains for terrorists unlikely.

A mature, sober atmosphere must prevail. Governments need to convince their publics that they can knowledgeably and efficiently manage terrorist incidents without suspending civil liberties. A government-imposed news blackout and widespread invasions of privacy are unmistakable invitations to disaster.

Terrorism has become a spectator sport, a theatrical event. But we become bored easily. The next airline hijacking -- or the next hostage episode -- is no longer spellbinding news. We are "media-saturated." As a consequence, the terror-organism may mutate, changing its targets and awaiting its press reviews. Among government's most important jobs, therefore, is to "out-invent" terrorists, assessing as yet unexploited tactical possibilities and devising countermeasures.

The Lines of Defense

If a nation could know beforehand "where, when and how," a terrorist assault might be thwarted; however, there are gaps to be bridged between an intelligence coup and operational victory. The value of intelligence is neither uniform nor easily predictable. Knowing for example that a certain terrorist group has a high propensity for violence may suggest a greater allocation of collection (warning) resources rather

than of substantial operational (reactive) assets. Yet, during a delicate hostage-barricade matter even such "soft" assessments of cultural and behavioral traits are valuable. We need to know if the captors are likely to murder the hostages, what behavioral patterns delimit rescue attempts, and so forth. In other words, damage limitation -- may depend upon intelligence data, but the needed precision of these data depends on their applications.

The perennial dilemma of an aggressive intelligence apparatus is how to match its activities to the needs of its clients. Although there is often close collaboration between the users of intelligence and its collectors, little analysis of the relative worth of various types of collection activities may have been done. For this and other related reasons, our understanding of terrorism may suffer from stunted thought. It is easy to raise doubts about the effectiveness of intelligence efforts, but having advance information about an impending terrorist assault is surely preferable to being caught totally unprepared. Intelligence is the first line of defense.

Hardening the Target

The second line of defense is contained in an idea that is simple but often expensive to implement: to harden the target, building "high-pass filters" which block the admission of the amateurish terrorists and increase the costs to the more talented as well. Limitation of access through physical

means and controlling the accessibility of dangerous devices and materials is necessary. Fences, guards, various sensors, closed-circuit television, metal detectors, tags for explosives, secure communications means, etc. are elements of a growing counterterrorism technology. While vulnerability is reduced, and the costs for both sides are increased, the "cost-benefit ratios" are not usually obvious. Deterrence of future terrorist acts, though a subjective matter, is undoubtedly enhanced by reducing target vulnerability.

Whether on threat assessment or actuarial bases, it is important for industry and government to do penetrating cost-benefit analyses of the vulnerability of key nodes of our society. If a portion of the electrical power grid were to fail for an extended period, it would not be just the problem of the power industry; it would be a national catastrophe having widespread economic and human implications.

We must look at the full costs of failure. ~~The~~ economics of physical security should not be limited to lost business and the (discounted) replacement value of damaged equipment. Analyses must include the sizable costs to be borne throughout the private and governmental sectors. (This is an interesting area for speculation about the eventual liability of public utilities which have been negligent in the face of what litigants may claim to have been a "clear and present danger.")

International Relations

International cooperation is imperative. We need to exchange intelligence, forensic data about terrorist incidents, provide technical assistance to each other, face the indemnification problems due to nations taking substantial risks on behalf of others; enter into agreements for extradition, no safe havens, etc. But we may need to take unilateral actions as well. Even if we were to stand alone, economic and trade sanctions against countries that harbor terrorists -- or worse yet, foster them -- must be available tools. In this sense H.R. 13387 sets an appropriate tone; but I express my concern about the bill's "form." As written, the automatic use of sanctions could deprive the Executive Branch of needed leverage by limiting its flexibility in dealing with a terrorist-harboring nation.

Incident Management

Finally, even the best intelligence and physical security efforts will sometimes fail, and governments will be forced to manage crises produced by terrorism. To minimize the trauma resulting from such acts, governments must behave efficiently. Organizational arrangements, management information and communications systems, sources of expert help, specialized military assets, emergency medical, food and power generation supplies; and clear delineation of legal and administration authorities must be developed ahead of time. Policy-level

officials should have practice in making the sorts of decisions they may face.

It would be no longer clear that law enforcement should take the lead, nor is it clear that we could find the appropriate target abroad to attack in retaliation. Broad-gauged, but well-tuned crisis management machinery must be developed. Above all, we should not rely upon ad hoc solutions. Contingency planning, serious efforts at "gamⁱng" the improbable event -- all these should be pursued vigorously but they should be absorbed inconspicuously within the national security and civil emergency preparedness apparatus designed to deal with the broader array of domestic and international crises we will undoubtedly face.

Severe risks to civil liberties are ever present -- if nothing is done to prepare and an incident does occur, governments may resort to repression on a broad scale. If governments overreact prior to a major incident, they may become subject to ridicule and charged with alarmism. Finally, if a major incident does take place, it is crucial that government meet the crisis squarely, and in a way to assure the public that reasonable and thoughtful action has been taken. Preparedness measures to meet terrorism must be neither isolated nor unexercisable; rather, they should fit within routine activities of government, ensuring an ability to mobilize resources at time of strain.

A Program for Action

I have tried to convey the need for prudence and planning in combating terrorism. The terrorism syndrome is inherently unstable. A slight quantitative change, even a terrorist's miscalculation, may have profound ramifications. In my view, a crisis team is needed to coordinate national activities at a time of a major incident. Such a team, which would be the interface between the policy and operational levels of government, should embrace a well-conceived civil emergency preparedness program. The opportunities for doing studies of the effects of resource interruptions, and actually gaining experience in emergency management, are plentiful under the aegis of civil emergency preparedness. Railroad strikes, fuel shortages, earthquakes and terrorist attacks -- at root they are identical. Their physical character may differ greatly but to the crisis manager, who must allocate resources and who is constrained by time, logistics and politics, the problem is the same.

The programs I believe the larger nations should undertake are the following:

° Develop national incident management systems.

-- Crisis management teams must be formed, preferably one which is a part of a viable civil emergency preparedness program, has immediate access to the highest level of government, and whose management role is set by pre-established authority.

-- These teams must do contingency planning in order to refine negotiating strategies, determine resource and management information needs, and coordinate the operations of government at times of crises.

-- The necessary standby arrangements for aircraft, communications, personnel and other resources must be made before the crisis. Further, a roster of experts and the means to summon them quickly is fundamental.

-- Consistent with the law, remotely accessible data bases concerning terrorist groups should be constructed for planning and operational purposes. (For predictive and incident management purposes, we need to maintain data bases on their tactics and operations, their weapons, and their organization and training.)

o International arrangements. A vigorous international relations program to combat terrorism must be pursued: no safe havens and extradition agreements, multilateral controls on the transfer of antitank and anti-aircraft weapons, agreements for technical assistance and the exchange of intelligence; and retaliation, including economic sanctions, which could be directed against countries fostering terrorism.

o Military option. Whether developed on a national level, or through cooperative international arrangements, large nations must have the specialized paramilitary ability to perform rescue operations such as those at Entebbe and Somalia.

^o Technology. Countering terrorism can only be accomplished by funding a vigorous research and development program. There are rich opportunities for behavioral and technological research. Even limited efforts could make dramatic contributions.

Concluding Comments

I feel that H.R. 13387, an "Act to Combat International Terrorism," is a step in the right direction; but I fear that its automatic imposition of sanctions would ultimately prove to be counterproductive. The Executive Branch needs flexibility; it should not be bound too rigidly. In the prior section I have set forth tasks which I feel large nations should undertake. In my view America is becoming prepared to deal with the sorts of terrorism we have seen to date. Nevertheless, as I have stated repeatedly and publicly, no nation is adequately prepared to deal with higher-order acts of terrorism.

If terrorism were to continue at the same level of sophistication and violence, I feel that the needed defenses are presently being created. Tougher policies, including trade sanctions and the termination of commercial air service to countries that harbor terrorists, as well as the development of special rescue teams will emerge as honed tools. But what if terrorists were to black out a major metropolitan area, such as New York City. What if the airline pilots were to

go on strike because a surface-to-air rocket were used to shoot down a jumbo jet lifting off from Dulles or Kennedy. We would face great problems. The derivative socio-economic effects of the terrorist attack could well outweigh the primary physical damage.

I support the formation of a crisis management mechanism to treat the consequences of terrorism, such as the proposed Federal Emergency Management Agency, one which would deal effectively with a broad spectrum of nationally disruptive crises: rail strikes, natural disasters, fuel shortages, terrorism, etc. Further, I support a "lead agency" concept such as the present NSC/SCC arrangement, assigning the primary coordinative responsibilities for incident management to the cognizant agencies: for law enforcement, clearly the Justice Department; and for international matters, the State Department.

There are those who feel that if terrorism is never discussed, it will not occur. They also feel that the development of counterterrorism tools would result in the suspension of some of our civil liberties. If our history is a guide, workable responses to terrorism will emerge. Obviously, however, we must anticipate some painful "trial and error."

As with many other complex problems, we are forced to live in a murky world -- a world of partial truths. I, for one, believe we should avoid the psychiatric problem of "denial." Terrorism is real. It may be with us for a long time to come.

Chairman ZABLOCKI. Thank you, Dr. Kupperman.

First of all, the Chair would ask unanimous consent that the prepared statements of all of the witnesses be made a part of the record, and that the witnesses would have an opportunity to incorporate in the transcript their extemporaneous remarks.

It appears that there is unanimity as to support for the purpose of H.R. 13387, with some reservations and some recommendations for improvement.

For example, Ms. Lawton, I believe on page 3 of your statement you urged that some definition language be added. I didn't read it, however. Is that the definition from the Executive order?

Ms. LAWTON. Yes, it is, Mr. Chairman.

Chairman ZABLOCKI. That would be defining terrorist motivation and your quote is "intend to endanger a protectee of the Secret Service or Department of State or to further political, social, or economic goals."

Ms. LAWTON. Yes.

Chairman ZABLOCKI. We will certainly take that under consideration to include that as an amendment when we markup on Thursday.

If I might just ask all of our witnesses and specifically Dr. Kupperman a question. On page 4 of your prepared statement you say intelligence is the first line of defense.

In view of the present or what appears to be the present targeting on the CIA and the FBI, to what extent is indeed such weakening of our intelligence systems going to affect our ability to really have that first line of defense that you speak of, Dr. Kupperman?

Mr. KUPPERMAN. Mr. Chairman, I am a civil libertarian. Therefore, I cannot minimize the risks of intrusive intelligence operations.

Nevertheless, let me suggest that if the terrorists were to use an SA-7 surface-to-air rocket—this may well have happened last week in Rhodesia—and if we did not have advance warning of it, as we did in 1973 in Rome, America could face an unprecedented tragedy.

Although I am not an expert on collection of intelligence, I fear that unless we make concerted collection efforts to warn of terrorist attacks, we are going to find ourselves in the position of dealing with the worst alternatives: These are relying upon the hardness of targets and worse yet, the last line of defense itself, dealing unhappily, even though efficiently, with a crisis of substantial proportions.

The need for intelligence is hardly at issue; rather, its reliability is often at question. Certainly its collection can be quite risky and there are its dangerously intrusive aspects. But I urge that we consider this matter most carefully, understanding that the attendant societal costs could be staggering were we caught by surprise.

Chairman ZABLOCKI. I fully agree, but that does not seem to be the understanding of too many Members of the Congress and particularly some of the press as to what our goal and our intentions should be as far as the gathering intelligence to cope with many other problems as we have but especially the problem of terrorism.

Ambassador, on page 10 you deal with the provisions of H.R. 13387, which provides for automatic applications of sanctions. You have modified your prepared statement somewhat by instead of

reading as it reads in the prepared statement, "would, in fact," you say it could; you modified it.

But, at any rate, despite the State Department's objections to automatic sanction or sanctions by denial of exports license, which proposed application would appear to be most troubling? If the sanction were changed to allow case-by-case consideration of all commercial exports, would the State Department have the needed flexibility to employ this policy and would you regard this as a logical complement to the national security waiver already given the President with respect to automatic sanctions?

Perhaps you might explain further just why is the State Department so concerned about automatic sanctions?

Mr. QUAINTON. Surely.

Our concern, as my testimony indicates, is with the effectiveness of our struggle against terrorism and our ability to change the behavior of countries who show a pattern of support. One of the problems which we anticipate is that in many cases of countries who in one way or another have supported or are likely to support terrorism in the future, the three sanctions which exist in H.R. 13387 would all be applicable.

There would be other cases in which perhaps only the third sanction would apply. In that case we would welcome the kind of flexibility which you suggested might be possible in terms of case-by-case review of individual exports.

However, where we have a relationship which encompasses economic assistance, trade, and perhaps military assistance as well, it's our view that it would be preferable to choose that weapon of the three which would most effectively bring pressure to bear upon the country concerned to change its policies, allowing us incrementally to increase that pressure if it were not responsive, so that you might cut off, for example, impose one sanction and then a second and then perhaps a third.

This would not be the case with every country one might be dealing with, but it certainly could be the case with a number of countries where there are terrorist problems in the world today.

I would not want to prejudge what countries will be listed 6 months after the bill is enacted, since the bill is indeed prospective. But, clearly, the possibility of listing countries where we would have more than just our trade relationship at stake must be considered, and we believe that in order to be effective it would be far preferable if we could choose the appropriate sanction.

Chairman ZABLOCKI. What would be defined as an appropriate sanction?

Mr. QUAINTON. All of the sanctions which are in the bill we regard as appropriate, as potentially appropriate sanctions. Whether all three should be imposed on any one country when a pattern of support has been determined—

Mr. GILMAN. Would the gentleman yield?

Chairman ZABLOCKI. Yes.

Mr. GILMAN. I thank the gentleman for yielding.

Mr. Ambassador, in the legislation there is language that permits the President to suspend the application of any sanctions that he may deem appropriate, requiring only the just reporting of the

reasons therefore to the Congress. Wouldn't that be sufficient language to take care of the situation you are discussing?

Mr. QUANTON. It certainly does provide a way under which the President can waive the sanctions which are in the bill. But to go through the national security process seems to us to be a cumbersome and unnecessary one and we believe the more effective and more expeditious way of dealing with the problem would be to impose the sanctions which Congress has recommended here on a case-by-case basis in the light of the circumstances involved.

Chairman ZABLOCKI. In asking the question, what in your opinion would be the appropriate sanctions, we do provide for three sanctions; no military or economic assistance, for example, is one, and no arms sales is another. But what would be the most appropriate?

In our opinion the third sanction dealing with commercial exports would be most appropriate. And I imagine this is the sanction that gives you the most trouble.

Mr. QUANTON. Again, I am not sure I would call it the most appropriate. It is certainly the one most likely to be used because with virtually every country we have trade relations which could encompass items of potential military significance. So that sanction clearly will come into play in our dealings with all listed states, I would think. But the more appropriate sanction in some cases might be the economic assistance sanction in countries where we had no military relationship or no likelihood of making military sales.

The appropriateness I think is a function of the country concerned. But you are right, Mr. Chairman, that it's the third sanction which would come into play most frequently.

Chairman ZABLOCKI. And as being appropriate, the gentleman from New York points out that the bill provides a waiver in subparagraphs (b) and (c): "If the President finds that the interest of national security so requires."

Since we are dealing with section 5, Ms. Lawton, is it my understanding that you would want the exact language dealing with classified information that is in sections 3 and 4 to also appear in section 5.

Ms. LAWTON. Yes, Mr. Chairman.

Chairman ZABLOCKI. Why do you believe, unless we specifically include it in the legislation, it would cause any problems?

Ms. LAWTON. Section 5 requires reports, as do section 3 and section 4. I think it is clear that the President's reasons for not applying a particular sanction to a country in some instances may involve national security matters. I have rather assumed omission of such a provision was oversight, Mr. Chairman, since most of the other bills, both in the House and in the Senate, have the classification language in all three sections where reports are required.

I had really sort of assumed it was oversight rather than a deliberate exclusion of a protection for classified information in this particular section.

Chairman ZABLOCKI. I would imagine it would become subparagraph (f) at the end of section 5.

Thank you very much.

Mr. Bingham.

Mr. BINGHAM. Thank you, Mr. Chairman.

I would like to ask if any of the witnesses can tell us a little bit about the history of the bill.

Was it initially drafted in one of the affected agencies and, if so, which agency?

Mr. QUAINTON. It was initially drafted, as I understand it, in Senator Ribicoff's committee, the first version of it in the Government Operations Committee.

Ms. LAWTON. Sections 10 and 11 were a Department of Justice bill which was in the Judiciary Committees. But the remainder of it, as the Ambassador says, came from the Senate Governmental Affairs Committee, I believe.

Mr. QUAINTON. I understand the taggants provision is also partly a Treasury initiative.

Mr. BINGHAM. Where is that found in the bill?

Mr. LALLY. Section 9 of the bill deals with taggants.

Chairman ZABLOCKI. Page 11.

Mr. BINGHAM. I notice the bill is entitled, "To Amend the Federal Aviation Act of 1958." In fact, the first several sections do not amend that act. They would stand alone as a new title in the code, presumably. The amendments to the Federal Aviation Act begin on page 8, and the taggants section is also not an amendment to the Federal Aviation Act.

Mr. Chairman, might I ask if the Committee on International Relations has the primary responsibility and is the first of three committees to which the bill is referred?

Chairman ZABLOCKI. It is coreferred, of course, to the Judiciary and Public Works Committees as well. There is some question as to whether the Committee on International Relations has or should have primary responsibility. The gentleman makes a very excellent point that it actually amends the Federal Aviation Act of 1958, and if we are going to have primary responsibility on the floor, we have to change the title as well.

As the gentleman points out, the legislation deals with international affairs, except for some amendments to the Federal Aviation Act and the latter sections of the bill.

Mr. BINGHAM. On the definition of international terrorism particularly, isn't it true, Miss Lawton, that it might be impossible to determine whether an act was an act of international terrorism until after the fact?

Ms. LAWTON. Yes, generally. Although there are instances where we have intelligence on planned activities by a group falling within the international aspect of this definition.

Mr. BINGHAM. Well, of course. But there would also be cases where something occurred and it would be difficult to determine whether it was, in fact, international or not.

Ms. LAWTON. Very difficult.

Mr. BINGHAM. I have in mind, for example, the case of the capture and holding of hostages in the B'nai B'rith building last year. Offhand, would you say that that was classified as an act of international terrorism, or not?

Ms. LAWTON. Not at all, no.

Mr. BINGHAM. No indication of foreign involvement?

Ms. LAWTON. None that I am aware of.

Mr. BINGHAM. But obviously these things are closely related, and it seems to me government policy in this matter has to be coordinated.

Ambassador Quainton, does your jurisdiction extend only to those areas which can properly be classified as international?

Mr. QUAINTON. International, the focus is international terrorism, but obviously many of those incidents may take place inside the United States with international involvement. It's not a geographic definition, but one which is consistent with the bill here. But the interagency group on terrorism would not consider domestic hostage situations, which would be legitimately the jurisdiction of the FBI. They might come very close to the kinds of situations you are describing.

But if there were some perceptible international dimension however small, we would certainly take this as part of our responsibilities.

Mr. BINGHAM. What if the terrorism is intended to achieve an international purpose but otherwise has no international characteristics?

For example, I am thinking of the acts of the Moluccan terrorists in the Netherlands, which seek to force the Government of the Netherlands to take a certain type of international action, but which might not qualify as international in any other sense.

Mr. QUAINTON. That would be of concern to us.

Mr. BINGHAM. Is that covered in the definition of such an act? This is not, by the way, a hypothetical question. One can well imagine actions of terrorists in this country who are American citizens, directing their actions against American property or American equipment, intended to coerce the Government of the United States into taking a position on the Middle East.

Mr. QUAINTON. There is on page 3 of the bill language which says which "intends to damage or threaten the interest of or obtain concessions from a state or an international organization." That, of course, might be the purpose of such an act.

Mr. BINGHAM. But it would not necessarily fall within the term "state support of international terrorism."

Mr. QUAINTON. No, not necessarily. It might be a private organization without any state support or state backing involved.

Mr. BINGHAM. Mr. Chairman, I will be glad to go further on another round.

Chairman ZABLOCKI. Would the gentleman yield just to pursue the primary jurisdiction?

The title of the bill amends the Federal Aviation Act while the short title cites an act to combat international terrorism. The short title could be, "act to combat domestic and international terrorism," to cover the field the gentleman has been questioning.

We have a problem here. Of course, as far as the Chair is concerned, it is not so important who has the primary jurisdiction; what we do want is a bill which will cope with the threat of terrorism, domestic and international. But I wonder what the witnesses would think of amending the short title.

Is this what bothers you, Jack?

Mr. BINGHAM. No; I was really just trying to clear up in my mind what the status is.

Chairman ZABLOCKI. I wonder where it is going to be in the United States Code.

Mr. BINGHAM. This bill actually only amends the Federal Aviation Act in certain limited respects.

Chairman ZABLOCKI. The short title makes it international.

Mr. BINGHAM. But—

Chairman ZABLOCKI. We will deal with this on Thursday.

Mr. BINGHAM. Does the short title apply to the entire bill or just to the first six sections of the bill?

Chairman ZABLOCKI. The section itself has a short title.

Mr. BINGHAM. Yes; but I think it applies to only the first five sections, because clearly it would not apply to section 6 and following where the bill does amend the Federal Aviation Act, and then section 9 where it amends the United States Code.

Chairman ZABLOCKI. We will have our legal adviser prepare for our markup on Thursday how to deal with this technicality.

Mr. QUANTON. Mr. Chairman, our concern would be only that the title be descriptive of the bill as it finally emerges. Whatever appropriate title the committee would choose would be acceptable to us.

Chairman ZABLOCKI. We may divide the bill into two sections, amending the Aviation Act and a section dealing with international terrorism.

Mr. Winn.

Mr. WINN. Thank you, Mr. Chairman.

We discussed the economic, military, and commercial sanctions which would be imposed against the countries which would demonstrate a pattern of support for international terrorism.

How would you define a pattern for support for international terrorism, Mr. Ambassador?

Mr. QUANTON. I would define it very much in terms that the bill uses. That is, the provision of any of a number of kinds of support, whether that be financial, military, logistic, the use of diplomatic facilities. There are all of these types of support that have been given to terrorist organizations in the past by foreign governments.

We would be looking, I think, to see whether it was more than an isolated incident. The bill speaks of a pattern, which requires a judgment that over a period of time there are a variety of kinds of support which a country is giving to terrorism. Their judgment would be necessary in order to make the determination that there is a pattern of support, and hence that the sanctions provision would apply.

Mr. WINN. If this pattern would develop in any one field, let's say because of the economic situation in that country, would you revert or use economic sanctions only or would you use all three of the main choices?

Mr. QUANTON. The bill as it currently is drafted would ask us to impose all three sanctions unless the President made a national security determination not to do so.

Our concern, to pick up a point that the chairman made a minute ago, is that if we elect to use the national security waiver we may be seen to be excusing terrorist activities. Rather than being seen to be letting a country off, which is how they might perceive a decision not to impose the economic or military sanc-

tions, it might be better to act in a positive context of using an economic sanction to deal with an economic problem where they might be most vulnerable, or most susceptible to pressure.

Mr. WINN. That was my question.

Mr. QUAINTON. As it now stands, we would have to make a Presidential national security determination to exclude the other two in order to apply just the one.

Mr. WINN. In some cases it seems to be that the main problem behind the terrorism is economic.

Mr. QUAINTON. It can be in many cases.

Mr. WINN. Or it could be in most cases, it seems at least by way of being interpreted from the news, political.

Mr. QUAINTON. Surely.

Mr. WINN. And nowhere in here do I see, and I apologize for not having time to have read the entire bill nor to have heard all of the testimony, although it was obvious that most of you were cutting your testimony down to fit within a time frame, we don't mention political sanctions.

I guess the three main ones, economic, military, and commercial would all be included in political sanctions.

Mr. QUAINTON. And any one or all three would have a profound impact on the political relationship between ourselves and the country sanctioned. There is no question about that, because they would all relate to major areas of its national interest.

Mr. WINN. Let me ask you what system do you have of trying to analyze various political organizations or terrorist organizations that take first place credit and blame for some of the acts of terrorism. Publicly, they want to make it look like they have done a great job of disturbing the political situation in that part of the country, or whatever their problem might be, and they take credit for it, and later on we find out they really weren't involved at all. They just took the credit for it.

Mr. QUAINTON. Of course, there is very little you can do about this, given the fact that—

Mr. WINN. Do you have a scoreboard?

Mr. QUAINTON. We have a scoreboard in the sense that we keep very close tabs in the intelligence community and elsewhere on each organization of which we are aware, each incident that they claim credit for, each individual who is involved. We have developed and are further refining our profiles of organizations and individuals, so that if you have a hijacking which is carried out by a group of Croatians, for example, we can immediately look to see what the pattern of their activity had been in the past. So we do very much try to follow this issue you are addressing.

Mr. WINN. Along that same line again, do you place in this record or this scoreboard who the spokesman might be? They seem to have a consistent system, most of them, most of the time, of within a few hours, or even sometimes in advance of an act of terrorism, between a hijacking, a public announcement or a call to the biggest newspaper. Do you keep a record if there is an identified spokesman and sometimes there is?

Mr. QUAINTON. Oh, yes, if there were an identified spokesman we would. If it's an anonymous phone call there are lots of problems in

tracking that down and being certain just where it came from or whether it's a hoax or not.

Mr. WINN. I am particularly interested in some of the earlier skyjackings and some of the acts of terrorism where somebody called and was representing themselves as being from the PLO and said this was an act by the PLO and this was only 1 of 10 or whatever they might have said to the press and, of course, we find out now as things have developed down through the years that there are several organizations within the PLO that are vying for publicity, press, and political power, I suppose.

That is pretty hard to track down, I suppose.

Mr. QUANTON. It is virtually impossible.

Mr. WINN. Virtually impossible?

Mr. QUANTON. Virtually impossible. Yes, we know a great deal about the PLO and about what the PLO has been doing to support terrorism in various ways, but if a phone call comes in in the midst of a bombing or before a bombing or saying this was done by the PLO and it's anonymous, it's very hard to be certain what you are dealing with.

Of course, the Department of Justice can speak to this more effectively, we get a very large number of hoaxes and calls in the form of bomb threats.

Mr. WINN. What percent?

Mr. QUANTON. I could not possibly give a figure on that. Perhaps Mr. Mignosa could.

Mr. WINN. You have to check them all out? You keep looking down at this gentleman. I guess he has the other half of the answers.

Mr. MIGNOSA. No, sir. My name is Mignosa, and I am with the FBI, and we get terribly involved when something happens in the United States, whether it's done by a foreign group or domestic group.

I will be glad to try to answer any of your questions.

Mr. WINN. He kept looking down and I thought maybe he was waiting for you to answer the statistical question. But you had to check them out. Then I will ask you a question directly.

Whenever you get these calls, you cannot assume it is a hoax. You have to assume that they mean what they are saying.

Mr. MIGNOSA. That's right, sir.

Mr. WINN. And start checking as best you can.

Mr. MIGNOSA. We start with the premise it's all real, and all credible until we are able to determine that it is not credible.

Mr. QUANTON. We have the same approach overseas when one of our missions or installations is threatened, we assume it's a real threat and try to pursue it with local law enforcement as quickly as possible.

Mr. WINN. This leads into section 7 of the legislation which authorizes that the Secretary of Transportation provide security assistance concerning aviation security to foreign countries.

Mr. LALLY. Yes, sir.

Mr. WINN. I wonder if you can describe, and I think you probably did it in the longer version of your presentation, a little bit of the detail of the type of security assistance programs which would be offered as well as the estimated costs of those programs?

Mr. LALLY. I will be happy to do that.

We think the provision in the bill that contains that authority for FAA is a very, very desirable one. At the present time FAA can undertake such foreign technical assistance only on a completely reimbursable basis, so we do not have any authorizing legislation to provide this kind of assistance.

So our primary interest is in having this authorizing, enabling legislation more so than the dollar amounts that are in there. The type of technical assistance we have been doing over recent years has been funded by the Law Enforcement Assistance Administration or by the State Department—

Mr. WINN. May I interrupt you right there?

Where does the State Department in its line item budgeting, where do they have that money? Where do they get those funds?

Mr. LALLY. I cannot tell you precisely. But our authorization to conduct the training is under the International Aviation Facilities Act, and we have been reimbursed by the country itself, by LEAA, or by the State Department in these various areas. Now, this may have gone back some years when it was funded by the State Department. But the work has been done and it's done on a reimbursable basis by the country concerned, unless there is compelling evidence that the nation needs the support and is unable to pay for it; in which case LEAA provides the funds.

The kind of work that has gone on includes our sending technical assistance teams to various nations upon request. This has been done with 26 countries which have requested it. In addition, we provide in-depth briefings for officials from foreign countries and we have done this for representatives from 65 countries.

In addition, we have available training materials and procedural advice and equipment, training for flight crews and airport people, and we have given that information to some 50 or more countries.

Mr. WINN. Is that ongoing?

Mr. LALLY. Yes, that is ongoing.

Chairman ZABLOCKI. Would the gentleman yield at that point?

To what extent is the FAA coordinating efforts with the CIA in this area?

Mr. LALLY. We have a very close working relationship with the CIA, the FBI, and State Department. All of these requests for assistance are generally coming from the nation involved through the U.S. Embassy into the U.S. Government, and the action is taken in coordination with other interested agencies.

Chairman ZABLOCKI. Would the gentleman yield further?

Mr. WINN. Go ahead.

Chairman ZABLOCKI. It is my impression the CIA has research and development in this area within its sole jurisdiction. Am I correct?

Mr. LALLY. Research and development in the area of aviation security?

Chairman ZABLOCKI. Terrorism, security, and the technical devices that should be developed to cope with the problem.

Mr. LALLY. I am afraid I cannot answer. I don't think I can give you an accurate answer on that at this time, sir.

Chairman ZABLOCKI. Ambassador Quainton is now the coordinator. Maybe he can answer in his capacity as Director of the Office for Combating Terrorism.

Mr. QUAINTON. All of the research and development efforts of the U.S. Government are coordinated, and they are being coordinated under the jurisdiction of the working group.

I could not in open session go into a description of the CIA's programs in this area. But, I can assure you that the needs of the various government departments that have an interest in the most up to date technology relative to relating airport security and other areas of combating terrorism are assessed.

Chairman ZABLOCKI. Thank you.

If the gentleman will yield further, the reason I have asked these questions is to further add the jurisdiction of this subcommittee, because if we are going to amend the title we might find ourselves in conflict with another subcommittee of our own committee.

Thank you.

Mr. WINN. I thank the chairman for that explanation.

Mr. Lally, are you involved in the training of airport personnel? In other words, the gate people for foreign countries?

Mr. LALLY. Yes, sir, we make available training aids for them.

Mr. WINN. Training aids?

Mr. LALLY. We generally do not conduct the training ourselves.

Mr. WINN. That is what I am trying to ascertain. You said you trained in 26 countries, and then you came right back and mentioned training in 65 countries, I am trying to figure out the difference in the training between the two sets of countries.

Mr. LALLY. Well, the first category I mentioned was when FAA at the request of a nation, sends a team of technical experts into that country, and they do a survey of their airport and their airline, aviation activities, and they might demonstrate some training at the same time.

In the other category I mentioned concerning training, either the officials come to the United States and they get in-depth briefings, and visit U.S. airports, or actual training aids, visual materials, data, procedures are made available to a nation.

Mr. WINN. How about equipment, in particular, scanning equipment?

Mr. LALLY. No, sir.

Mr. WINN. How do the foreign countries which have asked for our aid and our training, get scanning equipment made available to them?

Mr. LALLY. We have no provision for giving them equipment or for financing the purchase of such equipment.

Mr. WINN. I mean, how do they get it?

Mr. LALLY. Generally they have to buy it on their own.

Mr. WINN. But can they secure a list from the Department of State or elsewhere telling them where the very latest equipment is and where it's available?

Mr. LALLY. Yes; we make known the identification of the equipment, its characteristics, maintenance requirements, and training requirements for operators of the equipment.

Mr. WINN. I am trying to get down to what practically everybody has said here—that the weakness is basically at the airports in the

screening processor. For the screening, do the manufacturers of that equipment furnish training experts to go to foreign airports and help set up that equipment and see that those employees understand how to use that equipment?

Mr. LALLY. I think as a general rule the American manufacturers are anxious to sell the equipment.

Mr. WINN. I understand that.

Mr. LALLY. And they will put together a package that will include training or maintenance contracts, if the other country is willing to pay for it.

I might add here that many countries believe very strongly in a physical inspection as opposed to the use of walk-through weapons detectors or X-ray machines. They think there is a definite psychological advantage to have a laying on of the hands, so to speak, in the search and inspection procedures.

In addition, the equipment costs are not prohibitive for most countries. The costs are not that great. The difference between good screening and haphazard screening is primarily a question of will, determination, and supervision, not so much equipment and dollars involved.

If directors of aviation security at airports are willing to require that all people be thoroughly screened every night, every day all of the time, that is where we will see the difference, rather than reacting in a peak and valley, a rather haphazard approach to screening.

Mr. WINN. Well, peak and valley is just human nature; we get tougher sometimes when we have had a security problem in the United States and it reflects on all of us and all airport operations, and then when we don't have one for a year, like we did, we went through a 1-year period when we didn't have anything at all, and I think everybody got pretty lax.

Mr. LALLY. That is the challenge.

Mr. WINN. Yes; that is the challenge. Also the variation of equipment we have right here in the United States as well as overseas, all the way from none to some very sophisticated equipment.

Mr. Chairman, I have taken quite a bit of time, but I do have one more question, if I may, about the difference between the House and Senate bills. The Senate bill contains a concurrent resolution provision and it allows the Congress to veto the President's determination that the country no longer warrants retention on the list of those supporting terrorism.

I wonder if the Ambassador would care to talk about that difference?

Mr. QUAINTON. The administration has strongly opposed in the Senate that provision of Senator Ribicoff's bill on constitutional grounds. Perhaps Ms. Lawton would like to speak to that point, but we have felt that this would be an extremely unfortunate clause if the President's ability to act could be overruled in this way.

Ms. LAWTON. If I may pick up on that, it is our view that the device of the congressional veto, whether it be by a committee, a single House or even by a concurrent resolution, is inconsistent with the constitutional provisions on the enactment of legislation.

Now, if the Congress were itself to compile the list of countries, then the Congress would, of course, be the one to remove countries

from the list. But having delegated to the President authority to compile the list, we don't feel that it is constitutionally permissible in the structure of article I and article II to pull a string, to say to the President this is your authority, but if we don't like the way you will exercise it we will change it, not by statute, but by a concurrent resolution over which the President would have no veto power as conferred by the Constitution. We feel very strongly, and not only in this bill but any number of others, that that sort of mechanism is unconstitutional and that there are other ways for Congress to handle the oversight function and make its views known to the President very clearly in areas such as this.

Mr. WINN. The only trouble is, and I basically agree with you, that the other ways are very slow except for a letter or a call.

Ms. LAWTON. The statutory ways?

Mr. WINN. The statutory ways.

Ms. LAWTON. There are ways other than statutory that the Congress can affect the President.

Mr. WINN. Well, we won't get into those.

Thank you, Mr. Chairman.

Chairman ZABLOCKI. The Chair will extend the courtesy to our colleague who has been a witness now to ask a couple of questions.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. Chairman, I would like to address a question to the entire panel.

It's my impression from the testimony, and it certainly is very valuable testimony to the committee, I am certain, and will be valuable to our colleagues, that there is a consensus in the administration that this legislation would be a useful tool and that it should be adopted at an early date.

Am I correct in that analysis from all of your comments, with the exception of the new amendments that you have suggested with regard to taggants and discretion in opposing sanctions and reporting mechanism and the protection of classified material and protection of law enforcement?

I think those are some of the major areas you have discussed, but essentially you are all in accord, are you not? This is good legislation and we should move with it at this time.

Am I correct in that analysis?

Mr. QUANTON. That is our position.

Ms. LAWTON. Yes.

Mr. LALLY. That is correct.

Mr. GILMAN. What is the problem about black powder? From where is there some objection about a taggant on black powder? I understand the panel has recommended it. Where is the objection coming from? I had not seen that.

Mr. KUPPERMAN. I believe from the National Rifle Association.

Mr. GILMAN. What is the problem about a taggant in black powder; what objection do they raise?

Mr. LALLY. I think probably somebody from the Alcohol, Tobacco, and Firearms Bureau would be the best source of information on that or Department of Treasury. But, as I understand it, sportsmen like to load their own ammunition and they use this black or smokeless powder, and I think it's also in the distribution, commercial distribution of black and smokeless powder which goes to more

people, private citizenry, than a high explosive which goes to a more rather limited number of users.

Therefore, there is a concern, I believe, that perhaps administrative costs, recordkeeping might constitute a rather onerous burden in the view of some.

Mr. GILMAN. Am I correct then that the taggant includes also reporting of sale, is that the problem?

Mr. LALLY. Yes, sir. There is a taggant, two taggants, one is for detection, that is, for detection of the explosive before it goes off.

Then there is another taggant which is for identification. After detonation the debris will identify this substance, which will then identify the lot, manufacturer's lot, and then lead you to the source of supply, so that law enforcement agencies can identify the purchaser and perhaps the user of the explosive.

Mr. GILMAN. Then there would be a requirement for reporting the sale?

Mr. LALLY. I believe so, yes, sir. I believe so, but I am not certain of that.

Chairman ZABLOCKI. You mean before the fact or after the fact?

Mr. HUME. Only from the manufacturers, they have to report the taggant that goes into the powder at the time of manufacture. Upon the detonation, there is a metallic element in the tracing, and they use a magnet that sucks up this dust, which then they can put under a microscope and it is color coded and they can then tell from that who the manufacturer was and what lot by a record that the manufacturer has.

Mr. GILMAN. Then there is no proposal for reporting retail sales, is that correct?

Mr. HUME. No.

Mr. GILMAN. I think you better identify yourself for the record.

Mr. HUME. Ron Hume in the State Department.

Mr. GILMAN. I know you mentioned the international agreements, the Tokyo, Hague, and Montreal conventions, and they list, of course, a number of offenses that provide for apprehension and prosecution, extradition, and some remedies. But there are only a few states who have signed. I understand that only some 50 or 55 states have signed or ratified those agreements.

What seems to be the problem in obtaining ratification and what are we doing about trying to get ratification of those conventions?

Mr. QUANTON. Let me address that, if I might, Congressman. In fact, the numbers are somewhat higher than you suggested and, in fact, this year, as my testimony indicates, the number of countries adhering to the Hague convention has gone up from 82 to 93, and of the Montreal convention from 80 to 89, and we have another 18 countries who have indicated to us that they are fairly far along in the ratification process.

So I think we can anticipate within the next year the number of countries who are parties to these conventions will be over 100.

This increased interest in the conventions is the result of a widespread diplomatic effort which we undertook late last year and early this year following the Consensus Resolution of the United Nations General Assembly last November. Our Ambassadors in all countries where the host government was not a party to either the Hague or Montreal conventions, have been asked to make very

strong demarches seeking further participation in these conventions, and we have had some considerable results.

We have supplemented these efforts just in the last 3 weeks in our search for support for the Bonn declaration on hijacking with a simultaneous renewal of that request to governments that have not ratified these conventions to do so. So we have been keeping up a very strong and continuous diplomatic pressure, which has had its results.

Mr. GILMAN. I would like to address this question to Mr. Lally.

In the Anti-Hijacking Act of 1974 the President is authorized to suspend air service to those states aiding and abetting or providing sanctuary to terrorist activities, but also he was authorized to withhold, revoke, or impose conditions on the United States operating authorities of airlines of any nation that does not maintain international civil aviation organization standards for aviation security.

Have we done that for any nation?

Mr. LALLY. The short answer is no, sir, we have not found it necessary to do that. What you are referring to are two separate authorizations. One is a section 1114 of the Federal Aviation Act, which does give the President this authority to suspend air service with nations that do not fulfill their obligations under the Hague convention, and also nations that are found to aid and abet terrorism generally.

The second authority is in section 1115 of the Federal Aviation Act, which gives the Secretary of Transportation authority to attach conditions to or to revoke the operating rights of airlines whose countries are not maintaining, administering minimal ICAO security standards. We have not found it necessary to impose those sanction actions generally because our experience has been that most nations have been receptive to U.S. recommendations and suggestions for improvement, and while there is a way to go yet in achieving the desired level of security internationally, progress is being made without resort to those kinds of actions.

Mr. GILMAN. How many nations would you say have not met the minimum standards?

Mr. LALLY. I think to answer that you have to first look at the minimum standards. There has been launched a pretty considerable effort by the United States to improve the ICAO standards relating to aviation security, and most nations have now adopted civil aviation security programs in accordance with the standards, and they are administering these standards.

Now, the effectiveness, as I mentioned before, is the key, and it's really a subjective estimate. Nations may not effectively and consistently screen all passengers, all carry-on baggage, all flights at all airports. Some nations say they will screen only international flights, others have taken the approach that they are going to screen only certain flights, or flights going in certain directions. Our approach has been that the application of the standard should be consistent and across the board, and we are making progress in that record.

Mr. GILMAN. But we are satisfied that most nations are moving in that direction?

Mr. LALLY. Yes; I think all nations are definitely moving in that direction.

Mr. GILMAN. And we find no violators?

Mr. LALLY. Well, we find problems, and we work to solve problems. We have not found violations, and we have not found open opposition or refusal. If we did find that kind of resistance by other nations, we would have no hesitation about considering those sanction authorities. But we have not found it necessary to do so, so far.

Mr. GILMAN. Actually, our Nation has never imposed any sanction under any of the conventions or treaties, with regard to terrorist activity, have we?

Mr. LALLY. The only sanctions I am aware of; there may be others on the national scene, but the only two I am aware of are the two we have just discussed, and the answer to that is, no; we have not.

Mr. GILMAN. There are no sanctions in Tokyo, Hague, or the Montreal convention?

Mr. LALLY. No; the conventions themselves do not contain sanctions.

Mr. GILMAN. Thank you, Mr. Chairman.

Chairman ZABLOCKI. If I may ask a question at this point, and do it with some trepidation because, Mr. Ambassador, you have just become Director of the State Department Office for Combating Terrorism. Many experts in the field of terrorism have suggested forming a crisis management team with clearcut lines of authority and direct access to the President to coordinate U.S. Government responses during terrorist incidents and other crisis.

Now, is your Office of Combating Terrorism equipped to do that? Would a team be better to coordinate existing resources in various agencies to combat terrorism?

For example, it is argued that such a team of experts could engage in a number of antiterrorist activities including contingency planning or gaming and simulation of terrorist events which would be a major contribution to antiterrorist efforts.

Is your office equipped to do as well as the suggested team of experts?

Mr. QUANTON. We are beginning to.

Chairman ZABLOCKI. Beginning to what?

Mr. QUANTON. To do what is expected of us, what I understand you expect of us.

Chairman ZABLOCKI. Let me ask another question. In your office are you going to have psychiatrists—

Mr. QUANTON. No; our office—

Chairman ZABLOCKI. Another area, how does one determine what is the motivation of terrorists? This is something we should thoroughly examine.

Mr. QUANTON. This is a subject which comes up whenever we have a crisis or an incident. The Office for Combating Terrorism is there to act as the central coordinating point, and the kinds of issues which you raised really fit into two different kinds of categories.

A crisis management team is, in fact, set up every time there is an incident, whether it was the recent highjacking of a TWA plane in Geneva, whether it was the seizure of the German consulate in

Chicago. Terrorist incidents which affect the United States trigger immediately a crisis management team in the lead agency, whether that is the Department of Justice or in the Department of State.

That team, which is composed basically of the key people of that agency, may call upon, and does call upon, the necessary people from other parts of the U.S. Government that have relevant expertise.

In the case of the recent highjacking to Geneva, we called upon the State Department psychiatrist. There are other psychiatrists available in Washington who are immediately available to form part of a crisis management team.

Where we, on a minute-by-minute basis, deal with the issues which arise in the crisis, this team is the focal point for dealing with the foreign government. In the case of the Swiss highjacking to Geneva, the Swiss Government set up a crisis management team in Bern, and we were on a direct telephone line to those who were managing the incident. Where there are issues of policy which raise important issues for senior levels of the U.S. Government, these are taken to the Special Coordinating Committee of the National Security Council, which brings together at the subcabinet level the key decisionmakers of the U.S. Government, to focus on specific issues which need to be addressed in that crisis.

So, we are tied in directly to the President, although we try not to involve the President in the details of crisis management. That is clearly not a useful way for him to spend his time, and we only involve the CC when there are interagency issues which are significant to very high levels of the U.S. Government.

With regard to the policy and coordination issues, which is not one department's responsibility, for example, the subject of appropriate training which we might provide to foreign governments in the area of countering terrorism, this is handled by the working group. Its 28 member agencies and subcommittees to try to put together a policy on what kind of training each agency should be providing.

These are policy issues which will be referred up through the executive committee to the CC. We do have a crisis management team concept, and we do have a policy coordination team concept. These structures now are beginning to work. They have only been in existence less than a year, so I can't tell you that they are perfect or that they are all working smoothly.

But we are beginning to get the kind of coordination and the kind of cooperation which is essential to an effective counter terrorist effort.

Chairman ZABLOCKI. What is the number of personnel in your Office for Combating Terrorism?

Mr. QUANTON. There are six officers and three staff personnel.

Chairman ZABLOCKI. Dr. Kupperman, would you care to comment on the question I asked of the Ambassador?

Mr. KUPPERMAN. Yes; I would.

Mr. Chairman, my primary concerns do not rest with the level of incidents we have seen so far. If these problems were to continue, such as hijackings, assassinations, individual hostage events, such as the Hanafi siege, I think we are developing honed tools to deal with them.

For the sorts of terrorist assaults we have seen, the crisis management techniques that Ambassador Quainton has described are viable; however, if terrorists begin to change their targets, if the level of risk becomes much higher, the concept of lead agency becomes vaguer, the consequences of terrorist acts themselves become far more potentially pregnant; and the risks to government become vast. Government must develop the policy options and the reporting requirements; it must integrate the intelligence functions with the needed operational tasks. These are exceedingly difficult matters to accomplish on an ad hoc basis.

I think that until Ambassador Quainton came on board we were lacking in foresight. I think he has begun to take progressive steps.

As to the exact form a lead agency concept takes, or the bureaucratic location of planning groups, these should not be terribly important so long as talented people are available and the contingency planning is undertaken.

An aspect which was not covered directly by Ambassador Quainton, but which the administration is doing something useful about, is its efforts to deal with the physical consequences of terrorist acts. The many facets of damage limitation are being integrated into a Federal Emergency Management Agency, now being formed by reorganization. The key to contingency planning is experiential learning. We need to simulate serious events, try to uncover and resolve the policy and tactical problems that will arise.

I don't think that we will progress very far until we have tested ourselves, at least in a simulated manner. Ambassador Quainton has begun, and I wholeheartedly endorse his pioneering efforts.

Mr. QUAINTON. Let me say, I have asked Dr. Kupperman, with his very extensive experience in this area, to begin to work up for us some scenarios and some exercises which will begin to put the U.S. Government through some experience. With higher order of magnitude terrorist incidents; we hope we will never have to use it but we are very much aware of the need to exercise ourselves in routine kinds of incidents as well as in the higher order of magnitude ones, and we are going to be doing that.

Chairman ZABLOCKI. Thank you.

Mr. Bingham.

Mr. BINGHAM. Thank you, Mr. Chairman.

I understand that earlier versions of this legislation contained provisions directing the President fully to implement the Montreal convention of 1971.

Does the administration still support such a directive?

Mr. QUAINTON. I am not familiar with this area.

Mr. LALLY. I recall there was such a provision in the original version of S. 2236. In my view, and Ms. Lawton will probably comment more authoritatively on this, it was a redundant provision because the following provision did just that; and what you have in the bill before this committee is the provision of law that will fully meet the U.S. obligations under the Montreal convention.

Is that correct, Mary?

Ms. LAWTON. Yes, yes; we saw basically no point in saying the President shall fully implement when, in fact, the Congress, by changing the criminal laws relating to hijacking, was fully implementing.

Mr. BINGHAM. Up to now, then, the United States has not fully implemented?

Ms. LAWTON. Right. We have some jurisdictional gaps in our present criminal statutes on hijacking, which this bill would correct.

Mr. BINGHAM. I see.

On the matter of taggants, I take it that it is technically feasible to do what this bill requires, that we do have the capability of doing that. Does the reference to explosive material include nuclear material, or is that excluded in connection with the requirement as to taggants?

Ms. LAWTON. I do not believe, Congressman, that was intended to encompass nuclear material. The drafting of most of the taggant provisions was handled by Treasury, I believe, and the Treasury Department would not itself have jurisdiction over nuclear materials.

I think that is quite a different proposition.

Mr. BINGHAM. I notice that the Senate bill does have a rather extensive section dealing with nuclear matters, but I am told that the recommendation is that it be dropped out as being covered by the Nuclear Nonproliferation Act. Is anyone familiar with that?

Ms. LAWTON. Well, it has several provisions. Partly that is true of the section but also the Senate bill had a number of provisions which amount to amendments to the Freedom of Information Act, and it was just a question of whether this was the appropriate place, and whether they were, in fact, necessary provisions, or whether proper interpretation of that act would take care of the same problem.

Mr. BINGHAM. You referred, Ambassador Quanton, to your opposition to excluding black and smokeless powder, but as I read it, H.R. 13387 does not exclude those items. Or am I wrong? They are excluded in the Senate bill.

Mr. QUANTON. My understanding is, it was knocked out by the Aviation Subcommittee, and we thought it would be very useful to have it put back in the bill. If that is not correct, we welcome—

Mr. BINGHAM. I don't see any omission in this bill.

Mr. QUANTON. My advisers have explained to me the intricacies of your system. Because there is separate jurisdiction it has been dropped out of the version being considered in a different committee.

We would welcome its being retained in the version which you are considering.

Mr. BINGHAM. I see.

Now an important matter from the point of view, I think, of our committee, is the wording of subsection 3 on page 7 of the bill, which is the third type of sanction. It begins, "Approve no export license for the export of commodities or technical data which have a potential military application." I think we understand that. Then it continues, "or which would otherwise enable a foreign government to support acts of international terrorism." That strikes me as pretty vague language. That could be construed virtually to exclude any trade that might be beneficial economically to the other government and, therefore, to contemplate a total embargo.

Does anybody care to comment on that?

Mr. QUAINTON. It was certainly not our assumption, I think, that it would lead to a total trade embargo, but would be limited to those commodities which could be clearly shown to have a direct relevance to either the military capability of the country concerned or to its support for terrorism in some form or other. In implementing this provision we would look at our trade with the country sanctioned in that light.

Mr. BINGHAM. Could you give us an example of what you think is contemplated?

Mr. QUAINTON. Well, for example, communications equipment, which might be destined for the military of the country concerned. Certain kinds of transport aircraft, perhaps; certain kinds of vehicles which might be used primarily for the transport of heavy tanks, if you will. There are a number of particular commodities which can be identified, commercial items which can be identified as being of potential and direct military use.

Mr. BINGHAM. Those would fit under the first category?

Mr. QUAINTON. That's right. Aircraft would be a case which conceivably could fit under the second element here, which could be put at the disposal of a terrorist group. It would apply if we had reason and evidence to suppose that was likely to be the case.

I don't have a comprehensive list of commodities which would fit under that element.

Mr. BINGHAM. It has been pointed out to me that in order for the Government to determine whether items would fall under this category or not, virtually all exports to that country would have to be licensed. Is that contemplated?

Mr. QUAINTON. No; there is no requirement that all exports be licensed.

Mr. BINGHAM. If there is no licensing system, there is no way to review whether or not something is covered, as in the case of the Export Administration Act.

Mr. QUAINTON. There is, of course, an existing list of items which require licenses right now, and we can add to that list at any time. We have that authority today, to add to the list of items which require licensing.

Mr. BINGHAM. I think it would be helpful, Mr. Chairman, if a written answer to this line of questioning could be provided—

Mr. QUAINTON. Surely.

Mr. BINGHAM [continuing]. Because I do think we have a problem here, possibly just of drafting, but possibly more complicated.

Mr. QUAINTON. Could you clarify the question which you would like us to reply to?

Mr. BINGHAM. I am somewhat bothered by the language there, "or which would otherwise enable a foreign government to support acts of international terrorism." Perhaps it ought to be made more precise. And whatever it applies to, it may require a system of licensing in order to be used.

Mr. QUAINTON. We will investigate that.

[The information follows.]

CLARIFICATION OF LANGUAGE CONTAINED IN SECTION 5 OF H.R. 13387

With respect to the trade sanction contained in Section 5 of H.R. 13387 and the concern expressed by Congressman Bingham whether the phrase "or which would

otherwise enable a foreign government to support acts of international terrorism" ought to be more precise, I would like to make the following additional comments: This language is designed to provide the President the ability to make a case-by-case determination of those commodities which in his judgment should be embargoed in the light of our particular trading pattern with an offending state. It would permit the President to deny any exports which would reduce the ability of a listed state to support terrorist action.

Clearly we need and currently have in operation a validated licensing system which can afford us the necessary opportunity for such review and denial. Therefore, we would support writing a provision into the bill that would "require a validated license under the Export Administration Act of 1969 for exports to the listed state * * * which have a potential military application or which would otherwise enable a state to support acts of international terrorism * * *."

Mr. BINGHAM. It is not much good to simply say exports of X, Y, and Z are prohibited. You really have to have a system of licensing to determine what is being exported and what should be approved or not approved.

One final question: Have any of your groups been involved in examining the question of what organizations should be labeled as "terrorist organizations" for purposes of immigration? I have in mind the recent correspondence between some of us and the Department on the fact that the PLO has not to date been designated as a terrorist organization, so as to bar admission to this country of any member of the PLO. A number of us feel that in light of the McGovern amendment adopted last year, it is essential that that designation be made if PLO members are to be excluded.

Has your group been involved in that?

Mr. QUAINTON. We have not addressed that question. There are, as you know, a number of terrorist organizations that are listed, and our computer files contain the names of all known terrorists. Any visa application which falls within those categories is immediately referred to Washington for review, including to the Office for Combating Terrorism.

As I understand it, the question of the PLO is a very complex one, in view of the many different kinds of activities sponsored by the PLO, which include support for terrorist organizations as well.

I will look into the question of whether the PLO can and should be listed for these purposes.

Mr. BINGHAM. I know that is under examination in the Department and perhaps elsewhere, but may I just say if the Department wants to preserve the McGovern amendment of last year, I think it is essential that the PLO be designated as a terrorist organization, or we lose the whole ball game.

Thank you, Mr. Chairman.

Chairman ZABLOCKI. Mr. Winn.

Mr. WINN. I have no further questions, Mr. Chairman.

Chairman ZABLOCKI. I must come back to the earlier concern I had about the title of the bill.

Of course, it is basically our problem. I will again repeat, would you find any problem if the title of the bill would read, "To amend the Federal Aviation Act of 1958 relating to aircraft piracy, to provide a method for combating terrorism, to amend the Foreign Relations Authorization Act for Combating International Terrorism, and for other purposes," and in the short title to include, "this act may be cited as the 'act to combat domestic and international terrorism,'" and have two titles: Title I would deal with the com-

bating of international terrorism, and title II would begin on page 8, dealing with the amendments to the Federal Aviation Act.

Mr. QUAINTON. Title II would not be conceived of as just a domestic terrorism portion of the bill, or were you suggesting that, Mr. Chairman?

Chairman ZABLOCKI. Well, title—

Mr. QUAINTON. Because the air safety provisions are very much part of the effort to combat international terrorism as well.

Mr. LALLY. The Federal Aviation Act provisions cited here are international in scope, as well as domestic.

Mr. QUAINTON. And indeed the taggants would be extremely important to us in terms of our struggle against international terrorism. They would also be useful to domestic law enforcement agencies in their investigations.

Chairman ZABLOCKI. The question in the colloquy the gentlemen from New York certainly has caused me concern as to whether we should have two titles. I presume our legal counsel will be able to work this out as to how it will fit into the United States Code.

Thank you, Ambassador Quainton, and Ms. Lawton, Mr. Lally and Dr. Kupperman, for your testimony today. It was very helpful.

The committee stands adjourned until Thursday, when we meet to mark up the bill, H.R. 13387.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

INTERNATIONAL TERRORISM: LEGISLATIVE INITIATIVES

THURSDAY, SEPTEMBER 14, 1978

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON INTERNATIONAL SECURITY
AND SCIENTIFIC AFFAIRS,
Washington, D.C.

The subcommittee met in open markup at 10:25 a.m. in room H-236, the Capitol, Hon. Clement J. Zablocki (chairman) presiding.

Chairman ZABLOCKI. The subcommittee will please come to order.

The subcommittee meets today to consider the amendments and markup of H.R. 13387, an Act to Combat International Terrorism.

The Chair has four amendments which I will propose to this legislation based on the hearings we had the other day.

The members have before them a letter to the chairman with copies to the members of the subcommittee from Senator Abe Ribicoff and Senator Jacob Javits, who strongly recommend that the matter of sanctions in the proposed legislation be kept in the present form and not weakened.

Do we have a quorum?

Mr. BINGHAM. Mr. Chairman, we do have a quorum for markup, I believe, one-third.

Chairman ZABLOCKI. I thought it was a majority.

Mr. MOHRMAN. It is one-third for markup.

You need a majority (four) to report to the full committee.

Chairman ZABLOCKI. Why don't we begin reading the bill?

The clerk will read the bill.

Mr. SPALATIN [reading]:

A Bill to Amend the Federal Aviation Act of 1958 Relating to Aircraft Piracy and Provide a Method for Combatting Terrorism and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Short title, Section I, this Act may be cited as the Act to Combat International Terrorism.

Chairman ZABLOCKI. Why don't we stop right here? The Chair has an amendment to the title. Copies of the amendment are before the members. The clerk will read the amendment.

Mr. SPALATIN. The amendment to the title reads:

A Bill to Strengthen Federal Policies and Programs and International Cooperation to Combat International Terrorism.

Chairman ZABLOCKI. The Chair recognizes itself for time to explain. During the hearings I raised a question as to whether the present title amending only and addressing itself solely to the

Federal Aviation Act of 1958 caused some question as to international cooperation to combat terrorism and therefore the staff and legal counsel prepared the suggested amendment. The amendment to title I I am proposing more accurately reflects the purposes and effects of the legislation.

The bill for example defines in detail the term "international terrorism" but does not specifically address itself to domestic terrorism. I believe we should be dealing with both.

The specific amendments to the FAA focus on those sections relating to international policies and programs. Section VI of the bill addresses airport security standards. Section VII provides for an expanded security aviation assistance program for foreign governments. Sections X and XI deal with implementing legislation for U.S. responsibilities as a party to the Montreal convention.

Therefore in view of the fact that the bill deals with various provisions I feel that the suggested amendment is more encompassing and more accurate.

The Chair would invite comments to the proposal.

Mr. Bingham.

Mr. BINGHAM. I agree with what you have said. I think it is an improvement.

Chairman ZABLOCKI. Mr. Winn.

Mr. WINN. Mr. Chairman, I agree. I asked you when you came in if this was worked out. I think it certainly definitely clarifies the intent of this crucial legislation.

I move the amendment be approved.

Chairman ZABLOCKI. Without objection the amendment will be approved.

The clerk will read.

Mr. SPALATIN [reading]:

Section II. For purposes of this act, No. 1, the term "international terrorism" includes any act designated as an offense or crime under—

Chairman ZABLOCKI. The Chair will entertain a motion that the bill be considered as read and open to amendment at any point.

Mr. WINN. So moved.

Chairman ZABLOCKI. The clerk will read the second amendment.

Mr. SPALATIN. The second amendment starts on page 3:

Strike out lines 6 through 8 and insert in lieu thereof therefore the following: "intended, a, to damage or threaten the interest of or obtain concessions from a state or international organization or, b, to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a state or international organization by intimidation or coercion or obtaining widespread publicity for a group or its cause and * * *

Chairman ZABLOCKI. The Chair recognizes himself for the purpose of addressing himself to the amendment. As the members will recall, when we had the witness from the Justice Department, it was suggested that the definition of "international terrorism" be more exact and they suggested some language. This is the exact language that was suggested by the Justice Department to be incorporated at this point on page 3, subparagraph (a), change it to (a) and (b) and adding (b). Line 6, subparagraph 1 is identical to what is in the bill.

This amendment is an attempt to further define "international terrorism" by assessing the motivation of the terrorists.

Is there a question?

Mr. Winn.

Mr. WINN. Mr. Chairman, I don't have a question. This is what we discussed in the hearings. I think the wording again clarifies the intent of the subcommittee.

Chairman ZABLOCKI. Mr. Bingham.

Mr. BINGHAM. I am a little concerned with the breadth of this definition. If we look at just the last few words it would seem that it would cover acts intended to further political, social or economic goals by obtaining widespread publicity for a group or its cause.

Actually, that is too broad. I don't think we intended to cover just that. But that is the way I read it. There is nothing "terrorist" about a group seeking publicity for itself in order to further particular political, social or economic goals. But, since (a) and (b) are alternatives and not cumulative requirements, that would suffice to fulfill the definition of "international terrorism."

Mr. MOHRMAN. Mr. Bingham, if I might, this requirement is in addition to the requirements on page 2 of the bill, that the act be in contravention of one of the three conventions or that it be an unlawful act which results in death, bodily harm, forceful deprivation of liberty or violent destruction of property.

It is not simply obtaining publicity. It would be doing so in the context of injury.

Mr. SPALATIN. Violent or illegal activity.

Chairman ZABLOCKI. This particular subparagraph deals with the motivation of terrorists. It is my understanding that sometimes they are motivated by the publicity that they obtain, the attention that is brought to their efforts.

The last two lines are directly related to the first phrase, "to further political, social goals."

Mr. BINGHAM. Why do we need a definition of motivation? If it is going to be this broad, why do we need it at all? Intentions are always hard to prove.

Mr. SPALATIN. In Ms. Lawton's testimony recommending this language, she argues that terrorists seek to influence governments either by frightening the general civilian population, demanding concessions or by generating publicity for their cause to bring pressure to bear on governments.

I might also point out that in subparagraph (b) in the lines that you are addressing at this point, it is limited to those acts which are considered to be illegal and violent to begin with.

Mr. BINGHAM. Mr. Chairman, I don't want to hold this up now. Let me just reserve the right, possibly, to suggest an amendment to the full committee.

Chairman ZABLOCKI. Any further discussion?

The question occurs on amendment No. 2.

All those in favor, signify by saying "aye."

Mr. BINGHAM. Aye.

Mr. WINN. Aye.

Chairman ZABLOCKI. Aye.

Opposed, "no."

The amendment is adopted.

Amendment No. 3 on page 6. The Chair doesn't want to appear to be railroading this through. Are there any amendments the members have to page 2 or 3?

To section III on page 4? And 5?

To section IV, page 5?

The next amendment will be on page 6 to section V.

The clerk will read the amendment.

Mr. SPALATIN [reading]:

Amendment 3, page 6, "Strike out line 22 and all that follows through line 8 on page 8 and insert in lieu thereof the following.

Mr. WINN. Excuse me. Strike out line 22?

Mr. SPALATIN. Line 22 and all that follows through line 8 on page 8.

Section V, (a), With respect to any state which is listed pursuant to Section IV of this Act, the President shall not provide any assistance under the Foreign Assistance Act of 1961 other than international disaster assistance under Chapter 9 of Part I of that Act and, 2, shall not sell any defense articles or services or extend any credit or guarantees with respect to any sales of defense articles or services under the Arms Export Control Act and, 3, shall review each application for license under Section 38 of the Arms Export Control Act for the export of defense articles or defense articles sold commercially or (b), for license under the Export Administration Act of 1969 for the export of any articles, materials or supplies including technical data or other information which have a potential military application or which would otherwise enable a state to support acts of international terrorism to determine whether denial of such application would reduce the support of a listed state for terrorist actions.

(b), the President may suspect the application of any requirement of subsection (a) with respect to a listed state if, 1, after consultation with the appropriate committees of the Congress he finds that the interest of national security requires that suspension and, 2, he has transmitted to the Congress a report setting forth his reasons for such suspension.

(c), to devise initiatives to combat international terrorist actions and to reduce state support for such actions the President shall exercise such authority as is available to him in addition to those specified in this section as he deems appropriate.

(d), in implementing this section the President shall take into account the effectiveness of each specific sanction in inducing change in a state's policy or practices of supporting acts of international terrorism, the likely effect of sanctions on overall United States relations with such state or other states and the effect such sanction would have on the United States national interest.

(e), the President shall take all appropriate diplomatic measures consistent with international obligations to support the effectiveness of actions taken pursuant to this section in the accomplishment of the purposes of this Act.

(f), the President shall promptly and fully inform the Congress of each exercise of authority granted under this Act.

(g), nothing in this Act is intended to require the public disclosure of information which is properly classified under criteria established by Executive Order or which is otherwise protected by law. Such information shall be provided to the Congress in a written classified report. In such case, an unclassified summary of such information shall be prepared and submitted to the Congress.

Chairman ZABLOCKI. The Chair would state that in preparing this amendment it was intended to delete the disaster assistance from the automatic prohibition of assistance under the Foreign Assistance Act and to include in section V, as we have in sections III and IV, a Presidential waiver.

In doing so the staff and legal counsel used a technical explanation which I will call upon them to explain.

Mr. SPALATIN. Mr. Chairman?

Chairman ZABLOCKI. I know what you have done.

I want you to tell us why you did it in such a manner.

Mr. SPALATIN. We propose in terms of the first sanction which appears in the bill in subparagraph 1 on page 6, line 24, as the chairman pointed out, the deletion of disaster assistance from the automatic or mandatory prohibition. This recognized that a natural disaster in a given country is basically an uncontrollable item and that subsequent humanitarian relief for victims should not be affected by the propitious or arbitrary action of the state in support of patterns of international terrorism.

Chairman ZABLOCKI. Page 6 after line 25, all you are doing is adding other than the exemption of disaster assistance.

Mr. SPALATIN. That is correct, Mr. Chairman.

Chairman ZABLOCKI. And subparagraph 2?

Mr. SPALATIN. Subparagraph 2, the language as contained on page 7 of H.R. 13387 in our opinion is a little murky. It might be interpreted by somebody to include commercial sales. We did not want that impression to be left. So we proposed language as contained in amendment No. 3 to specify that any sale, credits or guarantees under the Arms Export Control Act, in other words government to government transactions, would be covered but not anything other than government to government.

Chairman ZABLOCKI. Counsel's understanding is that referring to a specific section in the bill was not necessary?

Mr. MOHRMAN. That is correct, Mr. Chairman.

Chairman ZABLOCKI. The staff will continue.

Mr. SPALATIN. The next modification we propose is in the original bill in the third sanction, paragraph 3, on page 7, starting at line 5 through line 9, involving another mandatory sanction. Based on the hearings, we felt it was an unnecessary limitation to be imposed on the President. It did not afford the President adequate flexibility in trying to influence a given state that has been determined to be engaged in support of international terrorism. We felt that the President needed the flexibility to review on a case-by-case basis those commercial sales referred to earlier as well as exports under the Export Administration Act that have potential military application.

Accordingly, the proposed amendment replaces the mandatory aspect with a case-by-case review by the President.

Chairman ZABLOCKI. Here is where we depart in this nittygritty between the Senate version and ours.

Mr. BINGHAM. I have a question.

Chairman ZABLOCKI. If the gentleman would yield, the amendments were in compliance with another point you had raised.

Mr. BINGHAM. I think the intention is in that direction. I do wonder, however, whether we don't do need something more here. This doesn't clearly say, it seems to me, that where the President decides that denial of the application would reduce the support of terrorist actions, the license should be denied. Nor does it say that the type of license required is a validated license.

I would like Mr. Johnson of our staff to comment on this further because I am not clear in my own mind as to the distinction. I don't think it is quite clear enough as to what the intention is.

Chairman ZABLOCKI. Mr. Johnson?

Mr. JOHNSON. Mr. Chairman, I would point out that there are two kinds of licenses required under the Export Administration

Act. One is a validated license, in which there is an actual application for a license which goes through a review process before a determination of approval or denial is made.

The other is a general license where there is no prior application required. The exporter merely ships items which, under the regulations, are allowed to be exported, and notifies the Commerce Department after the fact that the export has been made.

Only in the former case of a validated license is a review possible. So that when you say the President shall review each application, that automatically means each application for a validated license.

It is the intent, I suppose, of this amendment that the President should take steps to see to it that items which might have a potential military application or enable a state to support acts of terrorism be placed under validated license requirements so that they could be reviewed.

However, that is not specifically said here, and it would only be by accident that such an item would currently be under validated license control to a country which happens to end up on the list of countries supporting terrorism.

So you might want to consider specifically stating that the President shall establish validated license requirements for any item which might have the effect specified in the amendment, in order that he will have the opportunity to review them.

Mr. BINGHAM. Since I think our intention is clear, Mr. Chairman, perhaps we could ask Mohrman and Johnson and others of the staff to get together and work out language. I do have some qualms about this language, not in terms of its intent but whether it effectively carries out the intent we have in mind.

We want items of this kind going to countries in that category to be reviewed for possible denial, and where the item is such that it would increase the support of the state for terrorist actions, the license in the normal case would be denied.

I think we are agreed on that. But I am not sure this language says that.

Mr. SPALATIN. Mr. Bingham, we thought of that. We used the word "validated license" because the President cannot address himself to the general license, the areas that Mr. Johnson referred to.

Mr. BINGHAM. But you see, Vic points out that if you are talking about a general license the President has no opportunity to review the application because none is submitted. If you want to set up a procedure whereby the application will be submitted—

Mr. SPALATIN. We have to make all general licenses validated then.

Mr. BINGHAM. No.

Chairman ZABLOCKI. Isn't it the case now that a general license can still be under review, particularly if there is a military end item? I know a specific case where it was.

Mr. SPALATIN. I understand, Mr. Chairman, only if by authority of the executive branch they are required to become validated licenses.

Mr. BINGHAM. That is the case with Communist countries generally. What would be wrong in a general way with having these terrorist countries that are listed under section IV treated for

purposes of export licenses the same way that Communist countries are treated? Then there would have to be an application and a review.

Mr. MOHRMAN. There would be a requirement for a validated license if it was a listed country and if it was one of those items that were determined to be having a potential military application.

Mr. BINGHAM. This doesn't say that though.

Mr. MOHRMAN. Right. That is what you are trying to get at.

Chairman ZABLOCKI. Do we have some language in the report?

Mr. BINGHAM. I don't think we do.

Mr. MOHRMAN. I agree. The language that is in the amendment does not specify what the procedure is that is to be followed. It implicitly suggests that there is to be a validated license because otherwise the procedure doesn't work very well. But it doesn't spell out that it has to be a validated license.

Mr. BINGHAM. Even if you put the word "validated" in, it still doesn't state that exports to such a country require a validated license.

Mr. MOHRMAN. I think we could make it clear that for exports to listed countries of those items with military value potential you have to have a validated license and that applications for those licenses must be reviewed on a case-by-case basis to make the specified determination. If the determination is made that denying the export would reduce state support for international terrorism, then you cannot have the license.

Chairman ZABLOCKI. I am sure staff and counsel have a clear understanding of the intent of the gentleman from New York to adopt this amendment with the understanding that it will be perfected.

Mr. MOHRMAN. There is one other item, Mr. Chairman, and I am responsible for it not being in the draft. When I discussed this amendment with the subcommittee staff, it was suggested that the 90-day requirement for Commerce Department action on licenses under the Export Administration Act should be waived. Inadvertently in preparing the amendment that waiver did not get in this draft.

Would it be the subcommittee's intent that for these applications the 90-day review requirement would be waived?

Chairman ZABLOCKI. Any objection?

Mr. WINN. No.

Chairman ZABLOCKI. You can include that.

Any other question on amendment 3, with the understanding that the suggestion made will be incorporated?

Mr. WINN. Mr. Chairman?

Mr. BINGHAM. Mr. Chairman, I am sorry. I was distracted. What would be the reason for the waiver?

Mr. SPALATIN. It imposes an arbitrary time frame of 90 days for the President to utilize whatever leverage he may have related to the export item and recipient country. It allows that time frame to go on beyond 90 days.

Mr. BINGHAM. I think I would be opposed to that. In this whole field of export controls, we have been trying to speed up the process of licensing so that our exports are not impeded unneces-

sarily. We have that 90-day requirement on applications for export of strategic goods to the Soviet Union.

Mr. SPALATIN. The feeling was that the requirement was inappropriate in dealing with a state whose policies you are trying to influence.

Mr. BINGHAM. The 90-day requirement, you will recall, is not absolute. It simply sets a target which can be extended. So it is not a rigid limitation. Important as I think this is, I don't think that there is any reason why we shouldn't have a target. You are going to get criticism of this in any event from the exporting industries. I think to eliminate the 90-day provision would be a mistake. We should at least give some indication that we want these things to be acted on quickly.

Chairman ZABLOCKI. Do we have anybody from the State Department to comment on this 90-day provision?

Mr. SPALATIN. I didn't discuss it with them.

I don't know their position.

Chairman ZABLOCKI. Is there any problem with leaving in the 90 days and having it in the report that this is not absolute, that it is a target and can be extended? Keep it as it is. Would that satisfy the gentleman?

Mr. BINGHAM. Fine.

Mr. WINN. Mr. Chairman, I have a question on page 2, concerning the President's transmission of a report to Congress setting forth his reasons for such suspension. Later on it is spelled out as a written report. Should we clarify that? It could be misconstrued that he just calls somebody up and tells you.

Mr. MOHRMAN. I believe the word "transmit" suggests it should be written. There is no problem with putting "written" in there.

Mr. WINN. I don't know. I think it could be misconstrued as if he calls somebody on the telephone he is "transmitting."

Chairman ZABLOCKI. On page 2 he has to transmit to the Congress a report. On the last page under subparagraph (f) we have another report.

Mr. WINN. Why can't we just put a "written report" in there?

Mr. SPALATIN. The staff sees no problem with that clarification.

Chairman ZABLOCKI. Would you add that amendment?

Mr. BINGHAM. I think it is an improvement.

Chairman ZABLOCKI. Any other questions? Amendments? Any other questions on amendment No. 3?

Mr. WINN. I have a question on the first page. Again, No. 2, has the State Department any input in that wording?

Mr. SPALATIN. No. 2? The second section?

Mr. WINN. Yes.

Mr. BINGHAM. We do have the suspension.

Mr. SPALATIN. There is a waiver clause in the same amendment which they still find cumbersome.

Mr. WINN. In your consideration with them did they offer any alternative?

Mr. SPALATIN. That there would be nothing mandatory.

Mr. WINN. That is true of the Ribicoff letter.

Mr. SPALATIN. Ribicoff is arguing against that proposal, that is correct.

Mr. MOHRMAN. There already is a requirement in the Arms Export Control Act that a country which grants sanctuary to terrorists becomes ineligible for sales and credits for a 1-year period.

Chairman ZABLOCKI. All this authority is already available to the President. I think we are just re-emphasizing it. There is a political need to pass something.

Mr. WINN. I think it has to be spelled out, Mr. Chairman.

Chairman ZABLOCKI. Do you want it mandatory?

Mr. WINN. I think it is all right.

Chairman ZABLOCKI. No question?

Mr. WINN. No question.

Chairman ZABLOCKI. With the understanding that was given to the staff, if there is no objection.

Mr. BINGHAM. Mr. Chairman, on this last paragraph (g), for purposes of discussion—

Chairman ZABLOCKI. G?

Mr. SPALATIN. On page 3 of the proposed amendment.

Mr. BINGHAM. (g) on page 3 of the proposed amendment.

Chairman ZABLOCKI. I understand this is the exact language that is in sections III and IV and the Justice Department had asked that it be included, the State Department, so that it would be consistent.

Mr. WINN. I didn't hear what you said. The Justice Department did what?

Chairman ZABLOCKI. Had suggested that the language that is in section III, subparagraph (c) and in section IV, subparagraph (c) should be identical to the subparagraph in section V.

Mr. BINGHAM. It appears to be, yes.

Chairman ZABLOCKI. That is all it is.

Mr. BINGHAM. What would happen if that information in the normal course is submitted? Is it kept in committee files?

Chairman ZABLOCKI. I imagine it would be referred to the committee or committees that it would be necessary for the President to devise in classified form to abide by the rules and regulations when dealing with such information. It depends on the sensitivity of reports. There are reports that our committee receives that we keep in our files. There are reports that are brought in and taken back the very same day. It depends on the sensitivity of the report.

I am sure the gentleman from New York will agree that this classified information the President is going to share with Congress under the provisions of section V is properly submitted in classified form.

Mr. BINGHAM. Is this something close to boilerplate now?

Chairman ZABLOCKI. It is. Of course you can always improve the boilerplate, put another rivet in.

Mr. BINGHAM. I will reserve my right to propose another rivet.

Chairman ZABLOCKI. Is there objection to amendment 3 as amended by the discussion and the understanding given to the staff to perfect it?

If not, the amendment is agreed to.

Mr. BINGHAM. Mr. Chairman, I would like also to reserve the right possibly to propose an amendment adding a further sanction. Not that this is a necessary reservation. But I would just like to indicate my concern about the matter I raised the other day, the

failure to date of the State Department to classify the PLO as a terrorist organization. It might be that it would be appropriate to propose denial of immigration to certain organizations. I don't know whether it is appropriate here. But that is a subject that is concerning me at the moment. I might want to propose an amendment either in this part or in some other part of the act that would rectify that situation.

Chairman ZABLOCKI. Of course the gentleman and all the members of the subcommittee have an opportunity to amend the legislation further when it will be under consideration by the full committee or even on the floor.

Any amendment to sections VI and VII? These are not really within our direct purview. Section IX? Section VIII? Section X? Section XI?

We have some amendments to the bill at the end of the proposed legislation, amendment 4 on page 22.

The clerk will read.

Mr. SPALATIN [reading]:

Page 22, immediately after line 15 insert the following new section:

"Title, International Agreements to Combat Terrorism. Section XII, the President is urged to seek international agreements to ensure more effective cooperation in combating international terrorism. High priority in negotiating such agreements should be given to agreements which provide for, 1, establishment of a permanent international working group with subgroups and such topics as may be appropriate, law enforcement, crisis management, which would combat international terrorism by, (a) promoting international cooperation among countries, (b) developing new methods, procedures and standards to combat international terrorism, (c) negotiating multilateral controls on transfer of antitank and anti-aircraft weapons and, (d) negotiating agreements for technical assistance and exchange of intelligence;

"2, establish a means to oversee implementation of, (a) convention for the suppression of unlawful seizure of aircrafts, The Hague, December 16th, 1970, (b) the convention for suppression of unlawful acts against the safety of civil aviation, Montreal, September 23rd, 1971 and, (c) the convention for the prevention and punishment of crimes against internationally protected persons, including diplomatic agents, New York, December 14th, 1973 and;

"3, the establishment of common legal prohibitions in the taking of hostages by international terrorists."

Chairman ZABLOCKI. As is obvious, this amendment adds a section at the end of the bill which sets forth a list of possible international agreements the President is urged to seek in combating terrorism. It is not controversial. The amendment recognizes the importance of multilateral efforts and agreements to combat international terrorism. Our efforts would have less effect if not complemented by similar multilateral efforts.

Congressional intent is expressed through the kinds of possible agreements the President might seek. These include intelligence exchange agreements and multilateral controls on manned portable antitank and anti-aircraft weapons which would be extremely useful in heading off future incidents with weapons that have a high potential for use in terrorist attacks.

By establishing this "wish list" a strong impetus is established for the President to pursue future international efforts to combat terrorism.

Personally I think the President has the same wish. The other body has this.

Mr. WINN. The other body has this?

Chairman ZABLOCKI. Is it in the other body?

Mr. SPALATIN. Yes.

Mr. BINGHAM. Mr. Chairman?

Chairman ZABLOCKI. Yes?

Mr. BINGHAM. I think it is a good idea. I was a little concerned as I read over the section on sanctions that it appeared to refer only to unilateral sanctions. Clearly, multilateral sanctions could be developed which would be more effective. Efforts should be made to make them multilateral. So this would take care of that, even though the word "sanction" doesn't appear here. I think there could be language in the report that that is part of the intention, to cooperate on the matter of sanctions. So I think it is more than just window dressing. It is a good idea.

Chairman ZABLOCKI. It lends itself to multiple interpretations.

Mr. Winn.

Mr. WINN. No.

Chairman ZABLOCKI. Take your time while we are waiting for the other member.

Mr. SPALATIN. He just came in, Mr. Chairman.

Chairman ZABLOCKI. Mr. Winn.

Mr. WINN. Can I still take my time? I don't really need it.

Chairman ZABLOCKI. It is reserved and allocated. Take it.

Mr. BINGHAM. Mr. Chairman, let me say something else.

Chairman ZABLOCKI. You don't have to.

Mr. BINGHAM. I think there is a real weakness in this whole matter of combating terrorism in the attitude of other nations. Anything that can be done to strengthen the international—

Chairman ZABLOCKI. I agree. I think we have some very—

Mr. BINGHAM. Good language.

Chairman ZABLOCKI. Good language in the report. We can't legislate the—

Mr. WINN. This is the point I was going to make. This amendment makes it stronger than report language would. That is about all it does. We can't legislate for other countries.

Chairman ZABLOCKI. It is more than window dressing.

Mr. WINN. That is right.

Chairman ZABLOCKI. Are there other amendments?

If there is no serious objection to amendment No. 4, it will be adopted.

Is there objection?

If not, amendment 4 is adopted.

The question now occurs on the vote to report H.R. 13387 as amended, favorably or unfavorably with the amendments and language that will be incorporated as the committee members have advised the staff to prepare.

The Chair will entertain a motion.

Mr. WINN. Mr. Chairman?

Chairman ZABLOCKI. Mr. Winn.

Mr. WINN. I move that we vote out H.R. 13387.

Chairman ZABLOCKI. Favorably?

Mr. WINN. As amended. Favorably.

Chairman ZABLOCKI. All those in favor, signify by saying "aye."

Mr. BINGHAM. Aye.

Mr. Beilenson. Aye.

Mr. WINN. Aye.

Chairman ZABLOCKI. Aye.

Those opposed, "no."

The "ayes" have it. H.R. 13887 is reported out favorably.

I suggest that as soon as possible we schedule a meeting for the full committee to consider the bill as reported out by the subcommittee.

Mr. SPALATIN. Would you like to have this in committee print format?

Chairman ZABLOCKI. I think it should be in committee print form. We still want to keep this number though. We just add amendments to it.

Mr. SPALATIN. That is correct.

Chairman ZABLOCKI. By having a committee print it is easier for the members who are participating in the markup to see what we have done.

Is there any further business before the subcommittee?

The subcommittee stands adjourned subject to the call of the Chair.

Thank you very much.

[Whereupon, at 11:17 a.m. the subcommittee adjourned, to reconvene at the call of the Chair.]

INTERNATIONAL TERRORISM: LEGISLATIVE INITIATIVES

WEDNESDAY, SEPTEMBER 20, 1978

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, D.C.

The committee met in open markup at 11:10 a.m. in room H-236, the Capitol, Hon. Clement J. Zablocki (chairman) presiding.

Chairman ZABLOCKI. The committee will please come to order. The chairman desires to apologize. We were expecting a vote and therefore we stayed on the floor. We will begin.

[Whereupon, the committee proceeded in other business.]

MARKUP—H.R. 13387

Chairman ZABLOCKI. The next order of business is to begin final consideration and markup of H.R. 13387, an Act To Combat International Terrorism.

The bill has already been acted upon by the Subcommittee on International Security and Scientific Affairs. All members present should have before them copies of the committee print and a bill summary of H.R. 13387, with the amendments adopted by the subcommittee.

BACKGROUND

In its consideration of H.R. 13387, the subcommittee concentrated on the problem of international terrorism as it affects U.S. foreign policy and national security interests. The subcommittee also explored the definitions of international terrorism as defined in the bill to provide a clear list of criteria and conditions under which Presidential actions mandated in other sections of the bill would apply.

The subcommittee added four amendments to H.R. 13387 as follows: One, amending the long title of the bill to provide a more accurate reflection of the purposes of the bill; two, adding a definition to the list of definitions of international terrorism related to the motivation of terrorists; three, further amending section 5 of the bill, which deals with automatic sanctions imposed by the President on states supporting international terrorism, to provide more flexibility to the Executive in dealing with such states while maintaining the need for a strong, consistent U.S. response. I might add that this is a controversial section and we may have

some debate on it. The fourth amendment urges the President to seek international agreements to combat terrorism which complement U.S. unilateral actions provided for in this bill.

These four subcommittee amendments have attempted to take into account the important national security and foreign policy concerns affected by international terrorism. It is my hope that the amendments will have made an important contribution in this regard.

H.R. 13387 is now open for markup and the chief of staff will begin a reading of the bill.

Before he begins, however, I would ask for unanimous consent that the subcommittee amendment to section 5 be considered a part of the original text for the purpose of the amendment.

It is, without objection, so ordered.

Mr. BRADY [reading]:

H.R. 13387, a bill to amend the Federal Aviation Act of 1958, relating to aircraft piracy, to provide a method for combating terrorism, and for other purposes.

Mr. BINGHAM. Mr. Chairman, parliamentary inquiry, please.

Chairman ZABLOCKI. I recognize the gentleman from New York, Mr. Bingham.

Mr. BINGHAM. I thought the subcommittee recommended an amendment to the title.

Chairman ZABLOCKI. Yes; it did.

Mr. BINGHAM. It is not indicated here.

Mr. MOHRMAN. Mr. Bingham, the amendment to the title appears at the end of the bill. Under House rules, amendments to the title are considered after completion of the bill.

Chairman ZABLOCKI. It is on page 27.

Mr. BRADY [reading]:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, short title, Section One, This act may be cited as the "Act To Combat International Terrorism."

Mr. WOLFF. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from New York.

Mr. WOLFF. Mr. Chairman, I ask that the bill be considered as read and open for amendment at any point.

Chairman ZABLOCKI. Does the gentleman from New York ask unanimous consent on that matter?

Mr. WOLFF. I do.

Chairman ZABLOCKI. Is there objection?

[No response.]

Chairman ZABLOCKI. The Chair hears no objection.

Is there any amendment to the sections on page 1, page 2, or page 3?

Mr. BINGHAM. Yes; Mr. Chairman.

Chairman ZABLOCKI. The gentleman from New York, Mr. Bingham.

AMENDMENT TO SECTION 1

Mr. BINGHAM. Mr. Chairman, I don't have this in writing, but it is simple enough to explain.

I move that the amendment which the subcommittee indicated on page 3 not be adopted—in other words, that we go back to the

original form, as indicated in the interlined section. The effect of this is to omit (b).

Chairman ZABLOCKI. The effect of your amendment then would be to strike everything from line 15 through line 20?

Mr. BINGHAM. On page 3, strike from lines 11 through line 20, and restore what appears from lines 8 through 10.

Chairman ZABLOCKI. The gentleman is recognized to speak in support of his amendment.

Mr. BINGHAM. Mr. Chairman, I supported the change in the subcommittee.

Chairman ZABLOCKI. Excuse me, I can't hear the gentleman.

Mr. BINGHAM. We made this change, as I recall on the recommendation of the Department of Justice. Since then, the Department of State representatives have indicated their concern about the language in lines 15 through 20. On second thought, I am inclined to share their concern. Anything that is important to be covered I think is adequately covered in the terms, "intended to damage or threaten the interests of or obtain concessions from a State or an international organization." It is simply confusing to talk in terms of "furthering political, social, or economic goals" or "obtaining widespread publicity for a group or its cause."

It is true that this is tied into earlier parts of the definition of terrorism, but I think it is confusing. I am persuaded that the State Department's reservations are valid. I think it would be preferable to leave (b) out.

We are going to have enough problems with the definitions here and I think this simply complicates it unnecessarily.

Mr. LAGOMARSINO. Will the gentleman yield?

Mr. BINGHAM. Yes.

Mr. LAGOMARSINO. I didn't hear the debate on why that particular subsection was added, but taking it out, it would seem to me, would eliminate such things perhaps as the Japanese Red Army or the PLO attacking airplanes in some third country. Although that is clearly terrorism, it might not fall within the definition in (a) because they are not necessarily threatening the interests or obtaining concessions from a state, as such, or an international organization. Certainly that is the kind of thing that we are faced with most often. I would hate to eliminate that from the bill and that could be the effect of your amendment.

Mr. BINGHAM. I don't think it would be.

I think that clearly such a case as you mention should be covered but language in the report could make that clear. I would say that the organization was intended to obtain concessions from a state, at the minimum. The PLO could obtain concessions from the State of Israel, in effect, and could damage the interests of the State of Israel—more particularly the latter, to damage the interests of the State of Israel. I think that clearly would be the purpose of that type of activity.

Mr. GOODLING. Will the gentleman yield?

Mr. BINGHAM. Yes.

Mr. GOODLING. Can you think of any particular incident to which section (b) would apply, section (b) as it is expressly written, the part that you want to strike? What is the purpose of its getting in there in that form?

Mr. BINGHAM. I don't think that we thought it through. I think that the kinds of things we want to cover are covered by (a). When we talk in terms of obtaining publicity and furthering political goals, we are getting dangerously close to advocacy and matters that we might consider constitutionally protected. As I said earlier it is all tied in to the other parts of the definition.

I just do not think it is a necessary addition. Mr. Chairman, I don't know if it would be appropriate during a markup session, but it might be helpful to hear the comments of the Department of State on this subject.

Chairman ZABLOCKI. The Chair would have no objection. After all, this section was put in at the suggestion of the Department of Justice and the State Department representative was present. He didn't voice his views at the time, but if he has second thoughts, I think we could have the benefit of them now.

If the gentleman from New York would yield, the reasoning that the witness from the Justice Department gave was that terrorist acts should include random acts of sabotage or violence designed to undermine public confidence in government or obtain widespread publicity. The definition thus makes an important addition to the types of acts appropriately characterized as acts of international terrorism.

Although I have, as has the gentleman from New York, second thoughts about this, we would welcome the views of the State Department representative, if he is present.

Brian, we would be glad to hear from you.

STATEMENT OF J. BRIAN ATWOOD, DEPUTY ASSISTANT SECRETARY OF STATE FOR CONGRESSIONAL RELATIONS

Mr. ATWOOD. We would agree with Mr. Bingham that subsection (a) would cover just about any contingency that could be included under (b) and that under (b) you may be raising questions that you need not raise.

Mr. Fields worked on the definition section of this bill and I would like to ask him to comment.

Chairman ZABLOCKI. We would like to know why the section would be preferably omitted.

STATEMENT OF LOUIS G. FIELDS, JR., ASSISTANT LEGAL ADVISER, DEPARTMENT OF STATE

Mr. FIELDS. Thank you, Mr. Chairman.

I responded to a query to me about the bill and I gave a personal opinion.

Essentially the language that is contained in (a) and (b) here is the language found in the Executive order defining terrorism for the purposes of intelligence surveillance and things of that nature.

In responding to the question, I indicated that this particular section (b) had been considered when we met with Senate staff to come to grips with the very difficult issue of drafting a definition of international terrorism. At the time that particular part was removed because of the unnecessary broadening that would pick up perhaps certain types of problems that would not properly fall within the definition of international terrorism. It could involve even domestic issues, such as labor disputes and things of that

nature. If one of the participants in a group demonstrating for some economic goal were, in fact, say a Mexican citizen involved in a protest in some labor dispute in California, if there were any international element, why it just seems unnecessarily broad. I was stating a personal opinion, and the Department did not take a formal position on this. I think that it is unduly broad, in my personal judgment, in applying this.

Mr. FASCELL. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from Florida.

Mr. FASCELL. I would like to ask a question.

In reading the last clause of subsection (b), "obtaining widespread publicity for a group or its cause," the way I read it, it is not modified by the language "by intimidating or coercing."

Am I correct?

In other words, you need no intimidation or coercion to come within the definition of that last clause. Is that correct?

Mr. FIELDS. That would be my interpretation, Congressman.

Mr. LAGOMARSINO. Will the gentleman yield?

Mr. FASCELL. Yes, I will yield.

Mr. LAGOMARSINO. But it would all be conditioned on the language on line 7, which says, "if the act of international terrorism is." You have to have an act of international terrorism before you get into the intentions of it.

Mr. FASCELL. Yes, I know. But the point is that international terrorism is defined under the act. So, once you do that and you have any such act, why do you have to redefine it?

Mr. LAGOMARSINO. Because it goes on to say what happens if the act of international terrorism is intended to do these things. Then the bill applies.

Mr. FASCELL. The point is, why do you have to have an intent to do anything? If you have an international act of terrorism, the law will apply.

Mr. BUCHANAN. Will the gentleman yield?

Mr. FASCELL. Sure.

Mr. BUCHANAN. It seems to me that the whole intended section is a weakness rather than a strength in the bill. How are you going to analyze the intentions of somebody? Why even deal with intentions?

Mr. FASCELL. Right. If you have an act of terrorism, as defined under the act, then the act either applies or it doesn't. The minute you get into definitions it seems to me you change the whole thing.

Mr. WOLFF. Will the gentleman yield?

Mr. FASCELL. Yes.

Mr. WOLFF. It is very difficult to prove intent. How are we going to prove intent in any case?

Mr. FASCELL. Why prove intent? That is the whole point.

Chairman ZABLOCKI. The Chair would like to state that we are in the midst of a vote on the House bill regarding ethics in government. The committee will take a 5-minute recess for the purpose of voting.

[A brief recess was taken.]

Chairman ZABLOCKI. The committee will resume its deliberations on H.R. 13387.

There is a pending amendment, offered by the gentleman from New York, to strike on page 3 lines 12 through 20, and to keep in lines 8, 9, and 10.

I recognize the gentleman from New York, Mr. Bingham.

Mr. BINGHAM. I will speak further on the questions that have been raised.

I think, first of all, that it is essential to have a definition of intent; otherwise, any act of violence by a nonnational in the States, say by a Canadian or a Mexican who came into this country and got involved in violence in a labor dispute, would be covered.

So, I think you have to have a definition of intent. Intent is a part of many crimes. It sometimes is difficult if not impossible to prove. In this particular type of situation however, it is very common that the intent of the terrorist is made known. The terrorists want to make it known.

To get back to the elimination of (b), I think, that the case of the Mexican who comes to California and gets involved in violence in a labor dispute or to obtain publicity for some purpose might be covered by (b), without any connection with what we normally consider as international terrorism.

Mr. GILMAN. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from New York, Mr. Gilman.

Mr. GILMAN. Mr. Chairman, just a point of inquiry. I do not want to unduly delay this markup or make it more complex.

What would happen if we were to accept (a) and knock out (b), for example, and we had a situation where a terrorist group kidnaped one of our industrialists in a country and there is no demand made upon our Nation, but there is ransom money sought of several millions of dollars? He then flees to, say, Kuwait or some other country and they do not extradite him. Would that be an act of terrorism under this definition if we had only paragraph (a)?

I ask our State Department consultants to comment on that.

Mr. FIELDS. I was negotiating that one, in fact.

Mr. GILMAN. I ask if one of our businessmen were kidnaped and ransom money was sought and obtained; then the kidnapers flee to another country and that country does not extradite them.

Is that an act of terrorism under the definition of paragraph (a) if we were to exclude (b)?

The suggestion is to eliminate subparagraph (b) on page 3 and to leave only paragraph (a). If that happens, is this kidnaping and ransom and the failure to extradite an act of terrorism? There is no demand made on our Nation.

Mr. WOLFF. Would the gentleman yield?

Mr. GILMAN. Yes.

Mr. WOLFF. I am not trying to take the role of the State Department, but the point is made of "threatening the interests of." It is in the interest of the United States to protect its citizens and therefore that would be covered under that provision.

Is that correct?

Mr. FIELDS. That would be the point on which that would hang; yes, sir.

Mr. GILMAN. Is that sufficient verbiage to cover that situation? This is a valid problem, one that we have right now. Many of our people have been kidnaped in the past.

Mr. FIELDS. Yes, sir. That language is covered, I think, sir, in the Senate report. Such a situation would be intended to damage or threaten the interests of the United States.

Mr. SOLARZ. Would the gentleman yield?

Mr. GILMAN. I would be pleased to yield to the gentleman.

Mr. SOLARZ. I gather what you are concerned about is a situation where, say, a commonly acknowledged terrorist group might kidnap someone, a private citizen, for the purpose of raising ransom funds which could then be used to fund the operations of the terrorist group, and then they flee to some third country which gives them sanctuary.

Mr. GILMAN. Precisely.

Mr. SOLARZ. Would it not perhaps clarify the intent of section (a) in terms of the gentleman's problem, if it read, "to damage or threaten the interests of or obtain resources or concessions"?

Can we get language in here which deals with that kind of situation, where they are attempting to get resources for themselves rather than political concessions from a state or an organization?

Chairman ZABLOCKI. If the gentleman would yield, I think that can be clarified in the report. We will also explain in the report what is intended in subparagraph (b).

I am sure that the gentleman from New York, Mr. Bingham, agrees to have report language on (b).

Mr. BINGHAM. To clarify what the coverage of (a) is; yes.

Chairman ZABLOCKI. We will also include a clarification of the question that the gentleman from New York, Mr. Gilman, had raised.

Is there any further discussion on the amendment?

[No response.]

Chairman ZABLOCKI. If not, all those in favor of the amendment offered by the gentleman from New York, Mr. Bingham, so signify by voting "aye."

[A chorus of "ayes."]

Chairman ZABLOCKI. Those opposed, "no."

Mr. LAGOMARSINO. No.

Chairman ZABLOCKI. The "ayes" have it. The amendment is agreed to and the bill is returned to its original form.

I recognize the gentleman from Ohio, Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

STATEMENT OF FINDINGS AND PURPOSE

In reviewing the bill and the Senate bill after which it is patterned, I noted that the Senate bill has a statement of findings and purpose, on page 29 of the Senate bill, which the House bill does not have.

I have prepared an amendment which would provide a statement of findings and purpose very similar to that of the Senate bill with only one change. I am prepared to offer that amendment.

I am also prepared, if the chairman wishes, to have the staff explain why it is that there is no statement of purpose in the House bill.

Chairman ZABLOCKI. I would inquire of the staff and hope that they are now prepared to advise us. After all, this bill was jointly referred to three committees.

The bill was prepared by the principal sponsor, Mr. Anderson of California. Of course, I understand there are some 50 cosponsors after him. I believe this bill was prepared separately and is not necessarily based on the Senate version. We are considering the bill that was referred to the three committees, including our committee. The Judiciary Committee, I understand, did not see fit to include that section, the statement of findings and purpose.

Perhaps the staff can enlighten the gentleman from Ohio. I can not.

Mr. SPALATIN. I think the chairman has articulated the reason that bill 13387, as reported before the committee, did not have that purpose in there and the staff did not agree with the framers that that section not be on that.

Chairman ZABLOCKI. If the gentleman will yield further, we will go to conference on this and if the bills are different in some respects, we can accept their statement or purpose and say we feel strongly that it should be included. We can even include it in the report, if the gentleman feels strongly about it.

Mr. PEASE. Mr. Chairman, I believe I would like to offer the amendment.

Chairman ZABLOCKI. The gentleman from Ohio is recognized.

Mr. PEASE. Mr. Chairman, I do offer this amendment and I have copies.

Chairman ZABLOCKI. Does the gentleman from Ohio want a copy of his amendment read by the clerk or does he ask unanimous consent that it be considered as read, so that he can explain it?

Mr. PEASE. Mr. Chairman, I ask unanimous consent that the amendment be considered as if read.

Chairman ZABLOCKI. Is there objection?

[No response.]

Chairman ZABLOCKI. Then it is so ordered.

The gentleman from Ohio is recognized for 5 minutes to speak in support of his amendment.

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

The amendment that I am offering adds a statement of findings and purpose on page 1, after line 5 of the House bill. This statement of findings and purpose is identical to the Senate language with one exception, and that is paragraph (b)(1), which is a product of my own work. It would declare an additional purpose of the act, that being to:

State that the United States, as a matter of policy, will not accede to the demands of international terrorists, will not exchange prisoners pursuant to the threats of international terrorists, and will not make available public funds as ransom for international terrorists.

I think it would be helpful in our deliberations in conference with the Senate if we do add a statement of findings and purpose. I think the paragraph that I have added strengthens the response of

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the United States to international terrorism and for that reason I ask for support of the amendment.

Chairman ZABLOCKI. Does anybody wish to be heard or have any questions on the amendment?

Perhaps we ought to have the Department's spokesman comment on that?

Mr. ATWOOD. I think that we should not comment on that, as a matter of policy, Mr. Chairman. [General laughter.]

It is a statement of congressional intent and it would be accepted as such.

Chairman ZABLOCKI. The Congress finds that the State Department does not necessarily agree. [General laughter.]

Mr. PEASE. Nor disagree.

Mr. ATWOOD. There would be an inclination in these cases—I will go ahead and break my rule—there would be an inclination in these cases to want to look at them on a case-by-case basis rather than to have a set rule on how to handle terrorist activities or a case where a ransom is requested, et cetera.

Chairman ZABLOCKI. Do any of the lawyers on the committee have any observations to make?

Mr. BUCHANAN. Mr. Chairman, I would think that all those who junket might have some reservations about the conclusions of the Department. [General laughter.]

Chairman ZABLOCKI. Did the gentleman say "junket?"

Mr. PEASE. That would leave out all of us, of course.

Mr. BUCHANAN. All those who participate in study missions, international conferences, and the like.

Chairman ZABLOCKI. Your concern, then, is for those Members of Congress who travel under the auspices of other committees.

Mr. BUCHANAN. Absolutely. [General laughter.]

But even those who travel on very important official business, like the members of this committee, might pause to reflect on the possible implications of this.

Mr. WHALEN. Mr. Chairman, I think he has an exaggerated opinion of the value of Congressmen. [General laughter.]

Mr. BUCHANAN. Well, I am not sure that the Government would do anything other than nothing in the case of the Members of Congress.

Mr. WHALEN. Again, I think that should be on a case-by-case basis. [General laughter.]

Mr. WOLFF. Mr. Chairman, I also think it is determined by whether or not you have a diplomatic passport.

Chairman ZABLOCKI. Well, we will all have to have our passports changed from official to diplomatic.

Mr. Bingham, the gentleman from New York.

Mr. BINGHAM. Mr. Chairman, I have a question about the inclusion of (1) from a different point of view.

It seems to me that it is a little bit odd or unusual to include in a statement of purpose something which in fact should stand by itself if we agree with it as a statement of congressional intent.

Normally a statement of purpose, as is the case with (2), (3), and (4) is simply a kind of introduction to what follows and what follows is an implementation of the purposes spelled out.

In the case of No. 1, that is not so. As the gentleman from Ohio stated, it is by itself a statement of congressional intent.

So, it seems to me that on its merits, aside from that point, it does raise a number of questions which perhaps should have been the subject of hearings. It doesn't fall, I don't think, within the scope of the bill as it is presently drawn.

I happen to think that it states a proper policy, and I think it would be appropriate for the Congress to adopt that policy, but I am not sure that this is the time or the way in which to do that.

I just raise that question.

Mr. BUCHANAN. Will the gentleman yield?

Chairman ZABLOCKI. Does the gentleman from New York yield to the gentleman from Alabama?

Mr. BINGHAM. I will yield.

Mr. BUCHANAN. I was going to propose an amendment to the amendment, but I will not do so at this time.

Mr. GOODLING. If the gentleman would yield, I would be happier with this if under (b)(1) you would stop at the end of the first "terrorists," where you say "state that the United States as a matter of policy will not accede to the demands of international terrorists." I would feel happier if you would stop there.

Mr. BUCHANAN. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from Alabama.

Mr. BUCHANAN. I would just like to move that on page 1, section (b)(1) be stricken and the succeeding paragraphs be numbered accordingly.

Chairman ZABLOCKI. The gentleman from Alabama offers an amendment to the amendment offered by the gentleman from Ohio, to strike subparagraph (b)(1) and to renumber.

Mr. BUCHANAN. It is to strike all of (1) and that restores it to the original Senate language.

I personally feel, in light of the discussion, that that would be the best.

Chairman ZABLOCKI. The gentleman from Alabama has read the chairman's mind.

All those in favor of the amendment offered by the gentleman from Alabama to the amendment offered by the gentleman from Ohio so signify by saying "aye."

[A chorus of "ayes."]

Chairman ZABLOCKI. Opposed, "no."

[A chorus of "nays."]

Chairman ZABLOCKI. The amendment carries.

Mr. WOLFF. Point of information, Mr. Chairman.

Chairman ZABLOCKI. The Chair recognizes the gentleman from New York who seeks a point of information.

Mr. WOLFF. On page 3, line 22, it says "not committed in the course of military or paramilitary operations."

Chairman ZABLOCKI. You are not into the amendment now, are you?

Mr. WOLFF. I am not into the amendment. I just want clarification of that line.

Chairman ZABLOCKI. Well, could we clear up the amendment offered by the gentleman from Ohio first?

Mr. WOLFF. Oh, I'm sorry. I thought we had finished with that.

VOTE ON AMENDMENT

Chairman ZABLOCKI. The question now occurs on the amendment offered by the gentleman from Ohio, as amended by the gentleman from Alabama.

All those in favor so signify by saying "aye."

[A chorus of "ayes."]

Chairman ZABLOCKI. Opposed, "no."

[No response.]

Chairman ZABLOCKI. The ayes have it and the amendment is agreed to.

The gentleman from New York is recognized.

DEFINITION OF PARAMILITARY OPERATIONS

Mr. WOLFF. I just have a question regarding a definition of paramilitary operations.

Do we consider the Japanese Red Army a paramilitary organization? What is the definition of paramilitary? I am concerned about that because it can cover every terrorist organization that exists. The Symbionese Liberation Army could be considered a paramilitary organization, yet they are a terrorist organization.

Are we exempting them with this language?

Mr. BONKER. Aren't there any definitions in the bill?

Mr. ATWOOD. Mr. Chairman, might I clarify that?

Chairman ZABLOCKI. Yes.

Mr. ATWOOD. The word "paramilitary" appears to mean it is government sponsored. If it were a totally independent operation, then it would not be a paramilitary operation.

Mr. WOLFF. In other words, I am correct then, not committed in the course of military or government-sponsored paramilitary operations. Would that be right?

Mr. ATWOOD. That's right.

Mr. WOLFF. Then I think we should have something in the report to that effect.

Mr. BINGHAM. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from New York, Mr. Bingham.

Mr. BINGHAM. I think we ought to think about that a little bit. I had assumed that this kind of exception covered guerrilla operations directed against military targets, for example, in Rhodesia. That would not be covered by government-sponsored paramilitary operations. There are military and paramilitary operations sponsored and supported by liberation forces, if you will. But as long as they are directed against military targets, they would not be considered as terrorist acts. That is the way I understood it. I don't think the limitation of Government sponsorship is correct there.

Mr. SOLARZ. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from New York, Mr. Solarz.

Mr. SOLARZ. I think Mr. Bingham's observation is extremely well taken because lines 21 through 24 on page 3 really provide a critical distinction between random acts of international terror on the one hand and the kind of activities which are carried out in the normal course of a sustained war of liberation, particularly when they are directed against military targets. I think without this

language we would be going far beyond where we want to go in this bill. However, Mr. Chairman, I have some residual concern over the definition of military targets.

We are now exploring the possibility of offering a kind of clarifying amendment designed to give that a little bit more precision. I understand that the Hague Convention, No. 4, to which our own Government is a signatory, has language on this, but I have not yet seen it.

So what I would like, Mr. Chairman, with your permission, to reserve a right to return to this subsection in order to offer a clarifying amendment providing a little bit more substance and definition of military target. I think this might strengthen the bill, assuming we find that existing international law has established definitions which the committee would find suitable.

Chairman ZABLOCKI. If the gentleman reserves the right to propose such an amendment on the floor, we would like to move this legislation forward at this time.

I would like to ask the chief of staff to read that section of the report where the Senate addresses itself to this particular point. That may clarify the intent.

Mr. BRADY [reading]:

Acts committed in the course of military or paramilitary operations directed essentially at military targets are not defined as acts of international terrorism. During the course of a military campaign or operation, nonmilitary personnel or facilities unfortunately may become involved. Accordingly, this section excludes inadvertent or secondary involvement of nonmilitary targets from the definition of international terrorism. The intent to exclude infrequent incidents that may occur in what is essentially a larger military or paramilitary campaign.

However, this does not mean that an act is not covered solely because it was carried out by a military or paramilitary force or because it occurs in what is, in reality, a war of terrorism rather than one that is military in nature.

Chairman ZABLOCKI. I am sure that it is now very clear to everybody. [General laughter.]

Well, we can include the gentleman from New York's tightening definition of a military target in the report as well.

Mr. SOLARZ. If it should turn out that I can't get the necessary information before we finish today, I don't want to prevent the committee from reporting out the bill. But I would like to reserve the right to offer an amendment either before we finish the markup today or on the floor, if necessary, in order to clarify what we mean by military targets.

Chairman ZABLOCKI. We can also have it clarified in the report, if the gentleman finds that acceptable.

Mr. WOLFF. Mr. Chairman, I come back to the paramilitary part of it, which we seem to have lost on the way of the military target.

Having made some study of these terrorist organizations, the one basic purpose is they have prime targets, and then they have secondary targets, or targets of opportunity. Those prime targets might be military targets. When they do not reach the military target, they abort the attack and attempt to engage in an act of terrorism against a civilian population.

The primary act, however, is directed at a military target.

There is one very important factor here. I know what we are trying to do. We are trying to see to it that we do not interfere with the procedures of legitimate freedom fighters and the like.

But I am concerned, very much concerned, over these organizations which consider themselves paramilitary organizations, who are directing their attention against military targets, but yet will not stop at the idea of using as targets civilian populations in the course of their activities. I don't think that that is covered by the report that the Senate has given out.

Mr. LAGOMARSINO. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from California, Mr. Lagomarsino.

Mr. LAGOMARSINO. I would like to comment on a situation where, let's say, the Symbionese Liberation Army declares itself to be a paramilitary operation and they seize or attempt to seize a nuclear weapons facility. Then they demand in return as their concession that they be allowed to leave the country.

Certainly that would be an act of terrorism under anybody's definition, and yet, under the language of the bill, I am not so sure that it would be covered.

Mr. FASCELL. Well, why would it have to be?

Mr. LAGOMARSINO. Why would it have to be?

Mr. FASCELL. Yes. Isn't that a totally internal matter?

Mr. LAGOMARSINO. Not if they seek asylum in some other country.

Mr. FASCELL. That's different. You didn't say that.

Mr. LAGOMARSINO. Yes, I did.

Mr. FASCELL. I didn't hear you. I'm sorry.

Mr. SOLARZ. Will the gentleman yield?

Mr. LAGOMARSINO. I will yield.

Mr. SOLARZ. I think in the answer you gave, the answer is a nuclear weapons facility would be a military target.

Mr. LAGOMARSINO. So, it would not be covered by the bill?

Mr. SOLARZ. Right.

Mr. LAGOMARSINO. But it shouldn't it be, that is my question.

Mr. FASCELL. This is the problem we are going to have in writing this bill, at any rate.

Ms. COLLINS. That's right

Mr. FASCELL. How can you define every possible scenario.

Mr. Chairman, might I make an inquiry? I am having a little trouble reading today.

Chairman ZABLOCKI. The gentleman from Florida is recognized, Mr. Fascell.

SECTION 2

Mr. FASCELL. I would like to go back and read section 2, "For purposes of this act." Then it says, "the term 'international terrorism' includes any act designated as an offense or crime under" and then it lists a whole bunch of things. It goes into a definition. Then on line 7, page 3, it puts in a statement which I guess is supposed to condition the triggering of all of the definitions, I gather.

Am I right to so far? It says "if the act of international terrorism is."

Then we go to Roman numeral I, it is "intended to" which is a further qualifying, I suppose, of the definition. The Roman numeral II, I guess, is supposed to be an exception, where it says "not committed."

Do other people read it the same way?

Chairman ZABLOCKI. Yes.

Mr. FASCELL. Do you read subparagraph (2) by inclusion of the word "and" and line 24, as modified by all the language on page 4, down to line 19?

In other words, the exception does not apply unless all of the other factors take place. Am I reading that correctly?

Chairman ZABLOCKI. No.

Mr. FASCELL. Well, what does the "and" mean, then?

Mr. MOHRMAN. Mr. Fascell, there are two definitions contained in this section. One is the definition of international terrorism, which starts on line 8 on page 1. The second definition is the definition of state support of international terrorism, which starts on line 1 of page 4. The "and" you referred to is simply connecting the two definitions.

Mr. FASCELL. Well, what are roman numerals I and II supposed to refer to?

Mr. MOHRMAN. Those are conditions. To be an act of international terrorism, three requirements have to be met. It has to be an act that is described in paragraphs (A), (B), (C), or (D). It could be any one of those acts. Then it has to meet the requirements of Roman numeral I; then it has to meet the requirements of Roman numeral II.

So, there are three requirements basically.

Chairman ZABLOCKI. And on page 4, if you would continue.

Mr. FASCELL. Excuse me. If Roman II is an exception—

Mr. MOHRMAN. It is a negative requirement.

Chairman ZABLOCKI. Really, page 4 goes back to page 1, and section 2, "For purposes of this act."

Mr. MOHRMAN. That is correct, Mr. Chairman.

Chairman ZABLOCKI. Subparagraph (2) on page 4 is not related at all to this.

Mr. FASCELL. That's, Mr. Chairman—it is very clear. It is about as clear as the rest of this bill is going to be when we get through with it. [General laughter.]

Chairman ZABLOCKI. Taking section 2, "For purposes of this act," you say, "the term 'international terrorism' includes any act designated as an offense or crime under," and then it so designates. Then, on page 4, subparagraph (2) reads: "the term 'state support of international terrorism' means" and then you have the explanation.

Mr. FASCELL. Mr. Chairman, may I just go on the record to say that what I have read so far is awkward and confusing and I don't know what it means.

Mr. BURKE. I will join the gentleman in that statement.

Ms. COLLINS. Well, why can't they rewrite this thing?

Chairman ZABLOCKI. Out of this chaos, I am sure the wisdom of this membership is going to prevail.

Ms. COLLINS. Mr. Chairman, why can't the staff, in light of the confusion, go back and rewrite this thing and come back with something that is halfway understandable?

Mr. BRADY. This bill was written and introduced by Mr. Anderson. It was referred to four committees of the House. It we rewrite

the bill entirely, we are going to end up on the floor with one bill fighting three committees.

It is that simple.

Chairman ZABLOCKI. It is not our bill.

The Chair would like to state that those members who feel strongly that they do not understand it will have the privilege of voting against it.

The gentleman from New York, Mr. Wolff, is recognized.

Mr. WOLFF. Mr. Chairman, there is no reason why we, as a committee, cannot provide a substitute bill for the bill that is offered.

Ms. COLLINS. That's right, and that makes sense.

Mr. WOLFF. In line with what Mrs. Collins says, it is not a question of fighting one bill or another; but there are certain elements in here that are totally confusing.

You know, I brought up one of them. Here is another position that was brought up by Mr. Fascell. You will read on page 4, line 11, "providing direct financial support for the commission of any act of international terrorism" is outlawed. What about the indirect methods? I mean, you can go through every page of this and you will find that there is confusion that exists.

Mr. WHALEN. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from Ohio, Mr. Whalen.

Mr. WHALEN. Mr. Chairman, might I have a clarification on one question?

Does this bill apply where a state of war exists?

Mr. BRADY. That is the intent, I think, of subparagraph (II).

Chairman ZABLOCKI. That is on the bottom of page 3.

Mr. WHALEN. I had forgotten about this until the President mentioned it the other day. For example, a state of war still exists between Egypt and Israel and between Israel and other countries. Would this not apply then to those acts that might be termed terrorism?

Chairman ZABLOCKI. That is a very good point.

The Chair would like to state, if it is any comfort to the other members of the committee, that if you have read the Senate version, it is not any clearer. I am sure that if we started from scratch to rewrite our own bill and try to do what we are trying to do, we would also find ourselves coming up with a bill that our colleagues on the floor may not understand.

Let us try to see if we can salvage something.

The gentleman from New York.

AMENDMENT BY CONGRESSMAN SOLARZ

Mr. SOLARZ. Mr. Chairman, I think the gentleman from California had a very good point, and I have just drafted an amendment which I would like to offer which clarifies it.

He pointed out quite rightly that under subparagraph (II), if a terrorist group in the course of a paramilitary operation seized a nuclear weapon or attempted to capture control of a nuclear arsenal, they would be exempted from the coverage of this act. The amendment simply says, on line 23, for military targets "other than nuclear facilities."

Mr. Chairman, I think if we don't have language like that, it means that a paramilitary group which attempts to seize control or obtain possession of a nuclear weapon, because that is a military target, would not come under the purview of this legislation. I think that this is so special and important a situation that we ought to make it clear that it is not precluded.

Chairman ZABLOCKI. I think it would be very clear if we could define or make a clear distinction between paramilitary operations and guerrilla or terrorist or insurgent activities. If we do that, I think we would be on the way to having everybody understand what the intent of this subparagraph is.

I don't think the gentleman's amendment would add any clarity.

Mr. SOLARZ. Well, I think it does, sir, because right now, any operation directed against a military target does not come under the purview of this legislation, by virtue of the fact that the target is military in nature. This does not pose a problem in Rhodesia or Nicaragua or any country like that because they do not have nuclear weapons. But in those countries that do have nuclear weapons, if a paramilitary group went in and attempted to seize control of a nuclear weapon, they would not come under this.

Mr. BINGHAM. Would the gentleman yield?

Mr. SOLARZ. Yes.

Mr. BINGHAM. It seems to me that the same question arises in the case of a paramilitary group such as the Japanese Red Army going in and trying to seize a cache of conventional weapons from U.S. military facilities. The more I look at this, the more I think we really have a can of worms here.

I don't think we know the answers.

Mr. LAGOMARSINO. Would the gentleman yield?

Mr. SOLARZ. Yes.

Mr. LAGOMARSINO. In support of the gentleman's amendment, being as I brought up the subject in the first place, it seems to me that one of the things this committee has been very concerned about, and the President has been very concerned about, is nuclear proliferation, with a view in mind of stopping exactly what we are trying to stop with this amendment.

It would seem to me that if anybody could stretch this, and you would have to stretch it, that's true, to say that a paramilitary group could possibly seize a nuclear weapon and be out from under this act, is ridiculous. I don't think it hurts a thing to have it in the bill. It might make very plain exactly what we are concerned about.

Chairman ZABLOCKI. I did not intend to express any opposition to your amendment.

Mr. CAVANAUGH. Mr. Chairman.

Chairman ZABLOCKI. Mr. Cavanaugh.

Mr. CAVANAUGH. I don't have any hostility to clarifying nuclear supplies and facilities, but I share the view of Mr. Fascell that this isn't even written in English. The whole section is nonintelligible. The sentence is paragraph (II) and the "and" at the end, which refers to some definition of "state support of international terrorism," are disjunctive and nonsensical.

Mr. LAGOMARSINO. If the gentleman would yield, I think the chairman suggested a very simple amendment which would take

care of that, and that would be merely to add again "for purposes of this act." I think that would take care of it.

Mr. SOLARZ. Mr. Chairman, would the clerk read the amendments that are on the table?

Mr. CAVANAUGH. When you read it all together, you can't come to a conclusion as to what it means.

Chairman ZABLOCKI. At the present time the committee is considering on page 3, subparagraph (II) an amendment offered by the gentleman from New York, Mr. Solarz. The chief of staff will read his amendment.

Mr. BRADY [reading]:

Page 3, line 23, after "targets" add "other than nuclear facilities."

Mr. WOLFF. I have a question, Mr. Chairman.

Chairman ZABLOCKI. Mr. Wolff.

Mr. WOLFF. I see nuclear facilities as an important element. But we had a situation only recently whereby the water supply of a particular country or a city was threatened.

Mr. SOLARZ. But that is not a military target.

Mr. LAGOMARSINO. That's right, it's not.

Mr. WOLFF. Instead of the nuclear facility, perhaps a chemical facility.

Mr. LAGOMARSINO. That is not covered either.

Mr. WOLFF. Suppose they were producing arms.

Mr. LAGOMARSINO. Then that should be.

Mr. FASCELL. Would the gentleman from New York just yield for a second, please.

I would just add to the confusion of the scenario. Is the water system for Washington, D.C., run by the Corps of Engineers, a military target? [General laughter.]

Chairman ZABLOCKI. The gentleman from Ohio, Mr. Whalen.

Ladies and gentlemen, the Representative from Ohio deserves your attention.

Mr. WHALEN. Mr. Chairman, I would like to come back to the question I posed a few moments ago. I got some ohs and ahs, but I don't know whether I got a specific answer. So let me raise a specific example.

If my memory serves me correctly, Syria is still at war with Israel. If a PLO group came out of Syria into Israel and attacked a nuclear facility, would that come under the purview of this legislation?

Mr. SOLARZ. With my amendment, it would.

Without my amendment, it does not.

Mr. FASCELL. Well, why would it? It's an act of war. How could it be covered?

Mr. WHALEN. I mean, the two countries are still at war technically.

Mr. WOLFF. That was my question on the paramilitary part.

Mr. SOLARZ. If the gentleman would yield.

Mr. WHALEN. Yes.

Mr. SOLARZ. I may be wrong, but as I understand it, if a squad of Syrian soldiers crossed the border in furtherance of the state of war between Syria and Israel, presumably this would not apply. But if some Palestinian Fedayun group crossed the border with the support of the Syrian Government—it armed them, equipped them,

or trained them, or was offering them a sanctuary—and they directed an attack against a conventional military target, this legislation would not come into play. Without my amendment, assuming there were nuclear targets in Israel and such a Fedayun squad directed its attack against a nuclear facility, this legislation also would not come into play. But if my amendment were adopted, then any Palestinian terrorist raid against an Israeli nuclear facility, assuming such facilities existed, would come under the purview of this amendment.

Mr. FASCELL. Would the gentleman yield right there?

Mr. SOLARZ. Yes.

Mr. FASCELL. I am not arguing with the gentleman about that last discussion. But just reading the language, "essentially against military forces or military targets" then you define an exception.

Mr. SOLARZ. To military targets.

Mr. FASCELL. To military targets.

Mr. SOLARZ. Other than nuclear facilities.

But may I say that if there were a clearly peaceful nuclear facility in the country, it is already covered under the other part of this, because that is not a military target—if it is clearly for peaceful purposes.

Mr. FASCELL. It seems to me that anything a military force goes after is a military target. I don't know where a "military target" is defined in this bill. If it is not defined, then I am not sure that you want to write an exception.

Mr. SOLARZ. Well, we are working on an additional definition of "military target" which we would hope to get in here, which would hopefully clarify that because I share your concern about the definition.

Mr. FASCELL. Why don't we leave this amendment pending until we read the definition.

Mr. SOLARZ. The point that I want to make to my friend from Florida is the amendment refers to nuclear facilities in the context of nuclear targets, and we are talking about clearly military applications of nuclear facilities. We are not talking about a peaceful nuclear powerplant. We are talking about nuclear warheads or any other clearly military application of nuclear facilities which would otherwise not be covered without this amendment.

Mr. WOLFF. You keep concentrating on the target, which I think is a good idea. But I also want to have the definition of a military or a paramilitary group because under this circumstance, if the PLO is supported by Syria, which is at war there, then they are exempted from this bill, and I am concerned about that.

Mr. BUCHANAN. Will the gentleman yield?

Mr. WHALEN. I will yield.

Mr. BUCHANAN. I have just one small point.

I assume that while a military target of the PLO in Israel would not be covered by this, a school bus or a village, any essentially civilian targets, as most of their targets have been, would be covered.

Mr. WOLFF. Mr. Chairman.

Chairman ZABLOCKI. The Chair would like to state that if we are going to try to define a military target, we would probably have to include bridges, railroads, and almost anything.

Mr. FASCELL. What about people? People are military targets.

Chairman ZABLOCKI. I would agree with the gentleman from Florida that in making an exception, as the gentleman from New York has proposed, it would really open further a Pandora's box.

Mr. SOLARZ. But this tightens it.

Chairman ZABLOCKI. The gentleman from New York, Mr. Bingham.

Mr. BINGHAM. Mr. Chairman, I don't think we are ready to act on this bill. I think we have two joint committees that are scheduled to meet this afternoon at 1 o'clock. I don't see how we can possibly complete action on this bill and I am not sure we are dealing here with a problem that is so inordinately difficult that we are not going to be able to complete action in this session.

So, I move that the committee adjourn.

Ms. COLLINS. I second the motion.

Chairman ZABLOCKI. The Chairman did not hear the gentleman's motion.

Mr. BINGHAM. I move that the committee adjourn.

Ms. COLLINS. I second.

Chairman ZABLOCKI. Let's not cut off debate.

Mr. WOLFF. Let's go as far as we can.

Chairman ZABLOCKI. If the gentleman from New York would withhold his motion for a moment—I am in agreement with him, but please withhold briefly.

Mr. GILMAN. Mr. Chairman, this is a critical problem. This is a problem that the Congress has been wrestling with for a long time. I think if we shirk our responsibilities as we near the end of the session, we would certainly be open to a great deal of criticism, particularly if there were some acts of terrorism directed against our own Nation, and hopefully that will not be the case.

But, while it is a difficult and complex problem, and I recognize the problems, I think it is a responsibility of this committee to address itself to the problem as quickly as possible, and not to let it go over for another session.

Ms. COLLINS. Would the gentleman yield?

Mr. GOODLING. I would like to add that after one of the pieces of legislation that we passed recently on the floor of the House, today such problems in our country could come very quickly, I would think, problems in relationship to terrorism.

Ms. COLLINS. If the gentleman would yield, I think that we also have a responsibility to get out responsible legislation. Just trying to meet a timetable or a deadline is not what we are supposed to be all about. We are supposed to have at least legislation that is legible and readable and so forth. Just voting on legislation simply because the House is going to adjourn is not a reason for putting out trash.

Mr. GILMAN. I certainly agree with the gentlelady's objective of trying to get a responsible piece of legislation. But in like manner, let's not throw up our hands because there is some difficult language to wrestle with.

Mr. FASCELL. I agree with the gentleman from New York. May I be heard for a second, Mr. Chairman?

Chairman ZABLOCKI. The gentleman from Florida is recognized.

Mr. FASCELL. Look, we have the Foreign Assistance Act, section 620(a), which has language in it dealing with terrorism. We have the Arms Export Control Act, section 3(f)(1); and the Foreign Assistance Related Programs Appropriations Act, section 309.

Now, I have not read this in detail, but as I understand it, what we are dealing with here is the automatic establishment of sanctions.

Am I correct? Is that the main thrust of the bill before us?

Mr. MOHRMAN. The parts that this committee is looking at deal primarily with the sanctions and also with reports with regard to acts of terrorism.

Mr. FASCELL. But the main operative thrust of the legislation is legislative imposition of automatic sanctions, is that correct?

Mr. MOHRMAN. Parts of the bill are in this committee's jurisdiction. There are other parts that are before Judiciary and Public Works, which deal with aviation security, attacking of explosives and so forth.

Mr. FASCELL. Well, as far as our jurisdiction is concerned, under present law, am I correct that authority exists now to impose sanctions in the event any of these actions now take place?

Mr. MOHRMAN. That is correct.

Mr. FASCELL. So, therefore, what we are dealing with is simply legislating an automatic imposition of sanctions?

Mr. MOHRMAN. That is correct.

Chairman ZABLOCKI. The Chair would like to make an observation and a brief statement.

I realize that we will not be able to complete the bill today. I am firmly of the belief that much of this bill is really not necessary from the standpoint of giving the President any authority he does not now have. But there is a political aspect; the Chair has been pressured by the sponsors of the legislation in the other body and the sponsors in this body—and the Chair has promised that we would work the will of the committee on those sections of the bill that are under the jurisdiction of this committee. If you read the bill, the committee having primary jurisdiction would be Public Works and Transportation. As a matter of fact, the original title showed the bill to be an amendment to the Federal Aviation Act of 1958 until we broadened it to cover our jurisdiction over international terrorism and ~~sanctions~~.

As the gentleman from Florida has pointed out, the basic issue in this bill that we, in our committee, must deal with is mandatory sanctions. That is a very highly controversial topic.

I would suggest that the members—and I know all of you are interested in combating terrorism, international terrorism—study the bill very closely. We will have another session, possibly early next week or as soon as possible. But I do think it is necessary for this committee not just to disregard this bill and take no action.

Mr. BINGHAM. Mr. Chairman, that was the purpose of my motion. I did not move to table the legislation. I simply moved that the committee now adjourn so that members could have a chance to reflect and perhaps draft amendments that would cure some of these defects.

Mr. WINN. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from Kansas.

Mr. WINN. Mr. Chairman, I would urge the members of the committee who are interested in submitting amendments, rather than coming in here cold, to circulate them to the membership of the full committee. It would be helpful.

Ms. COLLINS. I agree with that.

Chairman ZABLOCKI. I have another suggestion.

Since the Chair believes that it is preferable that we consider this in a more manageable framework—and I don't mean that the full committee does not, indeed, add to the consideration of any legislation before it—we could probably meet under the ad hoc group's auspices to work out some of the knotty problems. Then we could schedule another full committee meeting, to which the members would be invited.

That would probably resolve the situation.

The Chair will try to confer with the members as to the preferable dates for an ad hoc group meeting and a full committee meeting. We will see if we can't get this bill on the road.

Mr. FASCELL. Mr. Chairman.

Chairman ZABLOCKI. The gentleman from Florida is recognized.

Mr. FASCELL. Mr. Chairman, might I request of the Chair that we be furnished—I just read three laws. I have been advised by legislative counsel that a lot more laws are now on the books which have some bearing on this issue. If we could get the citations of those and just the extracts of the provision or provisions that apply, it would be helpful for us to see the entire picture.

Chairman ZABLOCKI. We will do that and have it available for our next meeting.

[Whereupon, at 12:27 p.m., the committee adjourned to reconvene upon call of the Chair.]

INTERNATIONAL TERRORISM: LEGISLATIVE INITIATIVES

THURSDAY, SEPTEMBER 28, 1978

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, D.C.

The committee met in open markup at 12:10 p.m. in room H-236, the Capitol, Hon. Clement J. Zablocki (chairman) presiding.

Chairman ZABLOCKI. Although we need four additional members to adopt amendments, we can discuss them.

The committee will please come to order. We meet this afternoon to continue markup of the bill H.R. 13387, to amend the Federal Aviation Act of 1958.

I think we all recognize by now that this is a very comprehensive, controversial, complex piece of legislation which has been jointly referred to three separate committees for consideration, including our own.

PREVIOUS ACTION

As the members will recall, during the previous markup session on this bill the discussion focused on section 2, which attempts to define the terms "international terrorism" and "state support for international terrorism." At that time numerous questions were raised as to the actual effect of these provisions and their possible interpretation. Many believed the language of this section was both confusing and imprecise. It was suggested that the staff try to work out more broadly acceptable language in a revised draft, which would then be considered by the ad hoc group at a working session at which all committee members were invited to participate.

The ad hoc group met for this purpose on Monday afternoon. After considerable discussion and debate it agreed to recommend a further revised draft, copies of which were distributed to all members of the committee on September 26.

This draft which we are now considering is an attempt to accommodate the concerns expressed by the committee members and is the result of extensive consultation among committee staff members, our legislative counsel, and responsible, knowledgeable executive branch officials. Only after Brian Atwood got into the act did I know that I could add the word "knowledgeable."

Before consideration of another section of the bill I hope we can dispose of this section.

REVISED SECTION 2

The floor is now open to any members who wish to address this matter or ask questions about any of the section 2 provisions. Every member has before him or her a two-and-three-quarter page revised section 2. I don't believe we need to have the chief of staff read the revised section. I presume the interested members, having this section before them, are familiar with the provision. However, as a precaution so we will not act in the dark, I will ask the staff to explain exactly where the differences lie.

Mr. SPALATIN. Revised section 2 in front of you is an attempt to clear up some of the questions the members raised the last time we had the full committee markup in terms of trying to find what was and wasn't defined as an act of international terrorism and trying to define what was state support for acts of international terrorism.

On page 1 of section 2 revised, the opening lines there, 2, 3, and 4, that addresses itself to a very important part and that is the intent of the party conducting the acts and that intent must apply in order for the act to eventually be declared an act of international terrorism by the President for purposes of this bill.

Then, pursuant to those lines, subparagraph (1) on page 1 and paragraphs (A) and (B) below that define such acts that would be for purposes of this bill acts of international terrorism in a broad general sense.

Starting on page 2 we go into other types of acts that are offenses against three separate conventions which for purposes of this act would be acts of international terrorism if they have the intent that is laid out in the first three lines on page 1.

Finally, the revised section before you has an exception clause which states that states engaged in armed conflict, as long as those actions are consistent with international custom and practice in terms of military warfare, that such acts shall not be classed as acts of international terrorism. That same standard applies to other armed groups that have acted essentially against legitimate military objectives except when such an action is in an effort to obtain nuclear weapons, weapons-related technology, or other weapons or substance of mass destructive capability.

Chairman ZABLOCKI. Are there any other questions?

Mr. BROOMFIELD. Mr. Chairman, I would like to ask a question regarding the situation as far as the frontline group outside Rhodesia. How does this affect them? Apparently, this is drafted in such a way as to indicate they would not be considered in this category.

Mr. SPALATIN. If they would be engaged in a military action directed essentially against military objectives then that would not be an act of international terrorism.

Mr. BROOMFIELD. What about the situation that was recently—

Mr. SPALATIN. The downed plane?

Mr. BROOMFIELD. Yes.

Mr. SPALATIN. If the evidence indicates they had reason to believe that that downed plane had some military significance, the downing of the plane would not be an act of international terrorism for the purposes of this bill.

But the act that allegedly took place pursuant to that when civilians were taken out of the plane and then allegedly shot, if those facts are all true, that probably would be, that would be an act of international terrorism for purposes of the bill, the second act, because it would not be a legitimate military objective to eliminate those people under those circumstances.

Mr. BUCHANAN. I don't think we ever should have passed that thing on suspension a couple of weeks ago, removing the duty on imported worms. That opened up another can of worms.

I must say, I think the staff has made substantial improvement on this portion of this particular can of worms.

Chairman ZABLOCKI. I tend to agree with the gentleman from Alabama except this is not an imported can. It is a domestic variety of night crawlers.

Mr. BUCHANAN. I stand corrected.

Chairman ZABLOCKI. The gentleman from Minnesota.

Mr. FRASER. Mr. Chairman, with respect to that last question, on Rhodesia, does that come under this clause (iv) on line 21?

Mr. BRADY. What page? Page 1?

Mr. FRASER. The first page.

Mr. SPALATIN. You have to look at the revised section, Mr. Fraser.

Mr. FRASER. This one? That is what I am looking at.

Are we talking about the Rhodesian insurgents? I assume that comes under clause (iv) because it is supported by another state. Is that why it would apply?

Mr. SPALATIN. Yes; that is correct.

Mr. FRASER. But it wouldn't fall under the other first three, would it?

Mr. SPALATIN. No; I believe not.

Mr. FRASER. So it would come under (iv) because some of the frontline states are giving support.

Mr. SPALATIN. Are receiving support.

Mr. FRASER. What does it mean that the act is "supported?" I have difficulty believing the frontline states would have supported the act itself, if it is true, murdering these people.

Mr. SPALATIN. If the evidence would not document that, then it would of course not apply. The determination would have to be made by the President. If the facts so indicate that the Popular Front groups supported that act. Even if the act happened it would still be reported as an act. It would not necessarily be reported as supported by anybody.

Mr. FRASER. By another state?

Mr. SPALATIN. That is correct.

Mr. BUCHANAN. Mr. Chairman?

Chairman ZABLOCKI. The gentleman from Georgia.

Mr. FOWLER. In the revised section I don't see where—do you have to exercise violence or something in here?

Mr. BRADY. That is in subsection (1).

Mr. FOWLER. Looking at 2(B), why would that not cover an economic boycott?

Mr. BRADY. Sanctions are imposed in a different section of the bill. It comes on later. These are definitions.

Mr. SPALATIN. The definitions of terms.

Mr. FOWLER. I see. Where in section 5?

Mr. SPALATIN. Section 5 of the committee print.

Chairman ZABLOCKI. Page 8.

Mr. FOWLER. How many other committees have jurisdiction?

Chairman ZABLOCKI. The other committees that have jurisdiction are Public Works and Judiciary. They are the other two committees.

Mr. FOWLER. We are having hearings on international terrorism. The subcommittee chairman and I share that committee also. First time I had seen this. I didn't know from whence it came. Mr. Buchanan and I were just talking about that.

Chairman ZABLOCKI. This bill originated in the Senate. The principal sponsors in the other body were Senator Javits and Senator Ribicoff. The principal sponsor in the House is Congressman Anderson of California. There are about 40 sponsors.

The question occurs on the revised section 2 of H.R. 13387.

The Chair will entertain a motion.

Mr. BUCHANAN. I move the substitute be adopted.

Chairman ZABLOCKI. All those in favor signify by saying "aye."

[A chorus of "aye's."]

Chairman ZABLOCKI. Aye.

Opposed, "no."

[No response.]

Chairman ZABLOCKI. The "ayes" have it.

We have made some progress.

SECTION 3

Section 3, Report on Acts of International Terrorism, page 4 of the committee print. I presume the committee is operating under the agreement that we will not have the bill read but considered by sections and page.

Any amendments or questions to section 3?

Mr. BUCHANAN. Mr. Chairman, it was my understanding that the gentleman from Ohio, Mr. Whalen—

Chairman ZABLOCKI. That comes on page 8.

We will protect the gentleman.

Mr. BUCHANAN. Thank you.

Chairman ZABLOCKI. Any questions or amendments on Section 4: List of States Supporting International Terrorism?

Mr. GILMAN. Mr. Chairman?

Chairman ZABLOCKI. The gentleman from New York.

Mr. GILMAN. The gentleman from New York, Mr. Wolff, has several amendments to section 4, beginning on page 6. He has been detained for about 5 or 10 minutes. He asked me to inquire if we could pass over section 4 until he is present.

SECTION 5

Chairman ZABLOCKI. We shall pass over section 4 and return to that section when the gentleman from New York, the eloquent, able, and knowledgeable Member from New York, Mr. Wolff, returns.

Section 5, page 8.

Mr. BUCHANAN. This is the section where the gentleman does have an amendment. I don't know if—

Chairman ZABLOCKI. Mr. Whalen isn't able to be here, I understand. A very good substitute, and cosponsor of the amendment, will present it—Congressman Don Pease.

Before we consider amendments, I will very briefly ask the staff to explain section 5 and what the mandated provisions in the section entail.

Mr. SPALATIN. Section 5 has various sanctions that the President would have to impose immediately after he has placed a state on the list that has been determined by the President to have demonstrated support for patterns of international terrorism.

The first mandatory sanction that would have to be imposed would be all programs under the Foreign Assistance Act except for disaster relief, all military sales under the Arms Export Control Act on a government-to-government basis, and the third sanction which was mandatory when the subcommittee considered the legislation 2 weeks ago was modified to be placed in a discretionary basis. That provides for a case-by-case review by the President of exports licensed under the Arms Export Control Act. It also provides for prior consultation and subsequent certification to Congress if he waives any of the mandatory sanctions I just mentioned earlier.

That is basically a very general summary of that section.

Chairman ZABLOCKI. Mr. Pease.

AMENDMENT TO SECTION 5

Mr. PEASE. Yes, Mr. Chairman, I would like to offer an amendment which I believe the staff is or has already circulated. This is an amendment I am offering on behalf of Mr. Whalen, who cannot be here this afternoon.

It starts out on the bottom of page 8. Essentially it provides for a substitute subparagraph (1) under section 5(a). The import of it is to eliminate mention of cutoff of economic aid and limit the cutoff to military assistance and to IMET aid, international military education training, those two parts of the Foreign Assistance Act of 1961.

[The document referred to follows:]

Page 8, strike out line 24 and all that follows through line 2 on page 9 and insert in lieu thereof the following:

(1) shall not provide any assistance under chapter 2 (military assistance) or chapter 5 (international military education and training) of part II of the Foreign Assistance Act of 1961; and

Mr. LAGOMARSINO. Will the gentleman yield?

Mr. PEASE. I would be happy to yield.

Mr. LAGOMARSINO. I understand what the gentleman is trying to do. But it would seem to me that if the amendment is adopted you are going to take away real sanctions that would be available against a number of states that you would not be able to touch with this at all because most of the states, as I understand it, that are in a position of even being suspected of harboring terrorists, and fall under the purview of this act are states with which we do not conduct military assistance programs or provide military training. So what is left?

Mr. PEASE. Mr. Chairman, the gentleman makes a good point. But in actuality, most of the nations that we suspect of harboring terrorists don't receive any military aid or economic aid from us. So from that point of view this whole section does not have very much influence. I guess we are talking about other nations of the world that might get on the list by harboring terrorists for one reason or another. We want to provide sanctions against them and give them pause, make them think twice about doing that.

But I think we need to retain some flexibility with our economic aid policy. And, as we all know, the purpose of our economic aid is to help the poor people in those poor nations. I am not sure that the poor people in these countries should bear the brunt of our sanctions for the failure of their government to act to combat terrorism.

I would be happy to yield to my colleague from Alabama.

Mr. BUCHANAN. This is the first time I have seen the Whalen amendment. I understood it was intended to give the President some flexibility on enforcement so that when there was an overriding humanitarian concern that he could waive that.

Mr. BROOMFIELD. John, would you yield?

Mr. BUCHANAN. Yes.

Mr. BROOMFIELD. I want to join in what he is saying. I think we ought to be coming out with a strong act. But by giving the President some flexibility, it really ought to be applied to both economic and military if we are really serious about doing anything about terrorism.

Mr. BUCHANAN. You might add a waiver if the interests of the United States or humanitarian concerns somehow——

Chairman ZABLOCKI. The gentleman from Ohio.

Mr. PEASE. Mr. Chairman, if I can reclaim my time, I would just point out that the President already does have the authority to cut off economic aid as he wishes or any kind of aid and even in this bill, page 10, lines 15 and 16, devise initiatives to combat international terrorist actions and to reduce state support for such actions, the President shall exercise such authorities available to him, in addition to those specified in this section, as he deems appropriate. So he clearly has the ability to cut off economic aid if he wishes as a lever to use against terrorism.

But what this amendment would do would be to relieve him of the obligation of cutting off economic aid in the event that a country was put on the terrorist list.

Mr. SOLARZ. Would the gentleman yield?

Mr. PEASE. I would be happy to yield.

Mr. SOLARZ. Thank you. I think our friend from California as usual has raised a serious and thoughtful question because obviously there are a number of countries around the world which either do or may in the future harbor terrorists with respect to which we don't have any economic aid program and with respect to which we are not selling any arms.

So the question is, what penalties do we have against them? But if you consult the latter part of the bill, you will find that under the terms of this legislation the Secretary of Transportation has the authority with respect to an offending country to suspend the rights of any American airline carriers to fly into that country. So

there is a potential penalty which can be invoked against other nations even if they neither receive economic assistance nor are interested in making military purchases from our own country.

Consequently the adoption of this amendment would not with respect to those countries with whom we have a developing relationship but with respect to whom we don't have a military relationship completely eliminate the possibility of any kind of bilateral sanction because the Secretary of Transportation would have the right to suspend airline flights into that country.

Mr. BUCHANAN. Mr. Chairman?

Chairman ZABLOCKI. Mr. Buchanan.

Mr. BUCHANAN. I would like a vote on putting the overall sanctions in but giving him some kind of specific waiver. He is the one who has to find them guilty in the first place. He could find them guilty and waive both, I would think. I think it would seem stronger to include the economic in the sanctions but give him the clear authority to waive.

Mr. PEASE. Mr. Chairman?

Chairman ZABLOCKI. If the gentleman would yield, your concern is that we do not make it mandatory on the President to impose sanctions and then as an afterthought to use his waiver authority. This is what we want to prevent. We should give him the discretion before the sanctions would be—

Mr. BUCHANAN. Then why not make it both military and economic?

Mr. SOLARZ. If the gentleman will yield, I am informed that on page 10 of the bill, beginning on line 5 through line 12, the President has precisely the waiver the gentleman is talking about. He has the right to waive any of the penalties which would otherwise be invoked by virtue of this legislation.

So from your point of view, if the gentleman's amendment were defeated the waiver would already be there.

Chairman ZABLOCKI. Mr. Fraser.

Mr. FRASER. Mr. Chairman, the waiver requires the interest of national security, which is not a very large loophole.

There is another section where the meaning is not clear. I invite your attention to line 18 on page 10. It says:

In implementing this section, the President shall take into account the effectiveness of each specific sanction * * *, the likely effect of sanctions on overall U.S. relations * * *, and the effect such sanctions would have on other U.S. national interests.

The way it is worded in this context it is not clear whether this is a separate and additional waiver authority. Is it intended to be?

Mr. SPALATIN. It was an attempt by the staff to recognize that if you impose mandatory sanctions, sometime in the future, given circumstances may dictate that international security conditions other than combating international terrorism would overlay the national security interest in combating terrorism. So it tries to widen the national security waiver loophole a little bit in terms of recognizing in advance that he may decide to utilize that waiver.

Mr. FRASER. I don't think it quite does that the way it is worded. I would say that if (d) were effective, maybe it is but it doesn't sound like it, it sounds like a vague injunction to the President but it is not a specific waiver authority. But if it were I would assume

it would probably take care of the problem. But I think the waiver up above is too tight.

Mr. PEASE. Mr. Chairman, might we request the views of the State Department if they have a representative here?

Chairman ZABLOCKI. There is an able representative, Mr. Atwood.

STATEMENT OF J. BRIAN ATWOOD, DEPUTY ASSISTANT SECRETARY OF STATE FOR CONGRESSIONAL RELATIONS

Mr. ATWOOD. Thank you, Mr. Chairman. The views that we have relate to the automaticity of this section. It is rather awkward to have to apply a sanction to a country and then have to waive it because we send exactly the opposite message to the world than we want to send. We are not trying in any way to excuse terrorist activities that a nation has been engaged in. So our concern is that the sanctions would be applied automatically. It would also lessen the impact of applying the sanctions in a positive way if they are simply applied automatically.

What we are really concerned about is the kind of situation where we are engaged in negotiations with countries to try to resolve the conflict. The conflict may be the very cause of the terrorist activity. Some people may interpret it as a war of liberation. In such a case we don't want our negotiations disrupted because of the need to apply sanctions against the country with whom we are negotiating.

So our concern is with the effectiveness of the bill in dealing with terrorism, the problem of international terrorism. If the sanctions have to be put on automatically they have less of an impact in dealing with the terrorist problem. And if they have to be waived because of a situation wherein our national security or other interests are involved, then we send the wrong message. We send the message to the world that we are trying to excuse the terrorist activity when that may not be the case.

Mr. BUCHANAN. Are there no cases in which that would apply to military aid? Would it only apply where economic aid is involved?

Mr. ATWOOD. Frankly, Mr. Buchanan, our position is that we are against automatic sanctions entirely. I will be very frank and say this is a compromise solution which is acceptable to us for two reasons. We don't feel there are many countries that have a military supply relationship with us in the world that would be engaged in this kind of activity and if there were such countries we wouldn't want to continue such a relationship anyway.

So this is a compromise which I understand is acceptable to some of the sponsors of this legislation and it certainly is acceptable to the administration.

Chairman ZABLOCKI. Further questions?

Mr. FRASER. I would like to ask the staff about section (d). Are they convinced that that provides a broader waiver authority?

Mr. SPALATIN. In our opinion it puts in words, statutory language, a reflection of the fact that there is an element of arbitrariness in something that is mandatory in a conceptual sense so that when you have to apply that mandatory sanction sometime in the future, make sure that when you do so that the primary purpose of

the sanction, which is to combat international terrorism, is preserved and not offset by other international considerations.

Mr. FRASER. How do (b) and (d) differ?

Mr. SPALATIN. (b) is an attempt to advise the President that if he wants to suspend the waiver, that prior to doing so he consult with Congress.

Mr. FRASER. What about (d) then? How does that differ?

He can do it without consulting Congress?

Mr. SPALATIN. No; not according to this bill.

Mr. FRASER. I am trying to find out what authority (d) confers on the President.

Mr. BRADY. I would say that (d) refers back to (c), to all provisions of this section.

Mr. MOHRMAN. I think (d) modifies three different parts of this section. It is relevant to subsections (a), (b), and (c). Under (a) where we talk about denying munitions control licenses and denying exports, there is a standard of reducing state support; on (b) there is a waiver of the mandatory sanctions under (a); in (c) it calls for other sanctions; and (d) is intended to say that in each of these instances in figuring out what is appropriate conduct you take these factors into account.

Mr. FRASER. Can the President, using the authority of (d), refrain from imposing sanctions under (a)?

Mr. MOHRMAN. (d) is not an authority. It is sort of like report language. It is saying "when you exercise the other authorities of this section—"

Mr. FRASER. Where there is discretion, exercise it in accordance with—but it doesn't by itself confer any new discretion.

Mr. MOHRMAN. No.

Mr. FRASER. So (d) doesn't really do anything in that sense.

Mr. PEASE. Mr. Chairman?

Chairman ZABLOCKI. Mr. Pease:

Mr. PEASE. Mr. Chairman, I think the point raised by the gentleman from Minnesota is somewhat aside from the main thrust of the amendment before us. I think he raises a very good point. I have a lot of trouble with section (d). I don't understand what it means either. It seems to invite the President to take into account these factors in deciding whether or not to impose what is supposed to be an automatic sanction and invites him to take those factors into account in deciding whether or not the United States has a national security interest involved in section (b).

I think that is not good. It is ambiguous. Either we have a national security interest or we don't have one. The President should not decide whether we do or do not depending on his decision as to whether the effectiveness of such specific sanction is going to be to induce change in the state's policy or not. That is really beside the point.

Mr. BUCHANAN. Will the gentleman yield?

Mr. PEASE. I would be happy to.

Mr. BUCHANAN. It seems to me that if the gentleman's amendment is adopted then it alleviates the problem of the narrowness of the waiver because then national interest might be the only appropriate grounds, if you are just talking about military aid in the first place.

Second, it may mean it is not necessary to have a section (b). I would be pleased to listen to why you would need one. But should the amendment be adopted, we are only talking about military aid in the first place.

Chairman ZABLOCKI. Mr. Gilman.

Mr. GILMAN. Mr. Chairman, if I understood Mr. Atwood's comments on this measure, there are very few nations who harbor terrorists with which we have any military assistance. Is that correct?

Mr. ATWOOD. That is what I was saying.

Mr. GILMAN. Essentially then if we take away the economic sanctions and we don't have any military arrangement with these countries, what are we sanctioning? What is left to sanction? Where is our penalty? Would you explain that to me, Mr. Atwood?

Mr. ATWOOD. There are hopefully very few countries with which we have an economic assistance relationship that would engage in this kind of activity. But it is not a question of percentages. It is a question of the rare instance when we do have such a relationship when that country is extremely important to us in trying to resolve a conflict situation or through negotiation.

Mr. FRASER. What about Syria?

Mr. ATWOOD. I would rather not comment on specific countries at an open session.

Mr. FRASER. We give them—

Mr. ATWOOD. The authority already exists to impose not only these sanctions but other sanctions.

Mr. GILMAN. But essentially we have less of the military arrangements than we do have economic arrangements with some of these countries. There are a lot more countries that harbor terrorists where we have some economic arrangements with them. Isn't that so?

Mr. ATWOOD. You are requiring me to get into a discussion of how this bill would be implemented after all the legislative history is in. It is very difficult now to speculate on how the definition included in this bill would apply to countries.

Chairman ZABLOCKI. The reply to the gentleman is that as of now, countries that have a record of harboring terrorists are not receiving economic assistance.

Mr. ATWOOD. That is what I am worried about, getting into the trap of having to say which countries harbor terrorists. According to the bill's definitions, that criteria may change for making those determinations after the bill is enacted.

Mr. GILMAN. Mr. Chairman, what I am concerned about and what I think the committee should be concerned about is that if we are seeking to penalize countries that harbor terrorists and you take away economic sanctions and since there are very few of them that have military arrangements with us, you have very little left to penalize. So I would urge us to try to keep both economic and military sanctions available to us.

Chairman ZABLOCKI. Mr. Bingham asked to be recognized.

Mr. BINGHAM. Mr. Chairman, first with respect to the question raised by Mr. Buchanan, I wonder if he wouldn't be helpful in offering this as a formal amendment. Instead of say in implement-

ing this section to suggest, say, in implementing subparagraph (a) (3) and (4) of this section and (C) of this section.

Mr. BUCHANAN. That is a good idea.

Mr. BINGHAM. Line 18, page 10, strike the section and insert subparagraphs (A) (3) and (4) and (C) of this section.

Mr. BUCHANAN. That is better.

Mr. BROOMFIELD. Why shouldn't all of (d) be taken out?

Mr. BINGHAM. I think this is helpful to indicate what we are trying to get at if we are trying to get at not punishment but some change in a State's policy. I think it is worth putting in there, that it certainly should apply not only to those areas that are discretionary.

Mr. BUCHANAN. Would the gentleman yield?

Mr. BINGHAM. Yes.

Mr. BUCHANAN. It is a good amendment. I would hope the gentleman would offer it. When we dispose of this at the proper time I want to offer a substitute for this one though. You will probably vote it down. But I will offer it.

Mr. BINGHAM. I don't have it written out.

Chairman ZABLOCKI. If you will hold your amendment until we dispose of the amendment pending.

The gentleman from New York, Mr. Wolff, is recognized.

Mr. WOLFF. Mr. Chairman, it seems to me Mr. Gilman has a very important point. If we are just writing legislation with the idea of presenting a bill and indicating that we are trying to write into the language a condemnation of terrorism, that is one thing.

If we are really trying to make meaningful a piece of legislation; however, I think there ought to be some sanctions. If we go back to page 10, lines 5 and 6, they give the President on a security basis, a very easy out for anything that he wants to do. Therefore these amendments of limiting the sanctions to either economic or military aid are really superfluous.

We should see to it that we make it as strong as possible rather than as weak as possible so that the President can make a determination if there is any security interest involved and then he can suspend the application of the requirement.

Why should we go into the question of limiting this to military assistance? We don't give military assistance to any country that is involved with harboring terrorists today. We don't have military sales. Why should we take an action such as this, which is really a very cosmetic approach to a very serious problem?

Chairman ZABLOCKI. Mr. Lagomarsino desired the floor.

Mr. LAGOMARSINO. I just wanted to ask Mr. Bingham a question.

Mr. BINGHAM. I am withholding that.

Mr. LAGOMARSINO. Your amendment is not a substitute?

Mr. BUCHANAN. I have a substitute.

Mr. BINGHAM. No; simply clarifying——

Chairman ZABLOCKI. The gentleman from Alabama has an amendment?

SUBSTITUTE AMENDMENT TO AMENDMENT TO SECTION 5

Mr. BUCHANAN. Yes; I have a substitute amendment. Page 8, strike out line 24 and all that follows through line 2 on page 9 and

renumber the following sections, which has the effect of striking the whole mandatory aid section altogether, rather than delineating between economic and military. I would point out that if we do that you still have on page 10, line 13, section (c):

In devising initiatives to combat international terrorist actions and to reduce state support for such actions, the President shall exercise such authorities available to him, in addition to those specified in this section, as he deems appropriate.

He already has these authorities if he chooses to use them. Why not strike the whole mandatory thing rather than cut it in two? If we are not giving economic aid to many of these or any we know of, if we don't have military aid to many or any, the question may never occur. But it strikes the whole mandatory language and leaves the whole thing discretionary.

Mr. WOLFF. He can do those things now.

What do you need this bill for?

Mr. BUCHANAN. I don't think you need this bill at all.

Mr. WOLFF. I strongly feel that he needs this bill. I think we have to put into the bill some of the elements exhibiting the leadership that is expected of the Congress and hasn't been exercised until now.

Mr. BINGHAM. Where does the gentleman strike?

Mr. BUCHANAN. I am striking section 5(a)(1) and renumbering the other and that is saying the President shall not provide any assistance under the Foreign Assistance Act of 1961 other than international disaster assistance under chapter 9 of part I of that act, I am striking all of that mandatory language.

I am still saying he can't sell defense articles and he shall review the application and he shall do all the other things in the bill. But I am taking the mandatory aid cutoff out of the bill and leaving it to his discretion.

Mr. SOLARZ. Would the gentleman yield? I was under the impression that that was what the Whalen amendment offered by Mr. Pease did.

Mr. BUCHANAN. No; he leaves the cutoff of military aid mandatory. But makes the cutoff of economic aid discretionary. I am saying if you are going to follow that, follow it all the way.

Mr. GILMAN. Will the gentleman yield?

Mr. BUCHANAN. Yes.

Mr. GILMAN. Where does the President have authority to cut off—

Mr. BUCHANAN. He has it in existing law.

He can cut it off now.

Mr. GILMAN. For this purpose, for acts of terrorism?

Mr. BUCHANAN. Yes; if he sees fit.

Mr. SOLARZ. Will the gentleman yield?

Mr. GILMAN. Can we clarify that?

Mr. BUCHANAN. If somebody from the executive branch or the staff can clarify that, he has that authority, does he not?

Mr. ATWOOD. Yes; under the Foreign Assistance Act he can cut it off for national interest purposes, not just terrorism. But there are some terrorism provisions in the law as well.

Mr. GILMAN. Both military and economic aid?

Mr. ATWOOD. Anything, yes.

Mr. LAGOMARSINO. Will the gentleman yield?

Mr. BUCHANAN. I yield.

Mr. LAGOMARSINO. I thank the gentleman for yielding. I like your amendment a lot better than the amendment offered by my friend, Mr. Pease. However, I think I will also vote against your amendment. I am going to vote against both proposals because I like the bill better than either amendment. But I do believe your approach is better than that of Mr. Pease.

Mr. SOLARZ. Will the gentleman yield now? I am still trying to understand the difference between the original amendment and the substitute. As I read the original amendment it strikes out the language on line 24 on page 8 through line 2 on page 9. That means that it eliminates the mandatory application of economic aid sanctions, which is what I thought you said your amendment did.

Mr. BUCHANAN. But then it inserts language that reimposes the sanction of military aid. I am not reinserting that.

Mr. SOLARZ. I see. In other words the Pease amendment also eliminates the mandatory cutoff of military aid whereas yours—

Mr. PEASE. It retains it.

Mr. SOLARZ. What is the difference?

Mr. BUCHANAN. He retains the mandatory cutoff of military aid and military training. I just cut off the mandatory feature altogether as it pertains to aid.

Mr. SOLARZ. You would not make mandatory the cutoff of military training and military assistance either?

Mr. BUCHANAN. I don't think we are going to be dealing with anything where that is the case. I am just being consistent.

Mr. SOLARZ. So under your amendment everything is optional in terms of the cutoffs.

Mr. BUCHANAN. Everything is optional under the cutoffs.

Mr. SOLARZ. Whereas in the Pease amendment the cutoff of military aid and training is obligatory and the cutoff of economic aid is optional.

Mr. WOLFF. Would the gentleman yield?

Mr. BUCHANAN. Yes.

Mr. WOLFF. Since the President, as you have indicated, has authority and past Presidents have had authority, do you know of any President that has cut off anything on the basis of terrorism?

Mr. BUCHANAN. That is one of the many areas where I lack expertise.

Mr. WOLFF. Maybe we can get that.

Chairman ZABLOCKI. I have an instant case that I was interested in: An Oshkosh truck sale to Libya was canceled. The export license was canceled, under the already strict provisions of current law. There are others: Argentina.

The gentleman from Ohio, Mr. Pease.

Mr. PEASE. Mr. Chairman, I hope I am not being disloyal to Mr. Whalen in his absence. But I think there is a lot of merit to Mr. Buchanan's amendment in light of the discussion around the table. What I think we need to keep in mind is the need for some flexibility. As the bill is written now, if the President puts a country on the list of countries which are harboring terrorists, he has no choice but to cut off economic aid unless he can come up with a national security angle.

Chairman ZABLOCKI. Would the gentleman yield at that point? If he has to take that into consideration, he might not even put the country on the list.

Mr. PEASE. That is right. I think we are inviting the President to be hypocritical and not put a country on the list or else come up with a national security angle which does not really exist, in order to avoid cutting off economic aid to some small country, perhaps in Africa, where it is most likely to happen, and for that reason I think flexibility is important. Mr. Whalen, I think, thought it was especially important not to cut off economic aid because of the obvious implications for poor people.

But the point has been made about military aid, that countries with military assistance wouldn't harbor terrorists anyway. So I think if that is the case, removing that section altogether is probably a good move.

Chairman ZABLOCKI. Mr. Bonker. Before I recognize you Don—actually the military sales cutoff on page 9, subparagraph (2) is retained in the language: "shall not sell any defense articles." And under the Military Assistance Act Congress—

Mr. PEASE. The President has clear authority to cut off military aid under other sections. We don't need it here.

Mr. BONKER. I would like to offer an argument in favor of the Buchanan approach calling for nonmandatory provisions. I would cite an example with Egypt where much of our U.S. aid both in terms of arms sales and economic assistance could be jeopardized on the basis of criteria set forth in the bill. For example, in 1973 Egypt actually assisted Palestinian terrorists to the point of harboring those terrorists who killed our U.S. Ambassador and other Embassy officials in the Sudan. Technically Egypt would qualify under the provisions of this act for retaliation.

Mr. WOLFF. Would the gentleman yield at that point? Egypt was not giving sanctuary to those people at all. Egypt had them incarcerated and was rendering them punishment, whatever that punishment might be.

Chairman ZABLOCKI. What is the wish of the members?

That we dispose of this amendment?

Mr. FRASER. Mr. Chairman, I would prefer a somewhat different approach that I think would cover all these problems. I would like to have the waiver which now is tied to national security instead tied to the language of subparagraph (d) and I would leave economic aid sanctions in place.

Mr. BUCHANAN. Would the gentleman yield?

Mr. FRASER. yes.

Mr. BUCHANAN. That does not meet the simple concern of the administration, as I understand it, which is that they would have to first find and then waive, make it look like they don't really mean it, a slap on the wrist.

Mr. FRASER. As I understand it the finding comes when the country goes on the list and that is not affected by anything we are doing in this whole section. That list goes under section 4. We don't keep them off of the list by anything we do in section 5. Am I right about that?

Mr. BRADY. Once they go on the list the sanctions are automatic. This is what the administration objects to, the automaticity of the

sanctions, that they have to impose the sanctions once they put the country on the list and then if there are policies or other reasons for taking them off they have to make a determination.

Mr. FRASER. That goes to my point because when we say the President may suspend the application of any requirement and the requirement is sanctions—I am reading that from page 10, line 5—and instead of saying “national security” I would like to tie it into the language of subparagraph (d) which is much broader and from some points of view considerably weaker. But I think it is more realistic in relation to U.S. foreign policy interests.

So I would simply change line 9 to read that if he finds under subsection (d) the U.S. interest requires such suspension. That it seems to me deals with all kinds of problems, all the problems that are raised.

Mr. BUCHANAN. I still think you are going to put the President in a bad posture. Are you going to retain the consultation? Then he comes in and consults and then he—

Mr. FRASER. I think that is OK. Once they go on the list, that is the big problem for foreign policy.

Chairman ZABLOCKI. For purposes of parliamentary procedure, does the gentleman from Minnesota offer an amendment to the substitute amendment to the amendment?

Mr. FRASER. Whichever accomplishes the purpose.

Chairman ZABLOCKI. The Chair would find it most helpful if he understood the gentleman's amendment.

Mr. FRASER. I can tell you what the amendment is, whether or not it is in the nature of a substitute. In any event, Mr. Chairman, it would be that on page 10, line 9, strike the words “the interests of national security” and insert in lieu thereof “under subsection (d) that U.S. interests.”

Chairman ZABLOCKI. The Chair would suggest the gentleman withhold his amendment until we get to that section because it does not directly relate to the amendments before us unless the gentleman has another comment.

I think we would have to dispose of the amendments that are pending—the amendment of the gentleman from Ohio and that of the gentleman from Alabama.

Mr. BUCHANAN. I don't see what is wrong, Mr. Chairman, with disposing of my amendment as a way to remove the mandatory section. If it fails, then you have the opportunity to vote on the Pease amendment, which is a partial removal of mandatory sanctions.

If they both fail, you can move to the direction of the gentleman from Minnesota.

I would like to make one more brief appeal for my amendment. You have all the other language in this bill. The President has the authority under other law. We are addressing the subject and calling upon him to take the action that is in his power already to combat international terrorism and I think that is enough.

I urge the adoption of my amendment.

Mr. BINGHAM. Would the gentleman yield?

Mr. BUCHANAN. Yes.

Mr. BINGHAM. One question about the gentleman's amendment, why would he leave paragraph (2) at the top of page 9 in so the

mandatory prohibition of any sale of defense articles but no mandatory suspension of military assistance?

Mr. BUCHANAN. Frankly, I am doing the same thing the gentleman from Ohio, Mr. Whalen, did in that respect. I am just trying to do here what the traffic will bear. I can't imagine the President proceeding with sales. I would vote for an amendment to knock that out too.

Chairman ZABLOCKI. There are only five countries and the Congress approves these sales. So, there is no need to have them in here.

Mr. BUCHANAN. I don't think so.

VOTE ON AMENDMENT TO SECTION 5

Chairman ZABLOCKI. The gentleman from Alabama's amendment is a clearcut way of cleaning up this bill so it will be really workable. But if the members want to think about it, we could go vote and come right back.

Mr. PEASE. I am ready to vote.

Chairman ZABLOCKI. The question occurs on the amendment offered by the gentleman from Alabama, the substitute offered by the gentleman from Alabama to the amendment offered by the gentleman from Ohio, Mr. Pease.

All those in favor, signify by saying "aye."

[A chorus of "ayes."]

Chairman ZABLOCKI. Aye.

Opposed, "no."

[A chorus of "noes."]

Chairman ZABLOCKI. The Chair is in doubt. All those in favor, signify by raising their hands.

Opposed?

Nine to five. The substitute is agreed to.

All those in favor of the amendment offered by the gentleman from Ohio as amended by the substitute offered by the gentleman from Alabama, signify by saying "aye."

[A chorus of "ayes."]

Chairman ZABLOCKI. Aye.

Opposed, "no."

[A chorus of "noes."]

Chairman ZABLOCKI. The amendment carries.

We will go to vote now and come right back.

[Whereupon, a brief recess was taken.]

AD HOC STUDY FORCE

Chairman ZABLOCKI. The Chair would like to suggest that we resolve ourselves into an ad hoc study task force until we have a quorum and continue discussion of the bill. That is the only way we will finish.

The gentleman from Minnesota has a pending amendment.

DEBATE ON PROPOSED AMENDMENT

Mr. FRASER. Mr. Chairman, I don't think my amendment is significant anymore.

Chairman ZABLOCKI. I thought it was earth shaking the first time.

Mr. FRASER. It was at first.

I don't think I will bother to offer it at this point.

Chairman ZABLOCKI. The gentleman from Ohio, Mr. Pease.

Mr. PEASE. Mr. Chairman, I think the gentleman from Minnesota is correct. His proposed amendment to subsection (d) no longer means a whole lot. I think the same could be said of subsection (b), which begins on page 10, line 5.

Chairman ZABLOCKI. That subsection (a) was just deleted.

Mr. PEASE. There is nothing left of subsection (a). Well, there is too. There is the sale of defense articles. But items (3) and (4) under paragraph (A) are not really requirements. It says he shall review this and review that. It is not really mandatory. I am wondering whether we might, from a draftsmanship point of view, be better off deleting subsection (b) altogether, allowing subsection (d) to be the general escape clause for the President.

Mr. BINGHAM. Will the gentleman yield?

Mr. PEASE. I will be happy to yield.

Mr. BINGHAM. It seems to me that so long as we maintain an automatic prohibition against the sale of defense articles and services as we do at the present time that the waiver under (b) is necessary and desirable.

If we are to eliminate the prohibition of sales, I think I would agree with the gentleman that (b) would no longer be necessary. But since we do have that automatic sanction still in the bill I think (b) is—

Mr. BUCHANAN. Will the gentleman yield? Of course, the other alternative would be, as the gentleman implies, to remove the remaining automatic—

Chairman ZABLOCKI. I didn't quite understand the gentleman from New York to make that suggestion.

Mr. BINGHAM. I did not so move.

Mr. PEASE. Mr. Chairman, if that is the case, I guess my own preference would be to back off and leave (b) in because I do think that (a)(2) serves some purpose.

Chairman ZABLOCKI. It is now (a)(1).

Mr. PEASE. It is now (a)(1); yes.

Mr. WOLFF. Mr. Chairman?

Chairman ZABLOCKI. The gentleman from New York, Mr. Wolff.

AMENDMENT—NEW SUBSECTION C

Mr. WOLFF. Mr. Chairman, I have an amendment. I don't know what the procedure is now since we are acting as an ad hoc group. But I have an amendment that I think goes to the heart of the bill since we have now made certain changes in the bill at the request, I take it, of the State Department, to give them certain degrees of license that they require. My amendment singles out the one state which is an acknowledged supporter of terrorism.

On page 10, immediately after line 12, insert the following new subsection (c) and designate existing subsections (c) through (g) as subsections (d) through (h), respectively:

(c)(1) In addition to complying with any other requirements of this section which may be applicable, the President shall deny all applications for licenses under section 38 of the Arms Export Control Act for the export of defense articles or defense services to the Libyan Arab Republic, and shall prohibit all exports under the Export Administration Act of 1969 of articles, materials, or supplies, including technical data or other information, to the Libyan Arab Republic, until the President determines that Libya no longer demonstrates a pattern of support for acts of international terrorism.

(2) The requirements of this subsection may be suspended in accordance with subsection (b).

Mr. FRASER. Are we selling them material now?

Mr. WOLFF. yes.

Mr. FRASER. Military?

Mr. WOLFF. Quasi-military. We are giving training also to some Libyans, which was the subject of an Anderson article recently.

Mr. FRASER. Are we selling them anything that might come under this?

Mr. WOLFF. Yes.

Mr. BINGHAM. This would be a total embargo?

Mr. WOLFF. Yes; a total embargo.

Mr. FRASER. Arms exports?

Mr. BINGHAM. All exports.

Mr. WOLFF. Under the Export Administration Act.

Chairman ZABLOCKI. In other words it would be any export by any private company to sell trucks, Oshkosh trucks. The gentleman doesn't expect my support.

Mr. WOLFF. I would expect that the gentleman would put the whole question of terrorism ahead of his own provincial interests.

Chairman ZABLOCKI. Oshkosh is not in my district.

It is a matter of principle.

Mr. WOLFF. I might for the purposes of presenting this say that Libya's involvement has included the October 1972 massacre at the Munich Olympics, the hijackers of a Lufthansa aircraft in October 1972, the hijackers of a Japan Airlines Boeing blown up in 1973, the terrorists who attacked the TWA plane at Athens Airport in August 1973, the terrorists who attempted to shoot down an El Al plane outside of Rome, these were all accepted activities the Libyans have acknowledged responsibility for, the terrorists who commandeered a train from Czechoslovakia bound for Austria in September 1973, the hijackers of the BOAC plane, November 1974, the kidnapers of the OPEC oil ministers in December 1975, the guerrillas of the Philippines and Thailand, and the revolutionaries in Chad and Ethiopia that have been acknowledged by Mr. Khadafi as being supported by him, the Black September organization that is being supported by the Libyan Government, the Eritrean Liberation Front with financial support in their struggle.

In terms of support that countries can give to terrorists, perhaps the most abrasive and frustrating to other countries is providing refuge and asylum. Examples of Libyans providing sanctuary to terror groups include in August 1974 members of the Japanese Red Army were given asylum in Libya after holding 51 persons hostage at the U.S. Embassy in Malaysia. Carlos, the notorious terrorist, has been given Libyan refuge after the raid on the Vienna meeting of OPEC.

There is an article from the New York Times of July 1976 which goes into all of the aspects of the terrorist organizations and the acknowledgment that Libya has contributed very substantially to the forces that continue to disrupt the peace in Lebanon.

Khadaffi has allocated \$100 million to Black September and \$40 million to the El Fatah group.

Numeri blames Libya for the aborted coup in his country as well.

Therefore, I think if we are talking about a question of having an amendment or a bill that has some degree of semblance to attacking the question of terrorism, I think that there can be no question that this amendment is not only in order but should be passed, especially in view of the fact that there is a clause in it which gives the President the opportunity of withdrawing this provision at any time he wants to.

Mr. BUCHANAN. Will the gentleman yield?

Mr. WOLFF. With pleasure.

Mr. BUCHANAN. In essence, isn't the gentleman making a finding against Libya?

Mr. WOLFF. I don't think I am making that finding.

I think the world has already made that finding.

Mr. BUCHANAN. I am saying that we the Congress are making a finding—

Mr. FRASER. Would this cut off all trade?

Mr. WOLFF. It would cut off all sales to Libya.

Mr. BUCHANAN. All exports.

Mr. DERWINSKI. Can any of our Foggy Bottom people tell us the answer to Don's question? Does this mean sales or trade?

Mr. BINGHAM. My understanding is it would prohibit all exports.

Mr. BUCHANAN. It says "all exports."

Mr. DERWINSKI. All exports?

Mr. BUCHANAN. Period.

Mr. DERWINSKI. Period. In other words, agriculture exports?

Mr. BINGHAM. Any of them.

Chairman ZABLOCKI. Any. It would add to our imbalance of payments.

Mr. WOLFF. And it would add to our balance against terrorism.

Mr. DERWINSKI. Do I understand we are technically not in session anyway?

Chairman ZABLOCKI. We are not in session.

Mr. DERWINSKI. I apologize for being late. Will you forgive me if I make a brief comment. It seems to me that there are three possibilities. One is I understand Steve Solarz will be in Libya in 2 weeks and he may solve the problem.

Chairman ZABLOCKI. Under this law, would Steve be able to go there?

Mr. FRASER. Or get out?

Mr. DERWINSKI. He would be able to go there. He is not trade.

Chairman ZABLOCKI. Not an export product.

Mr. DERWINSKI. The second thing is that it seemed to me, Lester—and I don't mean to be facetious—if you are to argue this point on the floor you had better be better prepared than a Jack Anderson column in view of Anderson's fumbling of White House stories the last week or two.

But the serious point I would like to make is this: Wouldn't it be better if you slapped half an embargo on Khadaffi? If it doesn't work, follow it up 6 months later with an absolute embargo. It seems to me that the all-or-nothing-at-all approach is tough for a lot of Members who don't condone anything he does. You may wish to allow for a couple of very practical exceptions. I am just throwing that out as a thought.

Mr. WOLFF. The situation has existed for a long time now and nothing seems to help. And especially in view of the situation that has developed in the Middle East today, I think if this would be offered on its own without this bill, I think it would have merit because I think if we have as an objective of setting an example on the subject of terrorism, this is perhaps the least we can possibly do to evidence to the world that we really mean business when we talk against terrorism.

It is not as if the Libyans had committed one act. I should like to have the ear of the gentleman from Illinois. The litany of terrorist activities that have involved hundreds of people actually who have been killed as a result of the support of the Libyans is reported far beyond that which has been written in an Anderson column. I only mentioned that as an aside.

The important element here is that we have a long history of support for terrorist activities by the Libyans including, I might mention, terrorist activities that occurred in the north of Ireland that have been supported by Mr. Khadaffi.

Mr. DERWINSKI. I think everybody agrees that Khadaffi is the most, probably ranks with Amin as the most irresponsible head of state now in authority.

That is not the issue. I think the issue is can we in this bill address the very special problem the Government of Libya poses. Can we achieve the goal everybody would like to have, which is the end of Libya sheltering terrorists without having to go to the complete detail of your amendment? That is the question.

Mr. WOLFF. There is no other nation in the world that has in the form of giving sanctuary, giving support, to terrorists what Libya has done, not even Amin.

Chairman ZABLOCKI. Would the gentleman yield? The gentleman from Illinois compared Khadaffi to Idi Amin. Of course, we passed a resolution barring imports, including coffee, from Uganda. We get oil from Libya. Do you think we ought to boycott oil?

Mr. FRASER. Mr. Chairman, what is the procedure?

Are we going to informally adopt amendments?

Chairman ZABLOCKI. The ad hoc group would suggest amendments to the full committee when we meet again.

Mr. FRASER. I gather it won't be this afternoon.

Chairman ZABLOCKI. Not this afternoon. It appears that some members don't intend to come back.

Mr. FRASER. I get that impression.

Chairman ZABLOCKI. It appears the majority of members is so enthusiastic about this bill that they could care less what is in the can of worms. I might add to the gentleman from Alabama: This is the first time I would be for some population control—on worms.

Mr. BUCHANAN. Mr. Chairman, I won't even try to wiggle out of responsibility.

Mr. FASCELL. I am glad I came to this meeting.

Chairman ZABLOCKI. I would advise the gentleman from Florida we had a most entertaining afternoon. We have accomplished a great deal. We have completed section 2. Now we are on section 5.

Mr. FRASER. Mr. Chairman, Mr. Solarz had left with me a substitute for the amendment by Mr. Pease on airports. I don't know if we are going to get into that or not. If we aren't, I was going to leave.

Mr. BUCHANAN. The amendment is not before us since we are meeting informally.

Chairman ZABLOCKI. We are discussing it, trying to find some merit in it.

Mr. WOLFF. I appreciate the chairman's witty comment.

Until we have hearings on Northern Ireland, Mr. Chairman, we will never really know what Mr. Khadaffi is doing, since we have not been able to hold hearings on Northern Ireland.

Chairman ZABLOCKI. Would the gentleman suggest a show of hands so we will have something to show to the full committee—if you want to gage your support?

Mr. PRITCHARD. I have contacted the State Department on the sale of Boeing planes to Libya. Libya is now trying to make a decision whether they will buy the air bus or buy Boeing planes. In the past they have always had Boeing planes in their commercial air fleet. If they go to the air bus, then they go to the parts and go to the training, and if 2 or 3 years from now we want to make a switch back, it is very difficult to make a switch back.

You have a range of products that they buy from America. I think you have to leave some flexibility to the administration to decide which levers are best. To make a blanket prohibition, it seems to me is not going to get the result that you want.

Mr. WOLFF. If the gentleman would yield, there is an escape clause in here. The escape clause says that the requirements of this subsection may be suspended.

Mr. BUCHANAN. Would the gentleman yield? We have just removed most of the mandatory features from this bill. We are coming back with an even broader mandatory feature for one country. I share your feeling. It is as bad as you say about what Libya is doing. But you are imposing a much broader mandatory section directed against a single country than we have in the bill. You are putting the President in the position of having to waive—we import some 10 percent of our oil that we import from Libya. We sell many products to Libya.

The President would almost certainly have to waive, which puts him in a funny position to be waiving requirements against the worst bad actor around. I think it is better not to impose that burden on him in the first place.

Chairman ZABLOCKI. Mr. Bingham.

Mr. BINGHAM. Mr. Chairman, I certainly agree with the characterization of the Libyan Government that Lester has presented to us. I think it is unique among nations. I think it is worse than Uganda in this respect. I have some qualms about naming a country. But they could be overcome if this was somewhat limited and before we have any kind of a vote here, if we have an informal vote

on the amendment, I would like to informally propose an amendment to the amendment.

Chairman ZABLOCKI. The informal amendment to the informal amendment offered by the gentleman from New York is in order.

Mr. BINGHAM. To eliminate the references to exports under the Export Administration Act. In other words it is really a trade embargo, an export embargo, to eliminate those three lines after the first reference to Libyan Arab Republic.

Mr. FASCELL. In other words the language from Republic to Republic.

Mr. BUCHANAN. Yes.

Mr. BINGHAM. I don't suppose we export any defense articles. There might be some merit in putting it in. But to legislatively call for a total embargo in exports, particularly at a time when we are concerned about exports, trying to follow a sensible policy with regard to reduction of the trade deficit and the possible impact on our oil imports, this would militate against a reference to—

Mr. FRASER. Would the gentleman yield? If your amendment prevails, wouldn't the balance of this be covered under the act as it is now written?

Mr. BINGHAM. Yes.

Mr. FRASER. So we wouldn't need the amendment.

Mr. BINGHAM. There would be some virtue I think in singling out this particular government.

Mr. BUCHANAN. It seems to me if you are going to do anything about Libya you could just simply have a congressional finding that Libya does fit the description in this act. I don't know whether you want to do that or not either.

Chairman ZABLOCKI. In the report.

I am looking for some good reasons to vote for this. I don't want it to be further encumbered with amendments which make it impossible to support.

Does the gentleman from New York desire an expression of recommendation before the full committee? Would the gentleman accept the informal amendment to his informal amendment?

Mr. WOLFF. If that be the will of the committee.

Chairman ZABLOCKI. All those in favor—this is informal, you understand, it is not binding—of the informal amendment of the gentleman from New York, Mr. Bingham, say "aye."

[A chorus of "ayes."]

Chairman ZABLOCKI. Aye.

Opposed, "no."

[No response.]

Chairman ZABLOCKI. The amendment offered by the gentleman from New York as improved by the amendment of the gentleman from New York, Mr. Bingham, is now the next question.

All those in favor, signify by saying "aye."

[A chorus of "ayes."]

Chairman ZABLOCKI. Opposed, "no."

[A chorus of "noes."]

Chairman ZABLOCKI. The "ayes" appear to have it.

It doesn't make much difference.

Mr. BUCHANAN. Was that an informal ruling, Mr. Chairman?

Chairman ZABLOCKI. Are there any other provisions of the bill?

Mr. Wolff, I understand you had some to section 4. You may have better success.

Mr. WOLFF. The bill is in such shape now I don't think anything will help it. So I won't offer any.

Chairman ZABLOCKI. No, your amendment didn't cripple it that much.

Mr. PEASE. Mr. Chairman?

Chairman ZABLOCKI. Sincerely, if we really want an antiterrorism bill we had better bring one up that we can get some support for. I want to point out this bill is probably never going to be enacted in this session of Congress anyway. On the Senate side, it is going to be very difficult. There will be a filibuster, I guess.

Mr. BRADY. Somebody said there is one Senator who has a hold on the bill right now.

Mr. WOLFF. Abourezk has put a hold on the bill.

Chairman ZABLOCKI. I do think in the other body they have progressed with some type of terrorism bill. It is almost mandatory for us to take some similar action in this area. I am supportive of a bill that is practical and workable and which will accomplish in the end what we desire.

We have a problem with this bill, not only in our committee but in other sections that we fortunately don't have to deal with.

Mr. PEASE. Mr. Chairman?

Chairman ZABLOCKI. The gentleman from Ohio.

AMENDMENT TO SECTION 7

Mr. PEASE. Mr. Chairman, I have an amendment to section 7. On page 14—which I had distributed previously to members of the ad hoc committee and I have additional copies here for our other members who are present—

Chairman ZABLOCKI. Is this the section with reference to explosives?

Mr. PEASE. No; section 7: Aviation Security Assistance.

Chairman ZABLOCKI. Since this involves foreign governments, it would be under our jurisdiction.

Mr. PEASE. I have copies in case anyone needs copies.

Mr. Chairman, members of the committee, I was troubled when reading through this bill that the language on lines 6 to 11 in the bill as it came to us allowed the Secretary of Transportation, I guess, to provide for the payment of subsistence and expenses for travel within the United States for foreign nationals. And then it says "The Secretary may require a foreign government to reimburse the United States for all, part, or none of the cost of providing such technical assistance."

I can see why it would be useful from the standpoint of protecting our citizens against terrorism for us to provide technical assistance to other nations to improve their airport security. But for the life of me I can't understand why U.S. taxpayers should bear that expense.

It seems to me if another nation operates an airport, part of the normal expenses, like providing airport landing lights or paved runways, is providing adequate security as specified by international agreements.

For that reason I have offered this amendment which makes clear that while we can provide technical assistance it should be on an at-cost basis.

Chairman ZABLOCKI. The problem is it would foreclose any aid for certain countries unless they would agree to pay for it.

Mr. PEASE. Only aid relating to airport security. It would not affect any other aid.

Chairman ZABLOCKI. It is not a very large amount, is it, that would be involved in this type of technical assistance? I hate to bring it up in this type of meeting. But when Aldo Moro was kidnaped, we were unfortunately unable to provide the kind of assistance which might have been of benefit to Italy because of certain restrictions.

I am just wondering whether it is wise to put such restrictions on assistance to foreign governments for their aviation security.

Mr. FASCELL. Mr. Chairman, may I inquire?

Chairman ZABLOCKI. Yes.

Mr. FASCELL. I notice that this section applies to the Secretary of Transportation. If the mandatory nature of the gentleman's amendment were to be included, would that preclude the ongoing bilateral aid programs we now have under AID for the same purpose?

Mr. MOHRMAN. I believe Mr. Pease's amendment only applies to assistance that is provided under this section.

Mr. FASCELL. So the Secretary of Transportation couldn't do it. It would take a bilateral foreign aid agreement to do it.

Mr. MOHRMAN. To the extent that that type of assistance is authorized.

Mr. BINGHAM. Isn't this type of assistance actually given in the program?

Mr. FASCELL. I thought it was. I am trying to refresh my memory.

Mr. BRADY. I will have to check. I don't think we have any assistance under the AID program. If we do, it is probably administered by the Federal Aviation Administration.

Mr. BUCHANAN. Do we have an FAA person here, Mr. Chairman?

Mr. BRADY. Somebody from the FAA?

Mr. PEASE. Mr. Chairman, if I could seek leave, there is a bill on which I am very much involved. I may have to pick up and leave in a moment. I trust the committee will dispose of this matter in a fair—

Chairman ZABLOCKI. We will not dispose of it at all.

There is some question in my mind, Don, if your amendment would really be in order for our committee because, as was pointed out, it applies to the authority of the Secretary of Transportation. We are to deal with the sections of this bill that deal with international terrorism where the State Department is involved. Your amendment would more properly be in order under the jurisdiction of the Public Works Committee in my opinion. But I am not sure.

The gentleman from Minnesota.

SUBSTITUTE TO PEASE AMENDMENT TO SECTION 7

Mr. FRASER. Mr. Chairman, I have a substitute which Mr. Solarz left with me, which would continue the prohibition and the requirement for reimbursement but would be open for waiver if the country receives assistance under the Foreign Assistance Act.

Mr. BUCHANAN. You mean to the Pease amendment?

Mr. FRASER. Yes, which effectively would allow a waiver if the country is getting foreign assistance.

Mr. FASCELL. It seems to complicate it to me, Don.

Mr. BUCHANAN. That is getting it back to what we were trying to get out of.

Mr. FASCELL. That is right.

[The document referred to follows:]

Page 13, line 23, immediately after "Sec. 7." insert "(a)"; on page 14, line 6, strike out "The Secretary" and all that follows through "assistance." in line 11; and immediately after line 11, insert the following new subsection:

"(b)(1) Except as provided in paragraph (2), technical assistance may be provided to a foreign government under this section only if that government reimburses the United States for all of the costs of providing such assistance.

"(2) In the case of a country receiving assistance under chapter 1 of part I of the Foreign Assistance Act of 1961, the Secretary of Transportation may provide for the payment of subsistence and expenses for travel within the United States for nationals of that country who are receiving aviation security training in the United States under this section and may waive the requirement of paragraph (1) with respect to assistance provided under this section to the government of that country."

Mr. WOLFF. Mr. Chairman, I have another amendment that relates to aviation.

Mr. FASCELL. Excuse me. I don't think we ought to recommend this amendment, Mr. Chairman. As a jurisdictional problem there is the question about which law is involved. I am talking about the Pease amendment.

Mr. BUCHANAN. I would hope we wouldn't recommend it.

Chairman ZABLOCKI. No recommendation.

Mr. WOLFF. Mr. Chairman, to go back to page 10, line 17, I have a recommendation for an amendment that follows the Bonn accords on international terrorism, the Bonn air accords that were reached and agreed to by the United States, Britain, Canada, West Germany, Italy, and Japan.

On page 10, line 17, immediately before the period insert ", including the authority granted by section 1114 of the Federal Aviation Act of 1958 to suspend air services, both direct and indirect, between the United States and the state which is supporting international terrorist actions."

This does not mandate a cutoff. What it does, it supports the Bonn agreement to which we are already a signatory.

Mr. FASCELL. The exact language?

Mr. WOLFF. The exact language of the Bonn accord.

This was in the original Senate bill.

Mr. FASCELL. We don't really need it. It doesn't hurt.

Mr. WOLFF. I think it will strengthen the President's hand.

Chairman ZABLOCKI. When the committee meets we will consider it. The gentleman of course will have an opportunity to present his amendment.

Mr. WOLFF. Under the same circumstances.

Chairman ZABLOCKI. There are so few here. I don't think we should make a recommendation. I see no problem with it.

The ad hoc committee is adjourned. The full committee of the House International Relations Committee is adjourned, subject to the call of the Chair.

[Whereupon, at 4 p.m., the committee adjourned, to reconvene at the call of the Chair.]

INTERNATIONAL TERRORISM: LEGISLATIVE INITIATIVES

THURSDAY, OCTOBER 5, 1978

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, D.C.

The committee met in open markup at 11:05 a.m., in room H-238, the Capitol, Hon. Clement J. Zablocki (chairman) presiding.

Chairman ZABLOCKI. The committee will please come to order.

This meeting was called in the hope that we would have a quorum to mark up H.R. 13387. Seven members are present. A phone check indicates that 17 intend to come to the meeting—which number is two less than the quorum necessary to report out the bill.

It is quite obvious to those of us who have attended the markup meetings that we have had difficulty getting a quorum. This indicates and certainly demonstrates a lack of interest in the bill.

Therefore, the chairman can come to but one conclusion, that we won't report the bill out. At the last meeting I said that we would hold one more meeting. That is this meeting; that if a quorum did not appear, we would have no alternative but to let this bill die in committee, and I presume the Judiciary Committee will make a similar decision not to report it out.

The Chair will entertain a motion.

Mr. WOLFF. Mr. Chairman, on the question for a moment, I think it is certainly not your fault. I think it is a sad travesty that here we are engaged in all sorts of momentous decisions like building dams that aren't needed, and a lot of other things that take up the time of the Congress, and when it comes to a serious question such as this where lives are at stake, we cannot bring to the floor a bill that is so important to the international community.

Recently, when our subcommittee was in Japan, the Prime Minister said it was of extreme urgency that some international effort be made to take care of the question of terrorists. During the time you appointed me to serve at the United Nations, the same situation obtained. They have tried interminably to get a resolution before the United Nations on the question of outlawing terrorism.

Here in this body we could not get a bill out.

There are certainly very difficult questions to be answered when it comes to the question of terrorism, but it seems to me we have

not discharged our responsibility, either as a committee or as a Congress, if we do not bring out some sort of bill.

I am not in favor of the bill we have today unless it is amended in certain ways to put teeth in the bill. Merely to have palliatives will not suffice to protect the world against these people who threaten the world with anarchism and that is all it is.

If we are to have a system of international laws, we have to do something to band together with the other nations of the world in order to establish a respect for law and orderly procedures.

I only make this statement because it is really a great disappointment, after years and years of work, that we in this House cannot come together and bring a meaningful piece of legislation out that will alleviate some of the problems that are involved in terrorism.

I know there are some people to whom the question of the delineation of terrorism itself is anathema because they feel that to talk about terrorism is to deny legitimate freedom in their ability to operate, but I don't think we can associate violence with any legitimate needs.

I think this is the problem we face as a committee and as a Congress, that we are acceding to both sides of this question, people who seek to deny the rule of law to operate in the international community.

Mr. BURKE. Mr. Chairman, I would like to make a few statements, since apparently my good friend, Mr. Wolff, sometimes likes to make these political arguments. I would like to say, first of all, when the gentleman talks about those projects or dams that weren't essential, I happen to have one in my district that I think is a very essential item and the Public Works Committee had numerous hearings on all of these and it wasn't until late in the session, as Mr. Wolff knows, that the President interjected his position and there were arguments and debates on the House floor with regard to the Presidential amendment.

Let's at least get back to this. I think all of us know there is a need to provide some legislation to combat terrorism but when I hear that we should do it in quick order, such as this bill which came to us at a time when the session is almost at a conclusion, without any actual hearings, its being a bill with which we have strong disagreements, the bill put out by the Judiciary Committee, to me this becomes political legislation, poor legislation and not good legislation.

The reason you are not getting a quorum, I think most of the people feel that on a line item where we are getting ready to adjourn any legislation we put out now will be poor legislation and not really solve the problems we really have.

In my opinion, I think it is time to talk about what we need, but this type of legislation isn't something new that we need.

International terrorism has been going on to my recollection for a very, very long period of time. In fact, there was a plane hijacked over to Cuba years ago where the fellow took his son and he had asylum over in Cuba. He subsequently came back to this country and is now serving time.

So when somebody talks about how we are not doing our duty at this last minute, it may be proper to say that, but the time to do

anything in legislation is early in the session—if this is good legislation and intended to be good legislation.

I take a bit of offense at what Mr. Wolff said, even though he is a very good friend of mine and I sometimes enjoy what I call a little debating with him.

Nevertheless, I think it is wholly unfair for one of our committee members to presume that any member of this committee isn't interested in solving the problem of international terrorism. I think you have done an excellent job of trying to get the committee—I think we sat down before on line items concerning this and we know we can't get together with the Judiciary Committee. In fact, the language in the bill most of us don't even understand.

So I think when we get down to writing a good bill, have hearings and can vote out a good and proper bill, then we will have done in my opinion justice to the American people and the world at large. But certainly not following the practice of kicking the bills out for political reasons just before we recess.

Mr. PEASE. I would like to express myself to my good friend from Florida. I accept his statements on water projects upon which I am not qualified to comment. I make no comment one way or another about them.

This bill did come to us very late in the session. It was clearly unacceptable to the committee in the form in which it came. I think we have worked very hard in the last 2 weeks to try to put it in acceptable shape. It is a difficult area and there are problems remaining. I don't think we have to brand ourselves as failures just because we can't get a bill out at the last minute.

I think what the lack of a quorum really says is, not that this committee is unwilling to deal with terrorism, nor that there is not a solution to terrorism, but that the bill we have before us at this point in the game is not the right solution, or at least is not a solution that most of the members feel comfortable with.

There are many bills which die in the last few days of the session which have come back in the next session, been worked on and passed. I personally hope that this is one of them.

Chairman ZABLOCKI. Perhaps I should have clarified what I said in my opening statement about a lack of enthusiasm.

We have had difficulty in getting members to attend to form a quorum. That is because many members perceive that the executive branch and the President already have the authority to deal with terrorism, and most members feel that if this bill will not go anywhere, why should they come to this meeting when they could spend their time more productively elsewhere.

I note, further, that we are already in October with just a short while left in the session; we can come back in January. Our present efforts are not completely wasted. In the next session we can produce a new bill. I think this committee has perfected the legislation that was introduced in July to a great extent, and I think it is now understandable, or certainly readable.

Additional perfecting amendments may also be offered. It was not, I am sure, the intention of the chairman, or the members who have introduced amendments, to weaken the bill as the gentleman from New York has indicated.

I think our intention was to bring out a bill that enjoyed broader support and more general acceptance.

I am confident that if we do not act on this bill, it won't cause additional terrorism.

Next session we can begin early and make this one of our priority pieces of legislation. We will let it be known that the reason we didn't report it now, late in the session, is because we, indeed, want to report out a bill that will not only be workable, but effective, and one of which we can and will be proud.

Mr. WOLFF. Mr. Chairman.

Chairman ZABLOCKI. You don't have a Public Works project.

Mr. WOLFF. I have one in my district. I just alluded to that because of some of the high priority interests shown by individual members, and the like, and, I think, I can agree with virtually everyone who has spoken here as to the desires of the individuals to provide something meaningful.

You indicated that the President has the authority. Unfortunately for the most part Presidents haven't exercised the authority that they have and that is why there is a proliferation of the amendments to appropriations bills to which I would like to see an end, where there is legislation put on to the appropriation bill which seeks to accomplish what should be in a piece of basic legislation.

Second, I think when it comes to the question of terrorism and the high priorities we give to human rights, I think there can be no more basic human right than to be able to be free from a terrorist act and on that basis I am happy to hear the chairman say that it would be a priority item for this committee, for the next session of Congress.

Mr. PEASE. I move we adjourn.

Chairman ZABLOCKI. Without objection, the committee will stand adjourned.

[Whereupon, at 11:20 a.m., the committee was adjourned.]

APPENDIX 1

RESPONSES BY RICHARD F. LALLY TO QUESTIONS SUBMITTED BY THE SUBCOMMITTEE ON INTERNATIONAL SECURITY AND SCIENTIFIC AFFAIRS

Question. What is your view of the security standards established by the International Civil Aviation Organization (ICAO) for its 140 member states?

Answer. Annex 17 to the Convention on International Civil Aviation was adopted by ICAO in 1974 to provide international Standards and Recommended Practices for aviation security. At the time of the adoption of the Annex, the U.S. hailed it as a most significant forward step and we continue to believe that the Annex provides a sound basis for developing international aviation security programs. We would like to see the Standards strengthened, and we are working through ICAO to do this; however, it is important to realize that regardless of the quality of the Standards, the conscientiousness with which these Standards are implemented on a day by day basis is the key to any effective security program.

Question. What is the U.S., as a member of ICAO, doing to upgrade these Standards in the ICAO framework?

Answer. Annex 17 contains both Standards, which require adherence by member states, and Recommended Practices. The Secretary of Transportation, Brock Adams, in a speech to the ICAO Council on November 3, 1977, urged the upgrading of several Recommended Practices to Standards, and the adoption of several new Recommended Practices. On November 8, 1977, these U.S. recommendations were formally presented to ICAO. Subsequently, a number of our recommendations were adopted as proposed amendments to Annex 17 by the ICAO Committee on Unlawful Interference (CUI) and by the ICAO Council, and were submitted to the member states for comment in May 1978. All comments were due back to ICAO in August for review and action by the CUI. A brief summary of the amendments is enclosed.

What are the proposed changes to the ICAO Annex 17—Security? The "applicability" provisions of Annex 17, which now states that security measures should be applied "in proportion to the threat," would be changed to state that a contracting state "should determine the level of threat, keep it under constant review and apply security in conformity with the provisions of Annex 17."

Two current Standards (which are required actions) would be slightly strengthened; and, of most significance, six "Recommended Practices" (which are advisory in nature) would be elevated to Standards. These include providing for the special guarding of any aircraft that is liable to be attacked; preventing unauthorized access to aircraft; supervising movement of persons between a terminal and an aircraft; adopting measures to protect cargo and baggage; requiring frequent airport surveys; and examining articles suspected of containing explosives or incendiary devices. Finally, six new Recommended Practices would be included in the Annex. These include such measures as the development of training programs and the use of security measures for cargo aircraft.

Question. What has been the ICAO member response, individually or as an organization?

Answer. The responses of a solid majority of member states have indicated support for the most recent proposals of the ICAO Council. Many have included suggested changes in the language which appear to be intended to further strengthen the proposals. The Committee on Unlawful Interference (CUI) is tentatively scheduled to begin the review of these comments on October 26 for final recommendations to the Council.

APPENDIX 2

RESPONSES BY HON. ANTHONY QUAINTON TO QUESTIONS SUBMITTED BY THE SUBCOMMITTEE ON INTERNATIONAL SECURITY AND SCIENTIFIC AFFAIRS

Question. Could you provide for the record a brief description of all internal and external research funded by various Executive Branch departments and agencies on terrorism and managing terrorist incidents?

Answer. There follows first a list of those terrorism research projects funded by or through the Department of State, and second a compendium on research projects on terrorism and airport security funded by the Legal Enforcement Assistance Administration.

STATE DEPARTMENT FUNDING OF RESEARCH ON TERRORISM

During the years 1975-1978, the following projects were funded:

1975—Contribution of \$15,000 to a study of the Legal Aspects of international terrorism. This fairly comprehensive project was done under the auspices of the American Society of International Law. It brought together the work of 11 legal scholars and other specialists who mainly looked at the problem of terrorists' threats and societal vulnerabilities and international responses for the prevention and control of terrorism. Legal Aspects of International Terrorism (American Society of International Law, John Lawrence Hargrove and others).

1976—Contribution of \$3,300 to a conference of legal scholars and other experts who were brought together for a critique of the first draft of the study of Legal Aspects of International Terrorism. The purpose of this conference was twofold: (a) to expose the findings of the study to critical review before it was put into final form; and (b) to communicate the study's recommendations to a number of Washington officials as soon as possible.

1978—Professor Murphy of the University of Kansas Law School assisted Ambassador Isham (M/CT) in Congressional hearings on anti-terrorism legislation—Ribicoff bill—\$520.

COMPENDIUM OF LEAA COUNTERTERRORISM PROJECT SUMMARIES

I. *Research on Terrorism.*

The following projects represent research supported by LEAA to provide basic research on domestic and international terrorism for the benefit of state and local law enforcement agencies and, in many cases, by Federal agencies participating in the National Security Council/Special Coordinating Committee (NSC/SCC) to Combat Terrorism.

The first six projects listed were funded by LEAA on the recommendation of the NSC/SCC or its predecessor, the President's Working Group/Cabinet Committee to Combat Terrorism.

(a) "*Mass Destruction Crisis Management Study.*" \$100,000 Interagency Agreement (IAA) with U.S. Arms Control & Disarmament Agency. Work performed 1975-76.

The purpose of this project was to provide a preliminary assessment of operational problems facing the U.S. Government in the event of a terrorist threat to employ an agent of mass destruction. It culminated in recommendations for substantive governmental actions.

The following issues were considered: The development of a range of credible terrorist mass destruction threat scenarios that could confront the U.S. Government and the international community; the identification of major deficiencies in the then-existing management system for coping with nuclear or other mass destruction terrorist threats; and the development of a model interagency process for dealing with such threats. The study culminated in a classified report on these topics, and identified areas for further research.

(b) "*Mass Destruction Crisis Management II.*" \$75,000 Interagency Agreement with U.S. Arms Control & Disarmament Agency. Work performed 1976-77.

This project assessed the credibility of threats to use mass destruction or lower order threat agents by terrorists. It was a follow-on to research initiated in the project referenced in (a), and resulted in a classified study of threat credibility.

(c) "*Anti-Terrorism Research and Equipment Development.*" \$115,000 Interagency Agreement with U.S. Arms Control & Disarmament Agency. Work performed 1976-77.

This project developed analytical efforts to assess terrorist threat credibilities in order to provide a basis for decision-makers at various levels of government regard-

ing sophisticated terrorist threats. The study resulted in two classified reports on the range of devices available to terrorists and offered suggestions for developing government management systems to deal with terrorist threats. Discussion of Federal government policy to contain and combat international and domestic terrorism were included. An unclassified version of the report, "Facing Tomorrow's Terrorist Incident Today," was made available through LEAA's National Criminal Justice Reference Service and the Government Printing Office.

(d) "*Research on International Terrorism.*" \$182,000 Interagency Agreement with the U.S. Department of State. Work performed 1975-78.

This project represented one of the Federal Government's first major initiatives to perform basic research on international terrorism. LEAA undertook this study on the advice and recommendation of the President's Working Group/Cabinet Committee to Combat Terrorism. The purposes of this interagency agreement were: To perform basic research on international terrorism for use by Federal, state and local government officials; to convene two conferences on international terrorism, for the purpose of stimulating further research in the academic and private sector, as well as to provide a forum for the exchange of views between academic, Federal, state and local government officials; and to enable travel by Federal officials to interview individuals formerly held hostage by terrorists and government officials who managed terrorism incidents.

(e) "*Research on International Terrorism II.*" \$225,000 Interagency Agreement with the Department of State. Work performed 1978-79.

This IAA continues and expands previous efforts in understanding and responding to terrorism, and will provide problem-oriented research and practical measures regarding legal initiatives, crisis management and behavioral research concerning international terrorism. It includes four studies: Analysis of available benefits to victims of terrorism attacks; analysis of Council of Europe Convention on the Suppression of Terroristic Crimes; a conference on selected legal aspects of terrorism; and related research. With regard to crisis management, two tasks will be accomplished: case studies of 5-7 international terrorist incidents, and development of a "lessons learned" manual for use by public officials. Work will also be undertaken on the behavioral aspects of terrorism, including seminars concerning applied research, development of group profiles, and state-of-the-art surveys. Provision is also made for publication and dissemination of research under this IAA and for related travel.

(f) "*Legal Aspects of International Terrorism.*" \$30,000 Interagency Agreement with the Department of State. Work performed 1975-77.

This project analyzed selected legal problems involving international terrorism, and surveyed the laws of over 100 foreign nations concerning international terrorism. It culminated in a two-volume report on selected problems. The report will shortly be published.

(g) "*Terrorist Research and Management Staff (TRAMS).*" \$250,000 Interagency Agreement with the Federal Bureau of Investigation. Work performed 1976 to the present.

This project established a terrorist research and management staff in the FBI which initiates and correlates research and gathers data relative to negotiations and the decision-making during terrorist incidents. Additionally, TRAMS, now known as SOARS (Special Operations and Research Service), provides consultation to state and local authorities regarding terrorist negotiations, and provides training to state and local law enforcement authorities in counterterrorism and hostage negotiations.

(h) "*Disorders and Terrorism—Task Force on Disorders and Terrorism.*" \$260,445 grant to American University Institute for Advanced Studies in Justice. Work performed 1975-77.

This project resulted in development of recommended standards and goals for use by law enforcement and other agencies of government in the prevention, control, and reduction of civil disorders and acts of terrorism. These standards and goals have been disseminated widely through government, academia, and law enforcement agencies, and is available through GPO and LEAA.

(i) "*Threat Analysis in Terrorist and Criminal Activity.*" \$52,400 Interagency agreement with the Federal Bureau of Investigation. Work performed 1977 to present; and "*Psycholinguistic Analyses of Coercive Communications.*" \$20,000 IAA with Federal Bureau of Investigation. Work performed 1975-76.

These two projects developed psycholinguistic techniques applicable to the analysis of threat communications in both active and past FBI cases involving extortion, kidnapping, suicide, assassination, hostage barricade situations and terrorism. Data is evaluated to profile the perpetrator's character, predict the outcome of a case, and suggest apprehension and interrogation strategies.

(j) "*Special Seminar on Terrorism in Puerto Rico.*" \$74,457 grant to the Puerto Rico Crime Commission. Work performed 1978.

This project provided special training and assistance to the government of the Commonwealth of Puerto Rico concerning the threat of terrorism, both international and domestic. The grant was made at the special request of the Attorney General of Puerto Rico, and focused on developing an operational plan for containing and combating terrorism on Puerto Rico, if and when it should occur.

(k) "*Needs Assessment Study: Terrorism in Dade County, Fla.*" \$45,000 grant to Florida Bureau of Criminal Justice Planning and Assistance. Work Performed 1978-present.

The objective of this project is to develop an operational plan for Federal, state and local law enforcement agencies which will enable them to develop a coordinated response to the problem of Terrorism in Dade County, Fla.

(l) "*Political Terrorism and Law Enforcement Strategies.*" \$45,144 Fellowship awarded to professor Abraham Miller, Department of Political Science, University of Cincinnati. Work performed 1976-77.

This project analyzed the operational patterns of terrorist groups and strategies and tactics used by law enforcement officials in dealing with these groups. The project was international in scope, and focused primarily on hostage negotiations.

(m) "*International Narcotics Control Projects.*" \$81,100 IAA with Department of State. Work performed 1977 to present.

This project dealt primarily with international narcotics trafficking. However, one component of the project is possible development procedures for extradition of international narcotics traffickers and terrorists between the U.S. and several Latin American states.

II. Airport Security—Counter Skyjacking and Related Activities.

The following projects were devised to improve airport security at U.S. and at selected international airports. Each has application to the problem of skyjacking.

(a) "*Training of State & Local Law Enforcement and Foreign National Airport Security Personnel in Airport Security Techniques.*"

Interagency Agreements with the Federal Aviation Administration; current IAA runs through FY 78, and is for a total of \$462,000. LEAA has funded this training program since 1973. Since that time a total of \$1,100,488 has been obligated. Of this total, \$69,000 has supported the training of foreign airport security personnel.

The purpose of this training is to provide civil aviation security training to U.S. state and local law enforcement and foreign airport security personnel. A large segment of the training is devoted to counterskyjacking techniques. To date, approximately 1,500 U.S. state and local law enforcement officers, and 77 foreign nationals from other nations have participated in this training.

(b) "*International Airport Security Surveys.*" \$82,620 Interagency Agreement with the Federal Aviation Administration. Work performed 1976 to the present.

Under this project the FAA conducts security surveys at foreign international airports. The immediate purpose is to identify deficiencies and recommend improvements in an airport's security; the ultimate objective is to reduce skyjacking worldwide. Five surveys have been undertaken to date, at the following locations; Bogota, Columbia; Quito, Ecuador; Cairo, Egypt; Rabat, Morocco; and Ankara, Turkey.

(c) "*Airport Weapons/Explosives Detector System.*" \$70,000 Interagency Agreement with the Federal Aviation Administration. Work performed 1976-77 with LEAA funds; FAA is still testing system at this date.

The purpose of this project was to develop a prototype low-power X-ray device which could be used to screen checked baggage in air commerce through the use of metal and explosives detectors. The results are not yet complete. A prototype has been constructed and tested; tests show that it accurately identifies metal objects resembling weapons and explosives.

(d) "*Training Civilian Law Enforcement Officers/Dogs—Airport Security.*" \$583,344 Interagency Agreement with the Department of the Air Force. Work performed 1972 to the present.

This program has provided training for approximately 40 civilian law enforcement officers and dogs in patrol dog handling and explosives detection.

(e) "*K-9 Program.*" \$25,000 Interagency Agreement with the Department of the Army. Work performed 1972-73.

LEAA and the Army developed and tested through this project the first set of "sniffer dogs" trained to identify explosives and narcotics. LEAA's "bomb dog" program developed from this project; dog teams are now in use by law enforcement agencies and at airports in the U.S. and overseas.

(f) "*Weapons Detectors/Magnetometers.*" \$200,000 Interagency Agreement with the National Bureau of Standards. Work performed 1973-74.

This project developed standards for walk-through and handheld metal detectors for use at airports. The results are the screening devices in use at airports today.

Question. Could you describe in detail our security activities with respect to U.S. diplomatic installations?

Has this effort included better security around the perimeters of such installations, including high fences, increased numbers of security personnel, etc.?

To what extent have U.S. Government employees been trained to recognize potential problems of physical security?

Answer. The Department's Office of Security is responsible for a broad range of programs designed to combat terrorism and provide security to U.S. diplomatic facilities and personnel abroad.

To carry out its mission, the Office of Security has approximately 135 professional officers assigned abroad. These officers are responsible for physical, procedural, and personnel security, and for providing technical support services.

The Department's program includes such features as perimeter lighting; fencing; public access controls, the use of bullet resistant materials, partially armored vehicles (and fully-armored vehicles in selected instances); the temporary assignment of additional security personnel in high threat areas; walk-through metal detectors; intrusion alarms; and closed circuit television. Marine Security Guards perform their traditional role of providing internal security at diplomatic facilities. At many posts the host country has provided police protective services; where circumstances warrant, local guard services may be contracted.

Foreign Service personnel are required to attend a mandatory Terrorism Seminar at the Foreign Service Institute prior to departure on an overseas assignment. The points made in this seminar are reinforced by security briefings provided at, and tailored to, the post of assignment. Where critical situations have arisen, special teams of security officers have been dispatched from Washington to re-brief employees abroad. Slides, lectures, films, and practical exercises in defensive driving are presented.

To insure prompt response to rapidly developing situations, the Office of Security mans a 24-hour Command Center. This operation is staffed with professional security officers and intelligence analysts, and is able to provide immediate guidance to the field. It maintains a tracking and locator system to facilitate contact with security personnel, both domestically and abroad, and it has extensive communications capability with other government agencies.

Question. What further steps have been taken by the U.S. or the other parties to implement the agreement?

Answer. Representatives of the seven nations which participated in the Bonn Summit Declaration on Hijacking met in Bonn on August 1 and 2 to develop procedures for prompt and effective implementation of the Declaration. At that meeting we agreed on the basic outline of a consultative mechanism to manage response to specific hijacking incidents. We also agreed on procedures for soliciting support from additional governments for the objectives of the Bonn Declaration. Since the meeting we have undertaken, with our Bonn Summit colleagues, diplomatic demarches in virtually all the countries of the world. We have sought formal support from other governments for the Bonn Declaration, accompanied by some form of public announcement. To date, some twenty additional countries have voiced public or formal support for the Declaration. A significant number of other nations have expressed support in principle while studying the legal and political implications of affiliation.

A second meeting of experts on the Declaration took place in Ottawa on October 3 and 4. At Ottawa we further refined procedures for the consultative mechanism, evaluated the results of worldwide diplomatic demarches, reviewed monitoring procedures on recent hijacking incidents and studied a number of legal issues relating to the implementation of the Declaration. We are pleased at the cooperation which has been developed among the summit countries and the momentum which has been maintained behind the Declaration.

Question. Has the length of time for prosecution of hijackers or the return of hijacked planes been defined before suspension of air service would be invoked.

Answer. A key element of the procedures now being finalized for the post-hijacking consultative mechanism is that phase dealing with fact-finding coupled with determination of compliance or default. In that phase such factors will be weighed as whether the state of concern has established jurisdiction over the offense for purposes of prosecution or extradition, whether a request for extradition has been received, and whether passengers, cargo and aircraft have been allowed to continue their journey. Though no time frame has been established before enforcement measures are to be invoked, the decision to do so will be taken in consultation.

with the other nations supporting the Declaration and without unreasonable delay. We believe the evidence that a state does not intend to prosecute or extradite the offenders or return the aircraft should be readily discernible.

Question. Why didn't the sanctions extend to extradition of hijackers as well?
Answer. The language of the Bonn Declaration with regard to enforcement measures is as follows: "In cases where a country refuses extradition or prosecution of those who have hijacked an aircraft and/or do not return such aircraft, the heads of state and government are jointly resolved that their governments shall take immediate action to cease all flights to that country."

Clearly, failure to extradite a hijacker comes within the purview of the Declaration and will trigger enforcement measures by nations supporting the Declaration if hijackers are otherwise not prosecuted.

APPENDIX 3

STATEMENT OF HON. RICHARD J. DAVIS, ASSISTANT SECRETARY OF THE TREASURY

I very much appreciate the opportunity to appear before this Subcommittee in order to discuss the explosives tagging provisions of H.R. 13261 an "Act to Combat International Terrorism." With me today are Mr. J. Robert McBrien, my special assistant for matters involving terrorism and intelligence, and Mr. A. Atley Peterson, Special Assistant to the Director of ATF for Research and Development. Mr. Peterson, who has served as Chairman of the Advisory Committee on Explosives Tagging since 1973, will present more specific testimony on how tagging works.

If adopted, this legislation would provide Treasury with the necessary authority to require that all non-military explosives carry unique elements -- taggants -- which permit identification and detection. Identification taggants would remain intact after a bomb explodes and enable the type of explosive used to be identified and traced. Detection taggants would enable the presence of a bomb to be established before it exploded.

While we have proposed certain modifications to the provisions of H.R. 13261, the Treasury Department strongly urges the adoption of explosives tagging legislation. It would provide us with critical tools in the battle against terrorists and others who use explosives

illegally: it would help us apprehend the bomber, and it would help save lives and preserve property by preventing explosions from taking place. Our proposed changes, however, would explicitly require that taggants be safe, available and technologically acceptable before we may require them to be inserted in explosives.

Bombing is a particularly vicious and indiscriminate crime, and it is a clearly deliberate act of violence. One does not, in a moment of intense anger, grab his bomb from a closet and blow-up his spouse or neighbor. The bomber actively has to acquire the knowledge of how to make a bomb; he has to fabricate the explosive device; and he has to plant it. This is a calculated, planned and indisputably intentional process. At the same time the consequences of the bomber's action are severe: death, injury and the destruction of property. For these reasons we believe that we should do all that we legitimately can to meet this problem.

The Treasury has therefore been working in recent years to determine whether explosives taggants could be developed to assist in the investigation and prevention of bombings. A technical advisory committee, including all Federal agencies interested in explosives control and the Institute of Makers of Explosives, the Sporting Arms and Ammunition Manufacturers' Institute, the International Association of Bomb Technicians and Investigators, the American Society of Industrial Security, the Airlines Pilots Association and representatives from various universities was created in 1973. In addition, because of the importance of technical expertise in this area, Aerospace Corporation was retained in order to provide technical systems management. While Mr. Peterson's statement includes more detail on the technical status of the program; as a general matter we are ready to tag the cap-sensitive explosives -- that is, the dynamites, watergels and slurries -- for identification. If the facility for manufacturing those taggants was built, we could begin the identification tagging today. But it will not be constructed until the taggant manufacturer

knows that it will have customers, and the explosives manufacturers will become customers only by Congress passing legislation which requires that they use taggants. We believe that the production facility will be finished and producing taggants within 12 to 18 months after the law is enacted. It also appears that the availability of sufficient numbers of taggants is the only technical constraint on identification tagging of most high explosives.

If this legislation were to pass, the expected implementation date for identification tagging of other explosives is:

- Black and Smokeless Powder, June 1980
- Detonators, September 1980
- Cast boosters, September 1980
- Fuse and Detonator cord, January 1981.

Progress is also being made in the detection tagging area. Our experts believe that pilot detection tagging can begin in late 1979 for dynamites, water gels and slurries. Testing should have been completed by then since much of the applied research and advanced development are already in process.

For other detection tagging we have projected the practical readiness for national implementation as follows:

- Black and Smokeless Powder, March 1980
- High Explosives and Detonators, April 1980
- Fuse and Detonator cord, September 1981.

It is clear that the addition of identification taggants to commercial explosive materials or their boosters will better enable law enforcement authorities to trace the explosive material from a bomb scene to its last recorded owner and, hopefully, to its ultimate user. The chances of solving more

bombing crimes will be improved when identification tagging is introduced. In addition many valuable investigative hours now necessarily spent attempting to identify the last legal owner of the explosives involved can be saved.

From Treasury's perspective, the vital issue as to identification tagging is whether the crimes solved and the deterrence established will be worth the effort and costs of requiring the identification taggants. In order to assess this as objectively as possible, Management Science Associates was asked to study this question. While acknowledging the difficulty in assessing the impact of any program before it begins, the study concludes, and we believe, that the value and cost effectiveness of identification tagging is clear.

With tagging, bombers can only lose. And we believe the costs for the manufacturers, dealers and users of explosive materials will be entirely reasonable. An inflation impact study was conducted by Aerospace Corporation in March 1977. It found that the tagging program would not have a major inflationary impact.

The possible price increases in explosives as a result of tagging for identification were estimated at merely one-and-quarter cents per pound of explosive; and while research on detection tagging is still continuing, we believe it will be less. Ultimately, when identification and detection taggants are combined into one micro-unit, there should be more cost reduction.

If identification tagging is a real benefit to law enforcement, a successful detection tagging program is critical. The bomb is intrinsically a weapon of terror. Bombing is a crime that is carried out secretly and without warning. A bomb is small and lightweight. It can be hidden easily. Through a time delay mechanism or a motion-activated detonator, it can be concealed (or mailed) and then abandoned by its creator. The bomber can choose his explosive device, select his target, and plant his bomb. But once he has left it, every passerby becomes a random target as it explodes without warning.

The need, therefore, is to develop the ability to detect the presence of a bomb before it explodes. Substantial progress in developing a working capability to tag explosives so that they may be detected before exploding has recently been made. And it is this part of the tagging program from which the greatest direct benefits to the public safety can be expected. With detection taggants added to explosive materials and with detection devices placed at high target value locations, we can go beyond solving bombing crimes only after the destruction has happened and begin, through pre-detonation discovery, to prevent bombings from occurring. The MSA study suggests that the cost-benefit of this form of tagging is less certain than that for identification tagging. Its analysis makes clear, however, that if one considers just the high risk, potential targets -- airports, planes, public buildings -- then the benefits are clear. In addition, when one considers what detection tagging can do -- save life and limb -- the essentiality of going forward with this program becomes clearer.

I would now like to discuss some of the points that have been raised during hearings. Initially, it has been suggested by some industry representatives that the Federal government should buy the tagging materials and distribute them to the explosives manufacturers. There has also been a suggestion that the Government should bear the liability for any adverse results of explosive tagging.

It is the Treasury Department's belief that the Federal government should not interpose itself in the commercial chain and create an artificial and unnecessary "middleman" between the producers of taggants and their customers, the manufacturers of explosive materials. The function of Treasury's Bureau of Alcohol, Tobacco and Firearms with respect to the explosives industry should be to develop the requirements and to monitor the execution of the tagging programs. The BATF function clearly should not be that of an unnecessary, bureaucratic intruder in the marketplace. We believe either role -- that of distributor of taggants or insurer of manufacturers -- should be reserved for private enterprise where it

will be accomplished as guided by normal market forces and business management interests. Any involvement of the Federal government in this "middleman" role is unnecessary and would create an unfortunate precedent. In addition, the problem of administering a program in which the government is liable for a defective explosive caused by a taggant only, cannot be overestimated. Establishing this casual connection would be extremely difficult and accomplish little other than increased legal fees for attorneys. We sincerely hope the Subcommittee will not add any requirements of this sort to H. R. 13261.

In hearings on this issue certain groups have sought to eliminate black and smokeless powders from the coverage of the tagging program. Mr. Chairman, we believe that this attempt should be strongly resisted. The issues raised are not real; they are based on fancy, not fact. As discussed below, black and smokeless powders are used in a substantial percentage of bombings. When so used they kill; they injure; they destroy property. The failure of the Congress to include these two forms of explosives would serve as an invitation to the terrorist and the criminal to rely more and more on these unexplainably excluded powders. The entire intent of the tagging program would be undermined.

Those urging this exception have raised two principal arguments opposing the use of taggants on black and smokeless powders. First, it has been argued that we are seeking to impose tagging requirements for black and smokeless powders before it is safe and feasible to do so. That is not true.

The Senate antiterrorism bill, S. 2236, contains language to ensure that tagging will be safe to users and weapons alike and will not be imposed prematurely. That is in subsection 12(t) of S. 2236. We drafted that language for the Senate bill, and it is the amendment which we most strongly urge be adopted for H. R. 13261. We are committed to the standards set by that provision; we will adhere to them; and even if they were not in the legislation, they would still be applied. Taggants for each class of explosives should not be required until the all around safety, performance quality and environmental impact of the tagged

explosive are established through rigorous research and testing. In addition, a tagging requirement should only be imposed if the taggant itself has the requisite longevity, survivability, and uniqueness to accomplish its task. The tests conducted to date -- which have been carried out by the explosives manufacturers themselves -- have established that the identification taggants will be safe indefinitely.

It is because tagging technology and the readiness and adequacy for implementation varies according to the type of explosive, that we have recommended in all Treasury testimony that tagging legislation should include greater discretionary authority and flexibility for the Secretary in determining what explosive materials should be tagged and when. But as soon as these conditions are met for each class of explosives, it is important that we have the authority to require the inclusion of these taggants as soon as possible. Maximizing the safety of our people requires no less.

The second major aspect of this false issue regarding black and smokeless powders is the charge that Treasury is seeking to achieve gun control through ammunition control. Again, that is not true. We are well aware of the controversy the notion of gun control generates. This is not a gun control issue, and you should not allow yourselves to be deceived into believing it is.

We stated during our Senate testimony, and reaffirm today, that we are not seeking to require the introduction of taggants into small caliber, commercially produced, fixed ammunition. The contents of commercially manufactured fixed ammunition are rarely found in bombs and are generally impractical for the bomber to use.

It is not appropriate, as some have done, simply to refer to black and smokeless powders as "propellant powders." The impression conveyed by this expression is that black and smokeless powders are used only to fire bullets and that somehow they lose their character as a favorite implement of bombers and acquire innocence by being used to propel ammunition. That is not true.

The fact is that the same type of 1, 2 and 5 pound cans of black and smokeless powders used by some sportsmen and musketry enthusiasts are the sources of the second most commonly used explosive fillers in bombs. Black and smokeless powders are explosives; they blow-up.

Let us examine the facts. We have prepared brief comparison tables in order to demonstrate clearly that our information on the use of black and smokeless powders in bombs is not mere conjecture; and indeed, agrees conservatively with information developed by the FBI.

The incidence of black and smokeless powder bombs in 1977 has been monitored by BATF and the FBI separately. Since the reporting of bombing crimes on a nationwide basis is not perfect, there are some differences in their final data and the FBI reports a higher percentage of incidents involving black or smokeless powder bombings. If all reported bombings are used as a basis, including incendiary devices and the unidentified explosives, BATF reports show black powder use at 12.4 percent and smokeless at 7.4 percent -- a 19.8 percent total. FBI data reports 15.6 percent for black powder, 17.8 percent for smokeless, to equal a total of 33.4 percent of bombings.

If we calculate the percentages for reported bombings only when the explosive is identified, we find: black powder equals 18.2 percent (FBI) to 22.5 percent (BATF) and smokeless powders account for 13.5 percent (BATF) to 20.5 percent (FBI); these total to 36.0 percent (BATF) and 38.7 percent (FBI). If we exclude incendiary devices from these data and use only "explosive bombs," we have BATF reporting 31.3 percent for black powder, and 18.7 percent for smokeless powder, a total occurrence in 1977 bombings of 50 percent. The comparable FBI statistics are: 24.2 percent, 27.3 percent, and a total of 51.5 percent.

The incidence of death and injury from bombings was calculated on the basis of BATF data by MSA for the period April 1975 through July of 1977. In that study, black and smokeless powders accounted for 18.8 percent of the 388 recorded injuries. That equals 73 injuries.

Among the 78 fatalities, black and smokeless powders were responsible for 19.3 percent of the deaths, that is, for 8 deaths. BATF's latest statistics, covering January 1976 to May 1978, show that black and smokeless powders are responsible for 12 percent of the bomb deaths in that time and 20 percent of the bomb injuries.

The MSA study also examined the types of targets of bombings and the explosives used against them. Black powder accounted for, among other bombings, 27.2 percent against schools, 12.9 percent against private residences, 8.5 percent against vehicles, 6.4 percent against transportation facilities, and 10.4 percent against Federal, State and local government. Smokeless powder accounted for:

Schools	14.7%
Private Residences	10.3%
Vehicles	10.4%
Transportation Facilities	6.4%
Fed., State local govt.	13.3%

Black powder was not used against law enforcement agencies but smokeless powder was used in 12.5% of those bombings.

As these various figures show, the truth about black and smokeless powders is that they constitute a very major part of the bombing crime problem. While they certainly do not carry the explosive force of dynamite and other high explosives, they are a significant part of the bombing problem. Black and smokeless powders are found, along with other explosives, in the bomb factories of domestic terrorists and other criminals. FBI figures reflect that in 1977, 90 percent of the domestic terrorist incidents in the United States took the form of bombings. BATF investigators believe that every known terrorist group in this country has, at some time or another, used black and smokeless powders. Just recently an Associated Press story of July 13 described a case in which New York Police uncovered what was reported to be a FALN -- the Puerto Rican terrorist group -- bomb factory. Among the explosives found on the scene was black powder.

The proportionate use of black and smokeless powder in bombs is very significant. Only 400,000 pounds of black powder are commercially available to the public each year out of 600 million pounds of cap-sensitive explosives. The mathematics are simple: black powder represents only 0.067% of the total available commercial explosives, but it is used in 12 to 16 percent of the bombings. Thus, its use in crime is several hundred times greater than its proportional availability.

Smokeless powder is very similar. It represents only 0.83% of the total cap-sensitive commercial explosives available (5 million pounds out of 600 million pounds). Yet smokeless powder is used in 7.4 (BATF) to 17.8 (FBI) percent of bombing crimes. Again, its criminal use is very many times greater than its proportional availability.

Mr. Chairman, as I said above, if black and smokeless powders are not included within the taggant program, if, as in subsection 12(u) of H. R. 13283, a nearly identical bill, they are excluded from tagging, then the explosive materials used in a major proportion of current bombings will not only escape these safeguards, but the criminal-terrorist will also be provided with an obvious alternative to those explosives which can be traced or detected through taggants. We do not believe this result can be justified to the American people.

It is our view that this legislation should require the insertion of taggants in all types of cap-sensitive commercially available explosive materials which are used in crimes. The Secretary would then have the authority, applying the standards in the proposed language, to impose the specific requirement for each class of explosives within a reasonable time after the taggant for that class has been successfully tested and is available. The Secretary would exempt those classes of explosives not yet ready for tagging.

Mr. Chairman, the benefits of tagging are clear. It will not, however, provide a panacea, instantly solving the problem of explosives crime. Identification tagging will help solve some bombings, not all. Detection tagging does not mean that all bombs will immediately be detected. Together, however, they will meaningfully advance our ability to deal with the bombing problem, and may deter some from using this deadly instrument. Those would be major advances.

One thing is clear, however: the extent to which tagging will help counter bombing crimes will be largely influenced by how quickly and how many forms of explosives are tagged. It is critical, therefore, that as soon as technology allows, the requirement that a particular class of explosives be tagged should go into effect. One class of explosives is ready to be tagged now; others will be shortly. We, therefore, urge that this legislation be passed during this session. We can then minimize the delay in getting tagged explosives into the marketplace and maximize our ability to apprehend those who use bombs and to save the lives of their intended victims at the earliest possible time.

The Treasury Department deeply appreciates the attention which the Subcommittee and you, Mr. Chairman, are giving to the problems of bombings by terrorists and other criminals and the tagging of explosives to help fight this severe crime problem. We believe that all responsible Americans share a desire for all explosive materials commonly used in criminal and terrorist bombings, when operationally feasible, to be required to contain both identification and detection taggants.

We will gladly work with the Subcommittee to achieve a final version of H.R. 13261 which will accomplish our mutual goal of a workable scheme for requiring the tagging of explosive materials for identification and for detection.

That concludes my statement, Mr. Chairman; I will be happy to answer any questions the Subcommittee may have.

APPENDIX 4

STATEMENT BY CHARLES F. TURNER, ON BEHALF OF THE SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE

My name is Charles Turner. I am a Technical Advisor for the Sporting Arms and Ammunition Manufacturers' Institute, usually referred to as SAAMI. I am also a member of ATF's Advisory Committee on Explosives Tagging. SAAMI is a non-profit trade association composed of 11 producers of sporting firearms and ammunition and smokeless propellant powders. The central purpose of SAAMI is to provide a forum for the industry to consider technical matters that bear upon the safety of firearms and smokeless propellant powders.

With me today is Richard Downing, Manager of DuPont's Potomac River Works in Martinsburg, West Virginia and Price O. Gielen, SAAMI counsel.

I. INTRODUCTION

The prevention of bombings and the apprehension of criminals who use explosives or smokeless powder in acts of terrorism and destruction is supported by all law-abiding Americans. As producers of smokeless powder, SAAMI members are particularly concerned about the illegal diversion of their product from its intended use in ammunition for hunting and target shooting.

H.R. 13261, as introduced, does not include smokeless powder. Smokeless powder, as a component of ammunition, is exempt from Title XI of the Omnibus Crime Control Act of 1970. 18 U.S.C. § 845(a)(4). However, the issue of whether detection

or identification taggants should be required for smokeless powder sold in cannisters to handloaders of ammunition has been raised by testimony before and information submitted to the Subcommittee.

SAAMI will present information on the effects such a requirement would have upon the manufacture and distribution of smokeless powder. Such information will better enable the Subcommittee to consider whether there would be any benefit to law enforcement agencies sufficient to justify the attendant problems and costs.

A. Differences Between Smokeless Powder and Explosives

The significant differences between blasting explosives and smokeless powder must be recognized. The differences lie in the nature of the products, their distribution and their use.

Blasting explosives are used for their explosive qualities for blasting operations in mining, quarrying, construction and other commercial activities. In contrast, the purpose of smokeless powder is to propel projectiles from firearms.^{1/}

The significant differences in the marketing and distribution of explosives and smokeless powder are a result of their respective natures and uses. Blasting explosives are sold in

^{1/} There are many different smokeless powders. To achieve ballistic specifications tailored to propelling over 1000 different shotgun, rifle, revolver and pistol loads, the grains of smokeless powders are formed in a large number of sizes and shapes and bulk densities.

large quantities to a relatively few persons. The total market for cap-sensitive explosives is approximately 600 million pounds, while the total market for all high explosives is 3.7 billion pounds per year.

Smokeless powders are sold in bulk to commercial loaders of ammunition. Smokeless powders also are sold through a complex distribution chain in small amounts to firearms owners, to gun clubs and to police departments. These individuals, gun clubs and police departments form what is known as the handloading trade. The National Reloading Manufacturers' Association estimates there are three and one-half million handloaders. The total market for smokeless powder sold to the handloading trade is only 4-to-4.5 million pounds per year. The issue raised before the Subcommittee is whether the smokeless powder sold to the handloading trade should be subject to tagging under the proposed legislation.

Typically an individual handloader will purchase a 1/2 pound or 1 pound cannister of smokeless powder. With new or used cartridge cases, he will load his own ammunition. Handloading ammunition is less expensive than purchasing factory loaded ammunition. Handloaded ammunition can be tailored to provide the specific charge desired by the individual for hunting or target shooting.

Handloading is of great importance to the nation's sportsmen and hunters. The National Reloading Manufacturers'

Association estimates that 1.4 billion centerfire, metallic and shotshell loads and 4.2 billion rimfire cartridges were hand-loaded in 1977.

Consequently, it must be recognized that the regulation of smokeless powders is not regulation of commercial explosives. It is regulation of ammunition powder purchased by law-abiding firearms owners.

B. Adding Taggants to Smokeless Powder

With that background in mind, the issue can be placed in a better perspective. The basic differences in the nature and uses of explosives and smokeless powder appear to explain the different incidence and impacts of criminal bombings using these materials. ATF has testified before the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee that the explosives "known as dynamites, water gels and slurries" are responsible for a great majority of the deaths, injuries and property damage caused by such bombings. In contrast, ATF testified that because bombs made of smokeless and black powders, "produce a low-order explosion, loss of life, injuries, and property damage are small."^{1/} In fact, ATF statistics demonstrate that bombs made of smokeless powder cause 2.6 percent of the fatalities from bombings (based upon figures for April 1975 through July 1977). The FBI reports that all bombings in 1977 resulted in 22 fatalities.

^{1/} Testimony of A. Atley Peterson of ATF before the Subcommittee on Criminal Law and Procedures of the Senate Committee on Judiciary, September 14, 1977.

The use of smokeless powder in criminal activities should be of concern to the Subcommittee, our industry and the public. However, ATF's past testimony suggests that the benefits of tagging smokeless powder may be quite limited. The Subcommittee should carefully weigh those benefits against the problems and adverse consequences of tagging smokeless powder.

Mr. Rex Davis, while Director of ATF, testified before the House Appropriation Committee on the relative value of detection tagging and identification tagging. He stated that "the ability to detect the presence of explosives prior to detonation offers the higher degree of protection to life and property." The utility of identification tagging is limited to "the ability to trace the source of explosives."^{1/}

The addition of identification taggants to smokeless powders sold in cannisters for reloading raises the following problems:

(1) It will be at least 18-to-36 months before preliminary tests with the only identification taggant currently available will provide information as to whether taggants may cause fouling, ignition or other operational problems with firearms.

(2) Identification taggants cannot be added to smokeless powder during the normal manufacturing process without a significant proportion of powder being rendered unmarketable.

^{1/} Treasury, Postal Service, and General Government Appropriations for Fiscal Year 1978: Hearings Before the Subcommittee on the Treasury, Postal Service, and General Government Appropriations of the House Committee on Appropriations, 95th Cong., 1st Sess. 321 (1977) (statement of Rex D. Davis, Director of ATF).

(3) It is unknown whether a sufficient variety of identification taggants can be developed to match the numerous different grain size and shapes and densities of smokeless powders such that taggants will not stratify in shipping or be easily separated from the powder by those inclined to use smokeless powder for criminal purposes.

(4) The monopoly position which would effectively be granted to the producer of the identification taggants could result in exorbitant prices being charged for taggants and in serious disruption of the manufacturing of smokeless powder.

(5) The recordkeeping required of manufacturers, distributors, jobbers and retail outlets for smokeless powder alone would cause a significant increase in the price of smokeless powder. It can be conservatively estimated that recordkeeping requirements only for manufacturers, distributors and jobbers could increase the price of a 1 pound cannister of smokeless powder, currently selling for between \$6 and \$9, by \$.80. We have not been able to quantify the cost of recordkeeping for retailers, but the dealers we have consulted believe it would be significant. There would be additional costs at all levels of distribution which would significantly increase the price of smokeless powder. The additional costs to manufacturers would include the cost of taggants; of storing and inventorying taggants of all different sizes and shapes and densities; of actually physically blending taggants into the powder; and of powder rendered unmarketable by its failure to meet ballistics specifications after the addition of taggants. The additional costs to distributors,

wholesalers and retailers would include the cost of storing powder in such a manner to facilitate recordkeeping and inventorying, and time spent with ATF providing tracing information.

(6) A lot of smokeless powder will typically be distributed to 10,000 to 20,000 sportsmen for handloading. It is questionable whether such a list of ultimate users would be of any benefit to law enforcement agencies investigating the criminal misuse of smokeless powder.

Many of the serious logistic problems which would be encountered in adding identification taggants to smokeless powder would not be involved in adding detection taggants because detection taggants are not uniquely coded. The recordkeeping and storage for the uniquely coded identification tagged powders would not be necessary for detection tagged powders.

However, as Aerospace Corporation testified before the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee, the technology for an effective detection taggant is only in the very early stages of research and development. Neither the technology for detecting the taggants nor suitable substances for the taggants have been developed.

While detection taggants would not pose many of the problems of identification taggants, there are major technical and economic questions yet to be resolved. The nature of these issues can be illustrated by ATF's consideration of aromatic amines as detection taggant material. Amines can decompose into ammonia gases. Ammonia is known to produce stress cracking. A brass cartridge case exposed to ammonia vapors over a period of time could fail upon firing and possibly result in a serious injury to the shooter.

In SAAMI's view, the primary focus of any future development program should be on detection taggants. However, until further research and development programs are completed, there is no basis for legislation requiring the addition of detection taggants to smokeless powders.

SAAMI urges that H.R. 13261 be amended to specifically exclude identification tagging of smokeless powders. There are major questions as to the technical feasibility of adding identification taggants to smokeless powder. The cost of manufacture and distribution of smokeless powder with identification taggants will greatly increase the cost of this important product to sportsmen. The ability of law enforcement agencies to investigate bombing incidents and apprehend criminals will be enhanced, at best, only marginally.

II. TECHNICAL IDENTIFICATION TAGGANT RESEARCH ON BALLISTICS IMPACT

Representatives of SAAMI and its member companies met in January 1978 with Aerospace, to discuss the feasibility of adding identification taggants to smokeless powder sold in cannisters for handloading and to develop the testing program that should be conducted to determine what effects the addition of taggants to smokeless powder would have upon the technical operation of firearms. There was agreement that a great many ballistics characteristics could be influenced by the presence of taggants in smokeless powder and that the effects of taggants could vary by types of powder.

To develop a testing program which could be conducted within a reasonable period of time, it was agreed that the initial testing should be limited to those adverse effects from the presence of taggants in powder which, on the basis of the limited information now available, are judged to be the most likely to occur and to be the most deleterious to proper and safe operation of firearms. The test program, therefore, focuses on fouling of shotguns and centerfire rifles and ignition of ammunition for centerfire pistols and revolvers. From over 50 different smokeless powders available to the handloader, 9 powders were selected for evaluation in this first step test program. To evaluate the possible impact on safe operation of firearms, pressure, velocity and in-barrel-time uniformity will be measured for each test firearm.

The initial test program requires that a total of 249,000 rounds of ammunition be loaded with smokeless powder containing taggants and fired in 7 different types of firearms. Olin Corporation (Winchester-Western Division), Federal Cartridge Corporation and Remington Arms Co., Inc., have each submitted proposals to Aerospace Corporation to participate in the test program but to date have received no response. The test program will be conducted and completed in approximately 18-to-36 months after contracts with Aerospace are executed.^{1/} Both SAAMI and Aerospace recognize that the initial test program may not produce definitive results and that further testing may be required.

^{1/} A detailed explanation of the testing program is set forth in the minutes of the January 19 meeting, which is attached hereto as Exhibit A.

III. ADDING IDENTIFICATION TAGGANTS TO SMOKELESS POWDER

A. Manufacturing Process

Understanding the effects upon smokeless powder manufacturing which would result from requiring the addition of identification taggants requires some knowledge of the significant elements of the manufacturing process.

Step 1. The component materials for smokeless propellants are measured and physically mixed to give a desired composition. The components are nitrocellulose (nitrated cotton or wood fibers), solvent, nitroglycerine (used in double-base powder), stabilizers and burning rate control agents.

Step 2. The mix is granulated, with both the size and shape of the grain carefully controlled and varying by type of powder.

Step 3. The solvent is removed. (The only function of the solvent is to dissolve the nitrocellulose to facilitate mixing and granulation.)

Step 4. The material is screened to remove fine particles and particles that may have been malformed or which adhered to other particles.

Step 5. The grains are coated with ballistic control agents to ensure a proper burning rate and to act as antifouling and antiflash agents.

Step 6. The grains are dried.

Step 7. The powder is tested for ballistic characteristics. The powder is now considered a preliminary powder or blending

stock powder. Some or all of a preliminary powder may be rejected and recycled for reworking through earlier process steps to modify its ballistic characteristics.

Step 8. The powder is glazed with a graphite coating. The coating eliminates static charge build-up which presents a fire hazard due to the possibility of a spark being generated.

Step 9. The powder is subjected to quality assurance tests to ensure proper physical, chemical and ballistic properties. If specifications are not met, the powder must be reworked.

Step 10. The powder is passed through a screen to remove chips, dust and other impurities.

Step 11. The powder is blended with other powders of known characteristics to obtain a particular powder type.

Step 12. The powder is passed through a screen to remove chips, dust and other impurities.

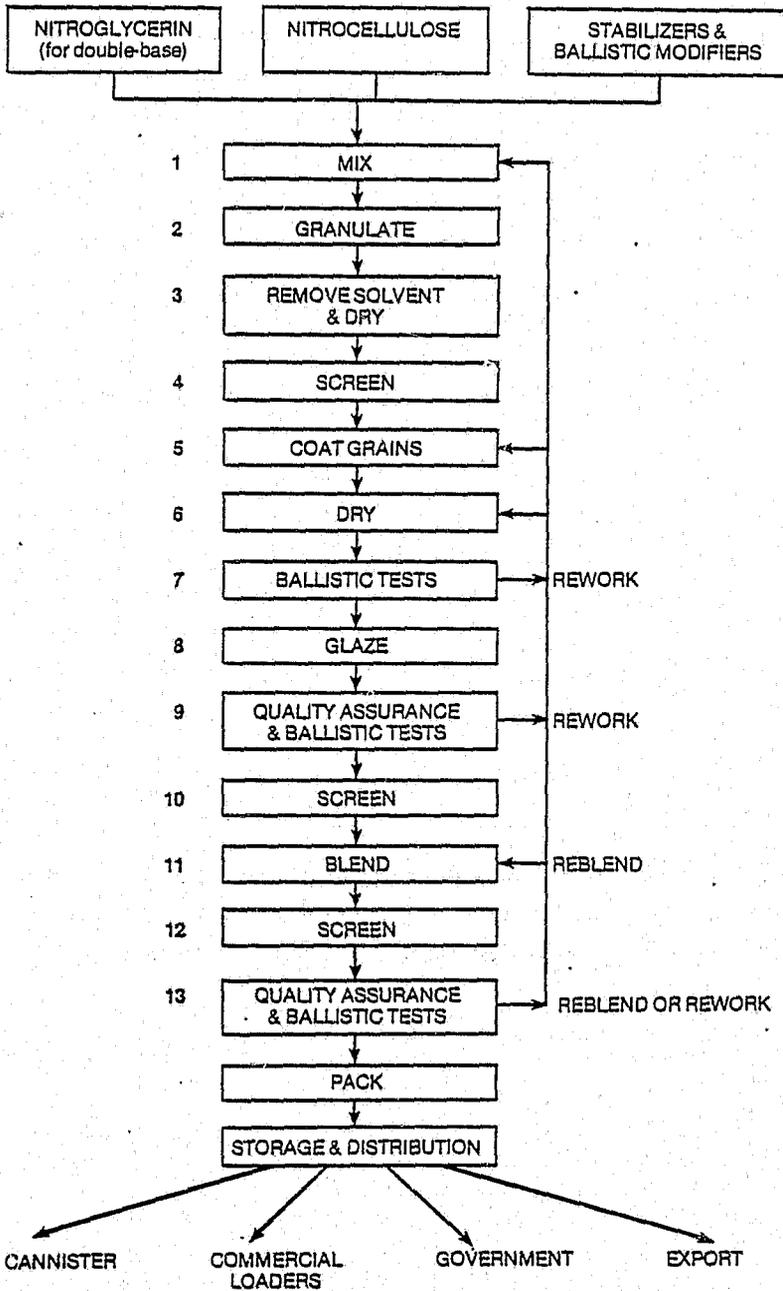
Step 13. The powder is tested to determine if quality assurance and ballistic specifications are met. If such specifications are not met, the powder must be reblended or reworked.

The schematic drawing on the following page illustrates these steps in the manufacturing process for smokeless powder.

B. Point At Which Taggants Could be Added.

For several reasons the only possible point in the normal manufacturing process for the introduction of taggants into the powder is Step 11, the blending operation. First, there would be an extreme hazard of explosion if taggants containing a metallic

SMOKELESS POWDER PROCESS STEPS



substance were introduced into the process prior to Step 6, drying. Second, all machinery through which the powder with taggants passes will be contaminated with the particular taggant. To avoid this contamination, and the resultant mix of taggants, the taggants should be added as late in the process as possible. Third, if taggants were added at an earlier point and a powder failed to meet the quality assurance or ballistic specifications tested at Step 9 of the process, it would not be possible to recycle or rework the powder. Upon recycling, the powder would be mixed with powders which were intended to receive different taggants. Fourth, the size of a lot of powder tagged with a particular taggant could best be limited if taggants were added at Step 11.

There are major manufacturing problems with adding taggants during the blending operation. The blending operation is the most crucial step in the process for meeting product performance specifications. The characteristics of smokeless powder are very carefully controlled for the purpose of allowing the handloader to achieve precisely the same ballistic results time-and-time again for like powder types purchased at different times.

1. Reblending and Reworking Powders.

Quite often a powder must be reblended to produce an acceptable final blend. In such a case reblending could result in a mixture of different taggants.

It is not feasible to plan production in such a way to ensure that a rejected powder can be reblended with a powder containing only identical taggants. Reblending will require lots with specific properties that are compatible with the characteristics of the powder to be reblended. Those lots may have been produced, blended and tagged many months earlier.

Complete or partial reworking of powder upon its failure to meet the Step 13 tests for quality assurance and ballistic characteristics is not unusual. Reworking of rejected powder from different blend lots, often a necessity, would result in a mixture of taggants. Further, reworking tagged powder through the early process steps would raise the same problems as an original addition of taggants at those steps.

If reblending and reworking of tagged powders were not possible, many thousands of pounds of tagged smokeless powder might have to be destroyed annually. The problem could be alleviated if there were a quick and efficient method for removing the taggants from the powder. However, unless this method were a secret process or device which could not be easily duplicated, terrorists also could easily remove the taggants.

Assuming a method of removing taggants during manufacturing were found, manufacturing costs and prices likely would be increased significantly. A production lot of powder typically varies between 10,000 to 20,000 lbs., and ranges from 5,000 to 50,000 lbs. This is a sizeable amount of material to handle

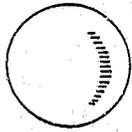
and process for any purpose.

2. Screening and Stratifying of Powders.

The necessary variation in the size and shape of smokeless powder grains results in a serious obstacle to identification tagging. Smokeless propellant powder is used to power well over 1,000 different rifle, pistol and shotgun loads. The required burning characteristics to give proper velocity to the projectile(s) and stay within specified standard pressure levels is controlled by the physical size and shape of the grain, the chemical composition and the surface coatings. Thus, grain size or shape must be precise within a particular production lot of powder, and must be precise from lot to lot for a particular powder type.

There are approximately 30 different sizes or shapes of powder grains. Powder grains may be spheres, flakes, or perforated cylinders. The spheres can vary in diameter from about one 1/100 to 3/100 of an inch. The flakes can vary in diameter from about 9/1000 to 1/10 of an inch. The thickness of flakes varies from 3/1000 to 1/10 of an inch. The cylinders are most always perforated, with one to seven perforations. The cylinder diameter ranges from 2/100 to 5/100 of an inch for powder used in small-arms, but can be one inch or more for artillery ammunition. The length is usually three or four times the diameter. Apart from shapes or sizes, there are approximately eight different specified bulk densities for powder grains. The densities range from 0.45 to 1.2 gm/cc.

POWDER GRANULE SHAPE



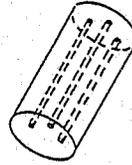
← .01"-.03" →

SPHERE



← .009"-.1" →

FLAKE



↑ .003"-.1" ↓

← .02"-.05" →

CYLINDER

For some powder types, screening of the blended powder, Step 12 of the manufacturing process, would remove any taggants not of the same size or shape as the powder. To prevent removal of taggants by screening, by vibration settling, or by pouring the powder through an airstream, the taggant must be a good match to the size and density of the powder. The total number of combinations formed by the different shapes, sizes and bulk densities would be approximately 200. To adequately match these powders could require as many as sixty to seventy different taggants.

Apart from inviting removal by a terrorist, failure to produce the necessary variety of taggants could result in the use of taggants which are not suitable to the present manufacturing process or which stratify in cannisters during shipping and storage. Stratification of taggants could allow use of powder thought to be tagged without taggants actually being in the powder placed in a particular bomb. Also, a hand loader could suffer a misfire, and possibly a blown-up firearm, by using powder with an extraordinary concentration of taggants.

3. Unknown hazards.

It is not possible at this point in time to assess other hazards or problems which may be created by the introduction of taggants into the blending and packing operations. As an example, airveying (conveying with moving air through tubing) is commonly utilized in packing powder. It simply is not known whether tag-

gant materials would create hazards, such as hot spots, when moving through this type of system.

C. Source of Taggants

1. Production of Taggants.

The only source of identification taggants is currently the 3M Company ("3M"). 3M recently testified before the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee that it would require two years lead time before it could begin production of identification taggants on a regular basis. However, when 3M provided this estimate, it had been focusing on high explosives and did not know the variety of taggants that would be necessary for smokeless powder. Because of the heterogenous nature of the grains composing high explosives, taggants added to explosives need not be any particular size, shape or density. Assuming 3M could develop taggants with the sizes and densities to match the numerous different powder grains found in particular smokeless powders, it would seem that its lead time for production would be significantly greater than recently estimated.

2. Supply of Taggants.

It should be immediately recognized that 3M would hold a monopoly position over the supply of taggants. Although no person would be legally barred from competing with 3M, the practical barriers to entry into the market would be enormous.

The presence of a monopolistic supplier of a product which the law would require smokeless powder manufacturers to

purchase and incorporate into their product creates numerous problems. Any serious disruption to the supply of taggants -- due, for example, to a strike of 3M workers -- could result in a disruption of corresponding length in the manufacture of smokeless powder. Of equal significance, the price charged for the taggants may be exorbitant. The expense of producing the taggants may be high due to the necessity of producing so many different sizes with different bulk densities. Market control by a single producer might well substantially increase that price.

IV. SMOKELESS POWDER DISTRIBUTION

A. The Market Structure

As Aerospace stated in its 1977 Annual Report, "Explosives Tagging and Control", prepared for ATF,

The smokeless powder chain is quite complex. Excluding from consideration sales to the Armed Forces or to commercial ammunition loading companies, and concentrating on smokeless powder sold in cannisters at retail for hand-loading, there is a total market of 4 to 4.5 million pounds per year. Hercules sells to 9 National distributors; Olin sells to 19 and DuPont sells to 9. The distributors sell to hundreds of jobbers and compete with each other on this level. (Aerospace Annual Report at 3-23.)

The nine master or national distributors for Hercules Incorporated sell powders to between 500 and 600 distributors and jobbers. E. I. DuPont de Nemours & Company master distributors sell powders to approximately 500 lesser distributors who, in turn, sell to over 20,000 jobbers. The retail outlets for smokeless powder are the many thousands of federally licensed dealers. The ultimate

consumer, the handloader, normally buys a 1/2 pound or 1 pound canister of powder.

As noted earlier, a production lot of smokeless powder is typically between 10,000 and 20,000 pounds, with a range of 5,000 to 50,000 pounds. A given lot of powder will normally be distributed by the manufacturer to more than one national or master distributor.^{1/} The master distributors will sell powder from a particular shipment to numerous lesser distributors and and jobbers.^{2/}

The jobber normally markets powder in small quantities to retail outlets in his local marketing area, and may ship powder in very small quantities to such outlets throughout the country. A 25 pound case of powder (containing 25 one-pound canisters) purchased by a jobber might be shipped by the jobber to 25 different dealers. The retail dealer purchases handloading powder at frequent intervals and in small quantities because of prevailing government regulations regarding shipping and storage of powder.

B. Effect on the Usefulness of Taggants

The complex structure of the smokeless powder distribution

^{1/} A typical Hercules Inc. bill of lading is attached hereto as Exhibit B and shows a sale of 33,839 pounds of 21 different products with 2000 pounds being the largest quantity of any single powder.

^{2/} Exhibits C1 through C6 are typical bills of lading for Hodgdon Powder Company, the largest distributor of smokeless powder, which repackages powder under its own brand name.

system would have a profound effect upon the usefulness of the proposed identification taggants program. Any given lot of smokeless powder sold in cannisters will typically pass through at least four levels of distribution before finally being sold throughout the United States to thousands of individuals buying 1/2 pound and 1 pound cannisters. We question whether in this situation there would be benefit to law enforcement from the presence of identification taggants in smokeless powder which a terrorist uses in a bomb.

The last recorded purchasers of a given lot of powder would frequently number close to 10,000. A given lot could be sold to 20,000 or more handloaders. These legal purchasers would most likely be spread throughout the United States. It is difficult to conceive what benefit law enforcement personnel could obtain from expending the resources necessary merely to compose a list of the 10,000 or 20,000 purchasers, much less to conduct a meaningful investigation to determine which cannister so purchased was misused. The large number of ultimate purchasers greatly enhances the possibility of harassment, intentional or not, of law-abiding dealers and handloaders.

It is particularly difficult to conceive of benefits from identification tagging in light of two elements of the factual situation surrounding past terrorist bombings; factual elements highlighted both in the February 3, 1978 Report of the Subcommittee on Criminal Laws and procedures of the Senate Judiciary Committee "Control of Explosives," and the recent testimony before that Subcommittee of Glen D. King, Executive Director of the International Association of Chiefs of Police. First, terrorists typically use

stolen explosives.^{1/} Second, terrorists often brag about the bombings for which they are responsible. The need to investigate 10,000 to 20,000 or more innocent purchasers of smokeless powder is reduced, if not eliminated, where the field of suspects is narrowed significantly by the guilty parties' own actions.

Apparently the members of the smokeless powder industry are not alone in their inability to foresee tangible benefits from the use of identification taggants. Neither ATF, Aerospace, nor the International Association of Chiefs of Police, have provided a specific explanation of the aid to law enforcement personnel from adding identification taggants to smokeless powder. In addition, the scenarios for benefit to law enforcement personnel from tagging set forth in the cost-benefit study prepared for ATF by Management Sciences Associates are totally inapplicable to smokeless powder. Quite frankly, it appears that the possibility of adding identification taggants to smokeless powder has been raised only because the idea sounds attractive when considered superficially. Its appeal is lost upon evaluation of the realities of the ballistics, manufacturing and distribution of smokeless powder.

V. RECORDKEEPING

A. Manufacturers

The burden of maintaining a recordkeeping system sufficient to allow law enforcement personnel to trace a lot of tagged powder would fall most heavily upon distributors, jobbers and re-

^{1/} Although the Subcommittee's Report and Mr. King's testimony report incidents of stolen explosives, as opposed to smokeless powder, presumably the terrorists who choose to produce bombs from smokeless powder operate in a similar manner.

tailers of smokeless powder. A manufacturer only deals with its own powder. A majority of master distributors and most jobbers and retailers purchase and sell more than one manufacturer's powder. The manufacturers have automated recordkeeping systems. A large majority of distributors and most jobbers and retailers do not.

The precise cost of recordkeeping for a particular manufacturer to allow tracing of a tagged lot of powder would depend upon the information currently placed in the manufacturer's recordkeeping system. We have estimated that the recordkeeping cost for the manufacturers would be between \$.05 and \$.10 per pound of powder.

B. Distributors and Wholesalers or Jobbers

Mr. Robert Hodgdon's testimony before the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee concerning the recordkeeping costs and other problems presented to distributors and wholesalers of smokeless powder from the proposed taggant program is attached hereto as Exhibit D.

C. Retailers

For retailers major changes and additions to records and procedures would be necessary. The taggant identification numbers on the product would have to be checked against the shipping documents. Record books would have to be organized or cross-indexed by taggant numbers and powder types, rather than simply by powder types. In turn, incoming powder would have to be inventor-

ied by both taggant numbers and powder types. Finally, powders would have to be grouped in storage by taggant number and powder type, rather than by type alone. Storage space for powders will necessarily increase because there likely will be numerous taggant numbers for each type of powder, and powders must be stored in such a way that taggant numbers are visible for inventory checking.

Upon selling powder the clerk would need to locate the proper powder type and taggant number page or section in the record book. This sequence would be repeated for each different powder type purchased and for each differently tagged cannister within a particular powder type.

The time to execute periodic record checks and inventories would be increased by the need to identify powders by taggant numbers. Each time ATF would request the names of all purchasers of powder with a particular taggant, the clerk would conduct a search of the records and provide the names and addresses of purchasers.

The retail dealers have been unable to provide an exact cost figure for recordkeeping. However, in light of the numerous additions and changes to their current procedures, the cost could be significant.

Note.—Attachments to this statement are retained in the subcommittee files.

APPENDIX 5

STATEMENT BY JOHN J. O'DONNELL, PRESIDENT, AIR LINE PILOTS ASSOCIATION

Mr. Chairman, I am Captain John J. O'Donnell, President of the Air Line Pilots Association (ALPA), which represents 50,000 professional airline pilots and flight attendants.

I am grateful for the opportunity to present our views to this committee. I am even more grateful that you are considering legislation to combat the growing scourge of international terrorism. Unfortunately, we live in a time when a few warped and dangerous individuals can place the lives of hundreds of innocent persons in jeopardy.

Terrorists are usually willing -- sometimes even eager -- to sacrifice themselves for whatever cause they subscribe to. They have no concern for their hostages, regarding them only as mere aids in achieving an objective.

The growing supply of sophisticated weapons and explosives available today to terrorists makes them even more dangerous. For example, Mr. Chairman, we know

there are small surface-to-air missiles available right now to various terrorist groups. We also know of at least two incidents in which terrorists with these missiles have been arrested near airports. It is only a question of time until someone uses such a missile to shoot down an airliner and murder the innocent persons on board.

Even more frightening is the prospect that some of the large amount of nuclear material available will find its way to a terrorist group. Sooner or later, innocent residents of a city will find themselves facing nuclear destruction not from a hostile nation but from a small band of fanatics.

Some may ask, what does terrorism have to do with commercial aviation? The answer is: quite a lot because airliners and their passengers are one of the most attractive targets for terrorists.

The reasons for this attraction include the following:

- Airlines are highly identifiable with their country. Most are government-owned, and even privately-owned airlines such as Pan American and TWA are widely considered to represent their countries.

- The place of attack can be selected from a variety of airports considering such factors as security arrangements, closeness to the destination and political stance of the government.

- Modern airliners cost up to \$50 million. Where else can something so valuable be taken so easily?

- The aircraft are relatively fragile and can be easily disabled or destroyed with a few dollars worth of easily obtainable materials.

- There will be as many as 400 passengers of different nationalities on a single flight. They make invaluable hostages.

- The hijacked aircraft provides the terrorist with a fast, reliable means of escape to almost any part of the world.

- One of the goals of terrorists is publicity. Aircraft hijackings and airport terminal attacks are proven world-wide attention-getters.

Because terrorism today is frequently international, there are some who say the United Nations is the proper body to deal with it. However, the airline pilots of the world have been struggling for more than eight years to find measures to block the terrorism that threatens us and our passengers. Many of our efforts have been in the forums of the U.N., and they have been without success.

We have been forced to conclude that the U.N. has neither the will nor the way to take effective measures against international terrorism. The only practical method, we have decided, is firm action by a few powerful nations.

The legislation you are considering, H.R. 13387, is an example of the kind of action we are talking about. We are pleased and relieved that the Congress is taking action now on the vital issue of international terrorism.

For too many years, Mr. Chairman, airline pilots have been pleading for diplomatic solutions to the problem of international hijackings, and for too many years the United States has been merely talking about it.

Meanwhile, international terrorism has continued to grow like a cancer. Because we have an effective security system in this country, we tend to overlook the fact that aircraft hijackings are still with us. There were 30 throughout the world last year, exactly twice as many as in 1976.

Airline pilots believe legislation is sorely needed to cope with the growing number of hijackings and other incidents of international terrorism. As drafted, H.R. 13387 would give the President and the Cabinet a number of tools that can be used effectively and flexibly in dealing with terrorists, countries that aid them and foreign airports that have poor security.

The House bill is similar in many ways to one that Senator Ribicoff has

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sponsored in the Senate. Four committees have already reported the Senate bill, and we expect it to be passed shortly.

Sections 4 and 5 of the House bill, which require the President to identify publicly those countries that support international terrorism and to take action against them, provide an appropriate mixture of firmness and flexibility.

There are only a few countries that, in the language of the bill, "have demonstrated a pattern of support for acts of international terrorism." Libya and Algeria are two that come quickly to mind. But even one country supporting terrorists is too many. We hope that firm action by the U.S. and other countries will cause these outlaw nations to change.

We believe that Section 6 on improving security at foreign airports will have a major impact on aircraft hijackings. Effective screening of passengers before boarding is the most important single action foreign governments could take to cut down on hijackings.

Such screening now takes place only in a few countries, such as the U.S., the United Kingdom and Israel. Security in most of the world is usually non-existent or at best ineffective.

The figures speak for themselves. Of the 25 hijackings involving foreign aircraft last year, the Federal Aviation Administration found that 21 "occurred because of weak passenger screening procedures."

Incidentally, to illustrate the scope of international terrorism, those 25 hijackings took place in 17 different countries, and the hijackers boarded the aircraft at 24 different airports.

The requirement that the Secretary of Transportation display prominently in U.S. airports the names of those foreign airports that have inadequate security will help publicize the lamentable security situation in most of the world.

U.S. airlines are already required to screen passengers boarding at foreign

airports. In some instances, our airlines have been increasing their share of passenger traffic because people prefer to fly on the airline with less chance of being hijacked. That has caused some resentment on the part of some foreign governments and airlines.

Mandatory screening of passengers would do away with that competitive edge for U.S. airlines, but it would make flying safer for all of us.

Another move that will make flying safer is the use of explosive taggants. There are two types -- identification taggants that tell investigators what kind of explosive was used after the explosion occurred, and detection taggants that enable hidden explosives to be detected before they go off.

Detection taggants will make it much easier for airlines and security officials to fight the growing threat of aircraft sabotage. Our main concern is that legislation require detection taggants. Identification taggants are helpful and should be required also, but they will not aid the victims of an explosion on an aircraft.

Detection taggants are not yet fully developed, and it could be as long as three years before they are in production. On a cautionary note, Mr. Chairman, legislation should not require use of detection taggants before effective ones that cannot easily be circumvented are developed.

We consider Sections 4, 5 and 6, dealing with nations that support terrorism, possible sanctions against them and airport security to be the heart of any anti-terrorism legislation. We strongly support them, and we urge you to act promptly so that this needed legislation may become law this year.

That is our goal. No one disputes the need for effective legislation such as H.R. 13387 to combat international terrorism. As I mentioned earlier, the Senate is expected to pass a similar bill shortly.

Frankly, we are less optimistic about the prospects for H.R. 13387 in the House. Time is slipping away rapidly. The 95th Congress will be history in a few weeks. There is much to be done before this important bill can pass the House.

of Representatives.

We commend you, Mr. Chairman, for your leadership in scheduling a subcommittee hearing and mark-up, and we expect the full committee will act promptly on this bill.

On behalf of the airline pilots and the millions who fly with us, I urge you to heed our plea and make the necessary efforts to get a bill passed in this Congress. We have been terrorist targets too long, and for too long our pleas have been ignored. Now we have a fine opportunity to obtain effective legislation. It would be tragic if all of us do not do our part in securing passage of H.R. 13387.

We announced at a meeting of the world's airline pilots earlier this year that Senator Ribicoff had introduced anti-terrorism legislation, and the pilots responded with a standing ovation. That illustrates the depths of feeling airline pilots throughout the world have on this legislation. We would like to convey their deep appreciation and thanks to you, Mr. Chairman, and the members of the subcommittee for your efforts on behalf of H.R. 13387.

We at ALPA are ready to assist you in any way we can. Thank you very much, Mr. Chairman, for the opportunity to be heard on this vital legislation.

APPENDIX 6

STATEMENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA

The Air Transport Association of America, which represents virtually all of the scheduled airlines of the United States, commends the Subcommittee for focusing on legislative changes to strengthen Federal policies and programs for combating terrorism. We are pleased to have the opportunity to submit a statement on H.R.13387, the proposed anti-terrorist legislation.

Airline security officials throughout the scheduled airline industry have dedicated their efforts over the last several years to achieving the highest possible level of security for U.S. airline operations world-wide. Most importantly, they have not been alone in striving toward that goal; they have worked side-by-side with equally dedicated security experts in our government, with the strong encouragement of the Congress and every Administration, in what has been described as one of the finest examples of government/industry cooperation in many years.

We were deeply gratified by the agreement reached at the economic summit two months ago; promising immediate action by seven of the major aviation powers of the world, to cease commercial air service to or from any country that harbors airline hijackers. We look forward to the early implementation and expansion of this dramatic accord to all civilized nations.

Scope of the Problem

While the number of hard core international terrorists is actually quite small (perhaps only a few hundred), their despicable actions, fed by instant global publicity, have seriously affected many elements of government, business and the general public. Ambassadors and military attaches, Prime Ministers and other public officials, as well as private citizens, have been slain, banks robbed, planes, ships and trains hijacked, and public, commercial and residential buildings and automobiles bombed.

Aircraft hijackings by terrorists and other criminals have received massive publicity, yet they constitute a small percentage of the problems. For instance, of the 151 hijackings of U.S. aircraft since 1968, four could be ascribed to terrorists. In the last seven years, there has been only one terrorist hijacking of a U.S. aircraft. Fortunately, and due in substantial measure to the achievements of government/industry aviation teams around the world -- with the U.S. among the acknowledged leaders -- aircraft hijackings

by international terrorists declined dramatically after the peak year of 1970. The trend was away from the formidable barriers erected by most of the world community against aviation terrorism and toward what have become relatively simpler, more easily accomplished forms of terrorism, such as bombing, incendiary attacks and armed assault.

We recognize the fact that there has been an increase in the number of foreign hijackings in the past year. And, as long as we face the dreadful experience of one aircraft sabotage, or one successful hijacking, or any other mindless act against the users and operators of civil aviation, we face the challenge of enhancing the unified effort to thwart these vicious crimes against mankind. We understand that to be the focus of the Subcommittee's deliberations.

Current Aviation Programs to Counter Terrorism

In exploring ways to meet the challenge, it is useful to consider what has been done to date. The aviation-related aspects of terrorism represent a matter of serious concern to the airline industry as well as governments. Consequently, the deterrent programs in place today were developed by the aviation industry in conjunction with governments. All U.S. carriers operate under a standard security program approved by the Federal Aviation Administration. Each year the member carriers of ATA spend more than one hundred million dollars on screening of international flights (both to and from the United States) and domestic flights. The FAA regulatory role

includes inspection of the security operations of all U.S. carriers as well as the foreign carriers flying to, from or within the U.S.

International Airport Inspection Program

This activity is supplemented by the inspection program of the Security Advisory Committee of the International Air Transport Association (IATA) whose membership includes over 100 of the world's major international airlines. IATA has developed and promulgated its own airport security standards for international airports. At the invitation of the governments involved, in-depth security surveys under IATA sponsorship have been conducted at airports throughout the world. This is an ongoing program in which ATA member carrier security experts frequently participate; indeed, Mr. Steele, Director of Security of TWA, and Mr. Sullivan, Vice President, Audits and Security of Pan American were members of a team that recently conducted a security survey at a large foreign airport.

IATA Resolution

Another significant act by the world's airlines was the passage of a resolution of IATA's Annual General Meeting held in Madrid last November, calling upon the international Civil Aviation Organization (ICAO) to amend the Chicago Convention by incorporating the Tokyo (Crimes Aboard Aircraft), Hague (Hijacking) and Montreal (Sabotage) Conventions therein and applying the provisions requiring expulsion of member

states failing to ratify the amendments so incorporated.

A further important step in building uniformity and security discipline worldwide was a June 2, 1978 message from the Director General of IATA to the presidents of all member airlines urging them to make every effort to obtain commitments from their governments to implement IATA recommended security practices, particularly the sterile concourse concept for screening passengers.

We endorse the IATA message and we are certain that, where possible, machine screening through a sterile concourse would enhance security at the world's airports.

ICAO Actions

The airline industry strongly supported the proposal by Secretary of Transportation Adams, as presented to a special meeting of the ICAO Council, urging that the highest priority be given to the October 1977 ICAO Assembly resolutions on security, that a variety of security measures formulated by ICAO be upgraded from recommended practices to worldwide standards, and that the promising program of regional aviation security seminars be increased and expanded. Our industry also wholeheartedly applauds the United Nations Resolution condemning aerial hijackings, and other acts of violence against civil aviation, and calling upon all states to improve security arrangements at airports and ratify or accede to the Tokyo, Hague and Montreal Conventions.

Carrier Screening

As can be seen, much has been done by the carriers,

by the U. S. Government, by IATA, by ICAO, and by the UN to insure recognition of the universal need for quality deterrent programs. In addition, there is increased carrier recognition that they must provide security for their flights, whether or not governments participate. Fortunately, a willingness of foreign authorities to grapple with the security problem is the general experience. However, in situations where the performance of airport authorities has appeared inadequate, our carriers, as well as those of other flags, have taken it upon themselves to provide the necessary personnel and equipment to insure safe and speedy transportation for our passengers and cargo. At times, these are individual carrier undertakings; at other times, joint efforts.

* * *

The section of H.R. 13387 that impacts most directly on airline operations and therefore is of particular interest to our industry is the proposed amendment to Section 1115 of the Federal Aviation Act of 1958 relating to security standards in foreign air transportation. Section 1115(a) would require the Secretary of Transportation to assess periodically the effectiveness of security measures at foreign airports. These assessments would be made in consultation with the appropriate aeronautic authorities of the concerned foreign government. We believe that provision should also be made for consultation with the U.S. flag carriers serving that airport since the member carriers of ATA would be

willing to provide additional security, if necessary, to remedy deficiencies in the security measures at the airport.

As mentioned previously, our carriers have taken it upon themselves to provide personnel and equipment to enhance security at some foreign airports and would be willing to extend this practice to other locations where it proves necessary. In short, we believe that a viable alternative to withholding or revoking the operating authority of any carrier to engage in foreign air transportation at an airport would be to permit the carrier or carriers to supply the manpower and equipment to get the job done.

Section 1115(d)(1) sets a six month time limit for remedial steps to be taken by a foreign government prior to publishing in the Federal Register, and posting notices at U.S. airports, the names of the foreign airports where security measures are found to be below ICAO standards. We believe that in most instances the six month period would be adequate, but there could be occasions when additional time would be required. We believe that H.R. 13387 should be amended to cover such situations, especially since interim measures by carriers may help to bridge any time-gap.

The airline industry heartily supports Section 7 which authorizes aviation security assistance to foreign governments. Expert, impartial surveys of international airports and well-conceived training programs in aviation security for foreign nationals are to the mutual advantage of all countries.

Section 8 accommodates the extension of existing security measures to charter flights. We are pleased to advise this Subcommittee that the regulation requiring screening of public charter flights became effective on July 25 and, to the best of our knowledge, no significant problems have surfaced.

Section 9 would require mandatory use of identification and detection taggants in the manufacture of explosives. The airline industry has always supported such a program and strongly endorses the proposed provision. Further, the airlines urge that an even greater emphasis and priority be given to the research and development effort for detection taggants in keeping with our primary goal of crime prevention.

Sections 10 and 11 set forth the penalties, including civil penalties, for aircraft sabotage, damage or interference with the operation of an aircraft, acts of violence against crew members or passengers, aircraft piracy, conveying threats and imparting false information concerning attempts to commit crimes such as sabotage, air piracy and damage to aircraft. The airline industry has long supported the Departments of Justice and Transportation in efforts to obtain such penalty provisions, and we therefore endorse these provisions as well.

In addition, Section 10 sets forth certain other amendments of our Criminal Code, occasioned by U.S. ratification of the Montreal (Sabotage) Convention. Having provided an

adviser to the U.S. delegation in the development of the Montreal Convention, the Association is particularly conscious of the wisdom and dedication which went into its formulation. The airline industry wholeheartedly endorses these amendments and any other steps necessary to insure full U.S. implementation of this important treaty.

A subject that is allied to crimes against aircraft, and a source of concern to airline security officers, is the carriage of loaded weapons in checked baggage.

The Civil Aviation Security Service of the Federal Aviation Administration recently amended Part 121.585 of the Federal Aviation Regulations on the carriage of weapons aboard aircraft. A copy of the amended regulation is attached, and we request that the attachment be included in the record. One of the provisions in the amended Part 121.585 is that "no certificate holder may knowingly permit any passenger to carry, nor may any passenger carry, while aboard an aircraft being operated by that certificate holder, in checked baggage, a loaded firearm."

The member carriers of the Air Transport Association strongly supported the Notice of Proposed Rule Making that led to amending Part 121.585 of the Federal Aviation Regulations. One of the reasons for this strong support is that in November 1976, an employee of Frontier Airlines was killed when a firearm discharged accidentally while checked baggage was in the process of being transported to an aircraft.

And just last month, an employee of Ozark Air Lines was wounded when a loaded handgun discharged in a passenger's checked luggage during baggage makeup handling in St. Louis.

A violation of the FAA regulation could result in a civil penalty of up to one thousand dollars. We believe that carriage of a loaded firearm in checked baggage is a criminal offense and we strongly urge that a federal law be enacted to insure that people who carry loaded firearms in baggage to be checked aboard a commercial aircraft are duly punished.

We believe this could be accomplished by inserting after the word "knowingly" in Title 18, Section 922(e) of the U.S. Code the following: "to cause to be transported aboard any common or contract carrier for movement in interstate or foreign commerce any loaded firearm or...."

Additional Suggestions

Member carriers of our association have also asked that we relay to the Committee three suggestions to enhance the efforts to combat terrorism:

(1) Continue the recent improvement in the Federal Government's collection, evaluation and dissemination of intelligence information.

(2) Seek the cooperation of the news media in order to avoid the reporting of terrorist actions in such a manner as to aid or abet terrorists during an ongoing incident or to encourage future acts of terrorism.

(3) Urge that Interpol, with its membership of more than 100 nations, give high priority to the investigation, apprehension and prosecution of criminal terrorists as well as the improvement of security at the world's airports.

* * *

We thank the Subcommittee for the opportunity to submit this statement and will be pleased to forward any additional information required.

APPENDIX 7

RESPONSES BY THE DEPARTMENT OF JUSTICE TO QUESTIONS SUBMITTED BY THE SUBCOMMITTEE ON INTERNATIONAL SECURITY AND SCIENTIFIC AFFAIRS

The following is in response to questions submitted by captioned committee following testimony by Deputy Assistant Attorney General Mary C. Lawton, Office of Legal Counsel, Department of Justice, and Section Chief Sebastian S. Mignosa, Terrorism Section, Federal Bureau of Investigation (FBI). It should be noted Question 3 is being referred to the Department of Justice for response.

1) There has been major concern about proper Federal-state coordination in handling terrorist incidents. If, for example, an airline hijacking were to occur in a given city, what would be the roles of the following agencies and authorities: the FBI? the FAA? the State Department? the Interagency Working Group on Terrorism, the Executive Committee of the Working Group, and the National Security Council? the local law enforcement authorities and appropriate airline officials?

By virtue of Title 49, Section 1472, Subsection (o), U. S. Code, the FBI of the Department of Justice has investigative jurisdiction with regard to Subsection (i) (Aircraft Piracy) of the Crime Aboard Aircraft Statute which deals with the commission or attempted commission of Aircraft Piracy which is defined as any seizure or exercise of control by force or violence or threat of force or violence or by any other form of intimidation and with wrongful intent of an aircraft within the special aircraft jurisdiction of the United States. An attempt to commit Aircraft Piracy should be within the special aircraft jurisdiction of the United States even though the aircraft is not in flight at the time of such attempt if the aircraft would have been within the special aircraft jurisdiction of the United States had the offense of Aircraft Piracy been completed.

"Special aircraft jurisdiction of the United States" includes the following aircraft while in flight - "a. civil aircraft of the United States; b. aircraft of the national defense forces of the United States; c. any other aircraft within the United States; d. any other aircraft outside the United States - (1) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or (2) having 'an offense,' as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and e. other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States; while that aircraft is in flight which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard."

On February 26, 1975, a Memorandum of Understanding between the Federal Aviation Administration (FAA) and the FBI was signed by the Director of the FBI and the Administrator of FAA outlining the authority and responsibility with regard to law enforcement activity in aircraft hijacking situations. This Memorandum, in effect, gives FAA exclusive responsibility for the direction of any law enforcement activity involving these offenses when an aircraft is in flight, that is from the moment when all external doors are closed following embarkation, until the moment when one such door is opened for disembarkation. In those instances in which FAA, after having fully considered the expressed wishes of the pilot in command, the responsible official of the airline operating the aircraft, and the FBI, determines that law enforcement action is appropriate, they shall request the FBI to advise as to the appropriate methods to be used and, after FAA approval, take the law enforcement action that is required.

When the aircraft is not in flight, that is prior to the moment when all external doors are closed after embarkation, and after the moment when one such door is opened for disembarkation, the FBI shall make the decision to take law enforcement action in these situations. The FBI shall give full consideration to the expressed wishes of the pilot in command, the responsible official of the airline operating the aircraft, and the FAA prior to initiating action. The decision of FAA shall prevail in those instances where a question arises as to whether an aircraft is in flight or is not in flight.

Since the FBI has primary jurisdiction for hijacking, the Department of State would assist in the area of international travel by representing the United States abroad in terrorist situations. Local law enforcement authorities would serve in an assistance role as required and directed by the FBI. Appropriate airline officials would provide assistance as needed during the incident to include technical data regarding the aircraft. The Interagency Working Group on Terrorism, the Executive Committee of the Working Group, and the National Security Council are advised of the occurrence of the terrorist incident and would provide assistance as needed during the incident as well as directives from the President regarding ramifications of the particular incident.

2) In the event of a nuclear threat from terrorists in a given city, what would be the role of the following: the FBI? DOE and/or NRC? the Interagency Working Group on Terrorism, the Executive Committee of the Working Group, and the National Security Council? DOD and other appropriate agencies? local law enforcement authorities?

The FBI derives its jurisdiction to investigate nuclear incidents, which are of a criminal or terrorist nature, from various criminal statutes under which the FBI has investigative jurisdiction. These statutes are primarily the Atomic Energy Act of 1954, Title 42, U. S. Code, Sections 2011-2281; and Extortion, Title 18, U. S. Code, Sections 873 and 875-877. The FBI is also the lead agency in combating terrorism within the United States and, as such, would gather intelligence information which might prevent a nuclear incident from occurring.

The Atomic Energy Act gives the FBI jurisdiction over various areas dealing with special nuclear material, by-product material, and atomic weapons. Within this jurisdiction is the control of communication; receipt and unauthorized disclosure of restricted data; and the unlawful possession, transfer, or receipt in interstate commerce of special nuclear material, by-product material, or atomic weapons. The Act also covers trespassing and photographing of Department of Energy or Nuclear Regulatory Commission installations.

The Extortion Statute deals primarily with threatening messages which contain demands for ransom or reward coupled with threats to do injury to persons or property. Nuclear extortions deal exclusively with the threatened use of nuclear material if the extortionate demands are not met. Special handling of these matters is necessitated based upon the need to establish the credibility (both technically and psychologically) of the use of this material.

In anticipation of an incident involving a nuclear device or nuclear material, or a threat to use a nuclear device, the FBI maintains comprehensive plans which permit a rapid and well-coordinated response. These plans bring preselected personnel into management and control of any incident at the earliest possible time and make full use of all necessary resources available to the Bureau. Integrated into the FBIHQ plans are the contingency plans of each field division, which include predesignation of specially-trained Agents who have been identified to the Department of Energy (DOE) and Nuclear Regulatory Commission (NRC), so as to allow them immediate access to highly classified areas or information if necessary.

To aid in coordination of the combined efforts of FBI, DOE, and Department of Defense/Explosive Ordnance Disposal (DOD/EOD) personnel in the event of a nuclear threat incident, the roles assigned to each agency are defined in a Memorandum of Understanding between the FBI and the Energy Research and Development Administration (now DOE). To amplify the existing FBI-DOE agreement and to more clearly define the role of DOD personnel, a Memorandum of Understanding between the FBI, the DOE, and the DOD is presently being drawn up.

In addition to the actions which are to be taken by participating agencies, which are set forth in the Memorandum of Understanding, the following procedures are followed to assess the credibility of the nuclear threat:

Upon receipt of the extortion communication, it is immediately furnished to DOE Headquarters which, through its scientific laboratories, provides a technical credibility assessment of the threat.

A psycholinguistic analysis of the content of the communication provides information as to whether or not the writer or writers of the communication have the technical background and behavioral traits to use a nuclear device.

Following the psycholinguistic and technical assessments, a decision is made by the FBI as to whether or not DOE's Nuclear Emergency Search Team (NEST) group should be asked to initiate search procedures to locate the nuclear device. The search is conducted utilizing sophisticated technical equipment designed to detect the presence of an improvised nuclear device through the location and identification of radioactive emissions. Once the device is located, it becomes the responsibility of DOE scientific and EOD personnel to render the device safe. The FBI is in overall command of each of these situations from their inception to their ultimate resolution.

In August, 1977, a joint FBI, DOE, and DOD exercise designed to evaluate nuclear threat incident contingency procedures was successfully conducted.

In the event of any loss or theft of nuclear weapons or materials, the FBI will institute essentially normal investigation procedures, committing whatever resources are necessary.

Therefore, in a situation of a nuclear threat from terrorists in a given city, many different Government agencies are involved to provide technical assistance and advice and other law enforcement authorities would necessarily be involved contingent upon the magnitude of the threat posed by the terrorists. Both the National Security Council and the Interagency Working Group on Terrorism would be advised regarding the events as they occur for their assessment of the situation and its ramifications. The contingency plans for each FBI field office provide for liaison with and assistance of other Government agencies and law enforcement authorities for terrorist incidents.

4) A recent Politics Today article has made mention of a secret CIA memorandum that predicts that the United States will experience major terrorist attacks beginning within the next 18 months. The article also states that because of domestic security investigations guidelines, the FBI is presently unable to collect meaningful intelligence on terrorist groups to prevent terrorist incidents from occurring. Would you care to comment on this report and its validity? Have the guidelines hamstrung the FBI in this effort? How have the recent personnel cutbacks in the FBI affected the antiterrorist effort?

It would not be appropriate, nor is it within the purview of the FBI to comment concerning the validity of a memorandum which emanated from the Central Intelligence Agency (CIA). Analysis of a CIA memorandum may be obtained by addressing the issue to CIA.

Terrorism in the United States, while not as rampant or violent as in other parts of the world, continues to exist and poses a real threat to security of this Nation.

Stephan T. Possony, Ph.D.; University of Vienna; Professor, International Policies, Georgetown University; Senior Fellow, Hoover Institute on War, Revolution, and Peace; member of the American Council on World Freedom, presents the position in his book, International Terrorism - The Communist Connection, 1978, that although the United States has been free of international terrorism as evidenced recently by factions of the Japanese Red Army, Baader Meinhof Gang, Red Army Faction

of Europe, and Italian Red Brigade, this immunity to terrorism will not continue because of the ease of entry into the United States and the fact that the political problems in San Juan, Puerto Rico, and Canada, as well as overtures to establish diplomatic relations with Cuba, will cause terrorist activity to increase.

Commander James Francis Nevill, Commanding Officer of the Antiterrorism Squad, New Scotland Yard, recently toured the United States as a guest lecturer on terrorism and states that he sees an analogous terrorist situation in the United States as existed in London, England. At the time the Irish Republic Army chose London as their target, minimal resources were being allocated to terrorism and the collection of information regarding individuals and/or groups advocating violence. Thus, New Scotland Yard had to respond in a reactive manner to combat terrorist activity. The United States is vulnerable to terrorist activity because of the ease of entry into the Country and the apparent ease by which false identification, weapons, and explosives may be obtained.

On September 21, 1978, Palestine guerrilla groups announced in Damascus, Syria, that in response to the Camp David Summit peace initiative, attacks will be made by Palestine guerrillas on the United States and other Western countries, citing the fact that the base of operations for these attacks will be moved and targeted against the United States.

Therefore, due to the mobility, access to false identification, availability of weapons and explosive material, and the funding of terrorist groups, it is apparent that no country will be immune from the specter of terrorist activity.

The Attorney General Guidelines for Domestic Security Investigations are not known to have had any adverse effect on the FBI's efforts or ability to deal with terrorist activities. The investigations of those individuals and organizations undertaken in accordance with the Guidelines are a necessary part of the FBI's response to potential terrorist acts and have as their purpose the identification of the problem before it, in fact, possibly results in terrorist activity.

Domestic security investigations have been responsible for the development of information concerning the involvement of individuals or groups in criminal actions leading to eventual prosecutive action. As an example, on September 22, 1977, Allan H. Randall, a successful labor attorney in San Juan, Puerto Rico, was shot to death. The same date, a communique was located stating Randall was guilty of crimes against the Puerto Rican labor movement. Discovered on the communique were latent fingerprints. Based on the FBI's prior domestic security investigation of a domestic terrorist group, the identities of a number of individuals considered likely bombing suspects were compiled. Comparison of the latents located on the above communique with the fingerprints of these individuals determined that they belonged to Miguel Angel Cabrera Figueroa, an organizer for the Brotherhood of Teamsters Labor Union in Puerto Rico.

The President's Fiscal Year (FY) 1979 Budget Submission to Congress for the Domestic Security and Terrorism Program requested 283 positions, 276 work-years, and \$9,869,000. The budget authorized by Congress for the Domestic Security and Terrorism Program consists of 375 positions, 365 work-years, and \$11,422,000.

This will allow the FBI to remain the principal United States Government agency responding to terrorist actions since approximately 99 percent of all terrorist activities fall within the investigative responsibility of the FBI.

5) Section 9 of H.R.13387 calls for the incorporation of identification and detection taggants into various explosives and regulates the sale, manufacture, transportation, receipt, distribution, import, and resale of explosives in order to provide that such explosives contain such taggants. Do these taggants, particularly with respect to black and smokeless powders, contribute significantly to the apprehension of terrorists who use such powders in bombings? In general, how would such a provision for all explosives make identification of suspects much less difficult? Do you regard taggants as an extremely useful tool in law enforcement?

Black and smokeless powders are frequently used as the explosive charge in improvised explosive devices or homemade bombs. Based on information reported to the FBI, these two products were the explosive charge in 1,386 improvised explosive devices during the two and one-half years ending in June, 1978. Therefore, the FBI favors tagging black and smokeless powders along with all other explosives when technology permits.

Placing taggants in explosives to permit post blast identification of the explosive and the obtaining of certain tracing data will be of assistance to law enforcement. However, it is not possible for anyone to estimate the value of a tagging program in terms of increased apprehensions or decreased bombing incidents attributable solely to the tagging program.

3) A difficult jurisdictional problem would seem to arise in terrorist incidents which originate abroad but terminate in the U.S. Under the Montreal Convention a number of actions are required of the U.S. to fulfill its obligations as a signatory including establishing jurisdiction over a number of offenses when committed in the U.S. or involving U.S. property.

--In a case such as this, what would be the appropriate roles of the following:

- the Justice Department?
- the State Department?
- any other authorities or agencies?

As to terrorist incidents which originate abroad but terminate in the United States, or which occur outside the United States, the Department of Justice through the Federal Bureau of Investigation would usually advise the Department of State that the terrorist is within its custody. The Department of State upon receipt of information that the terrorist is in custody within this country would then advise the foreign country or countries whose citizens may have been in any way involved in the terrorist incident or whose interests may have been affected by such a terrorist incident or in whose jurisdiction such a terrorist incident occurred or was continued. The above-mentioned foreign country or countries may request that the Department of State extradite the terrorist. In such an instance, the Department of State should coordinate any request for extradition with the Department of Justice. The

latter could recommend that the Department of State approve the request for extradition of the terrorist by the interested foreign country and the Department of Justice upon receiving notice of such approval would instruct the United States Attorney having venue over the terrorist to seek the issuance of a warrant of extradition. If, however, the Department of Justice determines that prosecution of the terrorist would be appropriate under the circumstances, the Department of Justice would instruct the United States Attorney having venue over the terrorist to initiate prosecution proceedings and inform the Department of State of the action taken. Upon receipt of such information, the Department of State should relay this information to the foreign country or countries concerned. Also, if one of the states has concurrent jurisdiction over an offense arising out of a terrorist incident, it may be appropriate for the Department of Justice to contact the state authorities concerned and endeavor to obtain the agreement of the state authorities to accede to extradition or federal prosecution as may be appropriate under the circumstances.

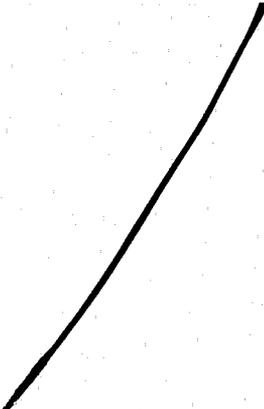
In addition to the above, the appropriate roles of other agencies in response to the terrorist incidents mentioned above are as follows:

(a) The Federal Aviation Administration should be notified by the Department of State so that it may determine what impact, if any, such a terrorist incident would have on the security of American carrier aircraft and, if so, the FAA should initiate appropriate measures to prevent similar recurring incidents from affecting the security and operations of American aircraft.

(b) The Immigration and Naturalization Service should be informed of the terrorist incident so that it may take action to determine whether or not the terrorist is a citizen of the United States, or if the terrorist is in fact a citizen of the foreign country which he purports to be a citizen of or another foreign country.

(c) The United States Customs Service should be notified so that it may examine the possessions of the terrorist for the purpose of determining whether or not Customs laws or regulations were violated.

Of course depending upon the circumstances leading up to and surrounding terrorist incidents, other agencies such as the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms or the Department of Agriculture could also have roles to fulfill with reference to terrorist activities which may fall within the cognizance of those agencies.



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