THE ANTITERRORISM AND FOREIGN MERCENARY ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON SECURITY AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2255

A BILL TO AMEND TITLE 18, UNITED STATES CODE, TO ESTABLISH CRIMINAL PENALTIES FOR PROVIDING SERVICES OR INFORMATION UNDER CERTAIN CIRCUMSTANCES TO THE GOVERNMENT OF LIBYA OR ITS AGENTS AND CERTAIN TERRORIST GROUPS AND FOREIGN GOVERNMENTS TO BE NAMED BY THE PRESIDENT, AND FOR OTHER PURPOSES

SEPTEMBER 23, 1982

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THE ANTITERRORISM AND FOREIGN MERCENARY ACT

THURSDAY, SEPTEMBER 23, 1982

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:55 p.m., in room 4232, Dirksen Senate Office Building, Senator Jeremiah Denton (chairman of the subcommittee) presiding.

Staff present: Joel S. Lisker, chief counsel and staff director; Bert W. Milling, Jr., counsel; Fran Wermuth, chief clerk; and Sam Francis of Senator East's staff.

Senator DENTON. This meeting of the subcommittee will come to order.

I want to welcome my distinguished colleague from New Hampshire, Senator Gordon Humphrey, and Congressman Matthew J. Rinaldo, Republican of New Jersey. Senator Humphrey introduced S. 2255 [1] in the Senate and Congressman Rinaldo introduced a companion measure in the House.

I also welcome witnesses Mark Richard, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice; Jeffrey Smith, Assistant Legal Advisor, U.S. Department of State; and Jack Maury, president, Association of Former Intelligence Officers [AFIO], who is accompanied by John Warner, legal counsel for AFIO.

Congressman Rinaldo has requested that he be allowed to testify first since he has a vote pending in the House. We have one, too, but it is being delayed.

In deference to you, Congressman Rinaldo, I will withhold my opening statement until after you do yours. I want to mention that Senator Humphrey is also deferring to you in that respect, sir.

STATEMENT OF HON. MATTHEW J. RINALDO, A U.S. REPRESENTATIVE FROM THE STATE OF NEW JERSEY

Mr. RINALDO. Thank you very much, Senator Denton. I appreciate the invitation to testify before the Subcommittee on Security and Terrorism on legislation to control the mercenary activities of American citizens on behalf of foreign powers and terrorist groups that are hostile to the United States.

[1] The complete text of S. 2255 appears in the appendix.

I also appreciate the courtesy extended to me by Senator Humphrey. I know he was going to testify ahead of me. I am certainly very grateful for this opportunity to get back and not miss any votes.

I furnished the subcommittee with a full statement for the record. I would request that it be included in the record in its entirety. In the interest of time, I will summarize here the key points of what I consider to be an extremely difficult piece of legislation to draft.

Senator DENTON. Without objection, your prepared statement will be inserted.

Mr. RINALDO. Last November, I was amazed to read accounts of Americans providing vital weapons and logistics support and services to Colonel Qadhafi. The actions of our countrymen, many of which were subsequently confirmed by the State Department, include flying and maintaining aircraft of the Libyan Air Force; training Libyans and Palestinian terrorists; and, under the direction of former CIA agent Edwin Wilson, constructing at least one so-called clean room. That is a laboratory that can be used for the assembly of both conventional and nuclear weapons. In addition, it appears that dozens of former Green Berets have sold their martial skills in other countries in Africa, South America, and the Middle East. Some allegedly worked for Somoza as assassins.

In my judgment, the problem is not an isolated one but presents a serious danger to the national security and to world peace. It requires early action by the Congress.

Certainly we understand that we are in the waning days of this session. But, if not in this session, at least in the next session—and I want to commend you, Senator, for at least initiating these hearings and paving the way toward a solution of this extremely difficult problem.

Since the breakup of the European colonial empires after 1945, the number of sovereign states has multiplied several times. There are now more than 150 members, as you know, of the United Nations. Many of these states are weak economically and unstable politically. But most of them are capable of using force against their neighbors. In addition to these states, we must contend with dozens of extranational terrorist groups: for example, the PLO, the Red Brigade of Italy, and many other groups that I could mention.

Many of these states as well as the terrorist groups themselves require outside help to attain a measure of power. They need weapons. They need the expertise to utilize the complex hardware. To find this expertise, some have naturally turned to technologically advanced nations like the Soviet Union or to citizens of the United States.

At the time of the disclosures of American mercenary activities in Libya, I asked the Justice Department which of these activities, if any, were beyond the reach of our criminal laws. In response to my initial inquiry, I received a letter dated February 16, 1982, which I have attached. I will not read it now. I have attached it to my formal statement for insertion in the record.

The letter notes that several activities do not appear to be illegal. These include recruiting Americans to travel abroad to train terrorists, serving as an adviser to the armed forces of a foreign

power, providing equipment and personnel to the armed forces of a foreign power.

It seems clear that the Justice Department sees the need for legislation. So do other experts. Last year, President Carter's Assistant Attorney General in charge of the Criminal Division, Philip Heymann, stated:

> The notion that there is no control over an American intelligence official taking his know-how and selling it to the highest bidder seems to be insane. If terrorism is to be taken as a major national problem, we'll have to start at home and draft statutes that would bar the sale of fancy American equipment and American expertise for terrorist purposes.

There are gaps in the criminal laws which should be closed as soon as possible. For that reason, late last year I introduced a proposed solution, something that I think could be the focal point of discussions at this committee and in the House, H.R. 5211, the Antiterrorist and Foreign Mercenary Act. Very briefly, the bill would make it unlawful for an American, on behalf of a foreign state, faction, or international terrorist group named by the President in a proclamation, to serve in its armed forces or intelligence agency; provide training to persons so serving; provide any logistical, maintenance or similar support; conduct any research, manufacturing or construction project directly related to its military functions; or recruit any other person to do any of the above.

I might say that we have discovered some areas where the bill could be improved. I would appreciate the opportunity to submit in a later statement some of those areas.

The proclamation could be issued only when the President finds that military support activities on behalf of a particular foreign state, faction, or international terrorist group are or would be detrimental to our national security

I might add that, finally, my legislation would not apply to any friendly country and by its nature would be used only in the most serious situations.

The bill would not—and we were very careful about this—restrict legitimate business activities in designated foreign states.

A similar bill, of course, S. 2255, has been introduced by Senator Humphrey and is before this subcommittee. In a number of respects it differs from my legislation. I would like to commend Senator Humphrey for two very definite improvements in his bill, the forfeiture provision and the exemption for medical services. They are important improvements, and Senator Humphrey should be congratulated for taking a leading position on this issue.

I also want to state—and I am hopeful and I feel that Senator Humphrey will agree with me—that these bills do raise many legal, constitutional, and practical questions, some of which are discussed in my full statement and the rest of which I am sure this committee will be able to resolve to the satisfaction of everyone concerned.

Finally, let me state that, as the free world's leading power, we have a special responsibility to ourselves and to the world to control activities of American mercenaries and arms merchants that could threaten peace. I urge you to act now.

I hope that we can have some legislation in place before a particularly serious incident occurs for which the United States could be held accountable.

Thank you again, Mr. Chairman, for this opportunity and for your courtesies here this afternoon. You also deserve to be congratulated for taking the responsibility to address this very serious problem.

Senator DENTON. Thank you, Congressman Rinaldo. We will include the full text of your prepared statement in the record. You may be excused to go to your vote. Thank you very much for appearing before the subcommittee.

[The prepared statement of Congressman Rinaldo and the attached letter from the Department of Justice appear on p. 8.]

Senator DENTON. We will now return to the normal order of proceeding and I will make my opening statement.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Today we take up S. 2255, a bill to amend title 18, United States Code, to establish criminal penalties for providing services or information, under certain circumstances, to the Government of Libya or its agents, and to certain terrorist groups and foreign governments to be named by the President. The bill proposes a substantive solution to what appears to be a very serious problem, namely, the supplying by U.S. persons and business organizations of logistical, mechanical, and technical support, training and other services to governments, factions, and terrorist groups.

Events in recent years have shown that some renegade former employees of U.S. intelligence agencies and some U.S. companies have undertaken to supply terrorist dictatorships and their agents with training and support to augment their military and intelligence services. The supplies have even extended to supplying the basic ingredients for murder.

For example, hollow statuettes, innocent enough when empty, become diabolical devices when filled with high explosives and triggered by sophisticated timing devices capable of being set up to 1 year in advance. Yet, it appears that no current law proscribes the mere export of such items, obviously to be used for the manufacturing of booby traps, even to a country like Libya, in which terrorism is a highly developed and practiced art form.

Moreover, no existing law prohibits U.S. citizens from accepting contract employment to fly missions for terrorist governments such as Libya. In fact, several Americans were retained by that government to fly military equipment and supplies to Libyan forces during Libya's invasion of Chad.

The criminal laws of the United States and of the several States do outlaw many criminal activities used by terrorists. Those activities are prohibited and punishable by our criminal law so long as the crime is either committed in the United States or affects the country in a way that provides a sufficient jurisdictional nexus.

The existing laws, however, enacted when state-sanctioned terrorism was not nearly as pervasive as it is today, do not appear to deal adequately with the situation. Although many such laws governing international aspects of criminal activity deal with such

areas as munitions control, export of technology, recruitment of foreign mercenaries, and the leading of foreign expeditions, there appear to be serious rips in the legal fabric. S. 2255 could be a major step in correcting this situation.

I, too, would like to congratulate Senator Humphrey for bringing this serious problem to the attention of the Senate.

The Senate will soon be in recess, and there is little chance that S. 2255 will reach the floor of the Senate during this session. I believe, however, it is important to take this opportunity to hear the views of the proponents of this legislation as well as the views of officials of the agencies that would be affected by the bill. This will give us time to work out any needed modifications prior to the reintroduction of the bill in the 98th Congress.

Both Congressman Rinaldo in his opening statement and Senator Humphrey in private conversation have acknowledged that S. 2255 and Congressman Rinaldo's bill must be examined very carefully for any flaws or possibilities for improvement.

At this time I ask my colleague and friend, Senator Humphrey, if he would care to make his opening remarks.

STATEMENT OF HON. GORDON J. HUMPHREY, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator HUMPHREY. Thank you, Mr. Chairman, for your introduction and for holding this hearing.

While it is, unfortunately, true that we cannot obtain passage of the bill in this Congress, your willingness to allow hearings today will give us a running start, you might say, next year.

I will ask to simply submit my statement, Mr. Chairman, and make a few remarks.

As Congressman Rinaldo has stated as well as has the chairman, the unfortunate fact of life is that American citizens are, in most cases under conditions of hire, aiding, and assisting terrorist governments and other terrorist entities. The case of Libya and Colonel Qadhafi is the most prominent but by no means the only situation.

The State Department has confirmed the involvement of American citizens in Libyan enterprises of aggression and subversion. The Central Intelligence Agency National Foreign Assessment Center has stated:

> The government of Colonel Qadhafi is the most prominent state sponsor of and participant in international terrorism. Despite Qadhafi's repeated public announcements that he does not support terrorist groups, there is a clear and consistent pattern of Libyan aid to almost every major international terrorist group.

The bill before you is aimed directly at curbing assistance by American citizens to those who foster these activities. The problem is that there are loopholes in the existing statute. By closing loopholes, as this bill will, we will place constraints on U.S. citizens, residents, and businesses regarding their currently unencumbered ability to provide services and expertise to the armed forces or other intelligence interests of the Government of Libya, for instance.

The bill also would give the President the authority to formulate and, if necessary, modify a list of additional entities to which such services would be restricted. I use the word "entities" because we

are not limiting this strictly to governments but to all terrorist entities.

To promote compliance by persons presently engaged in these activities, the language includes an ample 60-day grace period extending from the effective date. The act would also not apply to the provision of medical services or training for humanitarian purposes.

What we are trying to do here, in summary and in essence, Mr. Chairman, is to close some loopholes which have permitted Americans and residents to sell their services to terrorist governments and groups.

I think that almost every American would approve of this effort; certainly the Department of Justice does. We are glad to have their support as well as yours and that of Congressman Rinaldo.

Senator DENTON. Your entire remarks as prepared and submitted will be included in the record. I thank you for your testimony, Senator Humphrey.

Senator HUMPHREY. Thank you.

[The prepared statements of Senator Humphrey and Congressman Rinaldo follow:]

PREPARED STATEMENT OF SENATOR GORDON J. HUMPHREY

Mr. Chairman and members of the committee, I am very pleased to be here today to testify in support of my bill, S. 2255, which would amend title 18 of the U.S. Code to provide for criminal penalties in situations where persons who owe allegiance to the United States provide certain military- or intelligence-related services to the Government of Libya, or other foreign governments or entities which support and foster terrorism. As I am sure the members of this subcommittee are all too aware, the extent and growth of international terrorism is on the rise. In 1980, international terrorism resulted in more casualties than in any year since the Central Intelligence Agency began analysis of statistics related to terrorism in 1968. A review of terrorist incidents over the past several years reveals a pattern of striking at targets in industrialized democracies as well as attacking symbols of Western Power. The Central Intelligence Agency National Foreign Assessment Center has indicated that as of 1980, Americans were the primary targets of international terrorism, with nearly two out of every five incidents involving U.S. citizens or property. Even more disturbing is the fact that in recent years we have seen a significant increase in state-sponsored international terrorism, with the Soviet Union, Libya, South Yemen, Iraq, Syria, Iran, and Cuba all conducting or fostering terrorist activities.

The escalation of terrorism by foreign nations and entities has brought with it their desire to secure technical services of a military and intelligence-related nature. Terrorist interests with an eye toward these goals encourage and recruit American citizens to perform these tasks. In many instances, persons engaged to provide these services have extensive background and former association with the U.S. Special Forces, intelligence organizations, or civilian military defense contractors. These activities not only serve to train and aid foreign interests whose last concern is for the safety and wellbeing of the U.S. government and its citizens, but they also compromise U.S. training and implementation techniques.

The proliferation of American involvement in providing services and mercenary support to terrorist prone entities is in part caused by the failure of the United States Criminal Code to adequately address the problem. The Arms Export Control Act, U.S. Neutrality Laws, and Export Administration Act all superficially deal with prohibitions on the types of services we are addressing today. Yet no single U.S. law is currently in effect which would provide for a clear and complete prohibition on the transfer of military and intelligence-related services to interests which foster terrorism. Mr. Chairman, S. 2255 would provide such a prohibition and in my opinion establish an effective deterrent against aiding those who foster or engage in international terrorism.

As drafted, the Antiterrorism and Foreign Mercenary Act would prohibit the provision of certain services to the Government of Libya or Presidentially specified governments, factions, or terrorist groups. Services prohibited to these entities would

include serving in or acting in concert with their armed forces or intelligence agencies; providing training to the same; providing logistical, mechanical, maintenance, or similar support services; conducting research, manufacturing, or construction projects which primarily support their military or intelligence functions; or recruiting or soliciting another to engage in any of these activities.

The penalty for the commission of one of these offenses would be a fine of not more than five times the total compensation received for the services provided, or $25,000, whichever is greater, or imprisonment for not more than 10 years, or both. The bill is carefully drafted to ensure that the executive branch has broad authority to determine to whom such services should be denied, and when, if at all, services previously limited to certain foreign interests should be made available. S. 2255 provides for a generous 60-day "grace period" in order to provide an adequate incentive to individuals currently engaged in what otherwise might be prescribed activities to cease and desist. Lastly, the bill carves an exception to the rule and makes clear that no prohibition would exist regarding the provision, recruitment, or solicitation of medical services or training for humanitarian purposes.

Mr. Chairman, I would like to address one particular issue at this time which is likely to generate a certain amount of controversy in the Congress. The provision of the bill to which I refer is that which specifically names the government of Libya as an entity to which the provision of military or intelligence-related services would be restricted. This is a significant difference between S. 2255 and H.R. 5211, introduced by Congressman Rinaldo and now pending in the House of Representatives. It is my understanding that the Administration, particularly the Department of State, would prefer not to specifically name the Government of Libya. In the consideration of this particular issue, I would ask that the Committee in its deliberations to give consideration to the following three points. First, a list with no one on it is useless. The designation of the Government of Libya as an entity which fosters and engages in terrorist activities would be a proper place to start. Mr. Chairman, you and I both realize the role which Libya plays in the realm of international terrorism. That role is no secret. The Government of Libya, in my opinion, would be the prime candidate to appear at the head of the list. Secondly, it would seem that the Congress, from a diplomatic viewpoint, would be a more appropriate entity to in effect christen a list of foreign governments or factions to whom services would be prescribed. A sudden and abrupt sanction by the executive branch of the U.S. Government against the Government of Libya would otherwise be required to make S. 2255 effective. Such an abrupt executive sanction could have serious foreign policy ramifications. Lastly, specifically naming the Government of Libya as a government to whom the provision of military or intelligence related services would be prescribed, will give the President an additional bargaining chip with which to approach the Libyans through diplomacy. As delineated in S. 2255, the ability of the President to add to, loosen, or remove restrictions on these services, as respects the Government of Libya, would give the Executive Office a powerful lever in its diplomatic efforts to control terrorism.

Mr. Chairman, the organization of terrorist interests around the globe is becoming of increasing concern to the welfare and national security of the United States and other free world nations. The participations of Americans in Libyan enterprises of aggression, subversion and terrorism is of particular concern. In our era of technological knowhow and advanced weaponry, reasonable controls on the availability of military expertise and service to terrorist prone interests is increasingly desirable. S. 2255 is designed to provide these controls, while at the same time maintaining the prerogative of the executive in foreign policy matters. Your support and that of the committee, I am sure, would go a long way toward achieving a mutually desirable goal. Thank you.

STATEMENT OF THE HONORABLE MATTHEW J. RINALDO

I thank you, Senator Denton, for inviting me to testify before the Subcommittee on Security and Terrorism on legislation regarding mercenary activities by American citizens on behalf of foreign powers and terrorist groups that are hostile to the United States.

Last November, I was amazed to read accounts of Americans providing vital weapons and logistics services to Colonel Qaddafi, a dictator whom the civilized world has, with good reason, come to view with abhorrence. The actions of our countrymen, many of which were subsequently confirmed by the State Department, include:

-flying and maintaining, or serving as crewmen on, aircraft of the Libyan Air Force in connection with Libya's intervention in Chad.

-training Libyans and Palestinians to operate such aircraft.

-under the direction of former CIA agent Edwin Wilson, constructing at least one so-called "clean room," a laboratory that can be used for the assembly of both conventional and nuclear weapons.

-dozens of former Green Berets providing instruction to Libyans and Palestinians in the handling of explosives (for example, in making ashtrays and lamps into explosive devices).

It was also revealed that Americans sold their martial skills in other countries in Africa, South America and the Middle East. In 1978, former Green Berets and Navy specialists in unconventional warfare were recruited to work for Somoza in Nicaragua. Their counterterrorist jobs included the assassination of Somoza opponents. According to Seymour Hersh of the New York Times, Frank Terpil, who, with Edwin Wilson, is under indictment for numerous crimes, received $3.2 million from Idi Amin in return for arms, explosives and torture devices.

This year, the antics of Colonel Qaddafi have faded from the headlines, and the man who allegedly masterminded covert logistics support for Libya, Edwin Wilson, is in federal custody. But the problem is not an isolated one. It presents a serious danger to the national security and to world peace, and requires early action by Congress.

I wish to explain why I think this problem will worsen. Since the break-up of the European colonial empires after 1945, the number of

sovereign states in the world has multiplied several times over. There are now more than 150 members of the United Nations. A great many of these states are weak economically and unstable politically. But most of them are capable of using force against their neighbors. Unable to field armies on the battlefield to intimidate their neighbors, some of them increasingly adopt the tactics of the terrorist. And in addition to the sovereign states of the world, we must contend with dozens of extra-national terrorist groups; the PLO, the Red Brigades of Italy, the Red Army of Japan, and others.

Many of these states and terrorist groups require outside help to attain a measure of power: they need weapons and the expertise to utilize the complex hardware. To find this expertise, some have naturally turned to technologically advanced nations, like the Soviet Union, or to citizens of the United States.

At the time of the disclosures of American mercenary activities in Libya, I learned, somewhat to my surprise, that many of the mercenaries were beyond the reach of our criminal laws. In response to an inquiry I made to the Department of Justice, I received a response dated February 16, 1982, and which is attached to my testimony for insertion in the record. The letter lists the statutes which do cover much of the alleged conduct of Messrs. Wilson and Terpil. But it also notes that it is "doubtful" whether the "recruitment of United States citizens to travel to Libya to train Libyans in the manufacture of explosive devices and to supervise a terrorist training project forms the basis of a substantive offense."

The Department also notes that service by Americans as advisors, including training services, to the Libyan armed forces is not a crime. Nor, I would add, is traveling overseas and subsequently enlisting in the armed forces of a foreign power, although it is illegal to so enlist within the United States.

In addition, the letter states that, to some extent, "the provision of equipment and personnel to a foreign government is not covered by current statutory and regulatory prohibitions." It further states that the remedy may be, to the extent constitutionally permissible to regulate, by means of licensing requirements, the export of equipment and services to specified foreign governments.

Clearly, the Justice Department sees the need for action. Other experts agree. Last year, President Carter's Assistant Attorney General in charge of the criminal division, Philip B. Heymann, made this comment on his reaction when he reviewed the file on the Wilson-Terpil activities in Libya:

> I was shocked by what I saw in the Wilson matter. The notion that there is no control over an American intelligence official taking his know-how and selling it to the highest bidder seems to be insane. If terrorism is to be taken as a major national problem, we'll have to start at home and draft statutes that would bar the sale of fancy American equipment and . . . American expertise for terrorist purposes . . . (T) he question is exactly what Congress ought to be holding hearings on.

Further support for the need for Congress to act can be found in the statement of a Justice Department official, who, last December, was asked to comment on the mercenary activities of former Green Berets. He said:

> We have investigated activities of former Green Berets before and found some flaws in the mercenary laws. We found we can't go ahead with prosecution.

If I may, I would like to suggest that the subcommittee look into these investigations to see what conduct was beyond the scope of our criminal laws.

I wish to note one final statement by federal officials on this shortcoming in our criminal statutes. They have stated that the long delay in obtaining indictments of Messrs. Wilson and Terpil resulted from a basic gap in the law, which does not make it a crime to use American equipment and know-how to further terrorism overseas, as long as no overt acts are done in the United States.

Clearly, then, there are gaps in the criminal laws, gaps that should be closed as soon as possible. This subcommittee and you, Mr. Chairman, deserve commendation for taking the responsibility to solve this problem.

Late last year, I introduced a proposed solution, H.R. 5211, the Anti-Terrorism and Foreign Mercenary Act. Briefly, the bill would make it unlawful for an American on behalf of a foreign state, faction or international terrorist group named by the President in a proclamation, to:

> -serve in its armed forces or intelligence agency.
> -provide training to persons so serving.

-provide any logistical, maintenance or similar support.
-conduct any research, manufacturing or construction project directly related to its military functions, or
-recruit any other person to do any of the above.

The proclamation could be issued only when the President finds that military support activities on behalf of a particular foreign state, faction, or international terrorist group are or would be detrimental to the national security. The penalties would be ten years in prison and either $25,000 or a multiple of three times the amount of compensation received, whichever is greater.

My legislation clearly would not apply to any friendly countries and, by its nature, would only be used in the most serious situations. Moreover, the bill would not restrict legitimate business activities in designated foreign states; if Libya, for example, were the subject of a Presidental proclamation, any American oil companies doing business there would not be affected.

A similar bill, S. 2255, introduced by Senator Humphrey, is before the subcommittee. In a number of respects it differs from my legislation. The forfeiture provision and the exemption for medical services in the Humphrey bill, in fact, improve the legislation. I wish to congratulate Senator Humphrey for taking a leading position on this issue.

Our bills raise many legal, constitutional and practical questions, all of which will undoubtedly be carefully considered by the subcommittee. One principal question is the extraterritorial jurisdiction of American criminal law. I have had this question researched, and believe there is no consitutional bar to the extraterritorial application of our penal laws, as confirmed by numerous cases. Above all, we must be mindful of constitutional rights, such as the freedom to travel and freedom of association. I am confident this legislation in no way interferes with these rights.

Another vexing question is that by requiring the President to issue a proclamation, we would be placing him in an embarrassing diplomatic position, and that he would not issue the proclamation even when the situation demanded it. I recognize this criticism, but I believe there is no practical alternative. We would have to define the kind of country, faction or group in the statute. I doubt criteria of sufficient precision could be drafted. In addition, there inevitably

would be doubts and uncertainty about the coverage of the criteria; this would interfere with legitimate activity. It also would raise due process questions, in turn. Of course, Congress could name the proscribed parties itself, but this would be inflexible, and would raise the same diplomatic complications.

Moreover, it is not clear these complications are all that forbidding. The bill is intended only for the gravest situations, and not for frequent use. We already have a list of countries to which certain exports are restricted. In 1978, Secretary of State Vance told Congress he supported "the concept of a public list of countries which aid or abet terrorist actions. Public exposure and condemnation," he said, "can be effective in discouraging support for terrorist activities." I submit, then, that the proclamation procedure is the best method.

As the free world's leading military power, we have a special responsibility - to ourselves and to the world - to control activities of American mercenaries that could threaten peace. I urge the Congress to summon the foresight to act now, before a particularly serious incident occurs for which Americans would be accountable.

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

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 19 1982

Honorable Matthew J. Rinaldo
House of Representatives
Washington, D.C. 20515

Dear Congressman Rinaldo:

We are in receipt of your November 10, 1981 letter to Attorney General William French Smith in which you make reference to the activities of American citizens on behalf of the Libyan government and request an analysis of the current federal criminal code as it relates to those activities.

Undoubtedly, your inquiry is prompted by the recent publicity concerning the activities of Edwin Wilson and Francis Terpil and their associates. As a result of a lengthy criminal

investigation conducted by the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms, and the United States Customs Service, and coordinated by the United States Attorney's Office for the District of Columbia, an indictment was returned on April 23, 1980 by a federal grand jury in Washington, D.C. The 10 count indictment charged Edwin Paul Wilson, Francis Edward Terpil, and Jerome S. Brower with the following violations: 18 USC 844(d) (transportation of explosives in foreign commerce); 49 USC 1809(b) (unlawful transportation of hazardous materials in foreign commerce); 22 USC 2778(c) (unlawful export of articles listed on the United States Munitions list); 18 USC 371 (conspiracy to violate Title 18, USC 844(d), 49 USC 1809(b), and 22 USC 2778(c)).

Terpil and Wilson were also charged with violating 18 USC 951 (Agent of a Foreign Government) and 22 D.C. Code 2401, 105, 105(a) and 107 (conspiracy and solicitation to commit murder).

On December 15, 1980, Brower entered a plea of guilty to the conspiracy count. On February 23, 1981, he was sentenced to a term of five years imprisonment and a fine of $5,000. He was ordered to serve four months in prison, followed by a term of three years probation. The remainder of the sentence was suspended.

On August 6, 1981, a federal grand jury in Washington, D.C. returned an 11 count superseding indictment which adds a fourth defendant, Douglas Michael Schlachter, Sr., and addresses additional explosives shipments to Libya. The superseding indictment charges Wilson, Terpil and Schlachter with violations of 18 USC 371 and 844(d) (conspiracy and transportation of explosives in foreign commerce); 22 USC 2778(c) (Arms Export Control Act); and 49 USC 1809(b) (unlawful transportation of hazardous materials in foreign commerce). The indictment alleges that the objective of the conspiracy was to supply the government of Libya with personnel, explosives, and explosive materials, and to teach others how to make explosives in a terrorist training program. The indictment further alleges that, in order to further the object of the conspiracy, the defendants hired numerous American citizens to teach Libyans how to build explosive devices, and surreptitiously transported explosives by commercial cargo aircraft.

The indictment also charges Wilson and Terpil with violations of 18 USC 951 (Agent of a Foreign Government) and 22 D.C. Code 2401, 105, 105(a), and 107 (conspiracy and solicitation to commit murder). In furtherance of the murder conspiracy, Wilson and Terpil allegedly represented to the hired assassins that the planned assassination of a Libyan dissident was sponsored and supported by a government intelligence agency.

Wilson has been a fugitive since the indictment was returned in April, 1980 and is believed to be living in Libya. Schlachter recently surrendered to federal authorities in Washington, D.C.

Terpil fled the United States on the eve of a gun-running trial in New York City on September 4, 1980. On December 22, 1979, as a result of an undercover operation conducted by the Manhattan District Attorney's Office, George Korkala and Terpil were arrested by the New York City Police Department and charged with possession of weapons, and with manufacture, transport, and defacement of weapons. Terpil and Korkala were tried in absentia in a New York Court in March through May, 1981, and were found guilty. On June 9, 1981, both were sentenced to terms of 53 years' imprisonment. Terpil's whereabouts are unknown; however, he was last seen in Beirut, Lebanon.

On November 19, 1981 a federal grand jury in the Southern District of New York returned a 6 count indictment charging Terpil and Korkala with violations of 18 USC 371 (conspiracy to violate the Arms Export Control Act, 22 USC 2778), 18 USC 922 (dealing in firearms without a license), and 18 USC 371

(conspiracy to obtain a false passport, 18 USC 1542 and 1543). Terpil's wife, Marilyn Terpil, is also charged with making a false statement to obtain a passport for an Iranian, in violation of 18 USC 1542.

We are aware that there are a number of anti-terrorism bills currently pending in Congress, e.g., S.1651 - International Terrorism Crime Act of 1981, S.873-Omnibus Anti-Terrorism Act of 1981, H.R. 67 - An Act to Amend the Internal Security Act of 1950 to Control and Penalize Terrorists, H.R. 530 (H.R. 1948) - An Act to Combat International Terrorism. Although there is no general "anti-terrorism" legislation currently in force prohibiting conduct which promotes international terrorism, there are other statutes which address many criminal acts which are in support of terrorism. For example, the criminal charges pending against Wilson and Terpil indicate that their alleged activities were proscribed by a number of federal criminal statutes, i.e., Agent of a Foreign Government, the Explosives Control Act, the Arms Export Control Act, the National Firearms Act, the Hazardous Materials Transportation Act, and provisions of the D.C. Code. However, there is no Federal violation for a terrorist act against a person. For example, a murder committed by a terrorist or at the instigation of a terrorist group is only a violation of state law. In the Wilson/Terpil case, two of the defendants who conspired to kill a defector from the Libyan Revoluntionary Council were charged by the Federal Government with a violation of the District of Columbia Code because part of the alleged conspiracy took place in Washington, D.C.

The alleged activities of Wilson and Terpil in the United States on behalf of the Libyan government form the basis for the charge of a violation of Title 18 U.S.C. 951, which requires that anyone, other than a diplomat, who acts in the United States as an agent of a foreign government, must notify the Secretary of State in advance. This statute has been employed successfully in the prosecution of recent espionage cases. Recently, S.1963 has been introduced and submitted to us for comment. That bill would transfer the reporting function from the Department of State to the Department of Justice.

Much of Wilson's and Terpil's alleged activity was prohibited by specific criminal prohibitions. Congress has provided the President with the authority to regulate the export of goods, technology, and military equipment and explosives. The Arms Export Control Act, 22 USC 2751, et seq., grants broad discretion to the President to determine whether sales or assistance to a particular country will be in the interests of our national security and foreign policy. The Act provides that before defense articles and services may be exported in a commercial business deal, the exporter must obtain a license from the Department of State authorizing the export. 22 USC 2778-2794. This Act and the regulations promulgated thereunder, 22 C.F.R. 121.01 et seq., set forth a carefully crafted statutory scheme which controls the exportation of defense articles and services designated on the United States Munitions List, 22 C.F.R. 121.01, and provides criminal penalties for unauthorized export of such goods and technology.

Similarly, the Export Administration Act, 50 USC App. 2401 et seq., and the regulations thereunder, 15 C.F.R. 368.1 et seq., set forth a comprehensive scheme to control the export of goods and technology which would be detrimental to the security of the United States or the security of nations with which the United States has treaty commitments. The President, acting through the Department of Commerce, determines whether an export of such goods is in the national interests. Criminal penalties are applicable to unlicensed exportations. See also the Hazardous Materials Transportation Act, 49 USC 1801 et seq, and 49 C.F.R. 172.101.

The August, 1981 indictment alleges that Wilson and Terpil conspired to export six items which were listed on the United

States Munitions List or the Table of Hazardous Materials; therefore, their alleged conduct in that regard would fall within the statutory proscription.

Some of Wilson's and Terpil's alleged activities form the basis of a criminal charge only as the activities were performed as overt acts in furtherance of the conspiracy. For example, whether the recruitment of United States citizens to travel to Libya to train Libyans in the manufacture of explosive devices and to supervise a terrorist training project forms the basis of a substantive offense is doubtful, but it does constitute a series of overt acts in furtherance of the conspiracy to violate 18 USC 844(d), 22 USC 2778(c), and 49 USC 1809(b), and is evidence in support of the foreign agents counts of the indictment. Furthermore, the recruitment of an individual to murder Umar Abdullah Muhayshi, a defector from the Libyan Revolutionary Council, would be an overt act committed in furtherance of the murder conspiracy, a violation of the D.C. Code.

In summary, Wilson and Terpil are charged with violations of a number of criminal statutes. At this point, the primary obstacle to the successful prosecution of Wilson and Terpil is securing their arrest and return to the United States.

Title 18 United States Code, Sections 958 and 959 prohibit persons within the United States from enlisting in the foreign military service. As alleged in the indictment, United States citizens, recruited by Wilson traveled to Libya and trained Libyan personnel. Since the Americans did not actually enlist in the foreign military service but rather acted as advisers to the Libyans, their conduct in that respect did not clearly fall within the reach of the criminal prohibition.

To the extent that the provision of equipment and personnel to a foreign government is not covered by current statutory and regulatory prohibitions, the remedy for that inadequacy may be, to the extent constitutionally permissible, to regulate, by means of licensing requirements, the export of equipment and services to specified foreign governments. A regulatory scheme similar to the Arms Export Control Act may be an appropriate vehicle for such regulation.

Please advise us if the Department of Justice can be of further assistance to you in this matter.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Senator DENTON. We will now have a panel of two: Mr. Mark Richard, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice; and Mr. Jeffrey Smith, Assistant Legal Adviser, U.S. Department of State.

I welcome you gentlemen back since you have both testified previously before the subcommittee. You have been very helpful.

I will ask you to deliver your respective statements starting with you, Mr. Richard.

STATEMENT OF MARK RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. RICHARD. Good afternoon, Mr. Chairman. It is a pleasure to be here once more.

The Department of Justice supports the concepts behind S. 2255 if the changes we suggest are in fact incorporated into the bill.

With your permission, Mr. Chairman, I would like, rather than read my prepared remarks, to summarize them and submit the full text for the record.

We believe that S. 2255, as modified, would close gaps in existing law. It is, as already pointed out by Congressman Rinaldo, similar to legislation he introduced, H.R. 5211, on the House side. These bills would prohibit the furnishing by Americans of various forms of assistance, essentially services, to certain governments, factions, or terrorist groups.

The operative section of S. 2255, section 3, provides that it would be unlawful for any citizen or alien lawfully admitted to the United States, or sole proprietorship, partnership, corporation, or association organized under the laws of the United States to knowingly and willfully perform or attempt to perform any of the enumerated acts with respect to the Government of Libya or any other foreign government, faction, or terrorist group named in the Presidential proclamation.

The prohibited acts are, in essence, serving in the armed forces or in any intelligence agency; providing training to the armed forces or intelligence agencies; providing logistical, mechanical, maintenance, or similar support services to the armed forces or intelligence agency; conducting any research, manufacturing, or construction project primarily supportive of the military or intelligence functions; and recruiting or soliciting anyone to engage in any of the activities just described.

It would make it unlawful for anyone within the United States to knowingly and willfully perform or attempt to perform any of these acts.

The penalty provision for violating this proposal would be 10 years in prison, a fine of five times the compensation received for the violation, or $25,000, whichever is greater, or both.

Forfeitures are also provided for elsewhere in the bill.

Subsection (c) provides that the President may, when he determines that it is warranted for national security, foreign relations, or commerce interests of the United States, issue a proclamation naming any foreign government, faction, or terrorist group as being subject to the ban on receiving the services previously enumerated.

There is provision, of course, for the revocation of any proclamation made by the President due to changing circumstances.

Mr. Chairman, we would suggest several changes to this legislation. We have set forth in the appendix to my remarks specific changes we suggest and the reasons for them. I would like just to discuss briefly several particular areas which, in our judgment, warrant changes and additional attention.

To begin with, we think the focus of the legislation should be aimed at international terrorism. In this connection, we suggest that the legislation incorporate the definition for international terrorism currently contained in the Foreign Intelligence Surveillance Act.

Additionally, we suggest that the bill specifically exclude any properly authorized and conducted intelligence activities of the U.S. Government.

We also believe that the criminal forfeiture provision be rewritten to correspond to existing legal practices and be drafted in such a fashion that anticipated future congressional improvements will immediately be incorporated into this legislation. We believe that the definition of "business" currently in the bill is overly restrictive and would provide a major loophole for would-be offenders.

With respect to the specific naming of Libya in the legislation, we would defer to our colleagues at the State Department.

While we feel that the standards for the President in issuing the proclamation in the bill are constitutionally adequate, we do suggest that the term "commerce interests" be dropped and replaced with a more descriptive phrase.

Finally, this bill is designed to prohibit providing support services to military or intelligence branches of hostile governments or groups. However, the type of activities set forth in subparagraphs (a)(1)(D) and (a)(2)(D) can be viewed as even going further than that. Thus, Congress may wish to either eliminate these two subsections or narrow them appreciably.

These, as I indicate, are just the more significant areas for which we suggest additional attention and drafting time be allowed. We do think, in conclusion, that the bill does address a need and that this is very significant legislation which would appreciably assist us in dealing with a serious problem.

Thank you, Mr. Chairman.

Senator DENTON. Thank you, Mr. Richard. Without objection, your full statement will be inserted into the record.

Mr. Smith.

STATEMENT OF JEFFREY H. SMITH, ASSISTANT LEGAL ADVISER FOR LAW ENFORCEMENT AND INTELLIGENCE, DEPARTMENT OF STATE

Mr. SMITH. Thank you, Mr. Chairman. It is a pleasure to be here this afternoon and appear before the subcommittee to give you the views of the Department of State on S. 2255, the Antiterrorism and Foreign Mercenary Act.

As with Mr. Richard, I would like to submit for the record my formal statement, but I should like to summarize it briefly.

As this committee knows, the Department of State, President Reagan, Secretary Shultz, and their predecessors have repeatedly emphasized the need to combat international terrorism. We see the key to controlling international terrorism to be cooperation among nations. Increasingly, nations are cooperating, but we and our allies are pressing for further cooperation. As you know, we are party to a number of international conventions which require states to either extradite or prosecute individuals who commit a variety of terrorist acts.

In addition, we are taking steps to enhance the security of American Embassies and to increase protection afforded to foreign diplomats in the United States.

It is particularly distressing to all of us that U.S. citizens and businesses have reportedly assisted international terrorism by providing training and explosive devices, weapons, and other assistance. These activities seriously undercut our efforts to combat terrorism and must be stopped. In reviewing the criminal laws that are applicable to these activities, certain gaps appear which we agree should be closed. In that sense, we are grateful to Senator Humphrey for introducing S. 2255.

His bill does raise a number of difficult issues, however. Our comments here today represent our preliminary thinking on the bill. One difficulty should be mentioned at the outset. Terrorist groups frequently change their names, and often we know little about them. Since we began keeping statistics in 1968, more than 670 groups have claimed credit for at least one international terrorist attack. In 1981, for example, 113 groups claimed credit for such attacks. The committee might be interested to know that 22 of those groups directed their attacks against Americans or American property.

Therefore, to list these groups and make the provision of certain assistance to them criminal runs the risk of listing a group only to find that it has later changed its name. Another risk is that a terrorist incident could be committed by a group we have never heard of; and, if an American citizen is involved, he or she would not appear to be covered by the scheme of this bill. Obviously, this problem does not exist with respect to governments, but it does seem to us a serious drawback. This suggests to us that some alternate approach such as the use of existing license laws which focus on licensing the activity rather than on the recipient, might be explored.

For example, under current law the Secretary of State controls the export of defense articles and services. The Department of State has recently proposed a comprehensive revision of the implementing regulations which would expand the current definition of defense services to include such activities as the training of foreign military forces or terrorist groups in the use of weapons and most other military- or intelligence-related items. These activities will then require a license by the Secretary of State.

We have also proposed legislation which would raise the maximum penalties for violation of these regulations to 10 years' imprisonment or a million-dollar fine.

This is just one of an existing array of laws which have been enacted by the Congress over the years to combat international terrorism.

The bill we are discussing here today presents, I think, an initial step in what could be a useful complement to these laws. My Justice Department colleague, Mr. Richard, has made a number of technical suggestions which reflect consultations between our two Departments and in which we concur.

I would like to address myself for a moment to the question of the use of this bill as a tool to assist us in our effort to combat terrorism. We believe, for it to be useful, the scope of prohibited activity should be narrow. This will permit the President to adopt measures that are directly responsive to another government's support of international terrorism and would not put the President in the difficult dilemma of adopting measures which might have the effect of barring legitimate trade. I think this dilemma is especially difficult with respect to military governments around the world because, as presently drafted, the bill would make criminal the provision of these services to the Armed Forces of a listed foreign government. In many governments which are run by military officers it is difficult to sort out where the armed forces end and where the civilian institutions begin. For example, in many States the major international airport is also a military airport. If an American company had a contract to maintain the airport, such a contract could be "a maintenance service," which would be prohibited by the current draft of the bill.

In other countries, the air force is actually in charge of all airports. In some countries, the military so completely runs things that they even issue construction and commercial permits. One possible solution to this problem would be to amend the language of the bill to make it clear that it would be criminal only to provide such services to conventional military and intelligence organizations and not to other governmental organs that are primarily civilian in nature.

An additional step which Mr. Richard has already referred to would be to narrow the scope of prohibited activities by eliminating subparagraph (D) of section (a)(1) and subparagraph (C) of section (a)(2). These identical subparagraphs make it a crime to "conduct any research, manufacturing, or construction project which is primarily supportive of the military or intelligence functions" of a listed government or faction. We are concerned, as is the Department of Justice, that the breadth of this language would create difficulties in its interpretation and application and could possibly prohibit activities that we otherwise would agree are proper. Such things, for example, would be the sale of a computer to a central government or even cotton cloth which could be made into uniforms. Similarly, the ban on construction would probably halt or call into serious question major American construction contracts in a listed country.

We are also concerned about paragraph (c)(1) of section 971, which provides that the President may issue a proclamation putting a country or a terrorist group on the list whenever he finds that "the national security, foreign relations, or commerce interests of the United States warrant a ban." We have two suggestions.

One is that the phrase "commerce interests" be changed to read "the security of U.S. citizens or their property." We think this eliminates the possibility that other governments may see this bill as an effort to prohibit trade when the United States or American companies have suffered some commercial harm. The thrust of the bill seems to us to be to protect the physical security of Americans and their property overseas. We think the phrase "security of United States citizens or their property" is a more apt description of the genuine interest here.

We also suggest that the term "national security" be used as it is in the Executive Order on Classified Information, thereby including both foreign relations and national defense.

Finally, we do not believe that the Government of Libya should be named in this legislation, for three principal reasons.

First, as a matter of good legislative practice we believe that individual governments should not be singled out in legislation.

Second, because of past and present Libyan Government policy of support of terrorist groups, it is unlikely that naming Libya in the law would persuade that government to mend its ways.

Third, even though this bill has a provision which would permit the President to remove the application of the law to Libya, it would also be desirable to remove it from the statute should there be a reversal in its terrorist policies. That would require new legislation, whereas it could easily be removed from any proclamation that the President would issue.

Finally, the Department would suggest that this committee may wish to seek the views of the Department of Commerce and the U.S. Trade Representative to the extent this bill may have an impact on the commercial and trade interests of the United States.

Thank you, Mr. Chairman, very much.

Senator DENTON. Thank you, Mr. Smith. Without objection, your prepared statement will be inserted in the record.

I appreciate your emphasis on preliminary thinking, for that is also our position at this point. We have had this legislation to look over for a very short period of time, although I did study it carefully over the past couple of nights at home.

It occurs to me that rather than take the tack that the President should name nations and groups with all of the hazards which you have just mentioned with respect to the Government of Libya and whatever other nations or groups he might choose to mention, would it not be better to list the practices which we want to proscribe such as supplying training for terrorists, et cetera? Then we could place a punishment on those who would violate the proscribed practices or actions without prior approval. Each transaction, each action on the part of individuals or corporations, which would fall into the categories outlined in the legislation, would have to be cleared by either State or Justice or some place in the administration. Then you do not have to go through this potential bag of worms of trying to identify who is doing what at any time and whether it is military or civilian and that sort of thing. If they do it without being cleared, then they get punished. Wilson and Terpil, as would many others, would fall under that approach.

I admit that would require major alteration to S. 2255 as presently drafted. But much of what is in it already could be sustained

with respect to the kind of activity involved, and then each case would have to require clearance.

Does that approach have any merit?

Mr. RICHARD. Well, it certainly is an approach that could be utilized to deal with the problem. There are various tradeoffs involved, that is, the approach reflected in the Export Administration Act, the Arms Export Control Act, and so forth. However, by having what I would refer to as a straight criminalization of certain conduct once the President issued a proclamation, you are, of course, affirmatively condemning, if you will, a course of conduct which you would not otherwise have where you are merely issuing or approving licenses, if you will. One is a more forceful condemnation of certain types of behavior, I think, than a purely regulatory system where you seek prior approval for the conduct.

The types of services that you have in mind, I think, to be covered here are far more subtle, if you will, than the types of licensing procedures now in effect. The types of individuals that I think we are trying to reach are far different than those we encounter in other regulatory fields where you are dealing with legitimate business entities and what have you.

So, there are tradeoffs involved, although I would certainly admit that your suggested approach is a viable one for dealing with the problem.

Senator DENTON. Certainly I do not mean it as a conclusion I have reached. It was just something that occurred to me, that we might want to switch the emphasis from the negative to the positive. Then, were one to plead all that he is doing is shipping some statuettes, that is fine; but after the fact, if it is decided that those were used and he had reason to believe that they would be used for such and such an activity, then he could be punished.

Are you suggesting a million-dollar fine instead of a $25,000 fine?

Mr. SMITH. That is correct, Mr. Chairman. To amplify what Mr. Richard said, certainly a straight criminalization of these activities has its advantages. On the other hand, as I suggested in my prepared remarks, from the point of view of the Department of State, we think the licensing scheme which is a variation of the idea that you proposed, seems to us to offer a lot of advantages which should be considered carefully.

Senator DENTON. Would you be so kind as to contribute perhaps alternative wordings that we might build from in that direction?

Mr. SMITH. We would be happy to do that, Senator.

[The additional information submitted by the State Department is found on p. 63 of the appendix to this hearing.]

Senator DENTON. Would either or both of you give the subcommittee some specific examples of the abuses by U.S. persons or businesses which have occurred which would be prosecutable if S. 2255 is enacted, some version thereof, without repeating any of the more publicized examples which have taken place?

Mr. SMITH. Of course.

Mr. RICHARD. Certainly, the providing of training to military groups, drawing up of military manuals and the like certainly come to mind as being covered by this type of legislation. The list would be endless, Senator.

Senator DENTON. For the record, it would be helpful for us, just in terms of a list to which we could refer, to see what history reveals. If you could do that in writing after the hearing, it would be of considerable use.

[Additional information submitted by the State Department is found in the letter beginning on p. 63 of the appendix to this hearing; that provided by the Justice Department on p. 66 as item "1."]

On pages 1 and 2 of your testimony, Mr. Richard, you state that, if the President or Congress determines that the national security, foreign relations or commerce interests of the U.S. warrant a ban on certain kinds of assistance to a particular foreign government, faction, or terrorist group, this assistance should cease. This seems to imply that there are times when certain kinds of assistance to a terrorist group is appropriate. Do you mean to manifest that position? If so, would you cite examples?

Mr. RICHARD. No, I am suggesting that the legislation is designed to deal with those types of activities by foreign governments and international terrorist groups that are of primary importance to this government, that affect directly our interests. I think the reference was not that any of this behavior is appropriate but, rather, that there are different degrees of concern that we have with specific types of conduct.

Senator DENTON. That signal was the warning to me of a vote on the floor. I will excuse myself and return after voting. Mr. Joel Lisker, chief counsel and staff director of the subcommittee, will continue in my absence.

Mr. LISKER. As the subcommittee understands it, you prefer that the focus of S. 2255 deal with international terrorism. In the view of either of you, is it appropriate to proscribe such conduct with respect to domestic terrorist groups or factions? If that is the case, is this bill the vehicle for accomplishing that goal? Moreover, if this objective can be reasonably accomplished, should it be the vehicle of separate legislation?

Mr. RICHARD. Just as a preliminary response, I would just say that I think that the issue of dealing with domestic groups goes way beyond the thrust of this proposed legislation. It involves different issues. I would suggest that we not attempt to merge those issues in one comprehensive piece of legislation.

Mr. LISKER. In your view, does the Department have a position with respect to the proposal in separate legislation? Is that a matter which is under consideration or to which consideration might be given by the Department with respect to domestic terrorist organizations and support that exists here for those groups?

Mr. RICHARD. Nothing that I am aware of that would be analogous in approach for dealing with the problem. I am not aware of any such proposals at this time.

Mr. LISKER. Senator Denton asked me to ask this question specifically.

Assume a U.S. citizen in the United States or abroad is supplying training to a group in Libya which is comprised of members who are not Libyans, such as the PLO. This group of PLO are, in turn, training members of the Libyan military or intelligence service. In your view, would S. 2255 as presently drafted reach the conduct of the U.S. citizen, that is, a U.S. citizen training a group

which is not composed of Libyans but which is physically located in Libya and which in turn is training Libyans?

Mr. RICHARD. My response to that is that the question can be looked at in two ways. Assuming that the group is under the control of Libya and the legislation was passed with Libya identified as it is currently in the legislation, then I think it is an evidentiary issue: did the defendant have sufficient knowledge of that relationship such as to expose him to the penalties under the bill? As a practical matter, without that proof, if it was just the PLO happening to be in Libya and that was the relationship that the Libyan Government was tolerating their existence within the borders and nothing further, then I seriously question whether it would reach the activities of that group in your hypothetical.

Mr. LISKER. This is Dr. Francis, who is Senator East's designee to the committee. He has some questions.

Mr. FRANCIS. Thank you. Mr. Richard, I am not entirely familiar with the Wilson and Terpil case. But it seems to me that Wilson is already under indictment. Am I correct in saying that Terpil has been convicted of offenses previously?

Mr. RICHARD. He has been convicted in New York, in State court, yes.

Mr. FRANCIS. I am unclear exactly on what harmful activities we cannot prosecute already under current law. Perhaps you explained that earlier but I missed it. Would you go into that?

Mr. RICHARD. Because these cases are in active litigation, I would respectfully request that we not discuss those particular matters.

Mr. FRANCIS. Right.

Mr. RICHARD. There are, as I think we have indicated, what I will describe as gaps in existing law. By that I mean that, while you may have something on the books in the area, it does not take much ingenuity to avoid coverage and falling under existing laws. The neutrality laws are notorious, I think, in that regard.

So, while you may have a particular statute which superficially appears to deal with certain types of conduct, on reflection you can see anybody with a certain amount of effort can easily devise and structure his or her affairs in such a way as to get around it.

Mr. FRANCIS. Do you have any estimate of how widespread this type of activity on the part of Americans is, mercenary activity? Not just in regard to Libya, but I mean is this a common criminal activity on the part of Americans?

Mr. RICHARD. I could not give you an estimate, but I could certainly try to obtain that information for you.

Mr. FRANCIS. I think Senator East would like to have some indication of how necessary the need for a law like this is before actually supporting it. So, we would appreciate it.

Mr. RICHARD. I will try to obtain that.

[The additional information is found as item "2." on p. 66 of the appendix to this hearing.]

Mr. FRANCIS. I have no more questions.

Mr. LISKER. Mr. Richard, assume that the army of a foreign government covered by the Presidential proclamation, assuming that S. 2255 becomes law, is engaged in funding and providing training to an international terrorist group. A U.S. intelligence officer is able to persuade a junior officer of that army to provide on a con-

tinuing basis information identifying the members of the terrorist groups. The junior army officer fears for his life and insists that he will provide the information only if a means can be found for him to communicate it without coming into further personal contact with the U.S. intelligence officer. The U.S. intelligence officer wishes to provide the junior army officer with a complicated but easily concealable communications device by use of which he can transmit information. The U.S. intelligence officer furnishes the device to the junior army officer and trains him in its use.

Under these circumstances, would the U.S. intelligence officer appear to have engaged in conduct that would violate section 791(a)(1)(B) of S. 2255, which prohibits any U.S. citizen from providing training in any capacity to a member of the armed forces of a presidentially designated terrorist government or group?

Mr. RICHARD. In my judgment, you would not have the requisite criminal intent to support a conclusion that the statute was violated if the activity was duly authorized by our Government. We, nevertheless, suggest that that issue be dealt with by having an explicit exclusion, a national security type of exclusion, in the legislation to avoid that issue entirely.

Mr. LISKER. It is just an abundance of caution?

Mr. RICHARD. Yes.

Mr. LISKER. What impact will this bill have on the so-called soldiers of fortune who fight or provide training, for example, in the army of Jonas Savimbi against the Cubans and Angolans in Angola or with the Afghanistani rebels against the Soviets in Afghanistan? Are there any laws on the books which already proscribe such conduct? If you know what they are, would you tell us about them?

Mr. RICHARD. Again, it is difficult to generalize, as you know, because each transaction, each incident can give rise to jurisdiction, if you will, under one or more statutes, depending on the nuances of the transaction. So, it is hard to say that a given course of conduct would under all circumstances not be covered by some law on the books. But, assuming that the executive branch, the President issued the required proclamation and felt it was in the national interest to do so and so forth, it would occur to me that there could be coverage under that act.

Mr. LISKER. Mr. Smith, S. 2255 is silent on the question of raising money for a terrorist group. We are dealing here with services and certain technical skills, but nothing is said about money. Money, of course, can buy services and technical skills, construction, and so on.

Do you think it would be appropriate to expand the proscribed conduct to include the solicitation, collection, disbursal, dispensing of contributions, loans, money or other things of value in the interest of such government, faction, or group?

Mr. SMITH. I think that raises a number of questions, Mr. Lisker, that would have to be looked at carefully. My initial instinct is that it would not be advisable to extend it to that activity. I think Mr. Richard might have some additional thoughts from the point of view of the Department of Justice.

Mr. RICHARD. Again, I would suggest not expanding the scope of this bill to reach the fundraising situation.

Mr. LISKER. Well, the problem from our perspective, that is, you have the Provisional IRA. I guess you could probably get an argument as to whether or not they are a terrorist organization; we happen to think they are. We have in the United States a group called the Irish Northern Aid Committee, which the Southern District of New York has recently concluded is an agent of the Provisional IRA; and the second circuit seemed to agree with that conclusion. They claim to raise money for the Green Cross and the An Cuman Cabrah (the prisoners' relief fund), but there are some among us who are skeptical and believe that some of that money goes for the purchase of guns and ammunition.

There are a lot of people in this country that support the IRA through fund-raising drives of various types and descriptions and also support the Irish Northern Aid Committee. Do you think that it is appropriate that that activity by U.S. persons should continue? Or do you think that we should devise a vehicle by which such fund-raising activity for a terrorist organization becomes illegal?

I am really looking for a response not specifically with respect to the IRA. I use that only as an obvious example, but there are other organizations that would fit into this situation.

Mr. RICHARD. Obviously, the active and knowing support of international terrorist groups is reprehensible. But what gives me the pause and the hesitation is trying to come up with the outlines of the legislation which would avoid various issues that are obviously latent in trying to deal with the area. So, it is because of my concern with those issues that I am hesitant to say, "Yes, it is a good idea."

I would certainly reiterate that I think it goes way beyond the thrust of this particular proposal. I do not see how this proposed legislation would easily deal with that kind of situation.

Mr. LISKER. It just strikes me that, if the thrust of this proposal is to diminish the quality and amount of services which a terrorist government might receive from U.S. persons, that, if we make the funds available, assuming that they are an impoverished terrorist government—Libya does not happen to fit that definition—but assuming that the funds are not plentiful, if we provide the funds for them to acquire the technology or the expertise or training or whatever it is that they are seeking from third countries, then really all we have done is forced it into another channel.

Mr. RICHARD. The bill is directed at a fairly direct rendition of aid and services. It does contain the humanitarian exemption, and that, of course, reflects the recognition that there are tradeoffs involved.

Mr. LISKER. With respect to a humanitarian exemption, is it not a fact, or would you agree, that, when money is legitimately or legally raised for humanitarian purposes, that frees up funds which the terrorists themselves have to divert from the purchase of arms and so forth for that purpose, thereby, in a sense, enhancing their capabilities because they no longer have to be concerned about the humanitarian aspect of their operation?

Mr. RICHARD. From an accountant's point of view, yes, I agree with you.

Mr. FRANCIS. Mr. Richard, in addition to the information that I requested earlier, I would like to request if you could provide what-

ever specific examples of existing loopholes in the current laws that you think are reasonable. I would appreciate that, too.

Mr. RICHARD. Certainly.

[The additional information is found as item "3." on p. 66 of the appendix to this hearing.]

Mr. FRANCIS. Thank you.

Mr. LISKER. How do you reach a group that uses humanitarian purpose as a cover, whether you call it the Red Crescent or the Green Cross or whatever?

Mr. RICHARD. I am not sure that I appreciate the thrust of your question. When you say use as cover——

Mr. LISKER. In other words, if a group says that we are raising money for the Red Crescent Society, the Islamic Red Cross, or the Mogen David, the Jewish equivalent, or the Green Cross, the Irish equivalent, that is what they say they are raising the money for. So, people of good will give to that organization. Then it turns out that was not exactly the purpose, that that humanitarian organization was simply a conduit for the money. The people in that organization were cooperating with the terrorists and actually just acting as a channel.

How do you get to those groups? How do you stop that activity? It is my understanding that this is a fairly common way in which funds are raised; however, in fact, the funds never reach the beneficiaries.

Mr. RICHARD. It is somewhat analogous to other schemes that we are encountering with regularity on the domestic front where you have charity solicitations being made based on false representations. Of course, in the normal course of events, those are treated as misrepresentations and are thus susceptible to treatment under traditional fraud concepts and misrepresentation concepts.

I think, as a practical matter, education, though, of the public is the key to impacting on the problem. Your hypothetical assumes that, if the public is aware of the intended use of the moneys, they would not contribute and thus, presumably, education alone would effectively deal with the problem.

Mr. LISKER. With respect to the naming of Libya in the bill as it now stands, we have heard some testimony—as a result of your opening statements, I believe, specifically—on the disadvantages of such an approach. What about countries like the Soviet Union, political entities like SWAPO (the South West African People's Organization), the Popular Front for the Liberation of Palestine, the African National Congress, the Palestine Liberation Organization? Would these groups under any conceivable set of circumstances be likely to become covered by this bill? It seems to me that the criteria which are set forth are not that specific. So, I would assume there would be wide discretion on the part of the President or those who advise him on reaching this decision. After all, the Soviet Union also supports international terrorism. I think we have established that in many hearings. I do not think that is a secret.

Mr. SMITH. I cannot, of course, speak for what some President would do should this law be enacted. But I can say that we are presently required by the Fenwick amendment to the Export Administration Act to list countries that repeatedly provide support

for international terrorism. At the moment, we list Libya, Cuba, Syria, and South Yemen. It seems to me that that is a standard not inconsistent with the purpose of this bill.

Mr. LISKER. With respect to establishing criteria, it seems to me that, in order for the President to reach this decision based solely on the criteria which are specified here, he will have very broad latitude.

Do you agree that that broad latitude should be afforded? Or do you think that it should be much narrower, that is that the criteria should be more susceptible to objective application and less discretion?

Mr. RICHARD. Certainly from a constitutional point of view we think it is adequate now. We do not want to find ourselves in a position where we have to litigate the validity of whether a certain group named is in fact a terrorist group and what have you. We do not think that that is an item subject to litigation in the course of the prosecution.

As I indicated, I think that this is sufficient, constitutionally adequate, and provides maximum flexibility.

Mr. LISKER. When the Department did its analysis of this bill, I assume that the constitutional question was thoroughly analyzed from the conclusion which was stated.

Mr. RICHARD. Yes, from the Department's point of view.

Mr. LISKER. Would it be possible to provide us with that product? The reason that I ask for it, I expect that, when we get to the full committee with this bill, there will be those who might disagree. It would be useful to have that product to share with those members and their staffs who might disagree.

[The additional information is found as item "4." on p. 67 of the appendix to this hearing.]

What is the advantage or purpose in using the definition of foreign government found in section 1116(b)(2) of title 18 as opposed to the standard definition found in section 11 of title 18? There is a specific reason, I would assume, for including this definition.

Mr. RICHARD. Yes, Mr. Lisker, we felt the one we advocate is a narrower definition. The other one, as you know, picks up insurgent groups and the like. We feel within the context of this proposed legislation it already reaches factions, and we feel the narrower approach is the more appropriate one for purposes of this legislation.

Mr. LISKER. I believe that you may have already responded to this, but would you please answer it for the record?

Do you feel that the penalties presently set out in this bill are substantial enough to reflect the gravity of the offense? Are they consistent with other statutory penalties presently in force?

Mr. RICHARD. The penalties in this area, of course, span the gamut from being very light to more significant. To characterize it in the midrange, if you will, 18 U.S.C. 951 comes to mind. It also includes a 10-year penalty. The range of fine is realistic although I certainly would welcome an additional potential fine other than the $25,000 or five times the amount of the compensation.

[Senator Denton returned to the hearing.]

I envision that, unlike other statutes where you have a series of violations, this will probably be a single violation the way it is cur-

rently worded, that the total exposure from any prosecution would be the 10 years plus the $25,000 fine.

Senator DENTON. Mr. Richard, on pages 1 and 2 of your prepared statement, you state:

> Under accepted international law principles the Congress has the power to regulate and punish conduct of United States citizens and others owing permanent allegiance to the United States wherever they may be.

Would you provide the subcommittee with a more detailed analysis of this power of Congress and the principles, both international and domestic, upon which it rests?

Mr. RICHARD. It is the so-called international principle of jurisdiction. We would be glad to provide you with material on that principle.

[The additional information is found as item "5." on p. 67 of the appendix to this hearing.]

Senator DENTON. Also in your statement you recommend amending the forfeiture provisions presently contained in the bill. Would you describe more fully the changes you are suggesting, giving the Department's rationale for the changes?

Mr. RICHARD. Mr. Chairman, the administration has supported extensive revision of the general forfeiture provisions. They are quite complex and quite lengthy. I will be glad to submit that for the record, Mr. Chairman.

[The additional information is found as item "6." on p. 68 of the appendix to this hearing.]

Senator DENTON. I would like to thank you both very much. In case you leave before the usual statement at the end about responding to questions within 10 days after submission, we invite your attention to that. Thank you very much for your helpfulness.

[Statements of Messrs. Richard and Smith follow:]

Testimony

by

Mark Richard
Deputy Assistant Attorney General
Criminal Division
U.S. Department of Justice

My name is Mark Richard. I am a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice.

It is a pleasure for me to appear before you today to testify on behalf of the Administration concerning S. 2255 - the Antiterrorism and Foreign Mercenary Act. The Department of Justice is supportive of the enactment of S. 2255 if the changes which we suggest are incorporated into the bill. It is our belief that S. 2255, as appropriately modified, would close gaps in existing law and give the President needed additional power to deal with international terrorism.

S. 2255 would prohibit the furnishing by Americans of various forms of assistance, primarily highly technical services, and skills of a military nature, to certain governments, factions, or terrorist groups. S. 2255 does not, itself, deal with the sale of munitions, weapons, or other military hardware by Americans to such groups. Existing statutes -- primarily 22 U.S.C. 2778 -- cover these areas.

We believe the approach taken by S. 2255 is sound and provides a vehicle by which successful prosecutions can be brought against individuals who violate the restrictions when they are in force. Under accepted international law principles the Congress has the power to regulate and punish conduct of United States citizens and others owing permanent allegiance to the United States wherever they may be. Hence, when the President or Congress determines that the national security, foreign relations, or commerce interests of the United States warrant a ban on certain kinds of assistance by American citizens or businesses to a particular foreign government,

faction, or terrorist group, this assistance should cease. Failure to terminate such assistance in the time span provided under the bill exposes the individual to criminal sanctions and penalties.

The following is a section-by-section analysis of the bill:

Section 2 of the bill sets forth the findings by Congress.

Section 3 of the bill creates a new section 971 entitled "Military and intelligence assistance to certain foreign governments, factions, and terrorist groups" in chapter 45 (Foreign Relations) of title 18, United States Code.

Subsection (a)(1) of the proposed section 971 would make it unlawful for any citizen of the United States, any alien lawfully admitted to the United States for permanent residence (as defined in Section 101(a)(20) of the Immigration and Nationality Act), any sole proprietorship, partnership, corporation, or association organized under the laws of the United States, its territories, or possessions to knowingly and willfully perform or attempt to perform any of several enumerated acts with respect to either the government of Libya or any other foreign government, faction, or terrorist group named in a Presidential Proclamation. The prohibited acts are:

A. To serve in, or in concert with, the armed forces or in any intelligence agency;

B. To provide training in any capacity to the armed forces or any intelligence agency or their agents;

C. To provide any logistical, mechanical, maintenance, or similar support services to the armed forces, any intelligence agency, or their agents;

D. To conduct any research, manufacturing, or construction project which is primarily supportive of the military or intelligence functions; or

E. To recruit or solicit any person to engage in any activity described in sub-paragraphs (A) through (D).

Subsection (a)(2) makes it unlawful for any person or entity within the boundaries of the United States, its territories or possessions, to knowingly and willfully perform or attempt to perform any of the acts enumerated in (B) through (E) above.

Subsection (b) sets out the penalty for a violation of the new section. The penalty would extend to a fine of not more than five times the total compensation received for a violation, or $25,000, whichever is greater, or imprisonment for not more than ten years, or both, for each offense.

Subsection (c), provides that the President may, when he determines that it is warranted for the purposes of national security, foreign relations, or commerce interests of the United States, issue a proclamation naming any foreign government, faction, or terrorist group as one on which there is a ban as to the availability of services, resources, and other forms of assistance described above; thus triggering the operation of subsection (a) with respect to any government or faction other than the government of Libya.

Subsection (d) provides for revocation of any proclamation made by the President, as indicated above, and a declaration by the President should he determine that application of the above described sanctions are no longer applicable as to the Government of Libya. All proclamations and revocations of such proclamations are required by the bill to be published in the Federal Register and would become effective immediately upon publication.

Subsection (e) provides definitions of such terms as "foreign government," "armed forces," "faction," "terrorist group," and "intelligence agency." Subsection (f) provides that

any finding of fact made in any proclamation is presumed conclusive and that its validity cannot be questioned by a defendant at the time of trial. Subsection (g) provides for extraterritorial applicability of subsection (a)(1). Subsection (h) enumerates affirmative defenses. Subsection (i) provides for a criminal forfeiture of any property obtained, derived, used or furnished in the illegal activity, in addition to the penalties prescribed in subsection (b). The Attorney General is empowered under subsection (i)(2) to seize any of the items subject to forfeiture and make proper disposition of them. Subsection (j) excludes from the scope of the bill the provision of medical services or training for humanitarian purposes.

Section 4 of the bill, provides that a trial with respect to any offense under the new section committed outside of the United States may be held in any district. It permits the defendant to file a motion under the Rules of Criminal Procedure for a change of venue.

Section 5 of the bill makes the definition of "foreign government" in section 11 of title 18, United States Code, nonapplicable to the new section.

While the Department of Justice is supportive of the concept behind S. 2255, we do feel that certain changes are needed. I have set forth as an appendix to my remarks the specific changes we suggest and the reasons therefor. While some of them are technical, I would like to briefly discuss four particularly important areas in which we believe the bill should be amended.

First of all, we think it is important that the focus of the legislation be aimed at international terrorism. In doing so, we believe it would be wise to utilize the definition for international terrorism which the Congress has already adopted in section 101(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(c) note). By doing so, the import of the bill is aimed at that portion of the worldwide terrorism

problem which would or could most likely affect United States interests.

Second, we believe the present definition of "businesses" in the bill should be modified to include most business operations involving United States citizens and corporations.

Third, we suggest that the criminal forfeiture provision be rewritten to correspond to existing legal requirements and practices and that it be drafted in such a fashion that future legislative improvements in the area of criminal forfeiture will be incorporated into this legislation. Our suggestions on this point accomplish these goals.

Fourth, we suggest that the bill specifically exclude from its criminal liability any properly authorized and conducted intelligence activities of the United States Government.

Besides these suggestions, there are four other considerations which I would like to address. First of all, the bill as written specifically mentions Libya. Since this is a foreign affairs matter, the Department of Justice defers to the Department of State on the desirability of this aspect. We do note, however, that by specifically mentioning that country, the President is deprived of some leverage and flexibility in attempting to limit Libya's assistance to terrorist groups through diplomatic measures.

Secondly, the bill, consistent with other measures relating to national security and foreign affairs, does give the President broad discretion in imposing a ban, but it does require that he must find that "the national security, foreign relations, or commerce interests of the United States" would warrant such a ban. Each of these terms has a clear meaning and covers different national interests. The President can determine whether the conduct of any foreign government, faction, or group harms such interest. It is then left to the sound discretion of the President to decide whether the strong sanctions imposed by the bill should be activated. Of course,

in issuing any proclamation, it is anticipated the President would set forth the facts which have caused him to find that a ban is warranted. Consequently, we are satisfied that the standards in the bill are constitutionally adequate. We do suggest, however, that the term "commerce interests" be replaced by the more proper descriptive term "security of the commercial interests" of the United States.

Thirdly, it is important to note that the primary thrust of this legislation is to prohibit the furnishing of certain complex or skilled services. This is entirely clear in subparagraphs (a)(1)(A), (B), and (C) and (a)(2)(A), (B), and (C). In fact, it should be noted that subparagraphs (a)(1)(C) and (a)(2)(C) specifically relate to support services. This bill does not cover the furnishing of goods or materials as existing export control laws adequately cover such things. Moreover, it is important to realize that the support services must be provided to what we in this country would consider the military, intelligence, or police functions of the foreign government. For example, this bill would not prevent the furnishing of support services to the Agriculture Department of a country if that department happened to be headed by a military officer.

Finally, we do realize that the type of activities, particularly in subparagraphs (a)(1)(D) and (a)(2)(C), which would be banned is quite extensive. The Congress may wish to either eliminate these two subsections or narrow their scope. However, in doing so, the bill should not require the prosecutor to prove that the prohibited services were actually being used to promote international terrorism activities. It will be sufficiently difficult to prove that the services were provided. For what purpose the foreign government, faction, or group actually used the services will be nearly impossible to prove as the needed witnesses and evidence will be overseas and beyond the jurisdiction of our courts to compel production.

In conclusion, it appears to us that any meaningful effort

to thwart the furnishing of assistance supportive of terrorism by some American citizens and businesses requires a commitment on our part to impose the limited trade sanctions on the types of services set forth in the bill against the few pirate nations and groups in the world engaging in and supporting terrorism. As is customary, the Department of Justice is prepared to work with your staff in the refinement of this important legislation.

This concludes my prepared remarks. I would be happy to answer any questions you may have.

Enclosure.

Appendix
Suggested Changes to S. 2255 by
the United States Department of Justice

1. Insert the word "international" before the term "terrorist group" wherever such term appears in the bill. We believe this change, as clarified by some further suggested changes to the definitions, properly focuses national action upon international terrorism. In the same view, we also believe that the word "foreign" should be inserted before the word "faction" wherever such word appears in the bill. In addition, in subsection (e)(3), we suggest that the word "foreign" be inserted before the word "country" on line 5 of page 7 and that the words "terrorist groups," in line 2 on page 7 be deleted. This change focuses the bill on foreign factions and not domestic factions.

2. In subsection (a)(1), we suggest that the words "any sole proprietorship, partnership, corporation, or association organized under the laws of the United States, its territories, or possessions" be replaced by the words "or business entity." The term "business entity" could then be defined in subsection (e) as follows:

> "( ) the term 'business entity' means any sole proprietorship, partnership, company, or association composed in whole or in part of citizens or permanent resident aliens of the United States or any corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States."

This suggested change adopts the approach taken in H.R. 5211, a bill similar to S. 2255 in the House. As presently drafted, S. 2255 would not cover businesses incorporated under state law. Nor is it clear whether S. 2255 would cover businesses which are not actually organized pursuant to some statutory law. We believe the proposed definition of "business entity" cures most of these problems. We do note, however, that a foreign corporation which is owned, in whole or in part, by a United States corporation or which is affiliated in some business relationship with a United States business entity, would, most probably, not be covered by S. 2255 or the proposed change. On

the other hand, the suggested definition is broad enough to reach a United States citizen or permanent resident alien who organizes a partnership or other unincorporated business entity under foreign law and uses such entity to violate the statute. The definition would also cover any American citizen or permanent resident alien who, while in the employ of a foreign corporation, provided any of the services or assistance prohibited under the statute.

3. In line 12 on page 3, we would suggest that the word "act" be inserted before the words "in concert with." We believe this change helps clarify the text.

4. In line 13 on page 3 the first "of" should be "or";

5. In subsection (c)(1) on page 5 and in subsection (d)(2) on page 6, we suggest that the term "commerce interests" be replaced by the term "security of the commercial interests." As such, this change focuses the concern on threaten or actual physical attacks against United States businesses or businessmen overseas and clearly shows that it does not pertain to the entire gamut of interests under the commerce power which could include legitimate competition in the marketplace. Moreover, we suggest that in line 21 on page 5 that the term", resources," be deleted because the bill only covers services and does not cover goods or materials.

6. In subsection (e)(4) the definition of "terrorist group" should be replaced by the three definitions listed below, and subsection (e) (5) should be renumbered as (e)(7);

"(4) the terms "group" means an association of persons, whether or not a legal entity;

(5) the term "international terrorist group" means a group which engages in international terrorism;

(6) the term "international terrorism" has the meaning given to it in section 101(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(c) note)";

We believe that using Congress' present definition of "international terrorism" gives further meaning to this legislation.

7. In line 8 on page 8 the word "of" should be replaced by the word "after." As presently written with the word "of," the section could be interpreted to mean 60 days either before or after the effective date. The proper period should be after the effective date. Moreover, subparagraph (C) in subsection (h)(1) appears to be redundant and could be stricken from the bill because paragraph (1) of subsection (h) already contains the same element.

The affirmative defense is available only to a United States citizen or resident alien who is outside the United States on

the effective date of the bill or any proclamation issued under subsection (c). As such, the 60 day grace period for such persons is comparable to the approach taken by H.R. 5211.

8. With respect to the criminal forfeiture provision subsection (i), we would suggest that the present provision be deleted and replaced with the following:

> "(i)(1) Whoever has been convicted of a violation of this section, in addition to any other penalty prescribed by this section, shall forfeit to the United States --
>
> "(A) any property constituting, or derived from, any proceeds he obtained, directly or indirectly, as a result of such violation; and
>
> "(B) any of his property used, or intended to be used, to commit, or to facilitate the commission of, such violation.
>
> "(2) The procedures in any criminal forfeiture under this section, and the duties and authority of the courts of the United States and the Attorney General with respect to any criminal forfeiture action under this section or with respect to any property that may be subject to forfeiture under this section, are to be governed by the provisions of section 1963 of this title."

This suggestion simplifies the bill's present description of property which is to be subject to criminal forfeiture. As presently drafted, it appears that subsection (i) would permit the criminal forfeiture of two types of property: first, property which constitutes or is traceable to the economic gain reaped by the defendant as a result of the offense, and second, any of his property that was used to commit or facilitate the commission of the offense. It seems that both subparagraphs (A) and (D) of the bill, as presently drafted, are designed to reach proceeds. Indeed, there is considerable overlap in the scope of the two provisions. Our suggested subparagraph (A) is, in our view, a more straightforward way of describing these proceeds. (We strongly recommend the use of the term "proceeds" in lieu of "profits" so as to avoid the problem of the government being required to account for any "expenses" of the defendant in establishing the extent of property subject to forfeiture.) It appears that present subparagraphs (B) and (C) are intended to reach the second type of property. However, the scope of present subparagraph (B) is very unclear. We believe that our suggested subparagraph (B) provides a clearer definition of property subject to forfeiture by virtue of its having been used to accomplish the violation.

This suggestion also assures that the courts and the Attorney General can follow the comprehensive procedures already established and utilized for criminal forfeiture under 18 U.S.C. 1963. In view of the fact that Congress is presently considering substantial changes to section 1963 to address some of the problems posed in criminal forfeiture actions, */ our

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*/ See S. 2320, the Comprehensive Criminal Forfeiture Act of 1982" and Section 602 of S. 2572, the "Violent Crime and Drug Enforcement Improvement Act of 1982."

proposed subsection (i)(2) would incorporate into this bill any of the proposed changes to section 1963 that may ultimately be enacted.

9. In line 23 on page 6, the reference should be to section 1116(b)(2).

10. We suggest a new subsection (k) to read as follows:

> "(k) Nothing in this section shall be construed to create criminal liability for the conduct of United States intelligence activities which are properly authorized and conducted in accordance with federal statutes and Executive orders governing such activities."

This amendment preserves the status quo under the law governing United States intelligence activities. The proposed amendment would not itself authorize any United States intelligence activities, nor would it exculpate United States intelligence personnel who might engage in activities which are not lawfully authorized. The National Security Act of 1947, as amended (including its congressional oversight provisions), the Foreign Assistance Act of 1961 as amended (concerning special activities), the Foreign Intelligence Surveillance Act of 1978 (concerning electronic surveillance), the various statutes governing the activities of the individual intelligence agencies (e.g., the Central Intelligence Agency Act of 1949, the National Security Agency Act of 1959), Executive Order 12333 and detailed implementing regulations approved by the Attorney General, along with other applicable statutes and Executive orders, will continue to determine what United States intelligence agencies can and cannot do to counter the threat of foreign terrorism. Consequently, proposed subsection (k) clearly states congressional intent that the bill is not intended to prevent the authorized use of penetration agents or double agents directed against the military or intelligence components of a designated terrorist group or government by our intelligence agencies.

TESTIMONY BY JEFFREY H. SMITH
ASSISTANT LEGAL ADVISER FOR LAW ENFORCEMENT
AND INTELLIGENCE
DEPARTMENT OF STATE

THANK YOU MR. CHAIRMAN FOR THE OPPORTUNITY TO APPEAR BEFORE THE SUB-COMMITTEE THIS MORNING TO GIVE THE DEPARTMENT OF STATE'S VIEWS ON S.2255, THE ANTITERRORISM AND FOREIGN MERCENARY ACT.

AS THIS COMMITTEE KNOWS, THE DEPARTMENT OF STATE REGARDS TERRORISM TO BE ONE OF THE MOST PRESSING PROBLEMS OF OUR DAY. PRESIDENT REAGAN, SECRETARY SHULTZ, AND THEIR PREDECESSORS, HAVE REPEATEDLY EMPHASIZED THE NEED TO COMBAT INTERNATIONAL TERRORISM.

THE KEY TO CONTROLLING INTERNATIONAL TERRORISM IS COOPERATION AMONG NATIONS. INCREASINGLY, NATIONS ARE COOPERATING. BUT MUCH MORE IS NEEDED, AND WE AND OUR ALLIES ARE PRESSING FOR SUCH COOPERATION. FOR EXAMPLE, THE UNITED STATES IS PARTY TO A NUMBER OF INTERNATIONAL CONVENTIONS REQUIRING STATES TO "EXTRADITE OR PROSECUTE" INDIVIDUALS WHO COMMIT SUCH TERRORIST ACTS AS HIJACKING AIRCRAFT, ASSAULTING DIPLOMATS, TAKING HOSTAGES, OR STEALING NUCLEAR WEAPONS. A NUMBER OF DOMESTIC STATUTES HAVE BEEN ADOPTED WHICH PREVENT VARIOUS FORMS OF U.S. ASSISTANCE TO GOVERNMENTS THAT AID OR ABET TERRORISTS. FINALLY, WE ARE TAKING STEPS TO ENHANCE SECURITY AT AMERICAN EMBASSIES OVERSEAS AND TO INCREASE PROTECTION AFFORDED TO FOREIGN DIPLOMATS IN THE UNITED STATES.

IT IS PARTICULARLY DISTRESSING THAT UNITED STATES CITIZENS AND BUSINESSES HAVE REPORTEDLY ASSISTED INTERNATIONAL TERRORISM BY PROVIDING TRAINING, EXPLOSIVE DEVICES, WEAPONS, AND OTHER ASSISTANCE. THESE ACTIVITIES SERIOUSLY UNDERCUT OUR EFFORTS TO COMBAT TERRORISM AND MUST BE STOPPED. IN REVIEWING THE

CRIMINAL LAWS THAT ARE APPLICABLE TO THESE ACTIVITIES, CERTAIN GAPS APPEAR WHICH SHOULD BE CLOSED. WE ARE THEREFORE PLEASED THAT SENATOR HUMPHREY HAS INTRODUCED S.2255, THE BILL WHICH IS THE SUBJECT OF THESE HEARINGS TODAY.

THIS BILL RAISES A NUMBER OF DIFFICULT ISSUES AND OUR COMMENTS HERE TODAY REPRESENT OUR PRELIMINARY THINKING ON THE BILL. ONE DIFFICULTY SHOULD BE MENTIONED AT THE OUTSET. TERRORIST GROUPS FREQUENTLY CHANGE THEIR NAMES AND WE OFTEN KNOW LITTLE ABOUT THEM. (SINCE WE BEGAN KEEPING STATISTICS IN 1968, MORE THAN 670 GROUPS HAVE CLAIMED CREDIT FOR AT LEAST ONE INTERNATIONAL TERRORIST ATTACK; IN 1981, 113 GROUPS CLAIMED CREDIT FOR SUCH ATTACKS.) THEREFORE, TO LIST THESE GROUPS AND MAKE THE PROVISION OF CERTAIN ASSISTANCE TO THEM CRIMINAL, RUNS THE RISK OF LISTING A GROUP ONLY TO FIND OUT THAT THEY HAVE CHANGED THEIR NAME. ANOTHER RISK IS THAT A TERRORIST ACT COULD BE COMMITTED BY A GROUP WE'VE NEVER HEARD OF AND IF A U.S. CITIZEN WERE INVOLVED, HE OR SHE WOULD NOT APPEAR TO BE COVERED BY THIS BILL. OBVIOUSLY THIS PROBLEM DOES NOT EXIST WITH RESPECT TO GOVERNMENTS, BUT DOES SEEM TO US TO BE A SERIOUS DRAWBACK IN THE BILL AS DRAFTED. THIS SUGGESTS THAT SOME ALTERNATE APPROACH, SUCH AS USE OF EXISTING LICENSING LAWS WHICH FOCUS ON THE ACTIVITY RATHER THAN THE RECEPIENT, MIGHT BE EXPLORED. FOR EXAMPLE, UNDER THE ARMS EXPORT CONTROL ACT 22 U.S.C. 2751, ET. SEQ., THE SECRETARY OF STATE CONTROLS THE EXPORT OF DEFENSE ARTICLES AND SERVICES. THE DEPARTMENT OF STATE HAS RECENTLY PROPOSED A COMPREHENSIVE REVISION OF THE IMPLEMENTING REGULATIONS WHICH WOULD EXPAND THE CURRENT DEFINITION OF DEFENSE SERVICES TO INCLUDE SUCH ACTIVITIES AS THE TRAINING OF FOREIGN MILITARY FORCES OR TERRORIST GROUPS IN THE USE OF WEAPONS MOST OTHER MILITARY OR INTELLIGENCE RELATED ITEMS. THESE ACTIVITIES WILL THEN REQUIRE A LICENSE BY THE SECRETARY OF STATE. WE HAVE ALSO PROPOSED LEGISLATION WHICH

WOULD RAISE THE MAXIMUM PENALTIES FOR VIOLATION OF THESE REGULATIONS TO 10 YEARS IMPRISONMENT OR A ONE MILLION DOLLAR FINE.

AN EXISTING ARRAY OF LAWS HAVE BEEN ENACTED BY THE CONGRESS OVER THE YEARS IN AN EFFORT TO COMBAT INTERNATIONAL TERRORISM. MANY OF THESE PROHIBIT VARIOUS FORMS OF U.S. ASSISTANCE TO GOVERNMENTS THAT AID OR ABET TERRORISM. S.2255, THE BILL WE ARE DISCUSSING TODAY, COULD BE A USEFUL COMPLEMENT TO THOSE LAWS. MY JUSTICE DEPARTMENT COLLEAGUE, MARK RICHARD, HAS MADE A NUMBER OF TECHNICAL SUGGESTIONS WHICH REFLECT CONSULTATIONS BETWEEN OUR TWO DEPARTMENTS AND IN WHICH WE CONCUR.

FOR THIS BILL TO BE USEFUL TO THE PRESIDENT AND THE SECRETARY OF STATE AS TOOL IN OUR EFFORT TO COMBAT TERRORISM, WE BELIEVE THAT THE SCOPE OF PROHIBITED ACTIVITIES SHOULD BE NARROW. THIS WILL PERMIT THE PRESIDENT TO ADOPT PRECISE MEASURES THAT ARE DIRECTLY RESPONSIVE TO ANOTHER GOVERNMENT'S SUPPORT OF INTERNATIONAL TERRORISM AND WOULD NOT PUT THE PRESIDENT IN THE DIFFICULT DILEMMA OF ADOPTING MEASURES WHICH MIGHT HAVE THE EFFECT OF BARRING LEGITIMATE TRADE. FOR EXAMPLE, IF THE SCOPE OF THE PROHIBITED ACTIVITIES IS VERY BROAD, THE PRESIDENT WOULD FACE A DILEMMA IN DECIDING WHETHER TO PUT A GOVERNMENT ON THE LIST BECAUSE TO DO SO MIGHT TERMINATE TRADE THAT MOST OF US WOULD AGREE OUGHT TO CONTINUE. THIS WOULD BE ESPECIALLY TRUE WITH RESPECT TO MILITARY GOVERNMENTS BECAUSE, AS PRESENTLY DRAFTED, THE BILL WOULD MAKE CRIMINAL THE PROVISION OF THESE SERVICES TO THE ARMED FORCES OF A LISTED FOREIGN GOVERNMENT. IN MANY GOVERNMENTS WHICH ARE RUN BY MILITARY OFFICERS IT IS DIFFICULT TO SORT OUT WHERE THE ARMED FORCES END AND WHERE CIVILIAN INSTITUTIONS BEGIN. FOR EXAMPLE, IN MANY STATES THE MAJOR INTERNATIONAL AIRPORT IS ALSO A MILITARY AIRPORT. IF AN AMERICAN COMPANY HAS A CONTRACT TO MAINTAIN THE INTERNATIONAL AIRPORT, SUCH A CONTRACT COULD BE

SAID TO BE A "MAINTENANCE...SERVICE" WHICH WOULD BE PROHIBITED UNDER §971(A)(1)(C) AND (2)(C) OF THIS BILL. IN OTHERS, THE COUNTRY'S AIR FORCE IS IN CHARGE OF ALL AIRPORTS. AND IN SOME COUNTRIES, THE MILITARY SO COMPLETELY RUN THINGS THAT THEY EVEN ISSUE CONSTRUCTION AND COMMERCIAL PERMITS. ONE POSSIBLE SOLUTION TO THIS PROBLEM WOULD BE TO AMEND THE LANGUAGE OF THE BILL TO MAKE IT CLEAR THAT IT WOULD ONLY BE CRIMINAL TO PROVIDE THE PROHIBITED SERVICES TO CONVENTIONAL MILITARY AND INTELLIGENCE ORGANIZATIONS, NOT OTHER GOVERNMENTAL ORGANS THAT ARE PRIMARILY CIVILIAN IN NATURE.

AN ADDITIONAL STEP WHICH WOULD BE USEFUL IN NARROWING THE SCOPE OF THE PROHIBITED ACTIVITIES WOULD BE TO ELIMINATE SUBPARAGRAPH D OF SECTION (A)(1) AND (2). THESE IDENTICAL SUBPARAGRAPHS MAKE IT A CRIME TO "CONDUCT ANY RESEARCH, MANUFACTURING OR CONSTRUCTION PROJECT WHICH IS PRIMARILY SUPPORTIVE OF THE MILITARY OR INTELLIGENCE FUNCTIONS" OF A LISTED GOVERNMENT OR FACTION. WE ARE CONCERNED, AND THE DEPARTMENT OF JUSTICE AGREES, THAT THE BREADTH OF THIS SUBPARAGRAPH WOULD CREATE MANY DIFFICULTIES IN ITS INTERPRETATION AND APPLICATION AND COULD POSSIBLY PROHIBIT ACTIVITIES THAT ARE OTHERWISE PROPER. THE PROHIBITION ON "MANUFACTURING" MIGHT BE INTERPRETED TO BAR THE SALE OF VIRTUALLY ANY MANUFACTURED GOODS TO A COUNTRY THAT HAS BEEN LISTED, FOR EXAMPLE, THE SALE OF A COMPUTER TO THE CENTRAL GOVERNMENT OR EVEN COTTON CLOTH WHICH COULD BE MADE INTO UNIFORMS. SIMILARLY, THE BAN ON "CONSTRUCTION" WOULD PROBABLY HALT, OR CALL INTO SERIOUS QUESTION, MAJOR AMERICAN CONSTRUCTION CONTRACTS IN A LISTED COUNTRY. MOREOVER, IT DOES NOT APPEAR TO BE NECESSARILY DIRECTLY RELATED TO A GOVERNMENT'S SUPPORT OF INTERNATIONAL TERRORIST ACTIVITY. ACCORDINGLY, WE SUGGEST THAT IT BE DROPPED.

WE ARE ALSO CONCERNED ABOUT PARAGRAPH (C)(1) OF SECTION 971.

THIS PARAGRAPH PROVIDES THAT WHENEVER THE PRESIDENT FINDS THAT "THE NATIONAL SECURITY, FOREIGN RELATIONS OR COMMERCE INTERESTS OF THE UNITED STATES WARRANT A BAN" ON THE PROHIBITED ACTIVITIES, THE PRESIDENT MAY ISSUE A PROCLAMATION NAMING SUCH FOREIGN GOVERNMENT, FACTION OR TERRORIST GROUP. WE BELIEVE THAT THE PHRASE "COMMERCE INTERESTS" SHOULD BE CHANGED TO READ "SECURITY OF UNITED STATES CITIZENS OR THEIR PROPERTY." THIS ELIMINATES THE POSSIBILITY THAT OTHER GOVERNMENTS MAY SEE THIS BILL AS AN EFFORT TO PROHIBIT TRADE WHEN THE UNITED STATES OR AMERICAN COMPANIES HAVE SUFFERED SOME COMMERCIAL HARM. WE BELIEVE THE THRUST OF THE BILL IS TO PROTECT THE PHYSICAL SECURITY OF AMERICANS AND THEIR PROPERTY OVERSEAS, RATHER THAN THEIR PURELY COMMERCIAL INTERESTS, ACCORDINGLY, WE BELIEVE THIS CHANGE WOULD BE USEFUL. WE ALSO SUGGEST THAT THE TERM "NATIONAL SECURITY" BE USED AS IN THE EXECUTIVE ORDER ON CLASSIFIED INFORMATION (E.O. 12356). THEREFORE, WE SUGGEST THAT THIS SECTION BE REWRITTEN AS "THE NATIONAL SECURITY, INCLUDING THE FOREIGN RELATIONS AND NATIONAL DEFENSE, OR THE SECURITY OF UNITED STATES CITIZENS OR THEIR PROPERTY."

ALSO, THE DEPARTMENT OF STATE DOES NOT BELIEVE THAT THE GOVERNMENT OF LIBYA SHOULD BE NAMED IN THIS LEGISLATION, FOR THREE PRINCIPAL REASONS. FIRST, AS A MATTER OF GOOD LEGISLATIVE PRACTICE WE BELIEVE THAT INDIVIDUAL GOVERNMENTS SHOULD NOT BE SINGLED OUT IN LEGISLATION. SECOND, BECAUSE OF PAST AND PRESENT LIBYAN GOVERNMENT POLICY OF SUPPORT TO TERRORIST GROUPS, IT IS UNLIKELY THAT NAMING LIBYA IN THE LAW WOULD PERSUADE THAT GOVERNMENT TO MEND ITS WAYS. THIRD, EVEN THOUGH THIS BILL HAS A PROVISION WHICH WOULD PERMIT THE PRESIDENT TO REMOVE THE APPLICATION OF THE LAW TO LIBYA (§971(D)(2)), IT WOULD ALSO BE DESIRABLE TO REMOVE IT FROM THE STATUTE SHOULD THERE BE A REVERSAL IN ITS TERRORIST POLICIES.

NEW LEGISLATION WOULD BE NECESSARY TO REMOVE LIBYA FROM THE STATUTE, WHEREAS IT COULD BE REMOVED EASILY FROM ANY PROCLAMATION NAMING TERRORIST GROUPS AND GOVERNMENTS WHICH THE PRESIDENT WOULD ISSUE PURSUANT TO THIS LAW.

FINALLY, THE DEPARTMENT OF STATE ALSO SUGGESTS THAT THIS COMMITTEE MAY WISH TO SEEK THE VIEWS OF THE DEPARTMENT OF COMMERCE AND THE UNITED STATES TRADE REPRESENTATIVE TO THE EXTENT THIS BILL MAY HAVE AN IMPACT ON COMMERCIAL AND TRADE INTERESTS OF THE UNITED STATES AND ITS CITIZENS. THANK YOU VERY MUCH.

Senator DENTON. I now call on the Honorable John M. Maury, president of the Association of Former Intelligence Officers. I welcome John Warner, also.

STATEMENT OF JOHN M. MAURY, PRESIDENT, THE ASSOCIATION OF FORMER INTELLIGENCE OFFICERS, ACCOMPANIED BY JOHN WARNER AND WALTER PFORZHEIMER

Mr. MAURY. Thank you, Mr. Chairman. I have with me John Warner, legal adviser of our organization, and Walter Pforzheimer, sitting back there, who is an old hand in legislative and legal matters for the CIA.

We just figured out a few minutes ago that among the three of us we have had 120 years of experience in this field of intelligence and related legal problems. So, we are all old men.

Mr. Chairman, as the association's president, I welcome this opportunity to comment on S. 2255, which is of special interest to us. Indeed, just a year ago at our annual convention, the Association of Former Intelligence Officers adopted a resolution censuring the acts of a few former members of our profession who have betrayed their profession and the best interests of their country by selling their skills and services to those who seek to destroy the values that we have devoted our careers to defending.

Our statement contains attached to it a copy of that resolution. We are happy to note that the Washington Post quoted it on its editorial page back at that time.

Events since that time have added to the dimensions of the problem of international terrorism and to our concern about it. We therefore strongly endorse the purposes of S. 2255.

However, we would like to make several suggestions and comments on the specific wording of this bill, if we may.

First, we believe it more appropriate not to designate the Government of Libya by name. Since subsection (c) of new section 971 of title 18 provides a means by which the President, through proclamation, may designate governments, factions and groups which come within the propored law, this would seem sufficient.

Second, subsection (e)(5) of the new section 971 provides a definition of "intelligence agency" which we believe is too broad. A foreign ministry, library, or newspaper easily could fall within this definition. Perhaps no definition is required except to specify that the term "intelligence agency" includes internal security forces and agencies.

Our most important suggestion, Mr. Chairman, concerns the ability of the U.S. intelligence agencies to conduct successful operations against governments or groups by penetration or subversion. Read literally, the proposed law would prohibit U.S. agencies from giving assistance or training to penetration agents and would prohibit use of an American citizen or permanent resident alien as a penetration agent. We strongly urge an appropriate amendment to avoid putting such shackles on duly authorized U.S. intelligence operations.

It appears that this legislation probably overlaps existing provisions of law but at the same time appears to eliminate some gaps in existing law. However, we leave a detailed analysis to those more familiar with U.S. criminal laws and law-enforcement activities.

With these suggestions in mind, Mr. Chairman, we wholeheartedly support this legislation and urge its enactment.

Thank you for hearing us. If Mr. Warner or I can answer any of your question, we would be glad to do so. Thank you.

Senator DENTON. We are glad to have you back with us. I am glad to renew my friendship and acquaintance with Mr. Pforzheimer also.

Would you please give the subcommittee some specific examples of the abuses by U.S. persons or businesses which have occurred which would be prosecutable if S. 2255 is enacted? You mentioned your resolution. I share with you my abhorrence of the few who have dishonored the tradition and service of the vast majority of intelligence people. But what are some of the abuses that strike you as particularly abhorrent?

Mr. MAURY. Mr. Chairman, I explained that we have been out of the mainstream; we are retired. So, I am afraid we are not up to date on the facts regarding some cases where there are rumors of various improprieties. Certainly, I think it is safe to say, though, from everything we have seen and heard the cases of Messrs. Wilson and Terpil are prime examples. I have strong suspicions that there have been other abuses which I am not in a position to document fully because I do not have access to the information which would be available to the parent agencies of these people.

It is an abuse that I think is often very hard to pin down in that there is a gray area here. It is very difficult to tell an honorably retired government servant that there are certain kinds of activities and contracts and so on that he cannot enter into unless you can demonstrate that there is an overriding national interest. I mean, his constitutional rights of association and contracts and so on certainly have to be reckoned with. On the other hand, there have been people from the military as well as the civilian agencies who, I think, have certainly abused their past privileged positions by serving foreign interests for either gain or sometimes for ideological purposes.

I am sorry to say that I cannot think of other examples that I would feel free to put in the record, simply because I do not believe I have the full facts necessary to justify my judgment. Maybe Mr. Warner could comment on that question, sir.

Mr. WARNER. I feel that question was already asked of the Department of Justice. I think they are in a far better position than we are.

Senator DENTON. Mr. Maury, would you give your reasons for the recommendation about not designating the Government of Libya by name? Would you point out the problems you foresee if they were named? Would you place that Libyan recommendation parallel to a similar comment about the Soviet Union, Cuba, the PLO, SWAPO, and so on?

Mr. MAURY. Well, my personal feeling, sir, would be that I think the President should have wide latitude and discretion in designating the governments and individuals concerned. I think circumstances may some day arise, hopefully in the near future, when Libya will see the error of its ways and get out of the terrorist business. I am not predicting this. It is a fond hope, I know. But, still, I think that to put in legislative concrete the identities of any of the governments or groups may be a mistake because things change pretty rapidly in this kind of world. I would like to see the flexibility provided here so that the President can adjust to the problems as they arise.

Senator DENTON. As your testimony indicates, I would have to conclude that you agree with the amendment suggested by the Department of Justice and the CIA pertaining to the U.S. intelligence activities. Is that correct?

Mr. MAURY. In general, yes, sir. Mr. Warner may have some views on that.

Mr. WARNER. They have not proposed specific language yet, but, as I understand it, they understand the problem involved. We agree with the way they have suggested that there be some sort of amendment. What the exact language would be would be another matter, which I am sure would not be too difficult.

Senator DENTON. The CIA will not have a witness present to testify, but a statement by Gary M. Chase, Associate General Counsel for Legislation, CIA, addressed to this subcommittee and dated today will be made part of the official record of this hearing.

[The statement of Mr. Chase appears in the appendix, at p. 60.]

Senator DENTON. I want to thank you gentlemen for coming this afternoon. We note the resolution which you referred to as having been reprinted in the Washington Post and completely understand your sentiments in that regard.

The resolution on standards of professional conduct for intelligence personnel will be included in our permanent record of this hearing.

I also want to insert in the record the recently released President's report on all legislation and administrative remedies, currently in force and proposed, which can or could be employed to prevent the involvement, service, or participation by U.S. citizens in activities in support of international terrorism or terrorist leaders. It is noted that S. 2255 is mentioned as appearing to provide a starting point for legislation in this area.

[For the full text of the President's report, see appendix, p. 70.]

You, too, may receive written questions from me or the other members of the subcommittee. I will ask you to submit your written responses within 10 days from the time you receive the questions.

[The prepared statement of Mr. Maury with attached resolution follows:]

PREPARED STATEMENT OF JOHN M. MAURY

Mr. Chairman, Mr. John Warner, Legal Advisor of the Association of Former Intelligence Officers, and I, as the Association's President, welcome this opportunity to comment on S. 2255, which is of special interest to us. Indeed, just a year ago at our annual convention our Association adopted a resolution censuring the acts of a few former members of our profession who have betrayed their profession, and the best interest of their country, by selling their skills and services to those who seek to destroy the values we have devoted our careers to defending. (Copy attached hereto.) We were happy to note that shortly thereafter the Washington Post quoted this resolution on its editorial page.

Events since that time have added to the dimensions of the problem of international terrorism, and to our concern about it. We therefore strongly endorse the purposes of S. 2255.

We would, however, like to make several suggestions and comments on the specific wording of this bill.

1. We believe it more appropriate not to designate the Government of Libya by name. Since subsection (c) of new Section 971 provides a means by which the President, through proclamation, may designate governments, factions and groups which come within the proposed law, this would seem sufficient.

2. Subsection (e)(5) of new Section 971 provides a definition of "intelligence agency" which we believe is too broad. A foreign ministry, library, or newspaper easily could fall within this definition. Perhaps no definition is required except to specify that the term "intelligency agency" includes internal security forces and agencies.

3. Our most important suggestion concerns the ability of U.S. intelligence agencies to conduct successful operations against such governments, or groups, by penetration or subversion. Read literally, the proposed law would prohibit U.S. agencies from giving assistance or training to penetration agents and would prohibit use of an American citizen or permanent resident alien as a penetration agent. We strongly urge an appropriate amendment to avoid putting such shackles on duly authorized U.S. intelligence operations.

4. It appears that this legislation probably overlaps existing provisions of law but at the same time appears to eliminate some gaps in existing law. We leave a detailed analysis to those more familiar with U.S. criminal laws and law-enforcement activities.

With these suggestions in mind, we wholeheartedly support this legislation and urge its enactment.

Thank you for hearing us, Mr. Chairman. Mr. Warner and I will be glad to try to answer any questions you may have.

RESOLUTION ON STANDARDS OF PROFESSIONAL CONDUCT FOR INTELLIGENCE PERSONNEL

Whereas despite the high standards of conduct established by the several Federal intelligence agencies and observed by the majority of intelligence personnel, there have been abuses; and

Whereas among the most serious such abuses have occurred where former intelligence personnel exploit for personal gain their former intelligence connections by creating, encouraging or permitting to exist among unwitting individuals or organizations an impression they are still in some way associated with or acting on behalf of an intelligence or other Federal agency pursuant to a duly authorized National program or policy; and

Whereas such practice, from whatever motive, has the effect of directly supporting a primary objective of hostile intelligence services by casting doubt on the integrity and credibility of our intelligence organizations and personnel; and

Whereas such practice presents a serious obstacle to a primary objective of the Association of Former Intelligence Officers, which is to encourage public under-

standing of and support for our intelligence agencies by promoting the highest standards of professionalism, discipline and personal integrity among intelligence personnel, both active and retired; be it

Resolved; That the Association of Former Intelligence Officers in convention assembled on October 3, 1981, requests the officers of the Association of Former Intelligence Officers to consult with the several private professional intelligence organizations for suggestions on possible means of addressing the issue of standards of professional conduct for intelligence personnel and present their findings to the Board of Directors of the Association of Former Intelligence Officers.

Senator DENTON. Thank you very much. This hearing is adjourned subject to the call of the Chair.

[Whereupon, at 4:15 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

PROPOSED LEGISLATION

II

97TH CONGRESS
2D SESSION

S. 2255

To amend title 18, United States Code, to establish criminal penalties for providing services or information under certain circumstances to the Government of Libya or its agents and certain terrorist groups and foreign governments to be named by the President, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, FEBRUARY 22), 1982

Mr. HUMPHREY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, to establish criminal penalties for providing services or information under certain circumstances to the Government of Libya or its agents and certain terrorist groups and foreign governments to be named by the President, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antiterrorism and Foreign Mercenary Act".

SEC. 2. The Congress finds that—

(1) the growth and the size of armed forces and proliferation of advanced weaponry around the world

has empowered certain foreign governments, factions, and terrorist groups to pose new threats to the national security, foreign relations, and commerce interests of the United States;

(2) many of these foreign governments, factions, and terrorist groups lack the resources and capabilities to make efficient use of their armed forces and weaponry without the services and skills provided by more technologically advanced entities, including the United States;

(3) the Government of Libya is one such government;

(4) citizens of the United States have provided such services and are likely to do so in the future; and

(5) the provision of services on the part of United States citizens is in certain instances, detrimental to the national security, foreign relations, or foreign commerce interests of the United States.

SEC. 3. (a) Chapter 45 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 971. **Military and intelligence assistance to certain foreign governments, factions, and terrorist groups**

"(a)(1) Subject to subsection (j), it shall be unlawful for any citizen of the United States, any alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), any sole proprietorship, partnership, corporation, or association organized under the laws of the United States, its territories, or possessions to knowingly and willfully perform or attempt to perform any of the following acts:

"(A) serve in, or in concert with, the armed forces of any intelligence agency of the Libyan Government or of any other foreign government, faction, or terrorist group which is named in a proclamation in effect under subsection (c);

"(B) provide training in any capacity to the armed forces, any intelligence agency, or their agents; of—

"(i) the Government of Libya, or

"(ii) of any other foreign government, faction, or terrorist group named in a proclamation in effect under subsection (c);

"(C) provide any logistical, mechanical, maintenance, or similar support services to the armed forces, any intelligence agency, or their agents; of—

"(i) the Government of Libya, or

"(ii) of any other foreign government, faction, or terrorist group named in a proclamation in effect under subsection (c);

"(D) conduct any research, manufacturing, or construction project which is primarily supportive of the military or intelligence functions of the Government of Libya or of any other foreign government, faction, or terrorist group named in a proclamation in effect under subsection (c); or

"(E) recruit or solicit any person to engage in any activity described in subparagraphs (A) through (D) of this paragraph.

"(2) It shall be unlawful for any person or entity within the boundaries of the United States, its territories or possessions, to knowingly and willfully perform or attempt to perform any of the following acts:

"(A) provide training in any capacity to the armed forces, any intelligence agency, or their agents; of—

"(i) the Government of Libya, or

"(ii) of any other foreign government, faction, or terrorist group named in a proclamation in effect under subsection (c);

"(B) provide any logistical, mechanical, maintenance, or similar support services to the armed forces, any intelligence agency, or their agents; of—

"(i) the Government of Libya, or

"(ii) of any other foreign government, faction, or terrorist group named in a proclamation in effect under subsection (c);

"(C) conduct any research, manufacturing, or construction project which is primarily supportive of the military or intelligence functions of the Government of Libya or of any other foreign government, faction, or terrorist group named in a proclamation in effect under subsection (c); or

"(D) recruit or solicit any person to engage in any activity described in subparagraphs (A) through (C) of this paragraph.

"(b) Whoever violates this section shall be fined not more than five times the total compensation received for such violation, or $25,000, whichever is greater, or imprisoned for not more than ten years, or both, for each such offense.

"(c)(1) Whenever the President finds that the national security, foreign relations, or commerce interests of the United States warrant a ban on the availability of the services, resources, and other forms of assistance described in subsection (a), to any foreign government, faction, or terrorist group, the President may issue a proclamation naming such foreign government, faction, or terrorist group for which such finding has been made.

"(2) Any proclamation issued pursuant to this section shall—

"(A) be published in the Federal Register; and

"(B) become effective immediately upon publication.

"(d)(1) If the President determines that the conditions which were the basis for any proclamation issued under this section have ceased to exist with respect to any foreign government, faction, or terrorist group named in such proclamation, he may revoke such proclamation, in whole or in part. Such revocation shall be effective immediately upon publication in the Federal Register. Any such revocation shall not affect any action or proceeding based on any act committed prior to the effective date of such proclamation.

"(2) If the President determines at any time that national security, foreign relations, or commerce interests of the United States no longer warrant the application of subsection (a) in respect to the Government of Libya, he may issue a declaration stating his findings and publish such declaration in the Federal Register.

"(e) for the purposes of this section—

"(1) the term 'foreign government' has the meaning given it in section 116(b)(2) of this title;

"(2) the term 'armed forces' includes any regular, irregular, paramilitary, guerrilla, or police force;

"(3) the term 'faction' includes any political party, terrorist groups, body of insurgents, or other group which seeks to overthrow the government of, become the government of, or otherwise assert control over or otherwise influence any country or territory, possession, department, district, province, or other political division of any such country through the threat or use of force of arms;

"(4) the term 'terrorist group' means a group which engages in one or more violent acts committed for political or religious purposes, and which would have or did constitute a criminal felony on the date of commission, if it had been or was in fact committed within the juridiction of the United States; and

"(5) the term 'intelligence agency' means any entity which engages in collection, analyzation, and dissemination of information by, including but not limited to, covert means.

"(f) For the purposes of this section, any finding of fact made in any proclamation issued pursuant to subsection (c) shall be presumed as conclusive. No question concerning the validity of the issuance of such proclamation may be raised by a defendant as a defense in or as an objection to any trial or hearing if such proclamation was issued and published in the Federal Register in accordance with subsection (c).

"(g) Except as provided in subsection (a)(2), there is extraterritorial jurisdiction over any violation of this section which is committed wholly or partially outside of the United States, its territories, or possessions.

"(h) An affirmative defense shall exist for any person who—

"(1) violates this Act within sixty days of the effective date of this Act or of any proclamation affecting such person, if—

"(A) such person is outside of the United States, its territories, and possessions on said effective date;

"(B) such person does not violate this Act subsequent to return to the United States, its territories, or possessions if said return is made within sixty days of said effective date; and

"(C) the violation occurred within sixty days of said effective date; or

"(2) commits an act or acts which violate subsection (a), only with respect to the armed forces, any intelligence agency, or their agents of the Government of Libya, if—

"(A) the President issues a declaration pursuant to subsection (d)(2) of this Act;

"(B) such declaration becomes effective prior to the act or acts against which said defense is offered; and

"(C) no subsequent Presidential proclamation, directed at the Government of Libya, and issued pursuant to subsection (c)(1), is in effect at the time of such violation.

"(i)(1) Whoever has been convicted of any offense under section 971, in addition to any penalties prescribed by this chapter, shall forfeit to the United States—

"(A) the profits obtained by him in such activity;

"(B) any of his interest in, claim against, or property or contractual rights of any kind, held by him or derived by him through such activity;

"(C) any of the capital assets, fixed or liquid, held by him and used in such activity; and

"(D) all moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished in exchange for an action or actions proscribed by this Act, and all proceeds traceable to such exchange and all moneys, negotiable instruments, and securities used or intended to be used to facilitate a violation under this Act.

"(2) The Attorney General, or any entity duly authorized by him, is authorized and empowered to seize from

anyone accused, by indictment or information, of a violation of this Act, any of the assets referred to in subsection (i) and to hold such assets for benefit of the accused, unless a conviction is obtained, in which case such assets shall be held for the benefit of the United States. In the case of assets held for the benefit of the United States, the Attorney General, or his duly authorized representative, is empowered to deposit the same in the General Fund of the Federal Treasury, or to dispose of them at fair market value, or at public auction; the value of all emoluments received, exclusive of reasonable costs, to be deposited in the General Fund of the Federal Treasury.

"(j) This Act shall not be construed to prohibit the provision of medical services or training for humanitarian purposes, or the recruitment or solicitation thereof.".

(b) The analysis of chapter 45 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"971. Military and intelligence assistance to certain foreign governments, factions, and terrorist groups.

SEC. 4. Section 3238 of title 18, United States Code, is amended by—

(1) striking out "The" and inserting in lieu thereof "(a) Subject to subsection (b), the"; and

(2) adding at the end the following new subsection:

"(b) The trial of any offense under section 971 of this title which is committed out of the jurisdiction of any particular State or district may be in any district. Nothing contained in this subsection may be construed to restrict any right of a defendant under any rule in effect under section 3771 of this title.".

SEC. 5. Section 11 of title 18 is amended by inserting "971", after "sections 112, 878, 970,".

Additional Submissions

STATEMENT OF

GARY M. CHASE

ASSOCIATE GENERAL COUNSEL FOR LEGISLATION

CENTRAL INTELLIGENCE AGENCY

Mr. Chairman, Members of the Subcommittee:

I am pleased to present the views of the Central Intelligence Agency on S. 2255, the Antiterrorism and Foreign Mercenary Act introduced by Senator Humphrey.

The Central Intelligence Agency strongly supports the concept of legislation designed to strengthen the ability of the United States Government to combat international terrorism. S. 2255, which prohibits U.S. citizens, permanent resident aliens, and business enterprises from assisting military or intelligence components of foreign powers engaging in or supporting international terrorist activities, appears to be a positive contribution in the battle against terrorism.

Mr. Chairman, because the Central Intelligence Agency by law has no law enforcement powers or internal security functions, as a matter of policy we normally refrain from taking an active role in shaping federal criminal statutes, except when those statutes have a direct impact upon the activities or personnel of the Agency. Thus, as to the wisdom of the various provisions of S. 2255 as effective law enforcement tools for combating international terrorism, we defer to the Department of Justice.

The mission of the Central Intelligence Agency and the other departments and agencies in the Intelligence Community

INCLUDES THE COLLECTION OF FOREIGN INTELLIGENCE ABOUT TERRORIST ORGANIZATIONS AND GOVERNMENTS WHICH SUPPORT TERRORISM, THE CONDUCT OF COUNTERTERRORIST ACTIVITIES TO THWART TERRORISM, AND THE IMPLEMENTATION OF SPECIAL ACTIVITIES DIRECTED AGAINST HOSTILE FOREIGN GOVERNMENTS OR ORGANIZATIONS WHICH SUPPORT TERRORISM. SEVERAL PROVISIONS OF S. 2255 AS IT IS CURRENTLY DRAFTED COULD HAVE THE UNINTENDED EFFECT OF RESTRICTING THE ABILITY OF THE UNITED STATES TO CARRY OUT THESE ANTITERRORIST INTELLIGENCE ACTIVITIES.

UNDER THE BILL'S PROPOSED 18 U.S.C. § 791(A), A U.S. CITIZEN OR PERMANENT RESIDENT ALIEN COULD NOT SERVE IN, OR IN CONCERT WITH, A MILITARY OR INTELLIGENCE COMPONENT OF A FOREIGN GOVERNMENT OR TERRORIST GROUP DESIGNATED BY PRESIDENTIAL PROCLAMATION. I AM SURE THAT THIS PROVISION WAS NOT INTENDED TO PREVENT THE UNITED STATES FROM EMPLOYING SUCH PERSONS AS PENETRATION AGENTS, OR "INFILTRATORS," AGAINST MILITARY OR INTELLIGENCE COMPONENTS OF DESIGNATED TERRORIST GOVERNMENTS OR GROUPS. SIMILARLY, UNDER PROPOSED § 791(A) NO U.S. CITIZEN OR PERMANENT RESIDENT ALIEN COULD PROVIDE TRAINING IN ANY CAPACITY TO MEMBERS OR AGENTS OF MILITARY OR INTELLIGENCE COMPONENTS OF DESIGNATED GOVERNMENTS OR TERRORIST GROUPS. HERE AGAIN, IT SHOULD BE MADE CLEAR THAT THERE IS NO INTENT TO PREVENT EFFECTIVE USE OF PENETRATION OR DOUBLE AGENTS TARGETTED AGAINST SUCH GOVERNMENTS OR GROUPS.

TO ASSURE THAT S. 2255 DOES NOT HAVE THIS UNINTENDED IMPACT, WE RECOMMEND THAT YOU INSERT IN THE BILL THE FOLLOWING NEW SUBSECTION ON PAGE 10, AFTER LINE 15:

"(K) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE CRIMINAL LIABILITY FOR THE CONDUCT OF UNITED STATES INTELLIGENCE ACTIVITIES WHICH ARE PROPERLY AUTHORIZED AND CONDUCTED IN ACCORDANCE WITH FEDERAL

STATUTES AND EXECUTIVE ORDERS GOVERNING SUCH ACTIVITIES."

THE PROPOSED AMENDMENT MAKES CLEAR THAT THE LEGISLATION DOES NOT EXTEND CRIMINAL LIABILITY TO THE CONDUCT OF OTHERWISE LAWFUL U.S. INTELLIGENCE ACTIVITIES. IT MUST BE EMPHASIZED THAT THE PROPOSED AMENDMENT WOULD NOT ITSELF AUTHORIZE ANY U.S. INTELLIGENCE ACTIVITIES, NOR WOULD IT EXCULPATE U.S. INTELLIGENCE PERSONNEL WHO MIGHT ENGAGE IN ACTIVITIES WHICH ARE NOT LAWFULLY AUTHORIZED.

THE PROPOSED AMENDMENT CAREFULLY PRESERVES THE STATUS QUO OF THE LAW GOVERNING U.S. INTELLIGENCE ACTIVITIES. AS YOU KNOW, MR. CHAIRMAN, U.S. INTELLIGENCE ACTIVITIES ARE COMPREHENSIVELY REGULATED BY FEDERAL STATUTES AND EXECUTIVE ORDERS. THE NATIONAL SECURITY ACT OF 1947 (INCLUDING THE CONGRESSIONAL OVERSIGHT PROVISIONS ADOPTED IN 1980), THE FOREIGN ASSISTANCE ACT OF 1961 (CONCERNING SPECIAL ACTIVITIES), THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, THE VARIOUS STATUTES GOVERNING THE ACTIVITIES OF INDIVIDUAL INTELLIGENCE AGENCIES, SUCH AS THE CIA ACT OF 1949 AND THE NATIONAL SECURITY AGENCY ACT OF 1959, AND EXECUTIVE ORDER 12333 AND DETAILED IMPLEMENTING REGULATIONS APPROVED BY THE ATTORNEY GENERAL, WILL CONTINUE TO DETERMINE WHAT U.S. INTELLIGENCE AGENCIES CAN AND CANNOT DO TO COUNTER THE THREAT OF INTERNATIONAL TERRORISM.

SUPPLEMENTAL RESPONSE OF THE DEPARTMENT OF STATE TO QUESTIONS OF SENATOR DENTON

United States Department of State

Washington, D.C. 20520

FEB 17 1983

Dear Senator Denton:

This letter is in response to the two questions you posed to Assistant Legal Adviser Jeffrey H. Smith during his testimony on September 23, 1982 concerning S.2255, "The Antiterrorism and Foreign Mercenary Act". I sincerely regret the delay in responding. However, one of the matters you asked about, the Department of State's proposed revisions to the International Traffic in Arms Regulations, has only recently been completed.

Your first question related to Mr. Smith's suggestion that the United States Government could adequately deal with the problem of U.S. nationals who go overseas to train terrorists or foreign armies by revising existing regulations rather then through new legislation. Mr. Smith was referring to the Arms Export Control Act (the Act) and the International Traffic in Arms Regulations (the ITAR). Section 38 of the Act (22 U.S.C. §2778) authorizes the President to control the export of defense articles and defense services and to promulgate regulations for this purpose. These responsibilities have been delegated to the Secretary of State. Under the Act and the implementing ITAR regulations, the export of defense articles and the performance of defense services overseas generally requires a license or other written approval from the Department of State. Any person who willfully violates the Act or the ITAR is subject to fines of not more than $100,000 or imprisonment for not more than two years or both, as well as administrative sanctions. (The Department recently requested that these penalties be increased.)

The Act also provides that the President shall designate what constitutes a defense article or defense service. Under the existing regulations, the performance of a defense service overseas which involves the disclosure of technical data generally requires a license. (These regulations have essentially been in effect in the current form since 1955.) However, the performance of services which does not involve such disclosures (i.e., training of individuals utilizing information in the public domain) has as a matter of administrative practice usually not required a license.

The Honorable
Jeremiah Denton,
Chairman,
Subcommittee on Security and Terrorism,
Committee on the Judiciary,
United States Senate.

Two years ago, the Department began a comprehensive review of the ITAR. Reports that former U.S. intelligence officials were allegedly providing training to terrorists with respect to defense services led to a review of the adequacy of the provisions on defense services. It was determined that the definition of defense services had to be expanded. As a result, new regulations have been drafted which include within the definition of "defense services" a number of changes designed to require a license in order to conduct training of foreign persons outside the United States. For example, these changes will require a license from the Secretary of State to provide training in the use of firearms and small unit tactics or training of foreign pilots outside the United States even if that training does not reveal technical data not in the public domain.

We believe that such a course of action is highly desirable and consistent with the terms and purpose of Section 38 of the Arms Export Control Act. We intend to publish the proposed revisions for further public comment and would be pleased to provide you with a copy as soon as published.

You had also asked what past abuses the Department of State was aware of which would be punishable under a new bill such as S.2255. The Department of State does not systematically collect and maintain such information. Information of this nature, if available, would likely be in the hands of law enforcement agencies such as the Department of Justice or the Federal Bureau of Investigation. Those agencies might be able to assist the Subcommittee in compiling a list of past abuses.

I hope that these answers will be of use to you and the Subcommittee. If I can be of any further assistance, please do not hesitate to let me know.

With cordial regards,

Sincerely,

Powell A. Moore
Assistant Secretary for
Congressional Relations

SUPPLEMENTAL RESPONSE OF THE DEPARTMENT OF JUSTICE
TO QUESTIONS OF SENATOR DENTON

U.S. Department of Justice

Criminal Division

Deputy Assistant Attorney General

Washington, D.C. 20530

8 MAR 1983

Honorable Jeremiah A. Denton, Jr.
Chairman, Subcommittee on
Security and Terrorism
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Denton:

This responds to the recent request by your staff for supplemental responses to six questions which were raised during my testimony on September 23, 1982 before your Subcommittee on S. 2255.

Attached hereto are our responses. In a few cases, we have not been able to obtain very much more information than was provided to your Subcommittee during my testimony. I hope this information will be of assistance to your Subcommittee.

Sincerely,

MARK M. RICHARD
Deputy Assistant Attorney General
Criminal Division

Attachment

1. Specific Examples of Abuses Which Have Occurred Which Would Have Been Prosecutable if S. 2255 Had Been Enacted (pages 29-30) */

It is difficult to answer this request because it assumes that some country or group would have been named pursuant to requirements of S. 2255. However, in addition to those instances mentioned in my testimony and certain acts involved in such recent highly publicized cases against Edwin Wilson and Frank Terpil, this legislation may have been applicable to such contract killings as that of Orlando Letelier in 1976, to the Palestinians who are permanent United States residents who journeyed recently to Lebanon to fight for the Palestine Liberation Organization (PLO) and then returned to the United States, to efforts by some operatives of the PLO to purchase handguns or high explosives and detonators, and to the involvement of members of the Justice Commandos of the American Genocide in the acquisition, construction, and transportation of an explosive device. It should be noted that in some of these situations, there may be some other federal criminal laws (e.g., explosive or weapons statutes) which have been violated.

2. How Widespread Is Mercenary Activity On the Part of Americans? (page 34)

We requested the assistance of the FBI and the CIA in regard to this question. Unfortunately, we cannot be too helpful on this point except to state that we believe that it goes on in almost all areas of the globe to some degree. The FBI's investigative authority is limited to violations of the Federal neutrality laws. Mercenary activity frequently includes recruitment and operations overseas involving revolutionary groups and countries with which the United States does not have friendly relations. If an American is recruited overseas to provide mercenary skills to foreign countries, factions, or terrorist groups, no Federal law is violated. If an American mercenary is recruited in the United States, then the neutrality laws would be violated.

3. Specific Examples of Existing Loopholes in Current Laws (page 39)

There are some gaps in existing law which we believe could be closed to enhance our investigative and prosecutive control in these areas. S. 2255 is one example of ways in which existing law could be tightened. The Administration is preparing a comprehensive package to deal with international terrorism which will be submitted to the Congress in the near future. Hence, this is not the proper time to discuss these issues. We have attached, however, a copy of the Report to the Congress submitted by the President pursuant to Section 719 of the International Security and Development Cooperation Act of 1981 which may be of assistance to the Subcommittee on this point.

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*/ Page references are to pages in the initial draft of Mr. Richard's actual testimony.

4. Constitutionality of the Standard Given to the President Under S. 2255 in Proposed 18 U.S.C. § 971(c)(1) (pages 42-43)

Section 3 of S. 2255 would amend title 18 by adding a new § 971. This proposed § 971 would, in general, prohibit United States citizens, companies and lawful resident aliens from rendering certain kinds of military and intelligence assistance to certain foreign governments and terrorist groups. The President would, whenever he found it necessary because of national security, foreign relations, or commerce interests, issue a proclamation naming the foreign governments, factions and terrorist groups subject to the ban. A question has been raised as to this provision's constitutionality.

We believe the provision is constitutional. It is similar to provisions found in other statutes, where, as here, Congress has found it advisable to place fairly broad discretion in the President's hands. See, e.g., 50 U.S.C. § 205 (suspension of commercial intercourse with States in insurrection); 22 U.S.C. § 2370(a) (embargo on trade with Cuba); 22 U.S.C. §§ 441-457 (neutrality laws). 1/ These statutes, like § 971, provide the President with standards to guide his actions. Thus, the discretion of the President is not unguided, and it is possible to ascertain from the standards whether the will of Congress is being obeyed. Yakus v. United States, 321 U.S. 414 (1944). There is no reason to doubt either that Congress has the power to delegate this decisionmaking authority to the President or that § 971 provides adequate standards to guide his discretion.

5. Principles of International Law Giving Congress the Power to Regulate and Punish Conduct of United States Citizens and Others Owing Permanent Allegiance Wherever They May Be (page 44)

Section 971(g) states:

> Except as provided in subsection (a)(2), there is extraterritorial jurisdiction over any violation of this section which is committed wholly or partially outside of the United States, its territories, or possessions.

Section 971 governs the conduct of American citizens and companies and lawfully admitted resident aliens. Extraterritorial jurisdiction over the first two is governed by the basic principle of international law that, "A state has jurisdiction to prescribe a rule of law attaching legal consequences to conduct of a national of the state wherever the conduct occurs." Restatement (Second) of Foreign Relations Law in the United States (Restatement) § 30(1)(a). This jurisdiction based on nationality is one of the most well recognized bases for a state's assertion of jurisdiction. See 1 Oppenheim's International Law (Lauterpacht 8th ed.) § 293; S. Rep. No. 605, Pt. 1, 95th Congress, 1st Sess. 37-38 (1977 (report on the Criminal Code Reform Act of 1977).

1/ A fairly old example of this kind of law, passed in 1887, can be found at 46 U.S.C. § 143. The President was authorized to deny entry to the United States to ships or goods coming from any British dominions of North America that discriminated against American fishermen. Entry of ships or goods in violation of the proclamation was a criminal offense and subjected the ships and goods to forfeiture.

The more difficult question is whether there is jurisdiction over the extraterritorial actions of aliens--citizens of another state--who are permanent resident aliens of the United States. 8 U.S.C. § 1101(a)(20). We are reluctant to state that jurisdiction can always be asserted over the extraterritorial actions of a permanent resident alien. Oppenheim, supra, § 317. 2/ We can assume, however, given the standards enunciated under § 971(c)(1), that the President will only name foreign nations or groups when their activities threaten the safety or functioning of the United States. Jurisdiction over such crimes can be based on the "protective" principle of international law. Restatement, supra, § 33. This principle states that a country has jurisdiction to prescribe a rule of law attaching legal consequences to conduct outside its territory that threatens its security as a state or the operation of its governmental functions. 3/ Therefore, we believe there would be a sufficient basis for asserting jurisdiction over the extraterritorial actions of permanent resident aliens under § 971(g).

6. Changes to the Forfeiture Laws (pages 44-45)

The specific language and the reasons for the proposed changes to the forfeiture provision in S. 2255 are set out on pages 3 and 4 of the appendix to Mr. Richard's prepared statement. In essence, the proposed revision of this provision is designed to simplify the description of the property that would be subject to an order of criminal forfeiture and to cure, through incorporation by reference of the established procedures of the criminal forfeiture provision of the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. 1963), the bill's failure to address the variety of procedural issues that arise in criminal forfeitures.

In the material with our statement, we noted that the Congress was considering much needed legislation to improve the RICO forfeiture provisions, and that by using a cross-reference to these provisions any such improvements would automatically become applicable to the forfeitures provided for in S.2255. The Congress did not, however, pass such RICO amendments, although legislation incorporating a number of improvements in criminal forfeitures in the drug trafficking context was passed by both the House and the Senate as one of the sections of H.R. 3963 which was vetoed by the President on January 14, 1983. Therefore, our suggested revision of S.2255's forfeiture provision, inasmuch as it incorporates by reference certain of the forfeiture provisions of RICO, would not address the

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2/ It is true that legal resident aliens, who may serve in the Armed Forces, see 10 U.S.C. §§ 3253, 8253, are subject to the Uniform Code of Military Justice wherever they serve, including overseas. The theory for this assertion of jurisdiction is based on their continued personal relation to the United States. The limitations of this authority, however, are not altogether clear.

3/ Moreover, Congress has the constitutional power to define offenses against the law of nations. U.S. Const., art. I, § 8, cl. 10. Terrorism, like piracy, is rapidly becoming the subject of international agreements. See R. Lillich, Transnational Terrorism: Conventions and Commentary (1982). Crimes that have been universally condemned may be prosecuted by any nation that apprehends the criminal. Restatement, supra, § 34.

limitations of current criminal forfeiture procedures that we sought to address in legislation such as S. 2320. The Judiciary Committee's Report on S.2320 (S. Rep. No. 97-250, 97th Cong., 2d Sess. 1982) discussed in detail these limitations of the current RICO statute and the need for corrective legislation.
S. 2320 was passed by the Senate, with some modifications, as one of the titles of the Violent Crime and Drug Enforcement Improvements Act of 1982, S. 2572, and as H.R. 7140 (the Senate language was substituted for the House language, but was not subsequently approved by the House). It may also be noted that certain legislation (H.R. 3963) affecting forfeitures in the context of drug trafficking which Congress passed also failed to enact the desired improvements contained in the Senate's RICO bill, S.2320.

ATTACHMENTS TO DOJ LETTER OF MARCH 7, 1982

United States Department of State

Washington, D.C. 20520

SEP 1 6 1982

SEP 1 4 1982

Dear Mr. Chairman:

On behalf of the President, I am forwarding the enclosed report required by Section 719 of the International Security and Development Cooperation Act of 1981.

The Office of Management and Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

Powell A. Moore

Assistant Secretary
for Congressional Relations

Enclosure:

As stated.

The Honorable
Charles H. Percy, Chairman,
Committee on Foreign Relations,
United States Senate.

PRESIDENT'S REPORT

INTRODUCTION

Section 719 of the International Security and Development Cooperation Act of 1981 requires the President to submit a report including:

"(1) a description of all legislation, currently in force, and of all administrative remedies, presently available, which can be employed to prevent the involvement, service, or participation by U.S. citizens in activities in support of international terrorism or terrorist leaders;

(2) an assessment of the adequacy of such legislation and remedies, and of the enforcement resources available to carry out such measures, to prevent the involvement, service, or participation by U.S. citizens in activities in support of international terrorism or terrorist leaders; and

(3) a description of available legislative and administrative alternatives, together with an assessment of their potential impact and effectiveness, which could be enacted or employed to put an end to the participation by U.S. citizens in activities in support of international terrorism or terrorist leaders."

This report is a response to that requirement.

I. GENERAL U.S. LAW

At the beginning of this assessment, it is necessary to set the scope of what conduct is meant by "involvement, service, or participation of U.S. citizens in support of international terrorism or terrorist leaders."

The Congress has defined "international terrorism" (for purposes of foreign intelligence), as follows:

"(c) 'International terrorism' means activities that ---

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended ---

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum." (50 U.S.C. 1801(c)).

For purposes of this report, we will use the definition of international terrorism set out above. We will consider the following as "involvement, service, or participation in activities in support of international terrorism":

(1) Involvement in actual terrorist attacks;

(2) Involvement in a conspiracy to commit such attacks;

(3) Providing weapons, training, or other technical assistance with the likelihood that such assistance will be used in a terrorist attack.

A. Direct involvement in terrorist activities.

The criminal law of the United States (mainly Title 18, United States Code) and the laws of the 50 states outlaw many forms of criminal conduct directly utilized by terrorists as tactics in their efforts to coerce a civilian population or to influence governmental policy or action. Although the political motivation of these criminal acts sets them apart from more common crime, by definition a terrorist act is always an act or threat of criminal violence. Examples include murder, kidnapping, hostage-holding, arson, bombing, and hijacking. Such conduct or direct involvement in such a crime or in conspiracy, solicitation, or attempt to commit such a crime, is prohibited and punishable by the criminal law so long as the crime is either committed in the U.S. or impinges on our country so as to provide us with a sufficient jurisdictional nexus.

In certain cases, pursuant to international obligations, the United States has extended its criminal jurisdiction to cover crimes committed in foreign countries when the alleged offender is found in the United States. This legislation applies not only to U.S. citizens but to persons of all nationalities. Examples of such crimes are aircraft hijacking (pursuant to the Convention for the Suppression of Unlawful Seizure of Aircraft) and crimes against internationally protected persons (pursuant to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents). The obligation to extend U.S. jurisdiction derives from these international agreements which are intended to further international cooperation in bringing those who commit the specified crimes to justice, and is necessary to implement the principle of "prosecute or extradite" found in the conventions relating to terrorist crimes.

Under consideration within the U.S. government are other legislative initiatives which would implement other treaties relating to additional terrorist tactics. H.R. 4847, which would implement the provisions of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), is currently pending in Congress. Legislation is also pending in Congress which is designed to implement the Convention on Physical Protection of Nuclear Material (H.R. 5228, which has been passed, and S. 1446, which is awaiting floor action). Furthermore, the Administration is now developing a legislative proposal which would implement the International Convention Against the Taking of Hostages, a similar treaty dealing with the crime of hostagetaking. The Administration supports these legislative proposals which will make a substantial contribution to the United States' ability to take action against terrorists.

Other factors affecting the United States' ability to bring the criminal law to bear on those who have committed terrorist crimes are the problem of attaining custody over a fugitive (a problem not limited to those who are involved in terrorism) and the problem of extradition, particularly the "political offense" exception to extradition which is contained in many extradition treaties of the United States.

B. Support Activities

There are also other forms of conduct which are less directly related to the actual commission of acts of terrorism but which are potentially included in Section 719's language of "activities in support of international terrorism." These "support" activities range from speechmaking and propaganda activities on behalf of those who commit acts of terrorism, which may be protected by the First Amendment, to the outer fringes of a conspiracy to commit a terrorist attack. Somewhere between these two extremes are a number of supportive activities which are affected by current U.S. general law, such as supply and training. The following is a summary of existing U.S. law which could be used to regulate such activities.

1. The Arms Export Control Act (AECA)

With respect to the regulation of export of weapons from the U.S., Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the import and export of defense articles and defense services and to provide foreign policy guidance to U.S. persons who are involved in such exports and imports. This provision also authorizes the President to designate those articles and services which shall be considered to be defense articles and services and to promulgate the necessary regulations to control exports and imports. Comparable authority had previously been granted to the President under the Mutual Security Act of 1974 (Section 414).

Pursuant to these authorities, the Department of State promulgated the International Traffic in Arms Regulations (22 Code of Federal Regulations, subchapter M) (the ITAR). These regulations contain the U.S. Munitions List (Part 121 of the ITAR), which

specifies the articles and technical data subject to control under the ITAR.

Under the current ITAR, individuals who intend to export defense articles or related technical data must, as a general rule, obtain an export license or other approval from the Department of State. (Exemptions exist for certain exports.) Individuals who intend to perform certain services related to defense articles must also obtain licenses under the ITAR. The reason is that under the current regulatory scheme, exports of information that "...can be used, or be adopted for use, in the design, overhaul, processing, engineering, development, operation, maintenance, or reconstruction" of defense articles require an export license. (For purposes of the ITAR, an export consists of taking or sending technical data or defense articles out of the U.S. and certain disclosures of data to foreign persons within the U.S. See e.g., 22 C.F.R. 121.19 and 125.03). As a result, the performance of maintenance overseas on defense articles by U.S. corporations frequently requires an export license. Instruction on the use of defense articles can also frequently require a license. However, these provisions of the ITAR have not in practice been interpreted to encompass "mercenary" type activities and several other acts not directly related to the rather technical aspects of weapons.

In 1979, the Department of State decided to revise the ITAR. A proposed revision of the ITAR was published in the Federal Register on December 19, 1980, and numerous public comments were received. A revised ITAR is to be published in 1982.

One of the revisions proposed was the inclusion of a specific definition of "defense service." The Department of State is now considering whether the definition should be broadened to encompass the training of foreign military forces and the participation of U.S. nationals in foreign military activities generally. The statutory authority conferred on the President by Section 38 of the ACEA is clearly a broad one -- it specifically refers to the regulation of exports of defense services -- and it appears that regulating certain military activities would be consistent with the purposes underlying the AECA. The Department of State is in the process of formulating appropriate provisions for coordination within the Executive Branch and for public comment.

If such provisions were to be enacted, the participation of U.S. nationals in certain military activities on behalf of foreign persons or entities would require prior U.S. Government consent. The failure to obtain such consent could result in criminal and civil sanctions.

It should be noted that under the ITAR, export licenses may be denied if the Department determines that a proposed export would be contrary to U.S. foreign policy, the interests of world peace, or the security of the U.S. (22 C.F.R 123.05). The ITAR also provides that all Munitions List exports are prohibited to certain countries because the Department of State has determined that all exports to these countries are contrary to U.S. policy (22 C.F.R. 126.01). For example, all exports of Munitions List articles and services are prohibited under this provision with respect to most Communist countries. If it is ultimately decided to promulgate regulatory provisions on the participation by U.S. nationals in certain foreign military or paramilitary activities, permission to participate in such activities in the enumerated countries would automatically be denied.

2. Economic Regulation

a. International Emergency Economic Powers Act (IEEPA).

The International Emergency Economic Powers Act gives the President broad powers to regulate financial dealings and trade with foreign nationals or governments during times of declared national emergency. This statute was the authority for the blocking of Iranian assets and the latter broad trade embargo with Iran imposed

by the Treasury Department during the hostage crisis. The President's emergency powers under IEEPA are available only when the President declares a national emergency with respect to an event or situation which the President finds constitutes an unusual and extraextraordinary threat to the national security, foreign policy or economy of the United States. The statutory language and its legislative history make clear that IEEPA is to be utilized only in response to particular events of great magnitude.

In exceptional circumstances, such as the seizure of the American Embassy in Tehran, the President could declare a national emergency and use the resulting emergency powers under IEEPA to regulate U.S. citizens' financial transactions with foreign governments or persons engaged in acts of international terrorism. However, because IEEPA properly can be used only in extraordinary emergency situations, it does not provide a reliable means to regulate such activities by U.S. citizens under most circumstances. Nevertheless, when applicable, IEEPA could be the basis for regulations which totally prohibit persons subject to United States jurisdiction from any and all unlicensed dealings or transactions of any kind in property in which any foreign terrorist, terrorist group, or supporting foreign government, had any interest whatever, however slight, and whether direct or indirect; and could totally prohibit U.S. persons from all unlicensed dealings or transactions of any kind whatever from which a financial or economic benefit, no matter how slight, and whether direct or indirect, might redound or inure to the terrorist, terrorist group or supporting foreign government. Thus, since almost any overt, deliberate activity supportive of a terrorist, terrorist group, or supporting government would have some financial or economic consequence, however slight or indirect, the affect of such regulations issued pursuant to IEEPA would be the imposition of a virtually total ban on activity supportive of foreign terrorists, terrorist groups, or supporting foreign government, by persons subject to U.S. jurisdiction.

b. Section 5(b) of the Trading With the Enemy Act

Section 5(b) of the Trading With the Enemy Act (50 U.S.C., App. 5(b) gives the President almost unlimited power during the time of war to "investigate, regulate, direct and compel, nullify, void, prevent or prohibit" transactions of any kind involving property, or interest in property, in which a foreign country or national has any interest, by persons subject to U.S. jurisdiction. Prior to enactment of IEEPA, the 5(b) authority also extended to any "other period of national emergency declared by the President."

Therefore, what is said above with regard to the President's broad powers under IEEPA is equally true (with even more force) of his authority under 5(b) of the Trading With the Enemy Act, when applicable. Thus, although this authority is limited to time of war, it could be used also for regulations for preventing and combatting involvement or participation by U.S. persons in activities in support of international terrorism or terrorist leaders.

c. Export Administration Act (EAA).

Section 6 of the Export Administration Act of 1979 authorizes controls on U.S. exports where necessary to significantly further U.S. foreign policy. Controls may be placed not only on exports from the United States but also on exports "by any person subject to the jurisdiction of the United States" of "goods, technology, or other information."

Sections 3(8) and 6(i) of the EAA provide guidance for the use of such controls to discourage state support for international terrorism. Section 6(i) of the EAA requires Congressional notification at least 30 days before an export license is approved for the export of goods and technology valued at over $7 million which would make a significant contribution to the military potential of a country which has been designated by the Secretary of State as a repeated supporter of acts of international terrorism. Currently in force are controls on Libya, Syria, the People's Democratic Republic of

Yemen, and Cuba on dual-use security items valued at more than $7 million to military end-users. Other foreign policy controls apply to virtually all exports to Libya and Cuba.

The EAA also provides potential authority for controls against U.S. persons rendering services in controlled foreign destinations, on the theory that such transactions involve a transfer of "technology or other information" which constitutes an "export." However, such controls have never been imposed and the EAA authority for them is untested.

d. The Hostage Act (22 U.S.C. 1732)

This Act provides that whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the President's duty, inter alia, to use such means, not amounting to acts of war, as he may think necessary to effectuate a release.

If a foreign country was to condone or support in any way the conduct of a terrorist or terrorist group which had abducted a U.S. citizen, and did not put forth reasonable efforts to secure the release of the U.S. person from such terrorist leader or group within its borders, the President could cause economic and other sanctions to be instituted against such terrorist leader or group and the supporting country.

3. The "Neutrality Laws"

There are a number of sections of U.S. Code, the so-called "neutrality laws," which relate to the problem of armed attacks against other countries launched from the United States. These statutes, which are contained in 18 U.S.C. 951-970, have been used to prosecute persons who have undertaken armed invasions from United States soil. The statutes are cast in terms which indicate that the primary intention was to make illegal certain activities from the U.S. in support of foreign belligerents when the United States is not involved in the conflict. For example, Section 956 prohibits conspiring within the U.S. to injure in a foreign country the property of a foreign government with which the United States is at peace. Section 958 prohibits U.S. citizens from accepting and exercising a commission to serve a foreign power against another foreign power with which the United States is at peace. Section 959 prohibits enlistment or recruitment within the U.S. for the military services of a foreign state. Section 960, most frequently used, prohibits the launching of a military expedition from the United States against any country with which the United States is at peace.

As noted above, these statutes are intended to prohibit the launching of private invasions or armed attacks from the United States and are not primarily directed against terrorism. However, like other federal criminal statutes, they could be used when their provisions are violated by the terrorist's acts.

A separate question which is being addressed within the Department of Defense and the intelligence community is the recruitment of current or former U.S. personnel to participate in such activities. The Department of Defense has established policy to preclude unauthorized recruitment of U.S. military personnel.

Assessment of Adequacy

The statutes and accompanying regulations described above are generally workable to permit the United States to take steps in most cases to deter and to bring to justice those who are directly involved in support for international violence. However, there are several areas where additional legislation may be needed. An example of the workability of the statutes is the fact that in the most celebrated case, that of Edwin Wilson and Frank Terpil, federal indictments alleging numerous offenses have been brought. In that

case, the adequacy of U.S. law to bring charges is not in doubt; the problem is attaining custody of fugitives, which, as noted above, is a problem not limited to the area of support for terrorism and which is not susceptible to remedy by U.S. legislation.

In the Senate floor debate surrounding the Amendment which required this report, Senator Glenn noted an article which indicated that U.S. citizens had allegedly accepted employment performing services for the Libyan Air Force. Without more direct involvement in violent acts or the direction of such acts, such services cannot be construed to be involvement in international terrorism. While governments frequently conduct policies inimical to U.S. interests through their military forces, the fact that such activities are reprehensible does not make them "terrorism." Whether such activities should be prohibited is an issue distinct from what might be done in terms of legislation to prevent U.S. citizen involvement in international terrorism.

Since the passage of the International Security and Development Cooperation Act (DCA) of 1981, the United States has expanded greatly its export controls on Libya. We are confident that the revision of the export controls which went into effect on March 16, to include a wider selection of commodities and technical data which could be of military significance to Libya has contributed to our ability to monitor and control U.S.-origin activities in support of Libyan adventurism.

The question of resources to deal with international terrorism has been addressed and found to be generally adequate. For example, the FBI has dedicated increased manpower and other resources to the investigation of international terrorism. Specific needs in this area have been enumerated in the FY-1983 and FY-1984 budget submissions.

Alternatives

The Department of Justice believes that while existing laws are workable, there are some gaps which should be closed in order to facilitate a better federal investigative and prosecutive response to the problems caused by international terrorism.

Recent investigations and cases have revealed several areas where additional legislation is needed to allow the United States to deter or successfully prosecute those who are directly involved in the support of international terrorism. Present law, 18 U.S.C. 1116 18 U.S.C. 371, prohibits a conspiracy in the United States to murder high level foreign officials if they are to be killed outside of their own country. See also 18 U.S.C. 112, 878, and 1201(a)(4). Further, 18 U.S.C. 956 prohibits a conspiracy in the United States to commit certain acts of sabotage or property destruction in foreign countries with which the United States is at peace. However, there is no statute proscribing a conspiracy within the United States to kill, assault, threaten or kidnap a foreign official within his own country, although these acts can have a great impact on our foreign relations.

In addition, legislation closely regulating the involvement of United States citizens and permanent resident aliens in the providing of training and support services for foreign military and intelligence agencies would be helpful. The Arms Export Control Act, as discussed in the draft report, is generally limited to regulating the export of export of defense -- as opposed to intelligence -- articles and services. It should be noted that the Department of Justice has under consideration two similar bills, S. 2255 and H.R. 5211, that have been introduced in Congress which appear to provide a starting point for legislation in this area. An Administration position on this legislation is now being formulated.

Legislation may also be necessary to respond to a situation where a person falsely represents that he is acting on behalf of a United States intelligence agency or that some operation he is conducting has been endorsed or is supported by a United States intelligence agency when such is not the case. Furthermore, there may be a need to limit contact by former employees of United States intelligence agencies with their former agencies and the use of former employees by an intelligence agency unless such contact or use is approved by appropriate officials in the agency. It is not clear at this time, however, whether legislation is necessary to accomplish these last two goals or whether establishment of appropriate internal procedures by the intelligence agencies would be sufficient.

The United States Secret Service, which has responsibility for providing protective security to many persons who might be the target of terrorist attacks, is seeking, along with the Treasury Department, additional legislation which will make it a crime to threaten to kill, harm, or kidnap any statutory protectee of the Secret Service who is not already provided for by other statutes. In addition, Treasury and the Secret Service are seeking legislation which would clarify the Service's inherent authority to establish "zones of protection" around its protectees which it is a criminal offense to penetrate. Only the President is presently expressly covered by such authority. These badly needed measures are now pending in Congress.

Finally, also under consideration is a legislative proposal which would authorize payment of monetary rewards for information leading to the arrest and conviction of individuals and groups who commit acts of terrorism or conspire to commit such acts. The deterrent effect of such a program would also help in preventing U.S. citizen support for international terrorism. These and other needed legislative reforms in this area are under consideration by the Administration in anticipation of submission to the next Congress.

As noted above, consideration is now being given within the executive branch to changes in the ITAR which would bring the training of foreign military entities within the licensing requirements of the Arms Export Control Act. Although no final decision has been reached, such a change would contribute to remedying the situation noted in Senator Glenn's floor statement on this amendment.

The Administration will continue to review the need for legislation in this area and will make recommendations to Congress when appropriate.

Public Law 97-113
97th Congress

An Act

To authorize appropriations for the fiscal years 1982 and 1983 for international security and development assistance and for the Peace Corps, to establish the Peace Corps as an autonomous agency, and for other purposes.

Dec. 29, 1981
[S.1196]

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

International Security and Development Cooperation Act of 1981.

SHORT TITLE

SECTION 1. This Act may be cited as the "International Security and Development Cooperation Act of 1981". 22 USC 2151 note.

TITLE I—MILITARY SALES AND RELATED PROGRAMS

REPORTS TO THE CONGRESS

SEC. 101. (a)(1) Section 3(d)(1) of the Arms Export Control Act is amended— 22 USC 2753.

(A) in the text preceding subparagraph (A) by striking out "to a transfer of a defense article, or related training or other defense service, sold under this Act and may not give his consent to such a transfer under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act of 1961" and inserting in lieu thereof ", or under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act of 1961, to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at $50,000,000 or more,"; 22 USC 2314.

(B) by amending subparagraph (B) to read as follows:

"(B) a description of the article or service proposed to be transferred, including its acquisition cost;";

(C) in subparagraph (C) by striking out "defense article or related training or other defense service" and inserting in lieu thereof "article or service"; and

(D) in the last sentence by striking out "defense articles, or related training or other defense services," and inserting in lieu thereof "articles or services".

(2) Section 3(d)(3) of such Act is amended by striking out all that follows "The President may not give his consent" through "section 38 of this Act," and inserting in lieu thereof "to the transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or of any defense article or defense service valued (in terms of its original acquisition cost) at $50,000,000 or more, the export of which has been licensed or approved under section 38 of this Act,". 22 USC 2778.

(3) Section 3(d)(4) of such Act is amended—

(A) by inserting "or" at the end of subparagraph (B);

(B) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a period; and

by the Government of the Union of Soviet Socialist Republics of all its outstanding financial obligations to the United Nations, including its assessments with repect to the peacekeeping operations of the United Nations.

CONDEMNATION OF LIBYA FOR ITS SUPPORT OF INTERNATIONAL TERRORIST MOVEMENTS

SEC. 718. (a) The Congress condemns the Libyan Government for its support of international terrorist movements, its efforts to obstruct positive movement toward the peaceful resolution of problems in the Middle East region, and its actions to destabilize and control governments of neighboring states in Africa.

Report to Congress.

(b) The Congress believes that the President should conduct an immediate review of concrete steps the United States could take, individually and in concert with its allies, to bring economic and political pressure on Libya to cease such activities, and should submit a report on that review to the Congress within one hundred and eighty days after the date of enactment of this Act. Such a review should include the possibility of tariffs on or prohibitions against the import of crude oil from Libya.

UNITED STATES CITIZENS ACTING IN THE SERVICE OF INTERNATIONAL TERRORISM

SEC. 719. (a) It is the sense of the Congress that the spread of international terrorism poses a grave and growing danger for world peace and for the national security of the United States. As a part of its vigorous opposition to the activities of international terrorist leaders and the increase of international terrorism, the United States should take all steps necessary to ensure that no United States citizen is acting in the service of terrorism or of the proponents of terrorism.

Report to Congress.

(b) Not later than six months after the enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report which includes—

(1) a description of all legislation, currently in force, and of all administrative remedies, presently available, which can be employed to prevent the involvement, service, or participation by United States citizens in activities in support of international terrorism or terrorist leaders;

(2) an assessment of the adequacy of such legislation and remedies, and of the enforcement resources available to carry out such measures, to prevent the involvement, service, or participation by United States citizens in activities in support of international terrorism or terrorist leaders; and

(3) a description of available legislative and administrative alternatives, together with an assessment of their potential impact and effectiveness, which could be enacted or employed to put an end to the participation by United States citizens in activities in support of international terrorism or terrorist leaders.

NONALIGNED COUNTRIES

SEC. 720. (a) In considering whether to provide assistance, make sales, extend credits, or guarantee loans under the provisions of the Foreign Assistance Act of 1961, as amended, or the Arms Export Control Act, to any country represented at the Meeting of the

22 USC 2151 note.
22 USC 2751 note.

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